

2022

SB 361: Law Enforcement Strategic Support Act

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REVENUE AND TAXATION

Income Taxes: Amend Chapter 7 of Title 48 of the Official Code of Georgia Annotated, Relating to Income Taxes, so as to Enact the Law Enforcement Strategic Support Act (LESS Crime Act); Provide for Tax Credits for Certain Contributions Made by Taxpayers to Certain Local Law Enforcement Foundations; Provide for an Aggregate Annual Limit; Provide for Terms and Conditions; Provide for Applications and Certifications; Provide for the Revocation of Qualified Status; Provide for Certain Penalties; Require Annual Reporting; Provide for Rules and Regulations; Provide for Construction; Provide for a Short Title; Provide for Related Matters; Provide for an Effective Date and Applicability; Repeal Conflicting Laws; and for Other Purposes

CODE SECTION:	O.C.G.A. § 48-7-29.25 (new)
BILL NUMBER:	SB 361
ACT NUMBER:	856
GEORGIA LAWS:	2022 Ga. Laws 716
EFFECTIVE DATE:	July 1, 2022
SUMMARY:	This Act provides a new income tax credit for individuals, LLC members, partnership partners, and S-corporation shareholders ranging from \$5,000-\$10,000 for donations to law enforcement foundations, defined as domestic nonprofit corporations with the sole function of supporting local law enforcement units. The Act caps credits for all taxpayers at \$75 million per year.

History

From 1977 to 2017, Georgia increased police spending by 122%, mainly through local government funding.¹ However, George Floyd's

1. Alex Camardelle, *Data on Police Spending in Georgia*, GA. BUDGET & POL'Y INST. (June 19, 2020), <https://gbpi.org/data-on-police-spending-in->

murder in May 2020 sparked widespread Black Lives Matter protests and nurtured the “#defundthepolice” movement.² As progressive and conservative political voices debated police reform and a need for greater police accountability nationwide, cities and towns began to scrutinize local police budget allocations.³ City councils struggled to decide how to bridge the political divide, but ultimately Georgia’s police funding did not decrease.⁴ Immediately after Floyd’s death, the Atlanta City Council contemplated withholding \$73 million in police funding while considering changes to public safety initiatives.⁵ This plan failed by a vote of 8 to 7, and the \$73 million was released to the Atlanta Police Department (APD).⁶ In 2021, Atlanta increased the overall police budget to \$230 million.⁷ Governor Brian Kemp (R), concerned with ongoing defund-the-police messages, signed House Bill (HB) 286 on May 7, 2021, ensuring that local law enforcement funding was reduced by no more than 5% annually.⁸ In direct response to calls to defund the police, Governor Kemp stated, “Radical movements like the defund the police movement seek to vilify the men and women who leave their families every day and put their lives on the line to protect all Georgians.”⁹ He further stated, “This far-left

georgia/#:~:text=In%20Georgia,%20the%20overwhelming%20majority%20of%20spending%20on,demographic%20information%20for%20the%20city.%20Support%20GBPI%20Today [https://perma.cc/A3K4-DLNA].

2. J.D. Capelouto, *Atlanta Almost Withheld \$73M in Police Funding Last Year. What’s Changed Since Then?*, ATLANTA J.-CONST. (June 21, 2021), <https://www.ajc.com/news/atlanta-news/atlanta-almost-withheld-73m-in-police-funding-last-year-whats-changed-since-then/FEZOTN3G7NFCDFAMAI5BBBTVYY/> [https://perma.cc/6JHJ-FUAW]; Jason Silverstein, *The Global Impact of George Floyd: How Black Lives Matter Protests Shaped Movements Around the World*, CBS NEWS (June 4, 2021, 7:39 PM), <https://www.cbsnews.com/news/george-floyd-black-lives-matter-impact/> [https://perma.cc/22Q6-E2HW]; see also #DefundThePolice, BLACK LIVES MATTER (May 30, 2020), <https://blacklivesmatter.com/defundthepolice/> [https://perma.cc/ACD6-AAHW].

3. Lisa Mascaro, *Democrats Demand More Changes, Greater Accountability in GOP Police Bill*, POLICE1 (June 23, 2020), <https://www.police1.com/law-enforcement-policies/articles/democrats-demand-more-changes-greater-accountability-in-gop-police-bill-ZzYTmbUfkz7Ggig/> [https://perma.cc/HE4Y-XB8S]; Capelouto, *supra* note 2.

4. Capelouto, *supra* note 2.

5. *Id.*

6. *Id.*

7. *Id.*

8. Aimee Sachs, *Georgia Governor Signs Bill That Limits Decreasing of Police Funding*, COURTHOUSE NEWS SERV. (May 7, 2021), <https://www.courthousenews.com/georgia-governor-signs-bill-that-limits-decreasing-of-police-funding/> [https://perma.cc/9PDG-G68W].

