**LORD OF THE REELS: CAN GEORGIA LEARN FROM CANADA’S SUCCESS TO RESCUE ITS FILM INDUSTRY?**

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For Jonathan Alexander Hatcher.

They called you my shadow, but look how you grew!
Before I knew it, I was looking up to you.
I hope I live long, for many years will I need to stand proud in your shadow, with all you’ve achieved.
I love you and I miss you.
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One scheme to draw them all,
one scheme to entice them,
one scheme to bring them all,
and in that state, subsidize them.
Like the land of Canada, where the incentives are high . . .

I. INTRODUCTION

Once ranked the third-highest state in the United States in production activity, Georgia has recently seen its film industry slow to a crawl. An industry that contributed almost $300 million to the state economy in 2002, one of the state film industry’s most prosperous years, is struggling but a few years later. In the past, Georgia enjoyed advantages that made production in the state attractive. These advantages ranged from the availability of inexpensive labor in the 1970s, as compared to the West Coast, to, more recently, sales and use tax incentives that were competitive when introduced, but have since had their drawing power diminished. The advantages previously offered by the state have all but evaporated as other similarly situated states have begun to introduce plans to match or trump these advantages. Increasing competition from abroad is also complicating the problem.

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2 Id.
4 Eckenrode, supra note 1.
5 Id.
6 Id.
8 Eckenrode, supra note 1.
Canada continues to reap huge rewards as the largest foreign producer in the U.S. television and film industry. Canada has effectively established itself as "the benchmark" for attracting what is often termed "runaway production" or "production flight." The passing of Georgia’s recent legislation, the Georgia Entertainment Industry Investment Act, suggests that the state is committed to redeveloping its film industry and curbing production flight. The question is whether Georgia can effectively master Canada’s example and make significant strides forward in its own film industry.

It is the supposition of this Note that Georgia can create a long-term plan, based on Canada’s model, to regain—and perhaps surpass—the previous success of its own film industry. Such success will grant Georgia a certain measure of economic stability and will help the state weather future struggles like those that it has recently endured. However, this long-term plan must include measures that will allow the state to adapt quickly to changing circumstances in this rewarding, but volatile, industry.

This Note will first address in Part II the problem of the declining Georgia film industry and the resulting impact on the Georgia state budget. In Part III.A, this Note explores the reasons why incentives and subsidies are appropriate for the film industry in light of its net returns on investment and positive effects on local economies. Part III.B presents Canada’s successful film industry model to show how it has brought sustainable wealth to the country through a comprehensive long-term plan. This Note reviews in Part III.C Georgia’s most recent incentive structures and points out gaps between Georgia’s incentives and those of its competitors. Part IV introduces Georgia’s assets and offering to the film industry and suggests a course of action to ensure that a long-term plan to increase the success of the film industry in the state remains in place. Finally, this Note concludes in Part V by summing up the current state of the film industry in Georgia and predicting

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11 See, e.g., Wicker, supra note 9, at 461 (characterizing the phenomenon of production migration from the United States to Canada as “runaway production”).
13 See discussion infra Part III.C.2.
14 See discussion infra Part II.
the separate and distinct possibilities for its future. In order to control its own destiny with regard to its film industry, Georgia must remain vigilant. Quite simply, the state must decide whether there is a future for filming in the state, or the industry will make the decision itself.

II. GEORGIA’S DECLINING FILM INDUSTRY IN A TROUBLED ECONOMY

The substantial decline of a lucrative industry and the resulting loss of over $200 million in investment in the state\(^\text{15}\) could not have come at a worse time for Georgia. Since the September 11th attacks, Georgia had been in the midst of a budget crisis brought on by slow recovery from recession.\(^\text{16}\) This crisis had wide-reaching effects across the state, including cutbacks in investment in higher education,\(^\text{17}\) changes in important healthcare programs,\(^\text{18}\) and even degradation of the state correctional system.\(^\text{19}\)

The budget crisis was not caused exclusively by increased and irresponsible spending, but also by lost revenue of remarkable proportions. To put it into perspective, the total revenues for the state in fiscal year 2001 were $13,951,007,965.01.\(^\text{20}\) By fiscal year 2003, they had declined to

\(\text{15} \) Eckenrode, supra note 1.
\(\text{16} \) See, e.g., More Tight Budgets for State, ATHENS BANNER-HERALD, July 1, 2004, available at http://onlineathens.com/stories/070104/new_20040701036.shtml (indicating that cuts to state agencies were needed to “help the state regain its financial footing after a slow recovery from recession”).
\(\text{18} \) See Perdue Facing Storm of Protest Regarding Medicaid Changes, ATHENS BANNER-HERALD, July 31, 2004, available at http://onlineathens.com/stories/080104/ogi_20040801043.shtml (describing two changes to the state’s Medicaid program: one that would eliminate benefits for some seniors and another that would create an “estate recovery program to reimburse the state for some of the costs it incurs when providing long-term care services to some Medicaid patients”).
\(\text{20} \) Press Release, Georgia Department of Revenue, June Collections Announced (July 13, 2001), http://www.etax.dor.ga.gov/pressrel/p071301.pdf.
$12,680,972,622.23. This amounted to a difference in revenue of $1,270,035,342.78, or a 9.1% decline over the course of two years. During this time of declining revenues, Georgia was also experiencing rapid population growth, as evidenced by a consequent strain on state programs, making the situation in the state far worse than the dismal revenue numbers indicate.

Former Augusta Mayor Bob Young’s reluctance to open a city film office because of budget concerns is an indicator of the mindset of many officials across the State of Georgia towards investment in the film industry. Mayor Young estimated that a one-person film office would cost $140,000 per year. He cited deteriorating economic conditions, the city’s failure to retain its employees, and the city’s $3.9 million budgetary shortfall as reasons why the addition of such an office would not be possible at that time. Meanwhile, in a hearing held in Savannah on October 23, 2003, supporters of Georgia’s film industry repeatedly warned the state’s House Committee on Economic Development and Tourism that Georgia must “get serious about motion pictures and television” and “[o]ffer incentives” or risk “los[ing] [the] movie industry.” That this interest group perceived these gloom-and-doom warnings to be necessary suggests that lawmakers had been reluctant to invest sufficiently in the state film industry and to keep it competitive with the film industries of other states and foreign nations.

Ironically, the symptoms of the state’s problems have discouraged support of a partial solution to those problems. Supporters of Georgia’s film industry strive to create revenue for the state through investment and job creation.

22 Even though state officials anticipated a revenue spike of $972 million in fiscal year 2005, or a 6% increase over fiscal year 2004, they cautioned that “rising Medicaid costs and surging college enrollment statewide [were] outpacing” these gains. Markman, supra note 17.
23 See Eckenrode, supra note 1 (showing that other officials had budget-related concerns, as well as discussing a 2002 incentive package that passed with overwhelming support in the Georgia House of Representatives, but failed in the Senate, and suggesting that the reason for the failure was concern over whether the amount of the tax breaks given would be greater than the revenues generated by the increased production).
24 Eckenrode, supra note 1.
25 Id.
27 See Eckenrode, supra note 1 (reporting that Jay Self, director of the Savannah Film
This revenue would partially solve the state's economic problems. However, most state officials, like Mayor Young, feel that because of these budgetary problems, they cannot afford to invest in the film industry. Real progress, therefore, depends on convincing state officials to invest in incentives and subsidies for the film industry. State officials must also be willing to commit to adjusting these incentives when called for by changing circumstances. Ultimately, this investment might help to insulate the state from hard economic times in the future.

III. BACKGROUND

A. Why the Film Industry Is a Good Target for Incentives and Subsidies

The film industry provides a unique opportunity for investment. As this section will show, it is superior to other industries in terms of net return on investment and environmental impact. Further, the film industry provides a wide spectrum of job opportunities for local communities. The economic impact of the industry is multiplied by the demand for goods and services that local production brings. Finally, the return on investment is relatively quick, and some of that return will even be immediate.

1. Advantages over Other Industries

The film industry has an advantage over many other industries that are often the target of incentives and subsidies because the gains it achieves are not offset by major costs. Many other industries often incur enormous costs associated with their negative environmental impacts. For example, the agricultural industry, which is often the target of huge incentives and subsidies, carries with it the specter of enormous negative environmental

Commission, had attributed the loss of over $200 million in investment in the state and the loss of workers skilled in technical support and crew jobs in the Savannah area to a lack of support of the film industry in Georgia).

28 See Eckenrode, supra note 1.

impact. Conversely, the film industry has been described as “a pretty clean industry” by Georgia State Representative Larry Parrish.

“Clean industries” are those industries that generally do not have the same degree of negative environmental effects that are often part and parcel of “dirty industries.” Dirty industries, such as petroleum-based industries, often involve negative environmental effects, the costs of which can often swallow a high percentage of the gains secured by these industries. The likelihood of this outcome is especially high when the affected communities demand high environmental standards, as is the case in the United States. Because clean industries do not carry many of the expensive environmental side effects, they potentially provide higher net benefits than dirty industries. When both the economic gains of the industry and the consequential environmental losses are taken into account, clean industries are the smarter investment.

