DOAA
Georgia Department
of Audits & Accounts

Greg S. Griffin
State Auditor

March 27, 2024

Honorable Chuck Hufstetler
Chairman, Senate Finance
121-C State Capitol
Atlanta, GA 30334

SUBJECT: Fiscal Note
House Bill 1180 (LC 50 0918S)

Dear Chairman Hufstetler:

The bill would revise several provisions of the film tax credit program, including the following:

- Places a cap on the amount of credits that can be sold or transferred. The cap is set at 2.3 percent of forecasted state revenue for the corresponding fiscal year, but filming at qualifying studios and underserved counties provide an exemption from the cap.
- Increases the investment threshold for a single production to $750,000 and adds an $8 million threshold amount for a production company's investment on all productions that also would qualify for the credit.
- Adds criteria that must be met to receive the additional 10-percent uplift.
- Imposes Georgia personal income tax liability on all residuals and royalties earned by the nonresident creative team that worked in Georgia on projects that received the tax credit.

In addition, the bill creates the Georgia Interactive Entertainment Industry Investment Act, carving out language about the interactive games credit from the existing law into a new code section.

Impact on State Revenue

Georgia State University's Fiscal Research Center (FRC) estimated a range for the bill's impact on state revenue (Table 1). FRC noted that the cap on selling or transferring of credits is the primary reason for the state revenue impacts shown in the table. The upper bound estimate is unlikely; it assumes that no credits generated meet the criteria for exemption from the 2.3-percent transfer cap. FRC did not estimate that the additional 10-percent uplift provisions would have a fiscal impact in the period analyzed and that the revenue impact of the residuals and royalties provision is too speculative to estimate, and any impact is likely to come after the period analyzed. Details of the analysis are in the appendix.

Table 1. Estimated State Revenue Effects of HB 1180 LC 50 0918S

($ *millions*)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Upper Bound Estimate	$0.0	$217.6	$427.3	$408.6	$388.8
Lower Bound Estimate	$0.0	$0.0	$0.0	$0.0	$0.0

Impact on State Expenditures
The Department of Revenue would be able to implement the provisions of the bill with existing resources. However, changes to information systems will require approximately 16 weeks of staff time, equal to approximately $192,000 in staff time.

Respectfully,

Greg S. Griffin
State Auditor

Richard Dunn, Director
Office of Planning and Budget

GSG/RD/mt

Analysis by the Fiscal Research Center

The film tax credit, codified by O.C.G.A. § 48-7-40.26, currently allows for an income tax credit of 20 percent of qualifying production expenses, plus an additional 10-percent uplift subject to certain conditions. HB 1180 makes the following substantive modifications to the film tax credit that may materially impact state revenues:

- The total amount of all transfers or sales in a calendar year are limited to 2.3 percent of the total budget in the General Appropriations Act for the corresponding fiscal year, taken for purposes of this analysis to mean total state general fund revenues.
- DOR will issue tax credit certificates that identify the calendar year in which the credit may first be transferred or sold. Such tax credit certificates shall identify the current calendar year as the first year such certificates may be transferred or sold subject to the 2.3 percent cap.
- Any tax credit certificates available to be issued by the DOR in the current calendar year in excess of the 2.3-percent cap shall be issued and available to be transferred or sold in the next calendar year and count towards the cap in that year.
- Certified projects are exempt from the cap if
    - at least 50 percent of principal photography days occur in underutilized counties as defined by Department of Economic Development (GDEcD), or
    - at least 50 percent of principal photography days occur in a Georgia-based qualified production facility that includes newly constructed studio space with over $100 million invested or an existing facility that has more than 1.5 million square feet of stage space.
- The bill would take effect on January 1, 2026.

Table 2 below shows the estimated amounts of the film tax credit under current law from the state tax expenditure report. The 2.3-percent cap on transfers is estimated from the long-term state revenue forecast from the Governor's Budget Report for AFY 2024 and FY 2025. The calendar year carryforward is the difference between the two and represents the additional carryforwards over current law. This is referred to as the tax year carryforward in the tables. The second carryforward in Table 2 is the cumulative addition to the carryforward balances. These cumulative amounts do not impact the estimated revenue effects from this analysis but do have longer-term implications that are discussed in the next section.

Note this is an upper-bound estimate in that it assumes that no credits generated would qualify for the exceptions to the cap discussed above.

