

The House Committee on Ways and Means offers the following substitute to HB 539:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,  
2 relating to the imposition, rate, and computation of income tax, so as to revise and change  
3 provisions regarding state income tax credits; to repeal certain business enterprise income  
4 tax credits based upon business growth; to provide for income tax credits for certain  
5 entertainment industry production investments; to provide for a short title; to provide for  
6 definitions; to provide for procedures, conditions, and limitations; to provide for powers,  
7 duties, and authority of the state revenue commissioner, the Department of Revenue, and the  
8 Department of Economic Development; to provide for applicability; to provide an effective  
9 date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the  
13 imposition, rate, and computation of income tax, is amended by striking Code Section  
14 48-7-40.13, relating to business enterprise income tax credits based upon business growth,  
15 and inserting in its place a new Code Section 48-7-40.13 to read as follows:

16 "48-7-40.13.

17 ~~(a) As used in this Code section, the term "business enterprise" means any business or the~~  
18 ~~headquarters of any such business which is engaged in manufacturing, warehousing and~~  
19 ~~distribution, processing, telecommunications, tourism, and research and development~~  
20 ~~industries. Such term shall not include retail businesses.~~

21 ~~(b) A tax credit is allowed a business enterprise having a Georgia net taxable income in~~  
22 ~~the current taxable year which is 20 percent or more above that of the preceding taxable~~  
23 ~~year, if such business enterprise's Georgia net taxable income in each of the two taxable~~  
24 ~~years preceding the current taxable year also was 20 percent or more above each respective~~  
25 ~~preceding taxable year.~~

1 ~~(c) The tax credit provided in subsection (b) of this Code section shall be the excess over~~  
 2 ~~20 percent of the percentage growth in the business enterprise's Georgia net taxable income~~  
 3 ~~in the current taxable year, provided that the tax credit shall not exceed 50 percent of the~~  
 4 ~~business enterprise's Georgia net income tax liability after all other credits have been~~  
 5 ~~applied for the current taxable year and shall not be allowed if the total Georgia income tax~~  
 6 ~~liability before application of the credit exceeds \$1.5 million.~~

7 ~~(d) The tax credit provided in subsection (b) of this Code section may not be carried~~  
 8 ~~backward or forward Reserved.~~

## 9 SECTION 2.

10 Said article is further amended by adding a new Code section immediately following Code  
 11 Section 48-7-40.25 to be designated Code Section 48-7-40.26 to read as follows:

12 "48-7-40.26.

13 (a) This Code section shall be known and may be cited as the 'Georgia Entertainment  
 14 Industry Investment Act.'

15 (b) As used in this Code section, the term:

16 (1) 'Affiliates' means those entities that are included in the production company's  
 17 affiliated group as defined in Section 1504(a) of the Internal Revenue Code and all other  
 18 entities that are directly or indirectly owned 50 percent or more by members of the  
 19 affiliated group.

20 (2) 'Base investment' means the aggregate funds actually invested and expended by a  
 21 production company as production expenditures incurred in this state that are directly  
 22 used in a state certified production or productions.

23 (3) 'Multimarket commercial distribution' means commercial distribution which extends  
 24 to markets outside the State of Georgia.

25 (4) 'Production company' means a company primarily engaged in qualified production  
 26 activities which have been approved by the Department of Economic Development. This  
 27 term shall not mean or include any form of business owned, affiliated, or controlled, in  
 28 whole or in part, by any company or person which is in default on any tax obligation of  
 29 the state, or a loan made by the state or a loan guaranteed by the state.

30 (5) 'Production expenditures' means preproduction, production, and postproduction  
 31 expenditures incurred in this state that are directly used in a qualified production activity,  
 32 including without limitation the following: set construction and operation; wardrobes,  
 33 make-up, accessories, and related services; costs associated with photography and sound  
 34 synchronization, lighting, and related services and materials; editing and related services;  
 35 rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital  
 36 or tape editing, film processing, transfers of film to tape or digital format, sound mixing,

1 computer graphics services, special effects services, and animation services; total  
2 aggregate payroll; airfare, if purchased through a Georgia based travel agency or travel  
3 company; insurance costs and bonding, if purchased through a Georgia based insurance  
4 agency; and other direct costs of producing the project in accordance with generally  
5 accepted entertainment industry practices. This term shall not include postproduction  
6 expenditures for marketing and distribution.

7 (6) 'Qualified production activities' means the production of new film, video, or digital  
8 projects produced in this state and approved by the Department of Economic  
9 Development, such as feature films, series, pilots, movies for television, commercial  
10 advertisements, music videos, interactive entertainment or sound recording projects used  
11 in feature films, series pilots, or movies for television. Such activities shall include  
12 projects recorded in this state, in whole or in part, in either short or long form, animation  
13 and music, fixed on a delivery system which includes without limitation film, videotape,  
14 computer disc, laser disc, and any element of the digital domain, from which the program  
15 is viewed or reproduced, and which is intended for multimarket commercial distribution  
16 via theaters, licensing for exhibition by individual television stations, groups of stations,  
17 networks, cable television stations, public broadcasting stations, corporations, live  
18 venues, the Internet, or any other channel of exhibition. Such term shall not include the  
19 production of television coverage of news and athletic events.

