

The Senate Committee on Finance offered the following substitute to HB 1037:

**MOOT**

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 48-7-40.26 of the Official Code of Georgia Annotated, relating to  
2 the "Georgia Entertainment Industry Investment Act," so as to move certain sound recordings  
3 from qualified production activities to production expenditures; to reinforce the disallowance  
4 of the additional 10 percent credit allowed for including a qualifying Georgia promotion for  
5 certain productions and hold the issuance of such credit until public distribution of the  
6 project; to limit the recapture of certain tax credits; to change the timing when a tax credit  
7 can be claimed and its carry forward period; to require expenditures with vendors to include  
8 W-9 forms; to provide for applications for certificates of final certification; to require an  
9 audit prior to issuance of a final certification by the Department of Revenue; to phase in such  
10 requirement; to provide for certification of accountants as eligible auditors for conducting  
11 such audits; to provide for recouping of certain audit costs and prescribe actions to be taken  
12 by the Department of Revenue; to provide for definitions; to provide for rules and  
13 regulations; to provide for related matters; to provide for an effective date; to repeal  
14 conflicting laws; and for other purposes.

15 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

16 **SECTION 1.**

17 Code Section 48-7-40.26 of the Official Code of Georgia Annotated, relating to the "Georgia  
18 Entertainment Industry Investment Act," is amended by revising paragraphs (8) and (11) of  
19 subsection (b), by revising paragraph (2) of and adding a new paragraph to subsection (c),  
20 by revising paragraphs (4) and (5) of subsection (g), subsection (h), and subsection (k), and  
21 by adding new subsections as follows:

22 "(8) 'Production expenditures' means:

23 (A) Preproduction, ~~preproduction,~~ production, and postproduction expenditures  
24 incurred in this state that are directly used in a qualified production activity, including,  
25 but not limited to, ~~without limitation~~ the following: set construction and operation;  
26 wardrobes, make-up, accessories, and related services; costs associated with

27 photography and sound synchronization; expenditures excluding license fees incurred  
 28 with Georgia companies for sound recordings and musical compositions; sound  
 29 recording projects used in feature films, series, pilots, or movies; lighting; and related  
 30 services and materials; editing and related services; rental of facilities and equipment;  
 31 leasing of vehicles; costs of food and lodging; digital or tape editing; film processing;  
 32 transfers of film to tape or digital format; sound mixing; computer graphics services;  
 33 special effects services; ~~and~~ animation services; total aggregate payroll; airfare, if  
 34 purchased through a Georgia travel agency or travel company; insurance costs and  
 35 bonding, if purchased through a Georgia insurance agency; and other direct costs of  
 36 producing the project in accordance with generally accepted entertainment industry  
 37 practices.

38 (B) This term shall not include:

39 (i) ~~Postproduction~~ ~~postproduction~~ expenditures for footage shot outside the State of  
 40 Georgia, marketing, story rights, or distribution, but shall not affect other qualified  
 41 story rights;

42 (ii) Any expenditure for work or services not conducted or rendered in Georgia.  
 43 Expenditures for services not performed at the filming site shall only qualify if the  
 44 vendor is a Georgia vendor. Expenditures for services conducted or rendered both  
 45 in Georgia and outside Georgia shall only qualify to the extent the service is  
 46 conducted or rendered in Georgia;

47 (iii) Expenditures for goods that were not purchased or rented or leased in this state  
 48 from a Georgia vendor. Expenditures for goods shall only qualify to the extent such  
 49 goods are used in this state. A vendor that acts as a conduit to enable purchases or  
 50 rentals to qualify that would not otherwise qualify shall not be considered a Georgia  
 51 vendor with respect to such purchases, rentals, or leases; or

52 (iv) Any transaction subject to taxation imposed by Chapter 8 or 13 of this title for  
 53 which taxes have not been demonstrably paid.