Table 2. Estimated Upper-Bound Revenue Effects of 1180 LC 50 0918S

($ *millions*)	CY 2025	CY 2026	CY 2027	CY 2028	CY 2029
Baseline Credits Utilized	$1,144.3	$1,254.6	$1,271.5	$1,286.3	$1,306.9
Cap at 2.3% of State Revenue Estimate	$0.0	$819.4	$852.2	$888.4	$927.2
Carryforwards, Tax Year	$0.0	$435.2	$419.3	$397.9	$379.7
Carryforwards, Cumulative	$0.0	$435.2	$854.6	$1,252.5	$1,632.2
Net State Savings	$0.0	$435.2	$419.3	$397.9	$379.7

Historically, more than 90 percent of film credits generated are transferred and approximately 99 percent of utilization is by transferees. For the upper-bound revenue effect, it is assumed that the cap on carryforwards does not change the behavior of production companies. It is assumed that they transfer or sell all the credits they can under the 2.3-percent cap and attempt to sell the remaining amount the following year, subject to the cap. Thus, the impact to state revenue is the tax year carryforward amount, which is transferred and not utilized in the year generated because of the cap.

Table 3 shows the lower-bound revenue impact, driven by the newly created exemptions from the cap discussed above. Current estimates of film tax credit utilization for (calendar year) CY 2026 onward are associated with roughly $4 billion of certified industry spending annually. Based on the 2020 DOAA report, roughly 25 percent of certified movie projects have budgets over $40 million, making them ideal candidates for the largest studio spaces in the state. Other productions would qualify based on filming in GDEcD-designated underutilized counties, Thus, it would be reasonable to expect one third or more of spending each year to qualify for an exemption from the cap on transfers. The estimates in Table 3 assume that the full amount under the 2.3-percent cap is transferred or sold. The remainder each year is between 29 and 35 percent of the baseline credits, so the lower bound are assumed to have qualified for an exemption from the cap. If that assumption holds, there would be no savings to the state as a result of the cap.

Table 3. Estimated Lower-Bound Revenue Effects of HB 1180 LC 50 0918S

($ *millions*)	CY 2025	CY 2026	CY 2027	CY 2028	CY 2029
Baseline Credits Utilized	$1,144.3	$1,254.6	$1,271.5	$1,286.3	$1,306.9
Cap at 2.3% of State Revenue Estimate	$0.0	$819.4	$852.2	$888.4	$927.2
Amount Exempted from Cap	$0.0	$435.2	$419.3	$397.9	$379.7
Net State Savings	$0.0	$0.0	$0.0	$0.0	$0.0

The following changes in HB 1180 to the film tax credit may reduce the amount of credits taken in the long run. However, due to the provisions discussed above and the large carryforwards created by the 2.3-percent cap on annual transfers, these provisions only have the potential to reduce the size of the carryforward in the relevant period. We list the provisions below and then discuss briefly why they do not materially impact state revenues before FY 2030.

- The minimum amount of investment required increases to either $750,000 on a single certified production or $8 million on all certified productions by a given production company.
- To qualify for the additional 10-percent uplift, a certified project must meet four out of nine criteria approved by the Department of Economic Development and be subject to the required audit of the original application. The nine criteria are summarized:
  (1) At least 50 percent of a project's crew performing services in this state are Georgia residents;
  (2) At least 50 percent of its vendors providing goods or services in this state are Georgia vendors;
  (3) It incurs at least $30 million of production expenditures in this state;
  (4) At least 50 percent of its photography days occur in one or more rural counties;
  (5) At least 50 percent of its total photography days in studio facilities are in studio facilities in this state, or capital improvements are made by the company to a studio facility in this state, in a form and manner approved by the Department of Economic Development; or a long-term lease is entered into by the company of at least 100,000 square feet for five or more years at an approved type of facility;
  (6) The company agrees to contract with Georgia vendors for 20 percent of such production's postproduction expenditures or contracts with Georgia vendors for 20 percent of such production's visual effects expenditures;
  (7) The company participates in at least one Georgia workforce development program;
  (8) It includes a qualified Georgia promotion, or the company engages in alternative marketing opportunities approved by the Department of Economic Development.
  (9) The company contracts for the recording of the music score for the production from a

Georgia company or resident or else licenses such music from a Georgia company or resident.