9. *Id.*

movement will endanger our communities and our law enforcement officers and leave our most vulnerable at risk.”¹⁰

When HB 286 was signed into law, only three Democrats voted in favor of the bill, demonstrating the political divide on police funding, police accountability, and public safety concerns.¹¹ Senator Sonya Halpern (D-39th) explained that George Floyd’s death and police funding appear to be at odds with each other, but in reality, they both represent larger issues of public safety and police accountability, which are not mutually exclusive.¹² Instead, Georgians should be able to consider public safety while pushing for increased police accountability “because public safety is something that is absolutely on everybody’s mind across every neighborhood in this city.”¹³

Buckhead, one of the wealthiest neighborhoods in Atlanta, is attempting to secede from the City of Atlanta and form its own municipality as an unconventional approach to address public safety.¹⁴ Some Buckhead residents believe that the increased autonomy will allow more focused funding to improve policing and public safety.¹⁵ Supporters of the new municipality argue that APD “has failed them” and secession will allow for “different and more effective law enforcement presence.”¹⁶ Buckhead residents are, in essence, seeking ways to address public safety locally.¹⁷ Secession critics argue that the split will not reduce crime rates because criminals do not “care about arbitrary neighborhood lines.”¹⁸ Save erecting a “physical barrier” around Buckhead, critics argue, criminals will continue to target the wealthiest neighborhood in metro Atlanta.¹⁹

Senate Bill (SB) 361, the Law Enforcement Strategic Support Act (LESS Crime Act), was introduced in January 2022.²⁰ According to

10. *Id.*

11. *See id.*

12. Virtual Interview with Sen. Sonya Halpern (D-39th) (May 10, 2022) [hereinafter Halpern Interview] (on file with the Georgia State University Law Review).

13. *Id.*

14. Geoff Duncan, Opinion, *A New Bipartisan Georgia Bill Is Re-funding the Police and Fighting Crime*, NEWSWEEK (Feb. 14, 2022, 8:00 AM), <https://www.newsweek.com/new-bipartisan-georgia-bill-re-funding-police-fighting-crime-opinion-1678544> [<https://perma.cc/DX5W-3JHC>].

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. Press Release, Office of Lieutenant Governor, Lt. Governor Geoff Duncan Announces Priorities

bill sponsor Senator Larry Walker III (R-20th), the bill was first introduced to address the spike in violent crimes while retaining and supporting police officers.²¹ The legislation provides a much-needed additional layer of support and protection for public safety because it empowers citizens to financially contribute to local law enforcement.²² The legislation also enables Georgians to get more involved with local public safety initiatives, thereby building a more unified community.²³

During the 2022 legislative session, Lieutenant Governor Geoff Duncan (R) placed a heavy emphasis on public safety and unveiled the LESS Crime Act as the cornerstone of his plan to incentivize the community to partner with law enforcement to reduce crime.²⁴ Lieutenant Governor Duncan acknowledged that to accomplish this goal, the bill would need to take “a bipartisan approach to enhancing public safety while engaging directly with local community members.”²⁵ Indeed, the bill passed the Senate with unanimous support.²⁶

The LESS Crime Act was “[m]odeled after Georgia’s groundbreaking Rural Hospital Tax Credit [Program],” which Lieutenant Governor Duncan also introduced.²⁷ The program, effective on January 1, 2017, allows rural Georgian hospitals to access up to \$60 million in tax credits each year, with each hospital having access to \$4 million in tax credits.²⁸ The Rural Hospital Tax Credit

for the 2022 Legislative Session (Jan. 6, 2022) [hereinafter LG Duncan Press Release 1], <https://ltgov.georgia.gov/press-releases/2022-01-06/lt-governor-geoff-duncan-announces-priorities-2022-legislative-session> [<https://perma.cc/89RB-R8WW>].

21. Telephone Interview with Sen. Larry Walker III (R-20th) (May 13, 2022) [hereinafter Walker Interview] (on file with the Georgia State University Law Review).

22. *Id.*

23. *Id.*

24. LG Duncan Press Release 1, *supra* note 20.

25. Press Release, Office of Lieutenant Governor, Unanimous Senate Passage of Lt. Governor Duncan’s “LESS” Crime Act Receives Bipartisan Acclamation from State and City Leaders (Feb. 10, 2022) [hereinafter LG Duncan Press Release 2], <https://ltgov.georgia.gov/press-releases/2022-02-10/unanimous-senate-passage-lt-governor-duncans-less-crime-act-receives> [<https://perma.cc/4QNM-N8NP>].

26. *Id.*

27. LG Duncan Press Release 1, *supra* note 20; see *Health Care*, OFF. OF GA. LIEUTENANT GOVERNOR, <https://ltgov.georgia.gov/priorities/health-care> [<https://perma.cc/6Q9Q-9PYL>].