The film industry may fairly be described as a clean industry among clean industries. It is often considered by on-location communities to be highly respectful of local environmental needs and concerns. Even the externalities of the film industry are positive. They include increased tourism, new high-paying jobs and higher hotel revenues. In contrast, another segment of

30 See, e.g., Adelman & Barton, supra note 29, at 7 (arguing that agricultural production has three negative environmental effects: harm caused to the atmosphere, surface waters, and subsurface waters by agricultural effluent; impact on species' natural habitat; and depletion of the soil and other resources).
31 Murdock, supra note 26.
32 See Edith Brown Weiss, Environmentally Sustainable Competitiveness: A Comment, 102 YALE L.J. 2123 (1993) (discussing, among other things, the differing environmental impacts of dirty industry as compared to clean industry).
34 See John Wickham, Toward a Green Multilateral Investment Framework: NAFTA and the Search for Models, 12 GEO. INT'L ENVTL. L. REV. 617, 624 (2000) (arguing that although it is conceivable that a Western European country could relax its environmental standards to attract “dirty industries,” its citizens would ultimately demand stricter standards and expensive environmental cleanup).
36 Eckenrode, supra note 1.
37 Murdock, supra note 26.
38 See Eckenrode, supra note 1.
clean industries, the "high tech" industry,\textsuperscript{39} involves thousands of chemicals and high amounts of heavy metals, such as lead.\textsuperscript{40} Because the film industry involves even fewer environmental risks than other clean industries, the chances are great that the economic gains brought to the state by the industry will far outweigh the costs of any deleterious environmental effects.

2. Effects on Employment

Brian Kurlander, director of the Alabama Film Office, illustrated the effect that film industry production can have on local job availability when he declared that the jobs in the credits at the end of a film "are all jobs that could be in your area."\textsuperscript{41} Film industry production brings with it a demand for local skilled workers that creates high-paying, desirable jobs.\textsuperscript{42} One commentator has reported that during the era of production flight from 1989 to 1998, 125,100 full-time equivalent positions in the film production industry moved away from the United States.\textsuperscript{43} Another study estimated that production flight to Canada alone now costs the United States 25,000 entertainment industry jobs per year.\textsuperscript{44} These estimates show that a significant number of jobs are lost when film industry production moves to locations outside of the United States.

But are these jobs moving with the production, or are they simply disappearing? The answer, according to the localities gaining the production, is that these jobs survive the trip. In fiscal year 1998, Manitoba, Canada saw an addition of 1,200 full-time equivalent positions directly related to increased film production.\textsuperscript{45}

\textsuperscript{39} Beth E. Kinne, Regulatory Diversification and the Monitoring State: The Direction of Environmental Regulation in Taiwan, 13 PAC. RIM L. & POL’Y J. 91, 99 n.74 (2004) (noting that the high tech industry has been considered a “clean industry” around the world).

\textsuperscript{40} Id.


\textsuperscript{42} Id.


\textsuperscript{45} Krista Boryskavich & Aaron Bowler, Hollywood North: Tax Incentives and the Film
Arts at the Savannah College of Art and Design and executive director of the Savannah Film Festival, also predicted that 500 to 600 new jobs would be created if the school were to complete a film and television park.\(^4\) Considering Manitoba's results, this may be an extraordinarily conservative estimate.\(^4\) Given Manitoba's results and Filson's expectations for Savannah, it appears that a significant number of jobs go where the production goes.

Film industry production positions are especially desirable because they provide benefits to a broad range of the economic spectrum. For example, the Bureau of Labor Statistics took note not only of the length of the credits at the end of a film, but also of the variety of workers and the diversity of the positions listed therein when it described the occupations of the film industry.\(^4\) Film industry production creates positions for both blue-collar and white-collar workers.\(^4\) Further, the pay rate for many of these positions begins at a range of $16 to $20 per hour,\(^5\) which, for several of these positions, is higher than the average salary for the same or comparable positions in other industries.\(^5\)

3. Indirect Economic Impact and the Demand for Local Goods and Services

Indirect economic impact is especially potent for the film industry. The U.S. Department of Commerce has described the film industry as a "locomotive industry," or "one in which the 'number of production workers directly working in the industry belies the true impact of the industry on the economy.'"\(^3\)

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\(^3\) Industry in Canada, 2 ASPER REV. INT'L BUS. & TRADE L. 25, 33 (2002) (citing Manitoba Film and Sound Recording Development Corporation, Film Programs, http://www.mbfilmsound.mb.ca/setThis.html (last visited Jan. 14, 2006) (follow “Programs” hyperlink; then follow “Film Programs” hyperlink)).

\(^4\) The purpose of this park would be to provide year-round post-production facilities for motion picture and television companies shooting in Georgia. Murdock, supra note 26.

\(^5\) Manitoba's job creation numbers were triple its expectations in fiscal year 1998. Boryskavich & Bowler, supra note 45, at 33.


\(^7\) Murdock, supra note 26. See also Bureau of Labor Statistics, supra note 48, at 138 (listing many of the various blue-collar and white-collar positions associated with film industry production).

\(^8\) Murdock, supra note 26. See also Sisto, supra note 10, at 31 (compiling daily minimum rate information for selected artists in the United States and Canada); Bureau of Labor Statistics, supra note 48, at 140 (listing median hourly earnings in 2002 of various blue-collar and white-collar positions associated with film industry production, many of which exceed $16).

economy because so many upstream, downstream, and peripheral industries depend on the primary production plant,’ thus acting as a ‘multiplier’ of the effect on the economy.”

The workers who fill the positions directly created by the new production bring with them demand for local goods and services, which in turn produces additional “indirect jobs.” To illustrate, a large film industry employer, like most large employers, creates demand for goods and services provided by the construction, housing, restaurant, catering, and retail industries. However, a large film industry employer creates even further demand, specifically for goods and services provided by closely related industries, such as film laboratories, construction houses, prop rentals, and others.

The standard measurement of this economic “ripple effect” is the economic multiplier. An economic multiplier is generally defined as a summary of “the total impact that can be expected from change in a given economic activity.” As an example, Wayne P. Miller, Extension Economist with the University of Arkansas Cooperative Extension Service, demonstrated that if $1 is received in the local economy in exchange for exporting some commodity outside of the community, $.40 may be spent on goods and services in the community, while the remainder is either saved or spent outside of the community. Of this $.40 received by local firms and individuals, $.16 may in turn be spent within the community. Of this $.16, $.06 may then be spent locally, and so on. The total amount of money received by local firms and residents as a result of the


53 See Boryskavich & Bowler, supra note 45, at 33 (reporting that the increase in production in Manitoba resulted in the creation of 2,000 jobs, which were indirectly related to the increase).


55 Id.


57 Id. See also CALIFORNIA TECHNOLOGY, TRADE AND COMMERCE AGENCY, USING MULTIPLIERS TO MEASURE ECONOMIC IMPACTS 1 (2002), http://commerce.ca.gov/ttca/pdfs/detail/ersi/Multipliers.pdf (defining a multiplier as “show[ing] the additional (or indirect) change to the economy resulting from each change in a selected industry”).

58 Miller, supra note 56, at 1-2.

59 Id. at 2.

60 Id.
initial $1 in export earnings is $1.66, which thus yields an economic multiplier of 1.66.

There are three types of multipliers that provide relevant information to community leaders considering new industry: the output multiplier, the employment multiplier, and the income multiplier. The output multiplier estimates the total change in local sales, including the initial sales outside the area, resulting from that amount of sales outside the area. The employment multiplier measures the total change in employment resulting from an initial change in employment of an exporting industry. The income multiplier (also known as the "direct-effect earnings multiplier") measures the total increase in income in the local economy resulting from a one dollar increase in income received by workers in the exporting industry.

Though economic multipliers by their nature vary from locale to locale, an assumption of 2.12 is a conservative, widely-used (albeit technically misused) estimate for each type of multiplier for the film industry in California. A consistent rate of local spending of 40% is assumed. Miller, supra note 56, at 1-2. Id. at 2. Id. See also CALIFORNIA TECHNOLOGY, TRADE AND COMMERCE AGENCY, RIMS II MULTIPLIERS FOR THE STATE OF CALIFORNIA 8 n.1 (2002), http://commerce.ca.gov/ttca/pdfs/detail/ersi/Multipliers.pdf (stating that the values in the "output" column represent "the dollar change in output of the California economy for each [one dollar] change of output delivered by the selected California industry").