20 (7) 'Resident' means an individual as designated pursuant to paragraph (10) of Code  
21 Section 48-7-1, as amended.

22 (8) 'State certified production' means a production engaged in qualified production  
23 activities which have been approved by the Department of Economic Development in  
24 accordance with regulations promulgated pursuant to this Code section.

25 (9) 'Tier' means a tier as designated pursuant to Code Section 48-7-40, as amended.

26 (10) 'Total aggregate payroll' means the total sum expended by a production company  
27 on salaries paid to employees working within this state in a state certified production or  
28 productions. For purposes of this paragraph:

29 (A) With respect to a single employee, the portion of any salary which exceeds  
30 \$500,000.00 for a single production shall not be included when calculating total  
31 aggregate payroll; and

32 (B) All payments to a single employee and any legal entity in which the employee has  
33 any direct or indirect ownership interest shall be considered as having been paid to the  
34 employee and shall be aggregated regardless of the means of payment or distribution.

35 (c) For any production company and its affiliates that invest in a state certified production  
36 approved by the Department of Economic Development and whose average annual total  
37 production expenditures in this state did not exceed \$30 million for 2002, 2003, and 2004,

1 there shall be allowed an income tax credit against the tax imposed under this article. The  
2 tax credit under this subsection shall be allowed if the base investment in this state equals  
3 or exceeds \$500,000.00 for qualified production activities and shall be calculated as  
4 follows:

5 (1) The production company shall be allowed a tax credit equal to 9 percent of the base  
6 investment in this state;

7 (2) If the base investment in this state is in a tier 1 or tier 2 county, the production  
8 company shall be allowed an additional tax credit equal to 3 percent of such base  
9 investment;

10 (3) If Georgia residents are employed in the production, the production company shall  
11 be allowed an additional tax credit equal to 3 percent of the total aggregate payroll of  
12 Georgia residents; and

13 (4) If the base investment in this state is in excess of \$20 million for multiple television  
14 projects, the production company shall be allowed an additional tax credit equal to 2  
15 percent of such base investment.

16 (d) For any production company and its affiliates that invest in a state certified production  
17 approved by the Department of Economic Development and whose average annual total  
18 production expenditures in this state exceeded \$30 million for 2002, 2003, and 2004, there  
19 shall be allowed an income tax credit against the tax imposed under this article. For  
20 purposes of this subsection, the excess base investment in this state is computed by taking  
21 the current year production expenditures in a state certified production and subtracting the  
22 average of the annual total production expenditures for 2002, 2003, and 2004. The tax  
23 credit shall be calculated as follows:

24 (1) If the excess base investment in this state equals or exceeds \$500,000.00, the  
25 production company and its affiliates shall be allowed a tax credit of 9 percent of such  
26 excess base investment;

27 (2) An additional tax credit of 3 percent shall be allowed to the production company and  
28 its affiliates that qualify for and claim a credit under paragraph (1) of this subsection but  
29 only with respect to that portion of such production company's and affiliate's base  
30 investment that is the difference between the production expenditures in a state certified  
31 production in a tier 1 or tier 2 county in the current year and the average of the aggregate  
32 production expenditures made in those same counties for the years 2002, 2003, and 2004;

33 (3) If Georgia residents are employed in the production, the production company and its  
34 affiliates shall be allowed an additional tax credit equal to 3 percent of the difference  
35 between the total aggregate payroll of Georgia residents, which is includable in the base  
36 investment in the current year, and the average of the aggregate payroll of Georgia  
37 residents for the years 2002, 2003, and 2004; and

1 (4) If the excess base investment in this state is in excess of \$20 million for multiple  
2 television projects, the production company and its affiliates shall be allowed an  
3 additional tax credit equal to 2 percent of the difference between the production  
4 expenditures in a state certified production for multiple television projects in the current  
5 year over the average of the production expenditures for multiple television projects for  
6 the years 2002, 2003, and 2004.

7 (e)(1) Where the amount of such credit or credits exceeds the production company's  
8 liability for such taxes in a taxable year, the excess may be taken as a credit against such  
9 production company's quarterly or monthly payment under Code Section 48-7-103. Each  
10 employee whose employer receives credit against such production company's quarterly  
11 or monthly payment under Code Section 48-7-103 shall receive credit against his or her  
12 income tax liability under Code Section 48-7-20 for the corresponding taxable year for  
13 the full amount which would be credited against such liability prior to the application of  
14 the credit provided for in this subsection. Credits against quarterly or monthly payments  
15 under Code Section 48-7-103 and credits against liability under Code Section 48-7-20  
16 established by this subsection shall not constitute income to the production company.