28. Jessica Szilagyi, *Rural Hospital Tax Credit 2020: Which Hospitals Are Eligible?*, ALLONGEORGIA (Dec. 17, 2019), <https://allongeorgia.com/georgia-lifestyle/rural-hospital-tax-credit-2020-which-hospitals-are-eligible/#:~:text=In%202016%2C%20the%20Georgia%20General%20Assembly%20passed%20Senate,directs%20up%20to%20%2460%20million%20to%20rural%20facilities> [<https://perma.cc/FP9H->

Program, however, did not initially serve its intended purpose.²⁹ A 2018 Georgia Department of Audits and Accounts report noted that tax credit contributions were not reaching “the neediest rural hospitals.”³⁰ By 2019, however, “Dorminy Medical Center in Fitzgerald, ranked as the neediest rural hospital, received the \$4 million limit[,] . . . all in undesignated contributions.”³¹ Senator Halpern noted that while the Rural Hospital Tax Credit Program faced a few stumbling blocks, its ultimately successful formula of increasing resources through individual–community partnerships inspired the LESS Crime Act.³²

The LESS Crime Act emphasizes government and police accountability and includes strict requirements and restrictions on how tax credits can be obtained and spent.³³ In a press release, Lieutenant Governor Duncan stated that the donations from tax credits must be used to “[i]ncrease officer salaries[;] [h]ire additional law enforcement personnel[;] [e]xpand police training programs[;] [p]urchase or maintain department equipment[; and] [e]stablish or maintain an existing co-responder program that is dedicated to addressing mental health-related emergencies.”³⁴

The LESS Crime Act has been hailed as an innovative and creative way to address public safety concerns through community partnerships so that the tragedies of the last few years do not repeat themselves.³⁵ Indeed, Senator Halpern praised Lieutenant Governor Duncan for “taking a bipartisan approach to making our communities safe while prioritizing modern policing methods that promote law enforcement collaboration with mental health professionals.”³⁶

KY7V].

29. See Dave Williams, *Georgia Rural Hospital Tax Credit Program Gets More Favorable State Audit*, CURRENT (Jan. 7, 2021), <https://thecurrentga.org/2021/01/07/georgia-rural-hospital-tax-credit-program-gets-more-favorable-state-audit/> [<https://perma.cc/M39T-PAWH>].

30. *Id.*

31. *Id.*

32. Halpern Interview, *supra* note 12.

33. See 2022 Ga. Laws 716, § 2, at 716–21 (codified at O.C.G.A. § 48-7-29.25 (2022)).

34. LG Duncan Press Release 1, *supra* note 20. Once finalized, the Act clarified that contributions could not be used to pay salaries or other regular compensation, but rather, salary supplements that are paid no more than twice annually to such law enforcement officers. 2022 Ga. Laws 716, § 2, at 717 (codified at § 48-7-29.25(4)(A)).

35. LG Duncan Press Release 2, *supra* note 25.

36. *Id.*

*Bill Tracking of SB 361**Consideration and Passage by the Senate*

Senator Larry Walker III (R-20th) sponsored SB 361, with Senator Ed Harbison (D-15th), Senator Jeff Mullis (R-53rd), Senator Bill Cowsert (R-46th), Senator John Albers (R-56th), and others cosponsoring.³⁷ The bill was placed in the Senate hopper on January 24, 2022.³⁸ On January 25, 2022, the Senate read SB 361 for the first time and then referred the bill to the Senate Finance Committee.³⁹

The Senate Finance Committee favorably reported the bill by substitute on February 3, 2022.⁴⁰ The substitute included new language that capped the total amount of contributions that any foundation could accept at \$5 million each year.⁴¹ The substitute also eliminated the language requiring participating foundations to annually submit a Schedule H tax form.⁴² Furthermore, language that would automatically repeal and reserve the Code section on January 1, 2028, was removed.⁴³

The Senate read SB 361 for the second time on February 7, 2022, and for the third time on February 10, 2022.⁴⁴ On February 10, 2022, the Senate called SB 361 to the floor for consideration, and the bill

37. Georgia General Assembly, SB 361, Bill Tracking [hereinafter SB 361, Bill Tracking], <https://www.legis.ga.gov/legislation/61292> [<https://perma.cc/Q7NA-RKRA>].

38. *Id.*

39. State of Georgia Final Composite Status Sheet, SB 361, May 19, 2022.

40. *Id.*; SB 361, Bill Tracking, *supra* note 37.

41. SB 361 (SCS), § 2, p. 3, ll. 46–48, 2022 Ga. Gen. Assemb.

42. *Compare* SB 361 (SCS), § 2, p. 5–6, ll. 121–24, 2022 Ga. Gen. Assemb., *with* SB 361, as introduced, § 2, p. 6, ll. 122–25, 2022 Ga. Gen. Assemb. IRS Form 990 and other applicable attachments are still required, but IRS Schedule H form is not required. *See* 2022 Ga. Laws 716, § 2, at 719 (codified at O.C.G.A. § 48-7-29.25(g)(1)(A)). The Schedule H form is used to report household employment taxes if cash wages were paid to a household employee and the wages were subject to social security, Medicare, or FUTA taxes, or if federal income tax is withheld. IRS, U.S. DEP'T OF TREASURY, SCHEDULE H, FORM 1040, HOUSEHOLD EMPLOYMENT TAXES (2021), <https://www.irs.gov/pub/irs-pdf/f1040sh.pdf> [<https://perma.cc/ZYL4-44T8>].