54 (C) This term includes payments to a loan-out company by a production company or  
 55 qualified interactive entertainment production company that has met its withholding tax  
 56 obligations as set out below. The production company or qualified interactive  
 57 entertainment production company shall withhold Georgia income tax at the rate of 6  
 58 percent imposed by subsection (a) of Code Section 48-7-21 on all payments to loan-out  
 59 companies for services performed in Georgia. Any amounts so withheld shall be  
 60 deemed to have been withheld by the loan-out company on wages paid to its employees  
 61 for services performed in Georgia pursuant to Article 5 of this chapter notwithstanding  
 62 the exclusion provided in subparagraph (K) of paragraph (10) of Code Section  
 63 48-7-100. The amounts so withheld shall be allocated to the loan-out company's

64 employees based on the payments made to the loan-out company's employees for  
 65 services performed in Georgia. For purposes of this chapter, loan-out company  
 66 nonresident employees performing services in Georgia shall be considered taxable  
 67 nonresidents and the loan-out company shall be subject to income taxation in the  
 68 taxable year in which the loan-out company's employees perform services in Georgia,  
 69 notwithstanding any other provisions in this chapter. Such withholding liability shall  
 70 be subject to penalties and interest in the same manner as the employee withholding  
 71 taxes imposed by Article 5 of this chapter and the commissioner shall provide by  
 72 regulation the manner in which such liability shall be assessed and collected.

73 (D) Production expenditures by a production company shall be subject to any  
 74 limitations or reductions imposed by subsection (l) of this Code section."

75 "(11) 'Qualified production activities' means the production of new film, video, or digital  
 76 projects produced in this state and approved by the Department of Economic  
 77 Development as state certified productions, including only the following: feature films,  
 78 series, pilots, movies for television, televised commercial advertisements, music videos,  
 79 interactive entertainment, or prereleased interactive games, ~~or sound recording projects~~  
 80 ~~used in feature films, series, pilots, or movies for television~~. Such activities shall include  
 81 projects recorded in this state, in whole or in part, in either short or long form, animation  
 82 and music, fixed on a delivery system which includes without limitation film, videotape,  
 83 computer disc, laser disc, and any element of the digital domain, from which the program  
 84 is viewed or reproduced, and which is intended for multimarket commercial distribution  
 85 via theaters, video on demand, direct to DVD, digital platforms designed for the  
 86 distribution of interactive games, licensing for exhibition by individual television stations,  
 87 groups of stations, networks, advertiser supported sites, cable television stations, or  
 88 public broadcasting stations. Such term shall not include the coverage of news ~~and~~ or  
 89 athletic events, local interest programming, instructional videos, corporate videos, any  
 90 project that is not intended for multimarket commercial distribution, or ~~projects~~ any  
 91 project not shot, recorded, or originally created in Georgia."

92 "(2)(A) The production company or qualified interactive entertainment production  
 93 company shall be allowed an additional tax credit equal to 10 percent of such base  
 94 investment if the qualified production activity includes a qualified Georgia promotion.  
 95 Such additional tax credit shall be allowed for any qualified production that includes  
 96 a qualified Georgia promotion upon its release to the general public. In lieu of the  
 97 inclusion of the Georgia promotional logo, the production company or qualified  
 98 interactive entertainment production company may offer alternative marketing  
 99 opportunities to be evaluated by the Department of Economic Development to ensure  
 100 that they offer equal or greater promotional value to the State of Georgia. The

101 Department of Economic Development shall electronically certify to the Department  
 102 of Revenue when the requirements of this paragraph and paragraph (2) of subsection  
 103 (d) of this Code section have been met.

104 (B) The Department of Economic Development shall prepare an annual report detailing  
 105 the marketing opportunities it has approved under the provisions of subparagraph (A)  
 106 of this paragraph. The report shall include, but not be limited to:

107 (i) The goals and strategy behind each marketing opportunity approved pursuant to  
 108 the provisions of subparagraph (A) of this paragraph;

109 (ii) The names of all production companies approved by the Department of Economic  
 110 Development to provide alternative marketing opportunities;

111 (iii) The estimated value to the state of each approved alternative marketing  
 112 opportunity compared to the estimated value of the Georgia promotional logo; and

113 (iv) The names of all production companies who chose to include the Georgia  
 114 promotional logo in their final production instead of offering the state an alternative  
 115 marketing proposal.

116 The report required under this paragraph shall be completed no later than January 1 of  
 117 each year and presented to each member of the House Committee on Ways and Means,  
 118 the Senate Finance Committee, the Senate Economic Development and Tourism  
 119 Committee, the House Committee on Economic Development and Tourism, and the  
 120 Governor.

121 (C) The additional percentage of tax credit allowed by this paragraph and by  
 122 paragraph (2) of subsection (d) of this Code section shall not be allowed to a production  
 123 company for any qualified production activity or state certified production that has not  
 124 been commercially distributed in multiple markets.

125 (D) The additional percentage of tax credit that is allowed by this paragraph and by  
 126 paragraph (2) of subsection (d) of this Code section shall not be issued final  
 127 certification pursuant to subsection (l) of this Code section unless and until the state  
 128 certified production has been commercially distributed in multiple markets within five  
 129 years of the date that the project was first certified by the Department of Economic  
 130 Development.