17 (2) If a production company, or a production company and its affiliates, claim the credit  
18 authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the  
19 production company, or the production company and its affiliates, will only be allowed  
20 to claim the credit authorized under this Code section to the extent that the Georgia  
21 resident employees included in the credit calculation authorized under this Code section  
22 and taken by the production company, or the production company and its affiliates, on  
23 such tax return under this Code section have been permanently excluded from the credit  
24 authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.

25 (f) Any tax credits with respect to a state certified production earned by a production  
26 company and previously claimed but not used by such production company against its  
27 income tax may be transferred or sold in whole or in part by such production company to  
28 another Georgia taxpayer, subject to the following conditions:

29 (1) Such production company may make only a single transfer or sale of tax credits  
30 earned in a taxable year; however, the transfer or sale may involve one or more  
31 transferees;

32 (2) Such production company shall submit to the Department of Economic Development  
33 and to the Department of Revenue a written notification of any transfer or sale of tax  
34 credits within 30 days after the transfer or sale of such tax credits. The notification shall  
35 include such production company's tax credit balance prior to transfer, the credit  
36 certificate number, the remaining balance after transfer, all tax identification numbers for

1 each transferee, the date of transfer, the amount transferred, and any other information  
2 required by the Department of Economic Development or the Department of Revenue;

3 (3) Failure to comply with this subsection shall result in the disallowance of the tax  
4 credit until the production company is in full compliance;

5 (4) The transfer or sale of this tax credit does not extend the time in which such tax credit  
6 can be used. The carry-forward period for tax credit that is transferred or sold shall begin  
7 on the date on which the tax credit was originally earned;

8 (5) A transferee shall have only such rights to claim and use the tax credit that were  
9 available to such production company at the time of the transfer, except for the use of the  
10 credit in paragraph (1) of subsection (e) of this Code section. To the extent that such  
11 production company did not have rights to claim or use the tax credit at the time of the  
12 transfer, the Department of Revenue shall either disallow the tax credit claimed by the  
13 transferee or recapture the tax credit from the transferee. The transferee's recourse is  
14 against such production company; and

15 (6) The transferee must acquire the tax credits in this Code section for a minimum of 60  
16 percent of the amount of the tax credits so transferred.

17 (g) The credit granted under this Code section shall be subject to the following conditions  
18 and limitations:

19 (1) The credit may be taken beginning with the taxable year in which the production  
20 company has met the investment requirement. For each year in which such production  
21 company either claims or transfers the credit, the production company shall attach a  
22 schedule to the production company's Georgia income tax return which will set forth the  
23 following information, as a minimum:

24 (A) A description of the qualified production activities, along with the certification  
25 from the Department of Economic Development;

26 (B) A detailed listing of the employee names, social security numbers, and Georgia  
27 wages when salaries are included in the base investment;

28 (C) The amount of tax credit claimed for the taxable year;

29 (D) Any tax credit previously taken by the production company against Georgia  
30 income tax liabilities or the production company's quarterly or monthly payments under  
31 Code Section 48-7-103;

32 (E) The amount of tax credit carried over from prior years;

33 (F) The amount of tax credit utilized by the production company in the current taxable  
34 year; and

35 (G) The amount of tax credit to be carried over to subsequent tax years;

36 (2) In the initial year in which the production company claims the credit granted in this  
37 Code section, the production company shall include in the description of the qualified

1 production activities required by subparagraph (A) of paragraph (1) of this subsection  
2 information which demonstrates that the activities included in the base investment or  
3 excess base investment equal or exceed \$500,000.00 during such year; and

4 (3) In no event shall the amount of the tax credit under this Code section for a taxable  
5 year exceed the production company's income tax liability. Any unused credit amount  
6 shall be allowed to be carried forward for five years from the close of the taxable year in  
7 which the investment occurred. No such credit shall be allowed the production company  
8 against prior years' tax liability.

9 (h) The Department of Economic Development shall determine through the promulgation  
10 of rules and regulations what projects qualify for the tax credits authorized under this Code  
11 section. Certification shall be submitted to the state revenue commissioner.

12 (i) The state revenue commissioner shall promulgate such rules and regulations as are  
13 necessary to implement and administer this Code section.

14 (j) Any production company claiming, transferring, or selling the tax credit shall be  
15 required to reimburse the Department of Revenue for any department initiated audits  
16 relating to the tax credit. This subsection shall not apply to routine tax audits of a taxpayer  
17 which may include the review of the credit provided in this Code section."

### 18 SECTION 3.

19 (a) Except as provided in subsection (b) of this section, this Act shall become effective upon  
20 its approval by the Governor or upon its becoming law without such approval and shall be  
21 applicable to all taxable years beginning on or after January 1, 2005.

22 (b) Section 1 of this Act shall become effective upon its approval by the Governor or upon  
23 its becoming law without such approval and shall be applicable to all taxable years beginning  
24 on or after January 1, 2006.

### 25 SECTION 4.

26 All laws and parts of laws in conflict with this Act are repealed.