43. *Compare* SB 361 (SCS), § 2, pp. 1–8, 2022 Ga. Gen. Assemb., *with* SB 361, as introduced, § 2, p. 8, l. 191, 2022 Ga. Gen. Assemb. The Act contains language that makes the tax credits applicable only to “taxable years beginning on or after January 1, 2023, and ending on or before December 31, 2027” 2022 Ga. Laws 716, § 2, at 717 (codified at O.C.G.A. § 48-7-29.25(b)(2)). This allows law makers to extend the tax credits in 2028, if necessary, essentially having the same effect as the eliminated automatic repeal and reserve. *See* Walker Interview, *supra* note 21.

44. State of Georgia Final Composite Status Sheet, SB 361, May 19, 2022.

received an initial vote of 32 to 22.⁴⁵ The naysayers opposed the bill because at first glance, it appeared to be a tax credit program that removed tax money from the State's coffers only to benefit law enforcement.⁴⁶ The bill's sponsors explained that SB 361 was meant to improve law enforcement's operations and responses to mental health crises and to foster the relationship between law enforcement and local communities.⁴⁷ The Senate subsequently passed the Committee substitute on February 10, 2022, by a vote of 52 to 0.⁴⁸

Consideration and Passage by the House of Representatives

Representative Houston Gaines (R-117th) sponsored the bill in the House.⁴⁹ The House first read the bill on February 11, 2022, and read the bill for a second time on February 14, 2022.⁵⁰ The House Ways and Means Committee favorably reported the bill by substitute on March 29, 2022, with many changes.⁵¹

The Ways and Means Committee substitute decreased the aggregate amount of tax credits allowed to \$60 million per calendar year, rather than \$100 million.⁵² The substitute also decreased each law enforcement foundation's allowable contributions from \$5 million per year to \$3 million per year.⁵³

The substitute clarified that tax contributions could not be used to pay salaries or other regular compensation for persons affiliated with the law enforcement foundations.⁵⁴ The contributions, however, could be used to pay salary supplements that are paid no more than twice

45. *See id.*; Georgia Senate Voting Record, SB 361, #492 (Feb. 10, 2022).

46. Walker Interview, *supra* note 21.

47. *Id.*

48. State of Georgia Final Composite Status Sheet, SB 361, May 19, 2022; Georgia Senate Voting Record, SB 361, #497 (Feb. 10, 2022).

49. SB 361, Bill Tracking, *supra* note 37.

50. State of Georgia Final Composite Status Sheet, SB 361, May 19, 2022.

51. *Id.*; Video Recording of House Committee on Ways and Means Meeting at 24 min., 40 sec. (Mar. 29, 2022) (remarks by Chairperson Shaw Blackmon (R-146th)), <https://www.youtube.com/watch?v=iaUBMZmUHdo&t=265s> [<https://perma.cc/NC7G-YXG7>].

52. *Compare* SB 361 (LC 43 2430S), § 2, p. 3, ll. 51–53, 2022 Ga. Gen. Assemb., *with* SB 361 (SCS), § 2, p. 3, ll. 46–48, 2022 Ga. Gen. Assemb.

53. *Compare* SB 361 (LC 43 2430S), § 2, p. 3, ll. 51–53, 2022 Ga. Gen. Assemb., *with* SB 361 (SCS), § 2, p. 3, ll. 46–48, 2022 Ga. Gen. Assemb.

54. SB 361 (LC 43 2430S), § 2, pp. 2–3, ll. 36–46, 2022 Ga. Gen. Assemb.

annually to law enforcement officers.⁵⁵ Furthermore, the substitute kept language that allowed tax contributions to be used to cover the costs of operating an emergency response team of law enforcement officers and behavioral health specialists, but the substitute added that such costs could not include salaries or other regular compensation.⁵⁶

The substitute also added language barring limitations on local law enforcement's ability to receive gifts or funding from other sources by law, as long as the gift or funding was capped at \$3 million per calendar year.⁵⁷ The substitute clarified that to be certified, each foundation has to be designated by the local law enforcement unit as its sole law enforcement foundation.⁵⁸ This designation ensures that local law enforcement units will not receive funds from multiple foundations.⁵⁹ Lastly, the substitute proposed adding a new Code section to limit the aggregate tax credits provided for in the LESS Crime Act and four other Code sections to \$250 million per year.⁶⁰

On March 30, 2022, the House Rules Committee presented an additional substitute.⁶¹ The Rules Committee substitute increased the aggregate amount of tax credits allowed from \$60 million per calendar to \$75 million.⁶² Additionally, the substitute removed the proposed Code section that would limit aggregate tax credits under the LESS Crime Act and four other Code sections to \$250 million per year.⁶³ The Rules Committee favorably reported the bill by substitute on March 30, 2022.⁶⁴

The House read the bill for the third time on March 30, 2022, and adopted the Rules Committee substitute by a vote of 153 to 5.⁶⁵ The

55. *Id.*

56. *Id.*

57. SB 361 (LC 43 2430S), § 2, p. 4, ll. 75–78, 2022 Ga. Gen. Assemb.

58. *Id.* § 2, pp. 4–5, ll. 91–97.