131 (3) The base investment and the amount of the credit allowed by this subsection and by  
 132 subsection (d) of this Code section with respect to a production company shall be subject  
 133 to the limitations of and any reductions required by subsection (l) of this Code section."

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

137 subject to the provisions of subsection (l) of this Code section, the date on which the final  
 138 certification for such tax credit was issued pursuant to said subsection;

139 (5) A transferee shall have only such rights to claim and use the tax credit that were  
 140 available to such production company or qualified interactive entertainment production  
 141 company at the time of the transfer, except for the use of the credit in paragraph (1) of  
 142 subsection (f) of this Code section. To the extent that such production company or  
 143 qualified interactive entertainment production company did not have rights to claim or  
 144 use the tax credit at the time of the transfer, the Department of Revenue shall either  
 145 disallow the tax credit claimed by the transferee or recapture the tax credit from the  
 146 transferee; provided, however, that the Department of Revenue shall not recapture a tax  
 147 credit from the transferee if the tax credit was issued a valid final certification pursuant  
 148 to subsection (l) of this Code section. The transferee's recourse is against such production  
 149 company or qualified interactive entertainment production company; and"

150 "(h) The credit granted under this Code section shall be subject to the following conditions  
 151 and limitations; provided, however, that this subsection shall not apply to a production  
 152 company subject to the requirements of subsection (h.1) or (l) of this Code section:

153 (1) The credit may be taken beginning with the taxable year in which the production  
 154 company or qualified interactive entertainment production company has met the  
 155 investment requirement. For each year in which such production company or qualified  
 156 interactive entertainment production company either claims or transfers the credit, the  
 157 production company or qualified interactive entertainment production company shall  
 158 attach a schedule to the production company's or qualified interactive entertainment  
 159 production company's Georgia income tax return which will set forth the following  
 160 information, as a minimum:

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

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

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

166 (D) Any tax credit previously taken by the production company or qualified interactive  
 167 entertainment production company against Georgia income tax liabilities or the  
 168 production company's or qualified interactive entertainment production company's  
 169 quarterly or monthly payments under Code Section 48-7-103;

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

171 (F) The amount of tax credit utilized by the production company or qualified  
 172 interactive entertainment production company in the current taxable year; and

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

174 (2) In the initial year in which the production company or qualified interactive  
175 entertainment production company claims the credit granted in this Code section, the  
176 production company or qualified interactive entertainment production company shall  
177 include in the description of the qualified production activities required by subparagraph  
178 (A) of paragraph (1) of this subsection information which demonstrates that the activities  
179 included in the base investment or excess base investment equal or exceed \$500,000.00  
180 during such year, or \$250,000.00 on or after January 1, 2018, for qualified interactive  
181 entertainment production companies; and

182 (3) In no event shall the amount of the tax credit under this Code section for a taxable  
183 year exceed the production company's or qualified interactive entertainment production  
184 company's income tax liability. Any unused credit amount shall be allowed to be carried  
185 forward for five years from the close of the taxable year in which the investment  
186 occurred. No such credit shall be allowed the production company or qualified  
187 interactive entertainment production company against prior years' tax liability.

188 (h.1)(1) For any projects certified by the Department of Economic Development on or  
189 after January 1, 2021, the tax credit provided for in this Code section if covered under the  
190 schedule provided in paragraph (1) of subsection (l) of this Code section shall not be  
191 allowed, claimed, assigned, sold, transferred, or utilized in any manner by a production  
192 company until final certification is issued pursuant to subsection (l) of this Code section  
193 and except under the following conditions and limitations of this subsection.

194 (2) A production company seeking the tax credit allowed by this Code section shall  
195 apply for the tax credit in the manner provided by the Department of Revenue within one  
196 year from the date that it completes a state certified production. The following  
197 information shall be submitted with the application or prior to the commencement of an  
198 audit required by subsection (l) of this Code section:

199 (A) A description of the state certified production, along with its certification as a state  
200 certified production by the Department of Economic Development;

201 (B) A detailed accounting of all qualified production activities and the attendant  
202 production expenditures included in the base investment for the state certified  
203 production;

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

206 (D) Receipts for tangible personal property included in the base investment as  
207 requested by the Department of Revenue or the eligible auditor hired to conduct the  
208 audit for the state certified production;