Miller, supra note 56, at 2. See also CALIFORNIA TECHNOLOGY, TRADE AND COMMERCE AGENCY, supra note 64, at 8 n.5 (stating that the values in the "employment" column represent "the change in the number of jobs in the total California economy for each single job change in the selected California industry"). Compare Miller, supra note 56, at 2 (defining the income multiplier as a measure of "the total increase in income in the local economy resulting from a one dollar increase in income received by workers in the exporting industry"), with CALIFORNIA TECHNOLOGY, TRADE AND COMMERCE AGENCY, supra note 64, at 8 n.4 (stating that the values in the "direct-effect multipliers: earnings" column represent "the dollar change in earnings of households employed by all California industries for each [one dollar] change of earnings paid directly to households employed by the selected California industry").

Miller, supra note 56, at 2.

Because multipliers vary from locale to locale, there is no universal multiplier that can be applied correctly across different locations. Thus, using 2.12 as a multiplier in any location other than the one for which it was calculated would be an example of a misuse of that multiplier. However, 2.12 may provide a rough estimate where precise calculations are less important. More exact estimates must be determined using multipliers calculated for the specific locale and...
When this 2.12 value is applied to the three multipliers from above (output, employment, and income) in order to provide a rough estimate, the possible effects on the local community are staggering. Applying the employment multiplier, 100 additional film industry production jobs would create sufficient demand for 112 additional full-time equivalent positions in other industries in that community. Further, applying the output multiplier, sales of $100,000 made by the film industry in that community would result in an additional $112,000 in sales for the other industries in that community. Finally, applying the income multiplier, $100,000 in income received by the film industry workers in the community would result in an additional $112,000 in income received by workers in other industries in that community. These examples demonstrate that film industry production provides new vitality to the economy of a production locality.

4. Immediate Economic Impact

Investment in the film industry tends to pay off very quickly. In fact, Georgia State Representative Larry Parrish has described the economic impact for the specific industry. See U.S. DEP’T OF COMMERCE, BUREAU OF ECONOMIC ANALYSIS, REGIONAL ECONOMIC ACCOUNTS, available at http://www.bea.doc.gov/bea/regional/rims/brfdesc.cfm (last visited Jan. 14, 2006) (providing a description of the Regional Input-Output Modeling System (RIMS II System) and indicating that multipliers are calculated by industry and by region).

70 See CALIFORNIA TECHNOLOGY, TRADE AND COMMERCE AGENCY, supra note 64 (reporting that the output multiplier, employment multiplier, and income multiplier for “theatrical producers” in California in 2002 was 2.7098, 3.3083, and 2.7624, respectively); Murdock, supra note 26 (using an economic multiplier of 2.12 to estimate total economic impact in Savannah between 1995 and 2003); Press Release, Virginia Film Office, Governor Warner Announces Film Industry Economic Impact (Apr. 29, 2003), available at http://www.film.virginia.org/NewsPublications/News_Documents/Year_End_2002_PR_final.pdf (using an economic multiplier of 2.12 for the film industry and citing David Friedman, economist for the Alliance of Motion Picture Arts and Sciences, as its source for this value). The true source of the mysterious 2.12 multiplier may be Arthur Andersen Economic Consulting. U.S. DEP’T OF COMMERCE, THE MIGRATION OF U.S. FILM AND TELEVISION PRODUCTION 23 (2001), available at http://www.ita.doc.gov/media/migration11901.pdf. However, it is clear that economists disagree widely over the correct multiplier to apply to the film production industry. Id. The 2.12 value may be widely used in the interest of conservatism because it is often one of the lowest values given in the context of suggested multipliers. See id. (reporting values of 3.1, 3.6, 1.99, 3.02, 2.12, 2.33, and 2.61 for various multipliers associated with the film production industry).

71 An example of sales in the film industry to an outside area would be a post-production studio in Savannah contracting to sell special effects services to a California-based production.
When a production is scheduled to be filmed in a local community, that community will become host to the above-the-line workers, "the producers, writers, directors, and principal actors" of the film. Typically, these workers will travel to the community and will require hotel accommodations, catering services, and other similar services for the duration of the production. Though these workers are relatively few in number, many of their needs are immediate, such as the need for food and shelter. It follows that the economic impact of the demands associated with those needs would also be immediate. Hotel owners and catering companies, for example, can therefore expect immediate increased business from the presence of above-the-line workers.

It was once thought that the expertise gleaned during the United States'—and most notably California's—painstakingly deliberate development of the film industry from the silent movies of the 1910s and 1920s to the special effects extravaganzas of the latter part of the century would be difficult, if not impossible, to recreate elsewhere. However, not only do other countries have a supply of workers whose skills are comparable to those of their U.S. counterparts, some countries have also constructed infrastructure, in the form of sound stages and production sets, that rivals the sets and stages in the United States. Further, these countries made these strides in only a few years.

The workers who possess these skill sets and whose work involves constructing infrastructure "are the backbone of the [film] industry" and, by

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72 Murdock, supra note 26.
74 Id.
75 Compare Garon, supra note 54, at 13 (stating that productions create demand for the construction, housing, restaurant, catering, and retail industries of a community hosting the production), with U.S. DEP'T OF COMMERCE, supra note 73, at 9 (stating that below-the-line workers are less likely to travel to a community hosting the production). It follows that a substantial portion of the demand for housing (often in the form of hotels), restaurants, and catering is created by the above-the-line workers.
76 See U.S. DEP'T OF COMMERCE, supra note 73, at 9.
77 See, e.g., THE FOUR HORSEMEN OF THE APOCALYPSE (Metro Pictures 1921).
78 See, e.g., STAR WARS: EPISODE IV - A NEW HOPE (Lucasfilm 1977).
79 See U.S. DEP'T OF COMMERCE, supra note 73, at 3.
80 Id.
81 Id.
82 Id. at 9.
far, take up the most space in the ending credits of a film. These below-the-line workers include “technicians, less well-known actors, assistant directors and unit production managers, artists, specialists, post-production workers, set movers, extras, construction workers, and other workers in fields too numerous to mention.” Below-the-line workers are not as inclined as the above-the-line workers to travel to the community hosting the production. As a result, most (perhaps 70% to 80%) below-the-line workers are hired from the pool of workers found in the community hosting the production.

Though production projects are usually short-term and generally last only a few months, a community that hosts these projects at a reasonably consistent rate will begin to develop a pool of skilled below-the-line workers. These workers will have the same demands as resident workers in other industries, such as the demand for permanent housing and consumer products, which in turn will provide a boom for the local construction and retail industries, among others.

Though this process does not provide gains as immediately as those associated with above-the-line workers, the gains still arise rather quickly. Montreal, for instance, saw a seven-fold increase in the number of local crews working in the area over the course of one decade. Manitoba reported an increase of 1,200 direct full-time equivalent positions in 1998 to 1999 alone.

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83 See id. (referring to the “long list of persons with job titles that range from the mundane to the arcane” in the credits at the end of each film).
84 Id.
85 The most likely reason that below-the-line workers cannot follow the production is because they are relatively low paid. See id. Other reasons may include limitations brought about by national immigration or labor laws. Id. at 10.
86 Id. at 9.
87 Id.
88 Id. at 12.
89 See Boryskavich & Bowler, supra note 45, at 31 (reporting that Montreal’s number of local film crews had gone from four to twenty-eight in the space of a decade due to a recent production boom). Below-the-line workers often own or are employed by small businesses or are independent contractors. U.S. DEP’T OF COMMERCE, supra note 73, at 10. Below-the-line services also require substantial capital investment, such as the high cost of special effects equipment. Id. Because of the small size of the businesses typically involved and the resulting inability to weather project droughts, and because of the large capital investment required, consistent work in the form of a reliable pipeline of production projects must be available in order for below-the-line workers to relocate to a production community.
90 See Garon, supra note 54, at 13.
91 Boryskavich & Bowler, supra note 45, at 31.
92 Id. at 33.
The relative financial vulnerability of businesses providing below-the-line services may require them to be willing and able to move to communities where the pipeline of production projects is strong and consistent. Thus, below-the-line workers will likely move quickly to a community that has committed to building a strong pipeline through investment in infrastructure and extensive marketing of its filming locations.

The immediate economic effects of on-location production for a community provide but a taste of what that community can expect if it can position itself as a pipeline community. Once a community positions itself so, it will not only service the above-the-line workers of a production on a regular basis, but will also begin to call the below-the-line workers its own well-paid residents. The combined economic effect of these two phenomena can provide a quick and substantial return for a community willing to make the investment.

B. The Success of the Canadian Film Industry

Canada's success in the film industry, and in other cultural industries in general, may be due largely to its shrewd trade policies. While Canada is generally a proponent of liberalized free trade, it has been accused of implementing protectionist measures when it comes to cultural industries. After negotiating the Canada-United States Free Trade Agreement (CUSFTA), Canada claimed that it had won a "cultural exemption" in the agreement. A cultural exemption is a stipulation that the free trade provisions of an agreement shall not apply to certain cultural industries. CUSFTA provided that:

93 See U.S. DEP’T OF COMMERCE, supra note 73, at 10.
94 See Murdock, supra note 26 (reporting that as many as 90% of Savannah College of Art and Design (SCAD) graduates leave the state because of insufficient employment opportunities in Georgia). If the below-the-line workers demonstrate such mobility, it is likely that the businesses employing those workers are similarly mobile.
96 Id.
98 Schwartz, supra note 95, at 1.
1. Cultural industries are exempt from the provisions of this Agreement, except as specifically provided in Article 401 (Tariff Elimination), paragraph 4 of Article 1607 (divestiture of an indirect acquisition) and Articles 2006 [(retransmission rights of copyrights)] and 2007 [(repeal of print-in-Canada requirements of the Canada Income Tax Act)] of this Chapter.

