The Senate Committee on Finance offered the following substitute to HB 1053:

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes, so as to revise the definition and taxation of income of taxable nonresidents with respect to the Georgia Entertainment Industry Investment Act and Georgia Entertainment Industry Postproduction Investment Act; to revise the allocation and apportionment of income from state certified productions for corporations; to require the promulgation of rules and regulations necessary to obtain the requisite information needed to enforce such provisions; to provide for consent to taxation; to extend a tax credit for certain expenditures made by postproduction companies; to reduce the period of time for which such credits may be carried forward; to eliminate the ability to transfer certain tax credits; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes, is amended in paragraph (11) of Code Section 48-7-1, relating to definitions, by deleting "and" at the end of subparagraph (D), by deleting the period at the end of subparagraph (E) and inserting in lieu thereof "; and", by adding a new subparagraph to read as follows:

″(F) Every person that is not otherwise a resident of this state for income tax purposes that receives income which is, at any time, derived from residual payments due to employment, trade, business, profession, or other activity performed or carried on within this state with respect to a state certified production as defined in Code Sections 48-7-40.26 and 48-7-40.26A.″

SECTION 2.

Said chapter is further amended by revising subsection (b) of Code Section 48-7-30, relating to taxation of nonresident's entire net income derived from activities within state, separate accounting possible, applicability, allowed deductions, and applicability of provisions for corporations to nonresidents, as follows:

″(b) A taxable nonresident whose income is derived from employment, trade, business, professional, or other activity performed or carried on within and outside this state shall be taxed only upon the income derived from carrying on the activity within this state; provided, however, that all income derived from residual payments to a taxable nonresident due to employment, trade, business, profession, or other activity performed or carried on within this state, with respect to a state certified production as defined in Code Sections 48-7-40.26 and 48-7-40.26A, shall be taxable income whether such income is received within or outside of this state. The amount of taxable income may be determined by a separate accounting of the income if the commissioner is satisfied that the separate accounting reflects correctly the income fairly attributable to this state. Otherwise, the amount of taxable income shall be determined in the manner prescribed by this chapter for the allocation and apportionment of income of corporations engaged in business within and outside this state.″

SECTION 3.

Said chapter is further amended by adding a new subsection to Code Section 48-7-31, relating to taxation of corporations, allocation and apportionment of income, and formula for apportionment, to read as follows:

"(f) To the full extent permitted by the United States Constitution, the tax imposed by this chapter shall apply to the entire net income of any foreign or domestic corporation which is derived directly or indirectly from the sale, use, or lease of any state certified production for which a tax credit was claimed pursuant to Code Sections 48-7-40.26 and 48-7-40.26A."

SECTION 4.

Said chapter is further amended in Code Section 48-7-40.26, the "Georgia Entertainment Industry Investment Act," by adding a new subsection to read as follows:

"(m)(1) For each production certified as a state certified production on or after January 1, 2023, each entity that claims a tax credit under this Code section with respect to such a state certified production shall, as a condition to obtaining such credit, expressly consent to taxation as provided under the provisions of subparagraph (F) of paragraph (11) of Code Section 48-7-1, subsection (b) of Code Section 48-7-30, and subsection (f) of Code Section 48-7-31 with respect to this Code section.

(2) The department shall promulgate such rules and regulations necessary to ensure that the department is able to obtain all information necessary to enforce the provisions of subparagraph (F) of paragraph (11) of Code Section 48-7-1, subsection (b) of Code Section 48-7-30, and subsection (f) of Code Section 48-7-31 with respect to this Code section."

SECTION 5.