209 (E) Contracts for goods or services included in the base investment as requested by the  
210 Department of Revenue or the eligible auditor hired to conduct the audit for the state  
211 certified production;  
212 (F) An Internal Revenue Service Form W-9 completed and issued by each vendor for  
213 which expenditures are included in the base investment as requested by the Department  
214 of Revenue or the eligible auditor hired to conduct the audit for the state certified  
215 production;  
216 (G) Notification as provided for in paragraph (7) of subsection (l) of this Code section  
217 of any intent to utilize an eligible auditor;  
218 (H) A description of the status of the distribution of the state certified production and  
219 information related to any qualified Georgia promotion connected with such  
220 production;  
221 (I) The total amount of the tax credit sought for the state certified production; and  
222 (J) A statement affirming that the contents of the application are true and correct.  
223 (3) If a production company is issued final certification of a tax credit pursuant to  
224 subsection (l) of this Code section, such tax credit shall be considered earned in the  
225 taxable year in which it is issued final certification.  
226 (4) For each year in which the production company either claims or transfers the tax  
227 credit, the production company shall attach a schedule to the production company's  
228 Georgia income tax return which will set forth the following information, as a minimum:  
229 (A) The amount of tax credit claimed for the taxable year;  
230 (B) Any tax credit previously taken by the production company against Georgia  
231 income tax liabilities or the production company's quarterly or monthly payments under  
232 Code Section 48-7-103;  
233 (C) The amount of tax credit carried over from prior years;  
234 (D) The amount of tax credit utilized by the production company in the current taxable  
235 year; and  
236 (E) The amount of tax credit to be carried over to subsequent tax years.  
237 (5) In no event shall the amount of the tax credit subject to subsection (l) of this Code  
238 section for a taxable year exceed the production company's income tax liability. Any  
239 unused credit amount shall be allowed to be carried forward for three years from the close  
240 of the taxable year in which the tax credit was issued its final certification pursuant to  
241 subsection (l) of this Code section. No such credit shall be allowed the production  
242 company against prior years' tax liability.  
243 (6) This subsection shall not apply to qualified interactive entertainment production  
244 companies."

245 ”(k) Any production company, except as provided in subsection (l) of this Code section, or  
246 qualified interactive entertainment production company claiming, transferring, or selling  
247 the tax credit shall be required to reimburse the Department of Revenue for any department  
248 initiated audits relating to the tax credit. This subsection shall not apply to routine tax  
249 audits of a taxpayer which may include the review of the credit provided in this Code  
250 section.

251 (l)(1)(A) For any project certified by the Department of Economic Development on or  
252 after January 1, 2021, a tax credit allowed by this Code section to a production  
253 company shall not be claimed, assigned, sold, transferred, or utilized in any manner  
254 until the production company applies for the tax credit as provided in subsection (h.1)  
255 of this Code section and the department issues a final certification of the tax credit  
256 pursuant to this subsection if the total amount of such tax credit sought for the project  
257 exceeds \$2.5 million.

258 (B) For any project certified by the Department of Economic Development on or after  
259 January 1, 2022, a tax credit allowed by this Code section to a production company  
260 shall not be claimed, assigned, sold, transferred, or utilized in any manner until the  
261 production company applies for the tax credit as provided in subsection (h.1) of this  
262 Code section and the department issues a final certification of the tax credit pursuant  
263 to this subsection if the total amount of such tax credit sought for the project exceeds  
264 \$1.25 million.

265 (C) For any project certified by the Department of Economic Development on or after  
266 January 1, 2023, a tax credit allowed by this Code section to a production company  
267 shall not be claimed, assigned, sold, transferred, or utilized in any manner until the  
268 production company applies for the tax credit as provided in subsection (h.1) of this  
269 Code section and the department issues a final certification of the tax credit pursuant  
270 to this subsection.

271 (2) In accordance with the schedule provided in paragraph (1) of this subsection, prior  
272 to certifying a tax credit pursuant to this Code section, the Department of Revenue shall  
273 conduct or cause to be conducted an audit of each tax credit allowed by this Code section  
274 by either the department or an independent third party certified by the department in  
275 accordance with paragraph (3) of this subsection as an eligible auditor.

276 (3)(A) The Department of Revenue shall provide for the certification and  
277 decertification of certified public accountants as eligible auditors.