2. Notwithstanding any other provision of this Agreement, a Party may take measures of equivalent commercial effect in response to actions that would have been inconsistent with this Agreement but for paragraph 1.100

The cultural exemption in the agreement was sought and won because of concerns in the Canadian cultural community that a free trade agreement would result in "the erosion of Canadian political and cultural sovereignty."101 These concerns led former Prime Minister Brian Mulroney to assure the Canadian public that culture would not be a part of the agreement.102 Later in 1994, this same exemption would find its way into the North American Free Trade Agreement (NAFTA).103

Canada would eventually turn this cultural shield into a sword. So long as the U.S. federal government did not respond with "equivalent commercial effect"104 as provided in CUSFTA, Canada could effectively implement "protectionist measures" that resulted in not only a preservation of Canadian cultural identity, but a pillaging of United States cultural industry production.105 For many years, incentives and subsidies of the film industry existed at the federal level in Canada and there was no federal equivalent in the United States to counter them.106 However, the tide may have turned slightly

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100 CUSFTA, supra note 97, at ch. 20, art. 2005.
101 Boryskavich & Bowler, supra note 45, at 29.
102 Id.
103 Id. at 36 n.36.
104 For a discussion of "equivalent commercial effect," also known as a "re retaliatory measure," see Boryskavich & Bowler, supra note 45, at 30 n.11 and accompanying text.
105 See id. at 27 (discussing within the context of CUSFTA how the Canadian government has opted to not only protect, but also to promote, its cultural industry through its protectionist measures and stating that these protectionist measures have been augmented by initiatives to entice foreign producers to create their works within the Canadian marketplace).
106 See id. at 34-35 (stating that, as of 1999, then-Vice President Albert Gore was just beginning to formulate a response to the Canadian measures at the federal level with members of the film industry).
late in 2004 with the American Jobs Creation Act of 2004, as discussed in more detail below.

1. Canada's Role in U.S. Film Production

Canada is by far the largest foreign host of U.S. film production. It comprises 75% to 80% of all U.S. film production produced outside of the country. Estimates of the total amount of runaway production lost to Canada vary, but they ranged from $573 million to $2.24 billion in 1998 alone. Regardless of which estimate is correct, the value of runaway production to Canada is significant. Further, there are no definitive signs of a decline in this trend, and the United States may expect to see more production flee north of the border in the coming years.

2. Canada's Incentive Structure and Strategy

The explosion of the Canadian film industry, particularly in the 1990s, was no accident. It was the result of a coordinated effort to grow the industry. Manitoba, for example, implemented the Manitoba Film and Video Production Tax Credit (Manitoba FVPTC) in 1997 with two very...
simple purposes: to enhance the economy and to create jobs. Canada has paved the way for other countries looking to expand their film industry by developing a comprehensive long-term plan. Its extensive incentive program includes "wage and tax credits, financing packages, and funds for equity investment." This incentive program was designed to attract an initial wave of production to the country, which in turn would lead to the development of the infrastructure that would attract even further production on a consistent basis.

Canada's incentive structure exists at both the federal and provincial levels. The federal incentives consist mainly of tax credits for salary and wages, funding for equity investment, and working capital loans. At the provincial level, similar credits are offered in addition to the waiving of various location-specific costs, such as parking and permit fees.

Canada's unprecedented success has made it a blueprint for those wishing to attract film industry production. Its long-term plan can best be described as a multi-step process that has effectively transformed an area that once had little to offer the film industry into a film industry juggernaut.


The first step is to lure initial production projects aggressively, perhaps at great initial investment in the form of incentives. In Canada, this approach begins at the federal level with a firm national policy to make the country

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118 U.S. DEP'T OF COMMERCE, supra note 73, at 3.
119 For a discussion of some of the state-of-the-art production facilities in Canada, see Sisto, supra note 10, at 29-30. Canada's production infrastructure includes not only sound stages and other production facilities, but also the pool of skilled indigenous below-the-line workers necessary to make the country attractive to future productions. U.S. DEP'T OF COMMERCE, supra note 73, at 4 (citing MGT of America, An Economic Assessment of the Florida Film and Entertainment Industry 2-8 (2001)).
120 U.S. DEP'T OF COMMERCE, supra note 73, at 3.
121 Id. at 71.
122 Id. at 72.
123 Id.
attractive to the film industry.\textsuperscript{125} This support comes primarily in the form of the Film or Video Production Services Tax Credit (PSTC).\textsuperscript{126}

The PSTC provides a 16\% tax credit on qualified \textit{Canadian} labor expenditures.\textsuperscript{127} To qualify as a Canadian labor expenditure, the general requirement is that payments must be made to Canadian residents and businesses.\textsuperscript{128} The PSTC purports to attract as many films from outside of the country as possible through an aggressive federal-level tax credit. The Canadian labor expenditure requirement then ensures that the production will employ Canadian residents and spend money on Canadian businesses, both of which are a part of the federal tax base. It follows that these residents and businesses will then presumably pay taxes so that the Canadian Federal government will recover at least some of the credits extended under the PSTC.

Manitoba has followed this example at the provincial level.\textsuperscript{129} With such a large tax credit,\textsuperscript{130} it is unlikely that Manitoba is pursuing a strategy of increasing total tax revenues by slightly decreasing the tax rate in order to substantially increase the tax base. To illustrate, instead of simply giving marginal tax breaks to production companies already somewhat willing to film in the area, Manitoba was willing to concede huge losses in revenues\textsuperscript{131} in order to secure production that otherwise may not have considered the area.\textsuperscript{132} Like the federal strategy, Manitoba's willingness to expend great sums to attract production is probably part of a plan to increase the tax revenues collected from the secondary economic gains that are associated with increased film production.\textsuperscript{133} The investment is recovered not from the production

\textsuperscript{125} See Boryskavich & Bowler, \textit{supra} note 45, at 27 (discussing how the Canadian government has opted to promote its cultural industry, including its film industry, through protectionist measures).

\textsuperscript{126} See generally \textit{Canadian Film or Video Production Tax Credit, 1998 S.C.}, ch. 19, s. 145.1.

\textsuperscript{127} \textit{Id.}

\textsuperscript{128} \textit{Id.}

\textsuperscript{129} Manitoba Film and Video Production Tax Credit, 1998 R.S.M., ch. 110, s. 7.6(1).

\textsuperscript{130} In its current form, the Manitoba FVPTC provides for a 45\% tax credit for the eligible salaries paid by a corporation in a year (net of government assistance), an additional 5\% tax credit for corporations filming their third film in a two-year period, and yet another 5\% for corporations based in and filming at least half of their principal photography in rural Manitoba, that is locations at least thirty-five kilometers from Winnipeg. 1998 R.S.M. ch. 110, s. 7.6(1).

\textsuperscript{131} At one point, the tax credit had resulted in a total of $6.5 million in foregone revenues. Boryskavich & Bowler, \textit{supra} note 45, at 33.

\textsuperscript{132} See \textit{id.} (reporting that, as of the time of that writing, seventy-seven projects had applied for the program since the inception of the Manitoba FVPTC).

\textsuperscript{133} See discussion \textit{supra} Part III.A.3.
companies themselves, but from taxes that are collected as a result of the secondary economic activity that comes with the production.  

b. Step Two: “Build Me an Army Worthy of [Canada]”

The second step is to structure the incentive laws so as to maximize investment in the infrastructure of the area. Manitoba and Ontario have accomplished this, in part, by requiring that corporations be permanently established in the respective provinces in order to be eligible for their provincial tax credits. This somewhat onerous requirement ensures that a continuing presence will exist in the provinces and that production companies may soon find it convenient to handle other operations beyond filming, such as post-production, within the province. Conveniently, both Manitoba and Ontario have provided that their tax credits extend to post-production.

Perhaps the most telling aspect of these credits is their labor-based nature; these credits encompass the compensation of below-the-line workers. To illustrate, the Manitoba FVPTC specifically excludes remuneration, salary, and wages “determined by reference to profits or revenues” from “eligible salaries.” This type of payment scheme usually entitles participants to a percentage of every dollar that a movie grosses. The focus of the credit is

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134 See Boryskavich & Bowler, supra note 45, at 33 (reporting an additional $21.00 per capita in economic spin-offs leveraged by the $1.05 per capita supplied to the film industry under the Manitoba FVPTC). See also discussion supra Part III.A.4.


