

The House Committee on Ways and Means offers the following substitute to HB 1027:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to change certain provisions relating to the tax credit for film or video
3 production in Georgia; to provide for related matters; to provide for an effective date and
4 applicability; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
8 amended by revising Code Section 48-7-40.26, relating to a tax credit for film or video
9 production in Georgia, as follows:

10 "48-7-40.26.

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

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

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

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

21 (3) 'Multimarket commercial distribution' means paid commercial distribution which
22 extends to markets outside the State of Georgia.

23 (4) 'Production company' means a company primarily engaged in qualified production
24 activities which have been approved by the Department of Economic Development. This
25 term shall not mean or include any form of business owned, affiliated, or controlled, in

26 whole or in part, by any company or person which is in default on any tax obligation of
 27 the state, or a loan made by the state or a loan guaranteed by the state.

28 (5) 'Production expenditures' means preproduction, production, and postproduction
 29 expenditures incurred in this state that are directly used in a qualified production activity,
 30 including without limitation the following: set construction and operation; wardrobes,
 31 make-up, accessories, and related services; costs associated with photography and sound
 32 synchronization, lighting, and related services and materials; editing and related services;
 33 rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital
 34 or tape editing, film processing, transfers of film to tape or digital format, sound mixing,
 35 computer graphics services, special effects services, and animation services; total
 36 aggregate payroll; airfare, if purchased through a Georgia based travel agency or travel
 37 company; insurance costs and bonding, if purchased through a Georgia based insurance
 38 agency; and other direct costs of producing the project in accordance with generally
 39 accepted entertainment industry practices. This term shall not include ~~postproduction~~
 40 expenditures for footage shot outside the State of Georgia, including: postproduction,
 41 marketing, and distribution. This term shall not include development costs, including
 42 story rights. This term includes payments to a loan-out company if the loan-out company
 43 is registered to do business in this state and withholds taxes on all wages to its employees
 44 pursuant to Article 5 of Chapter 7 of this title notwithstanding the exclusion provided in
 45 subparagraph (K) of paragraph (10) of Code Section 48-7-100.

46 (6) 'Qualified Georgia promotion' means a qualified promotion of this state approved by
 47 the Department of Economic Development consisting of a:

48 (A) Qualified movie production which includes ~~an approximately a~~ a five-second long
 49 static or animated logo that promotes Georgia ~~within its presentation and all~~
 50 ~~promotional trailers worldwide~~ in the end credits before the below-the-line crew crawl
 51 for the life of the project and which includes a link to Georgia on the project's web
 52 page;

53 (B) Qualified TV production which includes an imbedded five-second long Georgia
 54 promotion during each broadcast ~~half hour~~ worldwide for the life of the project and
 55 which includes a link to Georgia on the project's web page; or

56 (C) Qualified music video which includes the Georgia logo at the end of each video
 57 and within online promotions; ~~or,~~

58 ~~(D) Qualified interactive game which includes a 15 second long Georgia advertisement~~
 59 ~~in units sold and imbedded in online promotions;~~

60 (7) 'Qualified production activities' means the production of new film; or video; or digital
 61 projects produced in this state and approved by the Department of Economic
 62 Development, ~~such as~~ including only the following: feature films, series, pilots, movies

63 for television, televised commercial advertisements, productions certified in the previous
 64 year that are ongoing, music videos, ~~interactive entertainment~~ or sound recording projects
 65 used in feature films, series, pilots, or movies for television. Such activities shall include
 66 projects recorded in this state, in whole or in part, in either short or long form, animation
 67 and music, fixed on a delivery system which includes without limitation film, videotape,
 68 computer disc, laser disc, and any element of the digital domain, from which the program
 69 is viewed or reproduced, and which is intended for multimarket commercial distribution
 70 via theaters, video on demand, direct to DVD, licensing for exhibition by individual
 71 television stations, groups of stations, networks, cable television stations, or public
 72 broadcasting stations, ~~corporations, live venues, the Internet, or any other channel of~~
 73 ~~exhibition~~. Such term shall not include the ~~production of television~~ coverage of news and
 74 athletic events, local interest programming, instructional videos, corporate videos, or
 75 projects not shot, recorded, or originally created in Georgia.

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

78 (9) 'State certified production' means a production engaged in qualified production
 79 activities which have been approved by the Department of Economic Development in
 80 accordance with regulations promulgated pursuant to this Code section. In the instance
 81 of a 'work for hire' in which one production company hires another production company
 82 to produce a project or contribute elements of a project for pay, the hired company shall
 83 be considered a service provider for the hiring company, and the hiring company shall
 84 be entitled to the film tax credit.