59. Walker Interview, *supra* note 21.

60. SB 361 (LC 43 2430S), § 3, p. 9, ll. 204–09, 2022 Ga. Gen. Assemb.

61. Video Recording of House Rules Committee Meeting at 18 min., 30 sec. (Mar. 30, 2022, PM 1) [hereinafter Rules Committee Video PM 2] (remarks by Chairperson Shaw Blackmon (R-146th)), <https://www.youtube.com/watch?v=DgBNsOuteVs&t=1084s> [<https://perma.cc/XE2Z-RV7H>].

62. *Compare* SB 361 (LC 43 2430S), § 2, p. 3, ll. 51–53, 2022 Ga. Gen. Assemb., *with* SB 361 (LC 43 2436S), § 2, p. 3, ll. 50–53, 2022 Ga. Gen. Assemb.

63. *Compare* SB 361 (LC 43 2430S), § 3, p. 9, 2022 Ga. Gen. Assemb., *with* SB 361 (LC 43 2436S), § 3, p. 9, 2022 Ga. Gen. Assemb.

64. Rules Committee Video PM 2, *supra* note 61 at 19 min., 52 sec. (remarks by Chairperson Richard Smith (R-134th)).

65. State of Georgia Final Composite Status Sheet, SB 361, May 19, 2022; Georgia House of

Senate agreed to the House substitute on April 1, 2022, and sent the bill to Governor Brian Kemp (R) on April 7, 2022.⁶⁶ The Governor signed it into law as Act 856 on May 9, 2022.⁶⁷ The Act’s effective date is July 1, 2022.⁶⁸

The Act

The Act amends Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated.⁶⁹ The overall purpose of the Act is to provide for “tax credits for certain contributions made by taxpayers to certain local law enforcement foundations” and to set the terms and conditions for the administration of said tax credits.⁷⁰

Section 1

Section 1 titles the Act the Law Enforcement Strategic Support Act or the LESS Crime Act.⁷¹

Section 2

Section 2 of the Act amends Article 2 of Chapter 7 of Title 48 by adding Code section 48-7-29.25, which provides income tax credits to Georgians who make preapproved contributions to qualified law enforcement foundations in a taxable year.⁷² Section 2 defines the categories of law enforcement foundations or local law enforcement units that are eligible to be recipients of the funds contributed by taxpayers.⁷³ For instance, the term “local law enforcement unit” includes any agency, office, or department in the state “whose primary functions include the enforcement of criminal or traffic laws, preservation of public order, protection of life and property, or the

Representatives Voting Record, SB 361, #819 (Mar. 30, 2022).

66. State of Georgia Final Composite Status Sheet, SB 361, May 19, 2022; SB 361.

67. *Id.*

68. 2022 Ga. Laws 716, § 3, at 721.

69. 2022 Ga. Laws 716, § 2, at 716–21 (codified at O.C.G.A. § 48-7-29.25 (2022)).

70. 2022 Ga. Laws 716.

71. 2022 Ga. Laws 716, § 1 at 716.

72. 2022 Ga. Laws 716, § 2, at 716–21 (codified at § 48-7-29.25).

73. 2022 Ga. Laws 716, § 2, at 717 (codified at § 48-7-29.25(a)(1)–(2)).

prevention, detection, or investigation of crime.”⁷⁴ The term also includes any sheriff’s office in the state but does not include other offices that may conduct “similar functions for any court, state board, state authority, state law enforcement division or department, railroad police, or any unit appointed under the authority of Chapter 9 of Title 35 of the Official Code of Georgia Annotated.”⁷⁵

Section 2 of the Act also details how the contributions can be used.⁷⁶ For example, contributions may be used to pay for salary supplements, to provide training to eligible law enforcement officers, or to purchase, lease, maintain, or improve equipment used by such officers.⁷⁷ Contributions may also be used “[t]o cover any costs incurred by the local law enforcement unit for the operation of an emergency response team that combines law enforcement officers and behavioral health specialists.”⁷⁸ The funds may not be used to pay for regular salaries or other regular compensation of law enforcement officers.⁷⁹

Furthermore, the maximum aggregate tax credits possible under Code section 48-7-29.25 is \$75 million per year, and each foundation may only receive up to \$3 million per year.⁸⁰ While there are no limits on how much individual taxpayers may choose to contribute, the Act limits how much they can claim in tax credits.⁸¹ For instance, each individual taxpayer or head of household may claim up to \$5,000 per year in tax credits, married couples filing a joint return may claim up to \$10,000 per year, and corporations may claim up to 75% of their income tax liability.⁸² Taxpayers may claim up to the maximum credit allowed or the amount of their actual qualified contribution—whichever is less.⁸³ In no event shall the total amount of the tax credit for a taxable year exceed the taxpayer’s income tax liability.⁸⁴ A taxpayer may apply any unused tax credit against the succeeding five

74. § 48-7-29.25(a)(1).