136 See supra notes 80-90 and accompanying text.

137 Manitoba Film and Video Production Tax Credit, 1998 R.S.M., ch. 110, s. 7.7(a.1); Ontario Film and Television Tax Credit, 1997 R.R.O. 322/97, s. 2.(1)(b).

138 Post-production activities often call for a large number of sophisticated facilities. See Sisto, supra note 10, at 30 (discussing Quebec’s extensive array of post-production and visual effects facilities).

139 See 1998 R.S.M., ch. 110, s. 7.5(1) (defining “eligible salaries” to include salary and wages through the post-production stage).

140 Ontario requires that, for a production other than a documentary, at least 95% of the cost of post-production work be carried out within the province in order for its tax credit to apply. 1997 R.R.O. 322/97, s. 3(1)(6)(iv)-(v).

141 1998 R.S.M., ch. 110, s. 7.5(3)(a)-(b).

142 Richard Natale, Take-Home Pay: The Stars Are Making Lots More Than You Think, E! ONLINE, June 9, 2000, http://www.eonline.com/Features/Features/Salaries/index.html. Perhaps the most famous example of this type of payment scheme was Jack Nicholson’s “percentage of the gross” payment for his role as “the Joker” in BATMAN (Warner Brothers 1989), for which he earned around $60 million, a record-setting salary for a single movie actor at the time. Trivia
on the compensation of below-the-line workers. These workers are usually less mobile than their above-the-line counterparts and, therefore, are typically hired from the production community's pool of workers. Thus, because the below-the-line workers' salaries and wages are eligible for the tax credits, these credits tend to strengthen the local pool of below-the-line workers for the respective provinces.

c. Step Three: "Deploy the [Laws] so That Nothing Gets off the System"

The third step is to shape the incentive laws so as to retain as much of the hard-won film production as possible. It seems reasonable to assume that the amount of production that Canada will be able to attract will be limited by the kinds of natural assets that it has to offer. As Canada reaches this limit, retention of previously attracted production becomes a primary issue. Once again, Canada's federal government moved decisively to keep production, particularly Canadian production, inside the country by passing the PSTC and the Canadian Film or Video Production Tax Credit (FTC).

While the PSTC's 16% tax credit is intended to retain production as well as to attract it, Canada is far more concerned with retaining its own cultural films by comparison. Intuitively, Canada is the best geographic area in which to produce films set in Canada. The FTC, therefore, supplies a robust 25% tax credit on qualified labor expenditures for Canadian film or video productions. With such a high-percentage tax credit, the purpose of the FTC is to keep the production of all Canadian films in the country; it is an attempt to prevent Canadian films from becoming runaway productions.

The provinces have also taken a similar approach. The Manitoba FVPTC, for example, provides an additional 5% tax credit on top of its standard tax
credit for those corporations that film at least part of three films in the province during a two-year period.\textsuperscript{149} The provinces, like the Canadian federal government, wish to retain the production that they have managed to attract.

Recent provincial maneuvering seems to suggest that Canada is currently within the third step of this strategy, at least at the provincial level. The provinces are now shifting their focus (though perhaps not their strategy)\textsuperscript{150} from attracting further production to competing with the other provinces for production that is already in Canada. Though the reason for this new direction is unclear, there are at least two plausible explanations. First, it may be that runaway production is decelerating or is reaching its limit. To illustrate, if one assumes that runaway production is an ever-increasing commodity, it seems that overcrowding of productions would inevitably result in the one province that offered the most attractive incentives. Some productions would then begin to choose other provinces that were less crowded, even though they have slightly less attractive incentives. However, if this were the case, the provinces might simply wait for the excess instead of scrambling to match each others' new incentive plans.\textsuperscript{151} One logical conclusion is that runaway production in Canada must be slowing down and approaching a zero-sum game.

A second explanation for the internal fight for production within Canada may be that runaway production has not yet risen to the level where overcrowding is a danger, i.e., the carrying capacity of any given province is greater than the current total volume of runaway production in all of Canada. Thus, one province could conceivably still accommodate all of the runaway production in Canada, and there would be no excess production for other provinces to absorb. This sobering alternative explanation suggests that Canada, as a whole, regardless of which province is internally victorious, may have only begun to collect its ultimate share of U.S. film industry production.

\textsuperscript{149} Manitoba Film and Video Production Tax Credit, 1998 R.S.M., ch. I10, s. 7.6(1).
\textsuperscript{150} Regardless of whether the perceived "threat" is the United States or other provinces, the favored combat tactic of each province remains to "up the ante" regarding the film production incentives so as to beat out the competition. See Allan Dowd, Tax Change Prompts Film Production Fight in Canada, BACKSTAGE.COM, Jan. 13, 2005, http://www.backstage.com/backstage/news/article_display.jsp?vnu_content_id=1000752844 (reporting on the struggle between Ontario, Quebec, and British Columbia over film production in Canada and how each province is either increasing or considering increases to its tax credits).
\textsuperscript{151} See id. (reporting that Ontario and Quebec moved their labor tax credit rates to 18% and 20%, respectively; British Columbia remained at 11%, although Finance Minister Colin Hansen promised that aid for the industry would be in the new provincial budget).
3. The Exchange Rate and Canada’s Low Cost of Production

While many commentators have pointed to Canada’s favorable exchange rate as a primary cause for runaway production, it may be less of a factor than is popularly believed. It does not follow that the explosion of runaway production in Canada, a relatively recent trend in the context of the history of the film industry as a whole, is caused in large part by a favorable exchange rate unless that rate has changed significantly during the boom and unless all other relevant factors have remained largely unchanged. To illustrate, if one assumes that costs of production in Canada and the United States have remained largely unchanged before and during the time of the boom, it follows that a significantly favorable change in the exchange rate would be necessary in order to convince production companies to film in Canada when they had been reluctant to do so before. For example, assume that the cost to produce a film in Canada was $150 million Canadian dollars (CAD) and that the cost to produce the same film in the United States was $100 million U.S. dollars (USD) before the boom. A pre-boom exchange rate of 1 USD for 2 CAD would mean that the cost to produce in Canada would be 75 million USD before the boom. However, if the exchange rate were to change to 1 USD for 3 CAD during the boom and the cost to produce the film in Canada were to remain at 150 million CAD, while the cost to produce the film in the United States would remain at 100 million USD, the cost to produce in Canada would have fallen to 50 million USD. The change in the exchange rate alone, then, would make filming in Canada more attractive by a measure of 25 million USD. Further, since there was no change in the cost to produce the film in the United States (100 million USD), the relative savings of producing the film in Canada as opposed to the United States will have increased from 25% before the boom to 50% during the boom.

One source has found that the exchange rate had changed significantly in favor of the U.S. dollar in recent years. The Monitor Company reported that, as of 1999, the Canadian dollar had declined by over 20% relative to the U.S. dollar since 1988. However, the exchange rate alone cannot indicate

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153 See U.S. DEP’T OF COMMERCE, supra note 73, at 46 (discussing the rapid growth of Canada’s film industry in the 1990s and the significant increase in U.S. filming in Canada over that time).
154 Monitor Co., supra note 152, at 19-20.
whether runaway production has in fact become more attractive.\footnote{U.S. DEP’T OF COMMERCE, supra note 73, at 60 n.76.} If the true cost of production\footnote{For the purposes of this Note, the true cost of production is the cost of a production after adjusting for differing currency values; it is the expression of the cost of a production in terms of purchasing power. See generally id. at 60 (characterizing the concern over the cost competitiveness of the United States in relation to other countries as a concern of purchasing power).} in Canada relative to that of the United States has remained unchanged, then any change in the exchange rate is nugatory because it does not indicate that a production’s budget will go any farther after the change than it would have before.\footnote{Here, unlike in the example given in the text above, the costs in Canada will have adjusted along with the exchange rate. Using the same model, assume that the cost to produce a film in Canada was 150 million CAD and that the cost to produce the same film in the United States was 100 million USD before the boom. A pre-boom exchange rate of 1 USD for 2 CAD would mean that the cost to produce in Canada would be 75 million USD before the boom. This means that the pre-boom true costs of production, measured in U.S. dollars, are 75 million USD in Canada and 100 million USD in the United States. The ratio of the pre-boom true costs of production is thus 75 to 100. If the exchange rate were to change to 1 USD for 3 CAD during the boom, and the prices in Canada were to increase in proportion to the exchange rate, then the cost to produce the film in Canada would have risen to 225 CAD, while the cost to produce in the United States would have remained 100 million USD. When converted to USD, the result during the boom would still be a true cost of production of 75 million USD to produce in Canada compared to a true cost of production of 100 million USD to produce in the United States. Thus, even though the exchange rate would seem more favorable to the USD during the boom, the ratio of the true costs of production would have remained the same, specifically 75 to 100. A U.S. production company would have gained no additional incentive to produce in Canada during the boom because the relative purchasing power of that company would have remained exactly the same. See generally U.S. DEP’T OF COMMERCE, supra note 73, at 59-62.} If this suggestion is correct, then changes in the exchange rate cannot be cited as a prime reason for runaway production because these changes will have resulted in no further advantage to relocate to Canada than when relocation was much less common.

