

House Bill 489

By: Representatives Horner of the 3rd, Dunahoo of the 31st, and Clark of the 100th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 48-7-40.26 of the Official Code of Georgia Annotated, the "Georgia
2 Entertainment Industry Investment Act," so as to provide for an aggregate annual limit; to
3 require annual performance audits; to require waiving of taxpayer confidentiality as a
4 condition of the tax credit; to publish certain information in each performance audit; to
5 prohibit the transfer, sale, or assignment of certain tax credits on or after a certain date; to
6 provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Code Section 48-7-40.26 of the Official Code of Georgia Annotated, the "Georgia
10 Entertainment Industry Investment Act," is amended by adding two new subsections and
11 revising subsection (g) as follows:

12 "(c.1) On and after January 1, 2024, the tax credit allowed to production companies shall
13 be subject to an aggregate annual limit of \$190 million. The commissioner shall determine
14 whether the total amount of credits that would be claimed for a calendar year would exceed
15 the annual limit for such year. In such cases, the commissioner shall prorate the total

16 credits allowed among all credits claimed on a percentage basis and reduce the total credits
17 allowed for each state certified production by such percentage.

18 (c.2)(1) By January 1, 2024, and annually thereafter, the state auditor shall conduct
19 performance audits of the tax credits allowed by this Code section and publish such audits
20 on its website.

21 (2) For all projects certified as state certified productions on or after July 1, 2023, as a
22 condition of obtaining status as a state certified production, the production company, its
23 affiliates, and all associate loan-out companies shall expressly waive taxpayer
24 confidentiality to the full extent necessary to effectuate this subsection.

25 (3) For all projects certified as state certified productions on or after July 1, 2023,
26 notwithstanding any provision of Code Section 48-2-15, 48-7-60, 48-7-61, or this Code
27 section, the commissioner shall provide all tax information requested by the state auditor
28 for conducting such performance audits and the state auditor shall include within the
29 audits:

30 (A) A current list of all production companies and their affiliates, all loan-out
31 companies, and each state certified production;

32 (B) The total amount of tax credits claimed or remaining for each year; and

33 (C) A complete copy of each audit conducted pursuant to subsection (1) of this Code
34 section, including, but not limited to, a list of all expenses allowed for the credit under
35 this Code section."

36 "(g) Any tax credits with respect to a state certified production earned by a production
37 company or qualified interactive entertainment production company and previously
38 claimed but not used by such production company or qualified interactive entertainment
39 production company against its income tax may be transferred or sold in whole or in part
40 by such production company or qualified interactive entertainment production company
41 to another Georgia taxpayer, subject to the following conditions:

- 42 (1) Such production company or qualified interactive entertainment production company
43 may make only a single transfer or sale of tax credits earned in a taxable year; however,
44 the transfer or sale may involve one or more transferees;
- 45 (2) Such production company or qualified interactive entertainment production company
46 shall submit to the Department of Economic Development and to the Department of
47 Revenue a written notification of any transfer or sale of tax credits within 30 days after
48 the transfer or sale of such tax credits. The notification shall include such production
49 company's or qualified interactive entertainment production company's tax credit balance
50 prior to transfer, the credit certificate number, the remaining balance after transfer, all tax
51 identification numbers for each transferee, the date of transfer, the amount transferred,
52 and any other information required by the Department of Economic Development or the
53 Department of Revenue;
- 54 (3) Failure to comply with this subsection shall result in the disallowance of the tax
55 credit until the production company or qualified interactive entertainment production
56 company is in full compliance;
- 57 (4) The transfer or sale of this tax credit does not extend the time in which such tax credit
58 can be used. The carry-forward period for a tax credit that is transferred or sold shall
59 begin on the date on which the tax credit was originally earned or for a tax credit subject
60 to the provisions of subsection (l) of this Code section, the date on which the final
61 certification for such tax credit was issued pursuant to said subsection;
- 62 (5) A transferee shall have only such rights to claim and use the tax credit that were
63 available to such production company or qualified interactive entertainment production
64 company at the time of the transfer, except for the use of the credit in paragraph (1) of
65 subsection (f) of this Code section. To the extent that such production company or
66 qualified interactive entertainment production company did not have rights to claim or
67 use the tax credit at the time of the transfer, the Department of Revenue shall either
68 disallow the tax credit claimed by the transferee or recapture the tax credit from the

69 transferee; provided, however, that the Department of Revenue shall not recapture a tax
70 credit from the transferee if the tax credit was issued a valid final certification pursuant
71 to subsection (1) of this Code section. The transferee's recourse is against such production
72 company or qualified interactive entertainment production company; ~~and~~
73 (6) The transferee must acquire the tax credits in this Code section for a minimum of 60
74 percent of the amount of the tax credits so transferred; and
75 (7) On and after July 1, 2024, no tax credit earned, allowed, or claimed pursuant to this
76 Code section shall be transferred, sold, or assigned."

77 **SECTION 2.**

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