75. *Id.*

76. 2022 Ga. Laws 716, § 2, at 717 (codified at § 48-7-29.25(a)(4)).

77. § 48-7-29.25(a)(4)(A).

78. § 48-7-29.25(a)(4)(B).

79. *Id.*

80. § 48-7-29.25(b)(1).

81. 2022 Ga. Laws 716, § 2, at 717–18 (codified at § 48-7-29.25(b)(2)).

82. § 48-7-29.25(b)(2).

83. *See id.*

84. § 48-7-29.25(k)(2).

years' tax liability; however, "[n]o such credit shall be allowed . . . against prior years' tax liability."⁸⁵

Taxpayers must seek pre-approval prior to contributing to any qualified law enforcement foundation, and they may not dictate how their funds are spent.⁸⁶ Any representations of quid-pro-quo are prohibited: No person soliciting contributions shall represent that a taxpayer will receive a direct benefit in exchange for making the contributions to a law enforcement foundation.⁸⁷ Any foundation that violates this prohibition will have their qualified status revoked for at least two years.⁸⁸

Finally, Section 2 lists the reporting requirements for the law enforcement foundations who receive contributions, as well as penalties for violating the requirements.⁸⁹ It allows 90 days post-notice for offending law enforcement foundations to cure any deficiencies, after which their qualified status is revoked if left uncured.⁹⁰

Section 3

Section 3 of the Act lists the effective date of the Act as July 1, 2022, and states that it is applicable to taxable years beginning on or after January 1, 2023.⁹¹

Analysis

The LESS Crime Act is modeled after the Georgia Rural Hospital Tax Credit Program, which has been in effect since 2017.⁹²

85. *Id.*

86. § 48-7-29.25(e)(1), (i)(1).

87. § 48-7-29.25(i)(3).

88. *Id.*

89. 2022 Ga. Laws 716, § 2, at 719–21 (codified at § 48-7-29.25(g)–(j)).

90. 2022 Ga. Laws 716, § 2, at 720–21 (codified at § 48-7-29.25(j)(2)–(3)).

91. 2022 Ga. Laws 716, § 3, at 721.

92. Szilagyi, *supra* note 28.

Impact on State Revenue

The LESS Crime Act allows for up to \$75 million in police funding per year through taxpayers' donations and tax credits.⁹³ In essence, taxpayers get to decide how much extra money the state government spends on policing. Georgia State University's Fiscal Research Center (FRC) estimates that by fiscal year (FY) 2024, contributions will reach \$67.5 million, "with the amount nearing the \$100 million cap by FY 2026."⁹⁴ These figures were determined by analyzing similar donation-based credit programs in Georgia such as the qualified education expense credit (QEEC) for donations to student scholarship organizations and the rural hospital credit.⁹⁵

Except for 2019 and 2020, tax credits under the QEEC have reached their cap since 2011.⁹⁶ The rural hospital tax program, a tax credit like the QEEC, did not reach its donation cap its first year because the tax credit provided for an award equal to 70% of the amount donated.⁹⁷ Once the reward was raised to 100% for 2018, however, donations reached the \$60 million cap.⁹⁸ In 2019, donations fell to 78% of the cap, likely due to the uncertainty of proposed IRS regulations that disallowed donations by some "corporations and pass-through entities to be deducted as a business expense."⁹⁹ However, credits earned rebounded to 99.9% of the cap in 2021 after the regulation was finalized and the tax benefit was not removed.¹⁰⁰ Based on donation patterns from these programs and the abundance of organizations prepared to promote the tax credit in their fundraising, the estimate assumes the LESS Crime Act will provide the government with approximately \$75 million every year after its first year.¹⁰¹

93. 2022 Ga. Laws 716, § 2, at 717 (codified at § 48-7-29.25(b)(1)).

94. GREG S. GRIFFIN & KELLY FARR, GA. DEP'T OF AUDITS & ACCTS., FISCAL NOTE: SENATE BILL 361 (LC 43 2159) 1 (Feb. 2, 2022) [hereinafter FISCAL NOTE] (At the time of this fiscal note, the proposed cap was \$100 million. The final Act caps the contributions at \$75 million.).

95. *Id.* at 3.

96. *Id.* (reporting of preapprovals for 2009 and 2010 are not available).

97. *Id.* at 2.

98. *Id.*

99. *Id.*; Williams, *supra* note 29.