The United States Department of Commerce performed an analysis examining both costs and exchange rates between the United States and Canada over several different time periods ranging from 1985 to 2000.\footnote{The study’s use of the term, relative costs, is equivalent to this Note’s use of the term, true costs of production.} The study suggested that there were no significant changes in relative costs\footnote{U.S. DEP’T OF COMMERCE, supra note 73, at 62.} between the two countries from 1985 through 2000.\footnote{U.S. DEP’T OF COMMERCE, supra note 73, at 62.} If this suggestion is correct, then changes in the exchange rate cannot be cited as a prime reason for runaway production because these changes will have resulted in no further advantage to relocate to Canada than when relocation was much less common.

If changes in the exchange rates cannot explain the boom of runaway production in Canada, then why has this boom taken place? Though changes
in exchange rates may not have increased the advantage to produce in Canada, few would argue that no cost advantage existed both before and during the boom.161 Perhaps another catalyst, specifically advancing technology, enabled production companies to take advantage of cost savings that were always there, but not achievable in the past.162

4. Advancing Technology

The technology associated with the film industry changed dramatically during the 1990s.163 Reliance on the dailies process may have made runaway production less attractive in the past.164 Dailies had to be reviewed shortly after scenes had been shot since sets could not be deconstructed (and production could not move on) until the directors and actors confirmed that the scenes were captured satisfactorily.165 Because of the time-sensitive nature of the dailies process, a location had to have a nearby processing facility capable of producing the dailies.166 Now, with the advent of high definition video technology,167 production is no longer tethered to these processing facilities.168 Thus, many parts of the world that had previously been shut off to production are now viable filming locations.

161 See id. at 60 n.76 (establishing consistently lower costs in Canada as compared to those of the United States as a control when exploring the effects of changing exchange rates on runaway production).

162 Transaction and relocation costs associated with filming in Canada may have been large enough to swallow much, if not all, of the potential cost savings before the boom. This may have often been the case for projects with low to moderate budgets that would not achieve actual savings (as opposed to a percentage savings) large enough to defray certain fixed costs. See id. at 62 (discussing natural relocation barriers in the context of the magnitude of relative changes in production costs).

163 Id. at 65.

164 The dailies process is the process by which a film is shot, transferred to videotape format, dailies, and then reviewed by the directors and actors involved. Id. at 68.

165 Id.

166 Id.

167 High definition video technology allows the directors and actors to immediately review the scene just shot simply by rewinding the tape. Id. at 69.

168 Id.
5. Canada’s Total Advantage

Technological advances were probably the most critical development leading up to runaway production, especially considering that these advances occurred rapidly over the span of one decade. These advances magnified the advantages presented by Canada’s existing lower cost of production. Further, they set the stage for Canada’s incentive schemes to become more effective than they would have been absent the advances.

C. Georgia’s Current Incentive Scheme

1. The Sales and Use Tax Scheme

Until very recently, Georgia’s plan to attract film production consisted of a sales and use tax incentive scheme. This scheme was introduced in early 2002 with the aim of saving producers between 5% to 7% on below-the-line costs associated with materials bought, rented, or leased in Georgia. It was also structured as a point-of-purchase exemption—rather than a tax rebate—so that producers could realize the benefit of producing in Georgia immediately.

Unfortunately, this scheme was obsolete before it was enacted. Compared to a Manitoba credit that could rise as high as 45% of a production’s eligible labor costs, a 5% to 7% savings on the purchase, rent, or lease of materials

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169 See generally id. at 65-70.
170 Id. at 65.
171 See discussion supra Part III.B.3.
172 See discussion supra Part III.B.2.
173 Eckenrode, supra note 1.
175 Id.
seemed insignificant. Further, Georgia's plan was easily bested without even considering the added incentives at the Canadian federal level.

The Georgia sales and use tax scheme, though targeted to be "one of the most effective and beneficial incentives in the United States" at the time of its introduction, paled in comparison to the plan conceived, only three years later, by its eastern neighbor state, South Carolina. South Carolina committed itself to a sales and use tax scheme that was superior to Georgia's, as well as to an employee tax rebate, a supplier enhancement rebate, an accommodations tax exemption rebate, and a commercial production company.

177 The Manitoba credit is labor-focused while the Georgia incentive is materials-focused. Compare Boryskavich & Bowler, supra note 45, at 32 (reporting that the "credit allows for a . . . rebate of approved expenditures on Manitoba [labor]"), with Press Release, Georgia Film, Video & Music Office, supra note 174 (stating that producers would save on most below-the-line materials bought, rented, or leased in the state). Although, it is somewhat difficult to compare these two schemes, there would likely only be a very small subset of productions with budgets dominated by materials expenses that would benefit from the 5% to 7% savings over a 45% credit on labor costs.

178 See discussion infra Part III.B.2.

179 Compare Georgia Film, Video & Music Office, Sales & Use Tax Incentive 3 (2002), available at http://www.georgia.org/film/pdf/Tax%20Incentive%20Brochure.pdf (listing an abundance of items not qualifying for the incentive, including hotel rooms and lodging, catering, transportation services, and others), with South Carolina Film Commission, Incentive Overview 1 (2004), available at http://www.scfilmoffice.com/Film%20Incentives.ps.pdf (stating that a production intending to spend at least $250,000 in connection with the filming or producing of one or more motion pictures in . . . South Carolina within a consecutive 12 month period shall be relieved from the payment of state and local sales and use taxes on funds expended in [the state] in connection with the filming or production of . . . motion pictures).

180 The employee tax rebate provides that any production "made in whole or in part in South Carolina and intended for national theatrical or television viewing . . . [will] qualify for a 15% . . . tax rebate for the employment of persons subject to South Carolina withholdings" making less than $1 million "when total production costs in the state equal or exceed [$1] million." South Carolina Film Commission, supra note 180, at 2.

181 The supplier enhancement rebate provides for a 15% rebate "of all South Carolina goods and services purchased by a motion picture production company for a motion picture, television series, or commercial in the state" where the total production expenditures in the state equals or exceeds $1 million. Id.

182 The accommodations tax exemption rebate provides a rebate for all accommodations taxes if the production company has stayed in South Carolina for an aggregate of thirty days over a twelve-month period and has total production expenditures that equal or exceed $250,000. Id. at 1. This exemption was specifically excluded in the Georgia scheme. Georgia Film, Video & Music Office, supra note 180, at 3.
tax incentive, and taxation credits for the creation of South Carolina motion pictures or facilities. As if this were not enough, South Carolina had also committed to providing grants for collaborative productions involving state institutions of higher learning and motion picture related entities. The motto of the South Carolina Film Commission was "Look no further. Spend no more." Given what was then a gross disparity between the plans of the two states, Georgia did little to convince productions to do otherwise.

South Carolina was not the only state that had introduced incentives that were more attractive to producers than Georgia's. The producers of Ray, for example, clearly did not have Georgia on their minds when they opted to produce in Louisiana, despite the fact that Georgia was the state where Mr. Charles was born. Louisiana had legislation providing that certain production companies would be completely exempted from sales and use taxes. Further, it had also introduced labor tax credits for production

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184 The commercial production company tax incentive provides for a credit of 10% "of the total investment made in South Carolina" for "commercial production companies with a total base investment of over $500,000 in . . . a calendar year." South Carolina Film Commission, supra note 180, at 3.

185 The Taxation for the Creation of South Carolina Pictures or Facilities program provides "an income tax credit of up to twenty percent . . . of the taxpayer's cash investment" in either a motion picture or "the construction or conversion, or equipping, or any combination of these activities, of a motion picture production or post-production facility." Id. Further, these credits "may be carried forward fifteen . . . succeeding taxable years." Id.

186 This program may very well have nullified one of Georgia's last remaining advantages over South Carolina. Assuming that South Carolina does not have a program that provides the film industry with the knowledge, skills, and facilities that Georgia possesses in SCAD, grants that foster collaboration between the motion picture industry and the higher education institutions of South Carolina would quickly defuse the advantage of SCAD.

187 South Carolina Film Commission, supra note 181, at 1.

188 RAY (Universal Pictures 2004).

189 See Murdock, supra note 26 (referring to the filming of The Ray Charles Story in Louisiana). The Ray Charles Story was the working title of Ray while it was in production. Internet Movie Database, http://www.imdb.com/title/tt0350258/ (last visited Jan. 14, 2006).


191 In Louisiana, [a] production company will be granted the 'exclusion' if it reports anticipated expenditures of $250,000 or more from a checking account in a financial institution in Louisiana in connection with filming or production of one or more nationally distributed motion pictures, videos, television series, or commercials in the state of Louisiana within any consecutive 12-month period.