The change in the threshold allowing for smaller amounts less than $750,000 per production to qualify for the credit if $8 million or more is spent on all certified productions by the given production company is likely to have a small impact on the total credits issued relative to the size of the overall cost of the credit. Film and TV productions account for roughly 95 percent of the credits generated in Georgia, and most have production budgets that are well over the $750,000 threshold. Data on individual Georgia production spending was not readily available for this analysis. However, the 2020 DOAA report on the film tax credit found that one half of the films that received the credit in Georgia had a production budget of $16 million or less. It is assumed that these films currently only invested the minimum of $500,000 to receive the credit. The same assumption is made for TV shows filmed in Georgia. Based on 2023 data, it is estimated that 160 film and TV shows would be impacted, resulting in a savings to the state of $24 million, roughly 4 percent of credits issued in CY 2023.

The additional criteria necessary to qualify for the 10-percent uplift are also likely to have a small impact on the number of credits issued. Per the 2020 DOAA report, almost all productions currently meet thresholds 1 and 2. It is highly likely that a motivated production company will find a way to meet at least two of the remaining seven criteria. However, for this analysis, the estimate assumes that these additional criteria result in another 8 percent savings to the state of roughly $50 million in film tax credits. Summing the assumed savings from the change in the size of allowed projects of $24 million and the additional criteria to receive the 10-percent uplift of $50 million yields a total savings of $74 million to the state.

Table 2 shows the very large carryforwards totaling over $435 million in CY 2026, declining slowly to $398 million by 2029. It is these large carryforwards that the $74 million would impact, making them smaller. In addition, the full $74 million would likely be spread out over several years, as the credits are not utilized all at once. Another limit is that in 2026 and 2027, most of the credits utilized would be generated in years in which the new legislation would not have an effect. Thus, the amount of savings from the new provisions is likely to be less than $74 million annually in FY 2026–29.

The bill would also impose Georgia personal income tax liability on all residuals and royalties earned by the nonresident creative team that worked in Georgia on projects that received the tax credit. For several reasons, it is too speculative to estimate the revenue effects of this provision. Although we acknowledge these effects are likely to be positive in the out years, in correspondence with DOR, this section would apply to royalties and residuals generated on projects certified in 2026 or later and apply to nonresident creative talent who worked in Georgia on the certified projects.

Royalties and residuals are negotiated on a per project basis and vary across actors, writers, musicians, and other creative people involved in film and TV production. In addition to the variation in rates, the amount of royalties and residuals depend on the success of the project financially and on the future stream of revenue generated via streaming and syndication or other viewing mediums.

It is unclear how such royalties and residuals income would be apportioned. Most projects certified for the credit are not made solely in Georgia. Thus, only some portion of the total project budget was spent in Georgia. Revenue that creates the residuals is also generated across the country as well as internationally. It is unclear from the bill what method would be used to apportion the royalty and residual payments linked to Georgia-certified projects, whether it would depend on the share of total budget spent in Georgia and receiving the credit, or the amount of revenues generated by the project in Georgia, or a combination, or another method entirely.

Finally, residuals and royalties only accrue to actors, writers, musicians, and other creative individuals after the project is completed, which would likely take several years or more. Thus, projects begun in CY 2026 and subject to the new law likely would not generate any royalties or residuals until CY 2028 or later. As a result, the early years of this fiscal note estimate that the amount of revenue generated by this provision is likely to be zero or very close to zero.

An additional degree of uncertainty in the long-term impact of the bill after 2029 involves the carryforwards. The legislation requires that the carryforwards from the previous year be counted towards the 2.3-percent cap in the year they may first be transferred. These credits are given priority based on the date of certification. It therefore appears that the carryforward credits would have priority over those that would be newly issued and allowed to be used in future years by the company if the 2.3-percent cap for the year is exceeded. This has the effect of growing the carryforwards by the amount of the previous year's carryforward. For example, the cumulative carryforwards that can be used in 2028 may be as much as $1.25 billion, as seen in Table 2. That amount is greater than the estimated 2.3-percent cap amount in 2029. This may put pressure on firms to lower the price of the credits they are selling before the 3-year carryforward expires, but would not impact state revenue under the 2.3-percent cap.

It is also possible that these changes incentivize production companies to change how they plan for taxes in Georgia and encourage them to take a greater amount than is estimated in the tables against their newly figured tax liability. If this happens, the benefit to the state may decrease.