100. FISCAL NOTE, *supra* note 94, at 3.

101. *See id.*

An Unintended Consequence: Tax Avoidance

The LESS Crime Act creates another tax shelter for individuals and businesses. A tax shelter is a vehicle used by individuals or businesses to reduce their taxable income and, therefore, potential tax liabilities.¹⁰² Although the term “tax shelter” has gained a negative connotation, tax shelters are legal, and some may identify them as tax incentives.¹⁰³ Indeed, in the LESS Crime Act, tax credits are intentionally used as an incentive to drum up donations to law enforcement foundations by offering a dollar-for-dollar reduction to their taxable income.¹⁰⁴ Tax shelters become illegal, however, when they are used as avoidance schemes that reduce taxes by promising a “too good to be true” tax benefit.¹⁰⁵ Taxpayers may abuse the benefit of tax credits by finding loopholes to receive more tax credits than they are legally allowed. This abuse was seen briefly in the Rural Hospital Tax Credit Program when a 2019 audit found that “a small number of credits [received] . . . exceeded statutory limits.”¹⁰⁶ Thus, it is likely that some taxpayers will also attempt to exceed the limits of the LESS Crime Act tax credit to avoid paying their tax liability.

Pass-through entities, such as limited liability companies, shareholders of an “S” Corporation, and partners in a partnership, have greater ability to exceed statutory limits and avoid taxes because they can fraudulently claim income through multiple pass-through entities.¹⁰⁷ Additionally, corporations and other entities that do not fall into the above categories may abuse tax credits by receiving more than 75% of their actual liability in tax credits.¹⁰⁸ The Rural Hospital Tax

102. *What Is a Tax Shelter?* TAX POL’Y CTR. [hereinafter TAX POL’Y CTR.], https://www.taxpolicycenter.org/sites/default/files/briefing-book/what_is_a_tax_shelter_1.pdf [https://perma.cc/T6XS-G258] (May 2020).

103. *Id.*

104. LG Duncan Press Release 2, *supra* note 25.

105. TAX POL’Y CTR., *supra* note 102.

106. Williams, *supra* note 29.

107. See Aaron Krupkin & Adam Looney, *9 Facts About Pass-Through Businesses*, BROOKINGS INST. (May 15, 2017), <https://www.brookings.edu/research/9-facts-about-pass-through-businesses/#fact6> [https://perma.cc/9MZ7-JH48] (“With so many options to choose from when determining how to structure a business and whether to distribute business income as profits, wages, or capital gains, business owners have considerable incentive and ability to avoid tax.”).

108. See Dave Williams, *Rural Hospital Tax Credit Program Gets Clean Bill of Health*, ROME NEWS-TRIB. (Apr. 29, 2022), <https://bit.ly/3pgQcE3> [https://perma.cc/V8M8-9ZSN] (In 2020, “the Department of Audits [and] Accounts identified a small number of credits . . . that exceeded statutory limits.”).

Credit Program was able to overcome compliance issues by its sixth year, but it is unknown how long it will take for the LESS Crime Act to ensure full compliance and prevention of tax avoidance schemes.¹⁰⁹

Public Policy

Unlike the Rural Hospital Tax Credit Program, which only allows donations to the lowest funded hospitals in Georgia, the LESS Crime Act does not have any needs-based restrictions. Because Atlanta has the highest population of any city in Georgia—more than double that of runner-up Columbus—Atlanta’s qualified law enforcement foundation will likely reach its allocated \$3 million donations before many other cities.¹¹⁰ Additionally, smaller cities may not have the population nor the affluence to fund donations.¹¹¹ The latter point is especially significant because even though the Act gives back 100% of the tax credit limit, taxpayers must have the money upfront in order to donate.¹¹² Lower income cities are often forced to allocate a significant amount of their limited resources to policing, leaving fewer resources available for other community services.¹¹³

Conversely, it is questionable whether splitting the aggregate total of \$75 million between qualified law enforcement foundations is equitable. In 2020, APD’s budget exceeded \$248 million.¹¹⁴ That same year, the City of Augusta had a police budget of almost \$65 million.¹¹⁵ With a population that is just over 40% that of Atlanta, and a smaller police department to match, one could argue that it is inequitable for Augusta to receive the same amount of funding as Atlanta.¹¹⁶

109. *See id.* The rural hospital tax credit program was launched in 2016 and in 2022, an “annual evaluation of the tax credit . . . concluded that all participating hospitals, taxpayers and third parties are complying with the law.” *Id.*

110. *See 2020 Census Count by Georgia City Population*, LEGIS. & CONG. REAPPORTIONMENT OFF. (Aug. 12, 2021) [hereinafter *2020 Census*], https://www.legis.ga.gov/api/document/docs/default-source/reapportionment-document-library/2020-census-count-by-city-population.pdf?sfvrsn=274928ba_2 [https://perma.cc/A7NK-P48B].

111. *See id.*; *see also* Walker Interview, *supra* note 21.

112. *See* LG Duncan Press Release 2, *supra* note 25.