La. Governor's Office of Film and Television Dev., Sales and Tax Use Exclusion, available at
companies that employed Louisiana workers.\textsuperscript{192} This pattern of increased commitment to the film industry continued throughout many other states.\textsuperscript{193}

2. \textit{The Georgia Entertainment Industry Investment Act}

Georgia took a courageous leap forward in early 2005 with the passage of the Georgia Entertainment Industry Investment Act,\textsuperscript{194} which Governor Sonny Perdue signed into law on May 9, 2005.\textsuperscript{195} The new legislation is meant to supplement, and not to replace, the older sales and use tax incentives.\textsuperscript{196}

The new legislation differs dramatically from the older sales and use tax incentives due to its labor-based incentives.\textsuperscript{197} These labor provisions are somewhat similar to those of Manitoba\textsuperscript{198} because they limit the credit to

\textsuperscript{192} In Louisiana, the credit is equal to 10\% of the total aggregate payroll for residents employed in connection with such production when total production costs in Louisiana equal or exceed $300,000 but less than $1 million during the taxable year. The credit shall be equal to 20\% of the total aggregate payroll for residents employed in connection with such production when total production costs in Louisiana equal or exceed $1 million during the taxable year.


\textsuperscript{193} See sources cited \textit{supra} note 7.


\textsuperscript{197} The legislation provides for a base tax credit equal to the base investment in excess of $500,000. \textit{Ga. Code Ann.} § 48-7-40.26(d)(1) (2005). Base investment is defined as "the aggregate funds actually invested and expended by a production company as production expenditures incurred in this state that are directly used in a state certified production or productions." \textit{Ga. Code Ann.} § 48-7-40.26(b)(2) (2005). Production expenditures includes "total aggregate payroll," \textit{Ga. Code Ann.} § 48-7-40.26(b)(5) (2005), which in turn is defined as "the total sum expended by a production company on salaries paid to employees working within this state in a state certified production or productions." \textit{Ga. Code Ann.} § 48-7-40.26(b)(10) (2005).

\textsuperscript{198} Both Manitoba's legislation and Georgia's new legislation intend these credits to benefit below-the-line workers. While Manitoba excludes above-the-line workers by defining how their
salaries exceeding $500,000 for a single production, i.e., below-the-line salaries. However, there is a key difference between the two. Georgia’s scheme allows for above-the-line salaries to generate credits up to a maximum of $500,000, while Manitoba’s excludes above-the-line salaries entirely. Thus, Georgia’s scheme might be more attractive to “top-heavy productions,” those productions with high above-the-line budgets.

Georgia’s legislation also offers an incentive to employ Georgia residents. An additional 3% credit on the portion of total aggregate payroll attributable to Georgia residents is available to producers that employ Georgia residents in their projects. This section of the legislation will benefit below-the-line workers because they are typically hired from the local population. However, this legislation may also make Georgia’s above-the-line workers more attractive because it provides the additional 3% credit up to the $500,000 ceiling.

Finally, Georgia’s new legislation provides yet another credit for “repeat customers.” Those production companies that invest in excess of $20 million in multiple television projects are allowed an additional 2% credit. The Georgia Production Partnership has interpreted this legislation to apply to all entertainment productions with the exception of news, sports, and on-air promotions.

The Georgia Entertainment Industry Investment Act is a seemingly powerful offering when measured by present standards. It is a faithful snapshot of Canada’s strategy, tailored for Georgia’s present situation in the context of the film industry. However, the legislation has failed to incorporate what is perhaps the greatest strength of Canadian film industry policy: its willingness and ability to quickly adapt to changing circumstances.

salaries are calculated, Georgia’s legislation establishes a salary ceiling of $500,000. Compare Manitoba Film and Video Production Tax Credit, 1998 R.S.M. ch. 110, s. 7.5(3)(a)-(b) (excluding remuneration, salary, and wages “determined by reference to profits or revenues” from “eligible salaries”), with GA. CODE ANN. § 48-7-40.26(b)(10)(A) (2005) (excluding from “the portion of any salary which exceeds $500,000 for a single production” from “total aggregate payroll”).

200 Georgia’s scheme excludes only “the portion . . . which exceeds $500,000 for a single production”). GA. CODE ANN. § 48-7-40.26(b)(10)(A) (2005).
201 GA. CODE ANN. § 48-7-40.26(c)(3).
202 See discussion supra Part III.A.4.
203 GA. CODE ANN. § 48-7-40.26(c)(4) (2005).
204 Georgia Production Partnership, supra note 196.
205 See discussion supra Part III.B.2.c.
IV. THE PROPOSED SOLUTION

Georgia has demonstrated a deep commitment to reviving its film industry with recent aggressive legislation. However, it is worthwhile to inquire whether Georgia can successfully implement Canada’s long-term plan (or a variation thereof). Such an inquiry must begin with an examination of Georgia’s assets as compared to those of Canada. The one asset that Georgia cannot emulate, the favorable exchange rate, must also be considered.

A. Georgia’s Film Industry Assets

1. Lower Cost of Production

Canada probably always offered a lower cost of production as compared to California, but it took significant technological advances to bring these lower costs within reach. However, Georgia can also provide comparatively lower costs, as it did in the 1970s, and the effects of the technological advancements are equally applicable to Georgia. Many of Georgia’s communities would provide a low cost of living for the below-the-line skilled workers that power the film industry. Georgia’s cost of living is relatively low, with very few communities exceeding the national average. This low cost of living would allow smaller budgets for production projects as workers that live in the area would require relatively lower salaries to maintain

206 See discussion supra Parts III.B.4-III.B.5.
207 See supra note 5 and accompanying text.
208 See discussion supra Part III.B.4.
209 For example, Savannah’s cost of living is relatively low; its cost-of-living index is 87.2, compared to a national average of 102.76. Yahoo!, Savannah Neighborhood Profile, http://realestate.yahoo.com/re/neighborhood/search.html?csz=Savannah%2CGA (last visited Jan. 14, 2006).
211 As much as 90% of the below-the-line budget of a production (generally the part of the budget reserved for the “crew” rather than the “cast”) is spent on location. U.S. DEP’T OF COMMERCE, supra note 73, at 10. The portion of the below-the-line budget that is spent hiring local workers can be smaller if the pool is populated with workers that have lower salary demands. This smaller budget portion results in either a much larger budget for other areas of production or a substantially smaller budget overall.
the same standard of living as workers living in other areas, such as Los Angeles.\textsuperscript{212}

2. \textit{Pool of Skilled Industry Workers}

Canada's ample supply of film industry below-the-line workers, secured mainly through attracting these workers with the promise of a steady flow of work, has contributed to its success.\textsuperscript{213} Georgia has a considerable supply of its own such workers, but has yet to fully take advantage of this resource. Savannah is the home of the Savannah College of Art and Design (SCAD),\textsuperscript{214} which offers bachelor of arts, master of arts, and master of fine arts degrees in animation, broadcast design and motion graphics, graphic design, film and television, illustration, media and performing arts, photography, sequential art, sound design, and visual effects, among others.\textsuperscript{215} Many of the careers associated with these degrees are film industry careers.\textsuperscript{216} Although many of the graduates of SCAD are fully capable of staffing film industry positions,\textsuperscript{217} as many as 90\% of them are currently forced to leave the state because of the lack of sufficient employment opportunities in the film industry.\textsuperscript{218} As it currently stands, SCAD, Savannah, and the State of Georgia as a whole, remain an untapped resource for the film industry.

\begin{footnotes}
\textsuperscript{213} \textit{See supra} note 119.
\textsuperscript{216} \textit{Compare, e.g.,} BUREAU OF LABOR STATISTICS, \textit{supra} note 48, at 138 (listing producers and directors as motion picture and video industry occupations), \textit{with} Savannah College of Art and Design, \textit{supra} note 215 (listing producer and director as careers associated with a degree in film and television).
\textsuperscript{217} \textit{See Murdock, supra} note 26 (reporting that Danny Filson, dean of SCAD's School of Media and Performing Arts, believed that the completion of a post-production park would create film industry jobs that would provide employment opportunities for the school's graduates).
\textsuperscript{218} \textit{Id.}
\end{footnotes}
3. New Federal-Level Incentives

Lack of federal aid has made it harder for Georgia to attract film industry production than it otherwise might have been. Though the state may have had the resources to go head-to-head with a Canadian province, it had little hope of contending with the dual threat of Canadian federal government incentives coupled with provincial incentives. Although the U.S. federal government was well within its rights under CUSFTA and NAFTA to respond with "equivalent commercial effect," it did not exercise these rights to help the states. Until now.

Congress passed the American Jobs Creation Act of 2004 (Jobs Act), which helps states fully compete with the Canadian provinces. The Act first amends the Internal Revenue Code to permit a deduction of the cost of any qualified film or television production as an expense in the year in which it is incurred, as opposed to requiring the expense to be capitalized and deducted over time, as was the case under prior law. Unfortunately, this benefit is available only to low-budget productions, or productions below $15 or $20 million, depending on the circumstances. However, what looks like a small step is actually a giant leap when viewed in context. Up to this point, the U.S. federal government had provided no substantial assistance of any kind to the states. It is possible that if the states succeed in hosting smaller budget films, this assistance scheme may be revisited and strengthened by Congress.