278 (B) To obtain certification as an eligible auditor, an accountant shall:

279 (i) Register with the department;

280 (ii) Maintain its registration with the Georgia State Board of Accountancy;

- 281 (iii) Agree to and be capable of completing audits related to this Code section in  
 282 accordance with this Code section and procedures developed by the department;  
 283 (iv) Successfully complete all training required by the department;  
 284 (v) Pay to the department a registration fee that the department shall set in an amount  
 285 that reflects the expenses incurred by the department as a result of this paragraph; and  
 286 (vi) Post and maintain any bond that the department establishes for each eligible  
 287 auditor.
- 288 (C) The Department of Revenue shall decertify an eligible auditor if such auditor:  
 289 (i) Fails to meet the conditions or comply with the provisions of subparagraph (B) of  
 290 this paragraph; or  
 291 (ii) Completes an audit and violates the requirements of subparagraph (E) of  
 292 paragraph (4) of this subsection.
- 293 (D) The Department of Revenue may decertify an eligible auditor if such auditor fails  
 294 to complete an audit in accordance with subparagraph (A), (B), (C), (D), (F), or (G) of  
 295 paragraph (4) of this subsection or meets any other grounds for decertification as  
 296 provided in regulations promulgated by the department.
- 297 (4) Each audit shall:
- 298 (A) Be completed in accordance with this Code section and procedures developed by  
 299 the department;
- 300 (B) Utilize sampling methods that the department may adopt;
- 301 (C) Follow regulations that shall be published by the department regarding  
 302 expenditures incurred with related persons or related members as such terms are  
 303 defined in Code Section 48-7-28.3;
- 304 (D) Verify each reported expenditure that is included in the audit and identify and  
 305 exclude each such expenditure that does not fully meet the conditions of this Code  
 306 section;
- 307 (E) Exclude any expenditure not submitted with or that was incurred after the  
 308 application required by subsection (h.1) of this Code section was submitted;
- 309 (F) Not be performed by an eligible accounting entity that is not determined to be  
 310 independent as provided in the American Institute of Certified Public Accountants Code  
 311 of Professional Conduct with respect to the production company or any of its related  
 312 persons or related members as such terms are defined in Code Section 48-7-28.3 or as  
 313 otherwise provided by the Department of Revenue; and
- 314 (G) Be submitted to the department which shall review the audit, make adjustments as  
 315 necessary, and issue a final certification to the production company.
- 316 (5) The Department of Revenue shall:
- 317 (A) Promulgate rules and regulations and implement this subsection;

- 318 (B) Publish and regularly update a list of all eligible auditors that a production  
319 company may hire to conduct the audit required by this subsection;
- 320 (C) Publish on its website the application for certification of eligible auditors as well  
321 as all requirements related to certification and conducting an audit pursuant to this  
322 subsection;
- 323 (D) Publish the registration fee required by division (3)(B)(v) of this subsection and  
324 any bond required pursuant to division (3)(B)(vi) of this subsection;
- 325 (E) Determine whether a sampling method shall be used for the audits required by this  
326 subsection, the appropriate sample method and size, and if a sampling method is used,  
327 ensure that it accurately captures a truly representative sample of all ineligible  
328 expenditures across all submitted expenditures and projects the type, rate, and amount  
329 of ineligible expenditures across all submitted expenditures;
- 330 (F) Perform the audit of expenditures when, due to confidentiality of information, the  
331 eligible auditor is unable to access necessary information that the department is able  
332 access;
- 333 (G) Review each audit conducted by an eligible auditor, conduct the portions of the  
334 audit described in subparagraph (F) of this paragraph, perform additional auditing as  
335 necessary, adjust the value of the tax credit as necessary, finalize the audit, and issue  
336 the final certification of the tax credit to the taxpayer; and
- 337 (H) For an audit that it conducts without an eligible auditor, complete the audit, adjust  
338 the value of the tax credit as necessary, and issue the final certification of the tax credit  
339 to the taxpayer.
- 340 (6) The production company applying for a final certification of a tax credit pursuant to  
341 this subsection shall agree and be required to reimburse the department for all costs  
342 incurred by the performance of a related audit, or any portion thereof, including for  
343 review of an audit conducted by an eligible auditor, prior to the issuance of such final  
344 certification.
- 345 (7) The cost of any such audit whether conducted in whole or in part by the department,  
346 an eligible auditor, or a combination of the two shall be borne by the production company  
347 and shall not be included as an expenditure claimed pursuant to this Code section, and  
348 shall be deducted from the value of any tax credit allowed pursuant to this Code section  
349 to such production company.
- 350 (8) This subsection shall not apply to qualified interactive entertainment production  
351 companies."

352 **SECTION 2.**

353 This Act shall become effective on January 1, 2021.

354

**SECTION 3.**

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