Said chapter is further amended in Code Section 48-7-40.26A, the "Georgia Entertainment Industry Postproduction Investment Act," by revising subsections (d) and (f), by revising paragraphs (2) and (3) of subsection (h), and by adding a new paragraph to subsection (h) to read as follows:

″(d) The tax credits allowed under this Code section for all postproduction companies shall be subject to the following aggregate annual caps:

~~(1) For taxable years beginning on or after January 1, 2018, and before January 1, 2019, the aggregate amount of tax credits allowed under this Code section shall not exceed $10 million;~~

~~(2) For taxable years beginning on or after January 1, 2019, and before January 1, 2020, the aggregate amount of tax credits allowed under this Code section shall not exceed $10 million;~~

~~(3) For taxable years beginning on or after January 1, 2020, and before January 1, 2023, the aggregate amount of tax credits allowed under this Code section shall not exceed $10 million per year;~~

(1) For each year from January 1, 2018, through December 31, 2024, the aggregate amount of tax credits allowed under this Code section shall not exceed $10 million per year;

~~(4)~~(2) The tax credits allowed under this Code section shall not be available ~~for taxable years beginning~~ on or after January 1, ~~2023~~ 2025; and

~~(5)~~(3) If the aggregate amount of tax credits claimed by taxpayers under this Code section during a year is less than the aggregate annual cap applicable to such year, the unclaimed portion of the aggregate annual cap shall be added to the aggregate annual cap applicable to the next succeeding year or years until it is fully claimed.″

″(f) ~~For taxable years beginning on or after January 1, 2018, and before January 1, 2023, the~~ During the period from January 1, 2018, through June 30, 2025, each postproduction company that has been allowed a tax credit under this Code section shall report to the Department of Revenue on its Georgia income tax return the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year. For purposes of this subsection, the term 'full-time employee' shall mean a person who performs a job that requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, for such taxable years, the commissioner shall annually report to the House Committee on Ways and Means and the Senate Finance Committee. The report shall include the name, tax year beginning, and monthly average number of full-time employees for each postproduction company. The first report shall be submitted by June 30, 2018, and each year thereafter by June 30.″

″(2) Where the amount of tax credits under this Code section exceeds the postproduction company's income tax liability in a taxable year, any unused credit amount:

(A) May be carried forward for ~~five~~ three years from the close of the taxable year in which the investment occurred; or

(B) May be taken as a credit against such postproduction company's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such postproduction company's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subparagraph. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subparagraph shall not constitute income to the postproduction company.

No such credit shall be allowed to the postproduction company against prior years' tax liability; ~~and~~

(3) ~~Any tax credits earned by a postproduction company under this Code section and previously claimed but not used by such postproduction company against its income tax or its monthly payment under Code Section 48-7-103 may be transferred or sold in whole or in part by such postproduction company to another Georgia taxpayer, subject to the following conditions:~~

~~(A) Such postproduction company may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;~~

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

~~(C) Failure to comply with this paragraph shall result in the disallowance of the tax credit until the postproduction company is in full compliance;~~

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

~~(E) A transferee shall have only such rights to claim and use the tax credit that was available to such postproduction company at the time of the transfer, except for the use of the credit in subparagraph (B) of paragraph (2) of this subsection. To the extent that such postproduction company did not have rights to claim or use the tax credit at the~~

~~time of the transfer, the Department of Revenue shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against such postproduction company; and~~

~~(F) Any postproduction company claiming, transferring, or selling the tax credit shall be required to reimburse the Department of Revenue for any department initiated audits relating to the tax credit. This subparagraph shall not apply to routine tax audits of a taxpayer that may include the review of the credit provided in this Code section.~~ Reserved; and

(4)(A) For each production certified as a state certified production on or after January 1, 2023, each entity that claims a tax credit under this Code section with respect to such a state certified production shall, as a condition to obtaining such credit, expressly consent to taxation as provided under the provisions of subparagraph (F) of paragraph (11) of Code Section 48-7-1, subsection (b) of Code Section 48-7-30, and subsection (f) of Code Section 48-7-31 with respect to this Code section.

(B) The department shall promulgate such rules and regulations necessary to ensure that the department is able to obtain all information necessary to enforce the provisions of subparagraph (F) of paragraph (11) of Code Section 48-7-1, subsection (b) of Code Section 48-7-30, and subsection (f) of Code Section 48-7-31 with respect to this Code section.″

SECTION 6.

This Act shall become effective on January 1, 2023, and shall be applicable to taxable years beginning on or after January 1, 2023.

SECTION 7.

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