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

88 (A) With respect to a single employee, the portion of any salary which exceeds
 89 \$500,000.00 for a single production shall not be included when calculating total
 90 aggregate payroll; and

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

94 (c) For any production company and its affiliates that invest in a state certified production
 95 approved by the Department of Economic Development and whose average annual total
 96 production expenditures in this state did not exceed \$30 million for 2002, 2003, and 2004,
 97 there shall be allowed an income tax credit against the tax imposed under this article. The
 98 tax credit under this subsection shall be allowed if the base investment in this state equals

99 or exceeds \$500,000.00 for qualified production activities and shall be calculated as
100 follows:

101 (1) The production company shall be allowed a tax credit equal to 20 percent of the base
102 investment in this state; and

103 (2) The production company shall be allowed an additional tax credit equal to 10 percent
104 of such base investment if the qualified production activity includes a qualified Georgia
105 promotion. If the inclusion of the Georgia promotional logo is prohibited by the
106 Children's Television Act, any other local, state, or federal government policy, or cannot
107 be satisfied due to prior contractual agreements, the production company may offer
108 alternative marketing opportunities to be evaluated by the Georgia Department of
109 Economic Development to ensure that they offer equal or greater promotional value to
110 the State of Georgia.

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

119 (1) If the excess base investment in this state equals or exceeds \$500,000.00, the
120 production company and its affiliates shall be allowed a tax credit of 20 percent of such
121 excess base investment; and

122 (2) The production company and its affiliates shall be allowed an additional tax credit
123 equal to 10 percent of the excess base investment if the qualified production activities
124 include a qualified Georgia promotion. If the inclusion of the Georgia promotional logo
125 is prohibited by the Children's Television Act, any other local, state, or federal
126 government policy, or cannot be satisfied due to prior contractual agreements, the
127 production company may offer marketing opportunities to be evaluated by the Georgia
128 Department of Economic Development to ensure that they offer equal or greater
129 promotional value to the State of Georgia.

130 (e)(1) Where the amount of such credit or credits exceeds the production company's
131 liability for such taxes in a taxable year, the excess may be taken as a credit against such
132 production company's quarterly or monthly payment under Code Section 48-7-103. Each
133 employee whose employer receives credit against such production company's quarterly
134 or monthly payment under Code Section 48-7-103 shall receive credit against his or her
135 income tax liability under Code Section 48-7-20 for the corresponding taxable year for

136 the full amount which would be credited against such liability prior to the application of
137 the credit provided for in this subsection. Credits against quarterly or monthly payments
138 under Code Section 48-7-103 and credits against liability under Code Section 48-7-20
139 established by this subsection shall not constitute income to the production company.

140 (2) If a production company, or a production company and its affiliates, claim the credit
141 authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the
142 production company, or the production company and its affiliates, will only be allowed
143 to claim the credit authorized under this Code section to the extent that the Georgia
144 resident employees included in the credit calculation authorized under this Code section
145 and taken by the production company, or the production company and its affiliates, on
146 such tax return under this Code section have been permanently excluded from the credit
147 authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.

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

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

155 (2) Such production company shall submit to the Department of Economic Development
156 and to the Department of Revenue a written notification of any transfer or sale of tax
157 credits within 30 days after the transfer or sale of such tax credits. The notification shall
158 include such production company's tax credit balance prior to transfer, the credit
159 certificate number, the remaining balance after transfer, all tax identification numbers for
160 each transferee, the date of transfer, the amount transferred, and any other information
161 required by the Department of Economic Development or the Department of Revenue;

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

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

167 (5) A transferee shall have only such rights to claim and use the tax credit that were
168 available to such production company at the time of the transfer, except for the use of the
169 credit in paragraph (1) of subsection (e) of this Code section. To the extent that such
170 production company did not have rights to claim or use the tax credit at the time of the
171 transfer, the Department of Revenue shall either disallow the tax credit claimed by the

172 transferee or recapture the tax credit from the transferee. The transferee's recourse is
173 against such production company; and

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

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

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

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

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

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

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

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

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

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

195 (2) In the initial year in which the production company claims the credit granted in this
196 Code section, the production company shall include in the description of the qualified
197 production activities required by subparagraph (A) of paragraph (1) of this subsection
198 information which demonstrates that the activities included in the base investment or
199 excess base investment equal or exceed \$500,000.00 during such year; and

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

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

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

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

214 **SECTION 2.**

215 This Act shall become effective upon its approval by the Governor or upon its becoming law
216 without such approval and shall be applicable to all tax years beginning on or after January
217 1, 2013.

218 **SECTION 3.**

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