113. *Id.*

114. Camardelle, *supra* note 1.

115. *Id.*

116. *Id.*; *2020 Census*, *supra* note 110.

An adequate response may be that the purpose of the LESS Crime Act is not to fund the police for the purpose of increasing per capita spending.¹¹⁷ It specifically allocates money for police innovation to address public safety at large.¹¹⁸ For example, one department may decide to invest the money in mental health partnerships, while another may use it to update its technology to improve efficiencies. However, the Act does not require the departments to do either.¹¹⁹ The upside is that each locality is empowered, within the available options, to improve policing how it sees fit.¹²⁰ The downside is that each police department still has enough autonomy to spend money on things that may not improve public safety, like salary bonuses.¹²¹ Legislators appear to trust that the foundations and law enforcement units will spend the funds where they are best utilized.¹²² Regardless of how the funds are spent, each qualified law enforcement foundation will need to use a grass-roots approach to educate community members, solicit donations through tax credits, and support local public safety efforts.

Comparison to Other States

The LESS Crime Act addresses two hot topics of the last few years: police funding and community engagement.¹²³ States and cities have used varying ways to address the latter. For example, in July 2020, Columbus, Ohio, adopted a set of legislative priorities that focused on resident engagement to address public safety.¹²⁴ Columbus used online surveys, focus groups, and town hall discussions to engage residents in community decision making.¹²⁵ This engagement resulted in Columbus's increased focus on alternative crisis response through investing in violence prevention and a more accountable public safety division.¹²⁶

117. LG Duncan Press Release 1, *supra* note 20.

118. *Id.*

119. *See* 2022 Ga. Laws 716 (codified at O.C.G.A. § 48-7-29.25 (2022)).

120. LG Duncan Press Release 1, *supra* note 20.

121. *See* § 48-7-29.25(a)(4)(B).

122. *See* Walker Interview, *supra* note 21.

123. LG Duncan Press Release 2, *supra* note 25.

124. *Reimagining Public Safety: Council Continues Reimagining Public Safety Effort*, CITY OF COLUMBUS, <https://www.columbus.gov/reimaginesafety/> [<https://perma.cc/3LSX-M376>].

125. *Id.*

126. *Id.*

In September 2020, Oakland, California, created their own Reimagining Public Safety Taskforce (RPST) to quickly develop recommendations to address public safety and police accountability.¹²⁷ Recommendations included “alternative responses to calls for assistance, and investments in programs that address the root causes of violence and crime (such as health services, housing, jobs, etc.)”¹²⁸ In response to community suggestions, twenty-five cities, including Oakland, removed police officers from schools, thereby reducing police spending by \$34 million.¹²⁹ Several other cities such as New York, Los Angeles, Chicago, Seattle, Milwaukee, Philadelphia, and Baltimore have all reduced police spending in response to community engagement.¹³⁰ While several other states have prioritized community engagement and community development initiatives over increased police funding to address public safety, Georgia hopes its increased police funding will lead to increased community engagement and increased public safety.¹³¹

Conclusion

In the wake of George Floyd’s murder in 2020, some jurisdictions reduced police spending. Conversely, Georgia passed the LESS Crime Act as an innovative way to increase police spending and potentially address public safety concerns.¹³² The LESS Crime Act allows Georgia taxpayers to contribute up to an aggregate of \$75 million annually to local law enforcement foundations.¹³³ To facilitate a more community-centered public safety response, recipient foundations may use the contributions to operate a co-responder emergency team that combines the expertise of law enforcement and behavioral health

127. *Reimagining Public Safety*, CITY OF OAKLAND, <https://www.oaklandca.gov/topics/reimagining-public-safety> [https://perma.cc/8S4P-4RVV].

128. *Id.*; Kirby Gaherty, *How Cities Are Transforming Public Safety at the Local Level*, SAFETY & JUST. CHALLENGE (Mar. 23, 2021), <https://safetyandjusticechallenge.org/blog/how-cities-are-transforming-public-safety-at-the-local-level/> [https://perma.cc/38NK-QCGU].

129. Sam Levin, *These US Cities Defunded Police: ‘We’re Transferring Money to the Community’*, GUARDIAN (Mar. 11, 2021, 11:03 AM), <https://www.theguardian.com/us-news/2021/mar/07/us-cities-defund-police-transferring-money-community> [https://perma.cc/45Q7-TSWX].

130. *See id.*

131. LG Duncan Press Release 1, *supra* note 20.

132. *See* 2022 Ga. Laws 716 (codified at O.C.G.A. § 48-7-29.25 (2022)).

133. 2022 Ga. Laws 716, § 2, at 717 (codified at § 48-7-29.25(b)(1)).

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specialists, but there is no requirement that they do so.¹³⁴ Foundations may instead choose to spend the \$75 million on salary supplements, officer training, or equipment purchase and maintenance.¹³⁵ Time will tell if this increase in police spending will positively impact public safety in Georgia.

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134. § 48-7-29.25(4)(B).

135. § 48-7-29.25(4)(A).