The Jobs Act provides a second substantial advantage. It also amends the Internal Revenue Code to allow a deduction of a percentage of the income generated by films when production takes place primarily in the United

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219 See supra note 104 and accompanying text.
221 Jobs Act § 181(a)(1).
222 The normal dollar limitation is an aggregate cost of $15 million. Jobs Act § 181(a)(2)(A). However, if the cost of the production is significantly incurred in a statutorily-defined "low-income community" or "distressed county or isolated area of distress," the dollar limitation is an aggregate cost of $20 million. Jobs Act § 181(a)(2)(B)(i)-(ii).
223 See supra note 104 and accompanying text.
224 Jobs Act § 102.
States. This percentage will be stepped up in a phase-in process, with the percentage set at 3% in 2005-06, 6% in 2007-09, and 9% thereafter.

Time will tell if these two federal assistance programs will change the face of runaway production. One thing is certain, however. Georgia and its fellow states are no longer alone in this fight.

**B. A Perceived Obstacle: The Exchange Rate Disadvantage**

Obviously, Georgia can offer no exchange rate advantage to U.S. production companies, but this may not be as significant a disadvantage as previously thought. Canada's perceived exchange-rate advantage may never have been much of a factor, as discussed above.

A new development that is noteworthy in this area is the rapid strengthening of Canadian currency as compared to U.S. currency during 2004. If this trend continues, any existing exchange rate advantage will quickly disappear. Canada saw a drop in production in 2004 because of this variation in the exchange rate, but has already stepped forward to head off the effects with increased incentives. Ontario has responded by freezing the exchange rate at 1 CAD per .78 USD for city services used by the film industry as a "floating discount."

Given the dubious value of the exchange rate advantage and its apparent evaporation with these recent developments, Georgia is probably at no insurmountable disadvantage because of the exchange rate itself. The greater danger is that, if Canada perceives the declining exchange rate advantage to be a bigger factor than it truly is, a series of "knee jerk reaction[s]," specifically

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225 The Code allows a deduction for "qualified production activities income." Jobs Act § 199(a)(1)(A). Qualified production activities income is defined as the excess of "domestic production gross receipts" over various sums identified in subsection (c)(1)(B). Jobs Act § 199(c)(1). Domestic production gross receipts are then defined to include any "qualified film." Jobs Act § 199(c)(4)(A)(i)(II). Finally, a film is a qualified film "if not less than 50 percent of the total compensation relating to the production of such property is compensation for services performed in the United States by actors, production personnel, directors, and producers." Jobs Act § 199(c)(6).
226 Jobs Act § 199(a)(2).
227 See discussion supra Part III.B.3.
228 Dowd, supra note 150.
229 Id.
231 Id. (quoting British Columbia Finance Minister, Colin Hansen).
drastic increases in incentives, may ensue. Some provinces may attempt to make up for the vanished advantage, and others may simply try to keep pace with those provinces. In fact, this process may have already begun.\(^{232}\)

\section*{C. Suggested Action}

With the passage of the Georgia Entertainment Industry Investment Act, Georgia has shown a commitment to revamp its film industry. And there is no time like the present. Now that federal aid is available,\(^{233}\) the incentives that Georgia recently enacted will yield greater results than they might have before. Yet, the state should be mindful of Canada’s approach, and follow Canada’s three-step process.

First, Georgia should “make its offer”\(^ {234}\) by commissioning periodic economic studies to determine what range of percentages it should offer for its new labor-based tax credit. These studies should determine the economic multipliers that would apply to the regions of Georgia and ascertain what economic spin-off activity can be reasonably anticipated based on a range of possible percentages for the credit. The state should stay abreast of the highest percentage that is reasonably manageable, taking into account the available resources of the state. Leaders should keep in mind that the economic spin-off activity will only increase as production becomes more commonplace in each locale, and that the tax base would, consequently, also increase.

Georgia should next “build its army”\(^ {235}\) by continuing to make the tax credit most favorable to “Georgia productions,” or productions that incur a certain percentage of their costs through the employment of Georgia residents. This preference will encourage the hiring of local below-the-line workers in the production communities. As the demand for these workers increases, qualified personnel will relocate to the areas where they are needed. Over time, production companies will find it convenient to handle such operations as post-production in these communities because the employees driving these operations would also be subject to the credit. This trend will lead to

\(^{232}\) Compare Dowd, supra note 150 (reporting that Ontario and Quebec have increased their incentives in response to the changing exchange rate), with Kit, supra note 230 (describing how British Columbia is now under intense pressure from production companies to match the increased incentives recently offered by Ontario and Quebec).

\(^{233}\) See discussion supra Part IV.A.3.

\(^{234}\) See discussion supra Part III.B.2.a.

\(^{235}\) See discussion supra Part III.B.2.b.
investment in, and the building of, the facilities necessary to perform these services, thus creating additional jobs.

Finally, Georgia should "deploy its laws" by adding a sunset provision to this tax credit legislation at the earliest opportunity. Such a provision serves two critical functions. First, it provides a safety valve if Georgia's investment in the film industry become unprofitable due to unforeseen circumstances. The state could simply wait until the end of the credit term and then bow out gracefully. Second, a sunset provision requires the legislature to stay abreast of other locales' film industry incentives, so that the credit does not become obsolete. As mentioned above, erosion of a state's film industry can occur at an alarming rate, as demonstrated by the obsolescence of the sales and use tax incentives in Georgia. If the state achieves great gains from its investment in the industry and if its hand is forced every few years to revisit this investment, it is much less likely that erosion will occur.

The renewal of the credit should be an opportunity to carry out at least two functions. First, it affords a new analysis of what the percentage of the tax credit should be. Other states and Canadian provinces may adjust their rates, and it may be necessary for Georgia to do the same to maintain its share. Second, it affords a gradual stepping up of the percentage of total production costs required in order to qualify as a Georgia production. The state can attract the initial round of productions by making this percentage very low at first. As time goes by, and as production companies have sunk more costs in the state, this percentage can be nudged upward in order to increase state revenues. So long as the adjustment is gradual, Georgia will be able to find the equilibrium rate at which it secures the highest revenues possible without causing production companies to flee the state.

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236 See discussion supra Part III.B.2.c.
237 A sunset law is "[a] statute under which a governmental agency or program automatically terminates at the end of a fixed period of time unless it is formally renewed." BLACK'S LAW DICTIONARY 680 (2d pocket ed. 2001).
238 See, e.g., James L. Zelenay, Jr., Note, The Prescription Drug User Fee Act: Is a Faster Food and Drug Administration Always a Better Food and Drug Administration?, 60 FOOD & DRUG L.J. 261, 284 (stating that the sunset provision in the Prescription Drug User Fee Act ensured that the FDA, the prescription drug industry, and Congress could (1) reevaluate some of the provisions of the Act and (2) determine if they should be reauthorized).
239 See supra note 89 and accompanying text.
240 See discussion supra Part III.C.1.
V. CONCLUSION

The State of Georgia and its film industry have reached a crossroads. Two paths present themselves. Georgia may choose the path of total commitment, one that is paved by the constant and mindful contemplation of what will attract and retain film industry production. This path, though difficult, has become much easier than it had been, since federal aid has finally arrived. The possible rewards of this path are many, but none are guaranteed. Canada’s recent past demonstrates the commitment that is necessary, as well as the rewards that are possible.

The path of total commitment necessarily includes dutiful attention to the circumstances surrounding the industry. Though the Georgia Entertainment Industry Investment Act is currently an excellent demonstration of Georgia’s strong commitment, it does not differ from the sales and use tax incentives in this regard. Both were viable schemes at their inceptions. Like the sales and use tax scheme, the new legislation has no built-in mechanism to adapt, so as to remain a viable solution as time passes. Without this mechanism, the current legislation can perhaps be described as a “good try,” one that may eventually be destined for the same failure as the sales and use tax incentives. As Yoda put it best, we must “[t]ry not. Do or do not. There is no try.”241 The path of total commitment requires nothing less. Canada’s ever-adapting laws and strategies demonstrate the necessity of this vigilance and flexibility.

The second path is the path of concession. Whether through a total abandonment of incentives or through continued half-hearted attempts, Georgia’s film industry will ultimately fail on this path. With total abandonment, the state can turn the page on this chapter of its history on its own terms. With the path of concession, there need not be any further debate on the film industry. Georgia will be free to pursue other endeavors.

Georgia’s film industry may not respond to the state’s incentives, no matter how generous they may be. Georgia’s resources, even when supplemented by federal aid, may not be enough to recapture the state’s past success.

It is time for Georgia to decide which path it will take. There will be few, if any, opportunities to turn back. “Once [we] start down the dark path, forever will it dominate [our] destiny. . . .”242