

House Bill 1239

By: Representatives Neal of the 1st and Stephens of the 164th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales
2 and use taxes, so as to provide for a program of tax refunds for companies creating new
3 tourism attractions; to provide for a short title; to provide for definitions; to provide for
4 legislative findings; to provide for conditions of eligibility and approval; to provide for
5 agreements; to provide for procedures, conditions, and limitations; to provide for powers,
6 duties, and responsibilities of the commissioner of community affairs and the Department
7 of Community Affairs and the governing authorities of counties and municipalities; to
8 provide for powers, duties, and authority of the state revenue commissioner and the
9 Department of Revenue; to provide for related matters; to provide for an effective date; to
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
14 taxes, is amended by adding a new article to read as follows:

15 style="text-align:center">"ARTICLE 5

16 48-8-240.

17 This article shall be known and may be cited as the 'Georgia Tourism Job Creation Act.'

18 48-8-241.

19 As used in this article, the term:

20 (1) 'Agreement' means a tourism attraction agreement for a tourism attraction project
21 entered into, pursuant to Code Section 48-8-245, on behalf of the Department of
22 Community Affairs and an approved company.

23 (2) 'Approved company' means any corporation, limited liability company, partnership,
24 limited liability partnership, sole proprietorship, business trust, or any other entity that
25 is seeking to undertake a tourism attraction project pursuant to Code Section 48-8-245
26 and is approved, pursuant to subsection (b) of Code Section 48-8-244, by the
27 commissioner of community affairs and by the governing authority of the city where the
28 tourism attraction project is to be located if within a city or otherwise by the governing
29 authority of the county where the tourism attraction project is to be located.

30 (3) 'Approved costs' means:

31 (A) Obligations incurred for labor and to vendors, contractors, subcontractors, builders,
32 suppliers, deliverymen, and materialmen in connection with the acquisition,
33 construction, equipping, and installation of a tourism attraction project;

34 (B) The costs of acquiring real property or rights in real property and any costs
35 incidental thereto;

36 (C) All costs for construction materials and equipment installed at the tourism
37 attraction project;

38 (D) The cost of contract bonds and of insurance of all kinds that may be required or
39 necessary during the course of the acquisition, construction, equipping, and installation
40 of a tourism attraction project which is not paid by the vendor, supplier, deliveryman,
41 or contractor or otherwise provided;

42 (E) All costs of architectural and engineering services, including but not limited to
43 estimates, plans and specifications, preliminary investigations, and supervision of
44 construction and installation, as well as for the performance of all the duties required
45 by or consequent to the acquisition, construction, equipping, and installation of a
46 tourism attraction project;

47 (F) All costs required to be paid under the terms of any contract for the acquisition,
48 construction, equipping, and installation of a tourism attraction project;

49 (G) All costs required for the installation of utilities, including but not limited to water,
50 sewer, sewage treatment, gas, electricity, and communications, and off-site construction
51 of utility extensions if paid for by the approved company; and

52 (H) All other costs comparable with those described in this paragraph.

53 (4) 'Incremental sales and use tax' means those state and local sales and use taxes
54 generated by the tourism attraction project above the amount of such sales and use taxes
55 generated by the previous use of the property on which such project is located.

56 (5) 'Tourism attraction' means a cultural or historical site; a recreation or entertainment
57 facility; a sports stadium or arena; an area of natural phenomena or scenic beauty; a
58 convention hotel and conference center; an automobile race track with lodging and
59 restaurant and other tourism amenities; a golf course facility with lodging and restaurant

60 and other tourism amenities; marinas and water parks with lodging and restaurant
61 facilities; or an entertainment destination center designed to attract tourists to the State
62 of Georgia. A tourism attraction shall be subject to the following conditions:

63 (A) A tourism attraction shall include commercial lodging facilities if the facilities
64 constitute a significant portion of a tourism attraction project or the facilities are to be
65 located on recreational property leased from a county, a municipal corporation, the
66 state, or the federal government; and

67 (B) A tourism attraction shall not include the following:

68 (i) Facilities that are primarily devoted to the retail sale of goods, shopping centers,
69 restaurants, or movie theaters; or

70 (ii) Recreational facilities that do not serve as likely destinations where individuals
71 who are not residents of this state would remain overnight in commercial lodging at
72 the tourism attraction.

73 (6) 'Tourism attraction project' or 'project' means the real estate acquisition, including the
74 acquisition of real estate by a leasehold interest with a minimum term of 30 years,
75 construction, and equipping of a tourism attraction; the construction and installation of
76 improvements to facilities necessary or desirable for the acquisition, construction, and
77 installation of a tourism attraction, including but not limited to surveys; installation of
78 utilities, which may include water, sewer, sewage treatment, gas, electricity, and
79 communications; and off-site construction of utility extensions if paid for by the approved
80 company.

81 48-8-242.

82 The General Assembly finds and declares that the general welfare and material well-being
83 of the citizens of this state depend in large measure upon the development of tourism in this
84 state; that, in light of the current economic conditions marked by extreme unemployment
85 and financial turmoil, it is in the best interest of this state to increase state tourism and
86 economic development by inducing the creation and expansion of major tourism
87 destinations that will advance the public purposes of relieving unemployment by preserving
88 and creating jobs, particularly in geographic areas designated as enterprise zones due to
89 disinvestment, underdevelopment, and economic decline, which would not exist if not for
90 the sales and use tax refund offered by the State of Georgia to approved companies and by
91 preserving and creating sources of tax revenues for the support of public services provided
92 by this state; that the purposes to be accomplished under the provisions of this article are
93 proper governmental and public purposes for which public moneys may be expended; and
94 that the inducement of the creation and expansion of tourism attraction projects is of

95 paramount importance to the economy of this state, mandating that the provisions of this
96 article are to be liberally construed and applied in order to advance public purposes.

97 48-8-243.

98 (a) In consideration of the execution of the agreement, each approved company shall be
99 granted a sales and use tax refund from the incremental sales and use tax on:

100 (1) The sales generated by the approved company and arising at the tourism attraction;
101 and

102 (2) The sales generated by the approved company that are attributable to and connected
103 with any project to be a part of or an addition to an existing tourism attraction.

104 Each approved company shall keep and maintain annual records that delineate the increase
105 in sales created by a project at an existing tourism attraction in order to be eligible to be
106 granted a refund for that increase in sales.

107 (b) The approved company shall have no obligation to refund or otherwise return any
108 amount of this sales and use tax refund to the persons from whom the sales and use tax was
109 collected.

110 (c) For all privately owned tourism attractions, the term of the agreement granting the sales
111 and use tax refund shall be ten years. For any tourism attraction owned by one or more
112 counties or municipalities located in the State of Georgia or by an agency, authority, or
113 instrumentality created or authorized by one or more counties or municipalities in the state
114 of Georgia, the term of the agreement granting the sales and use tax refund shall be 20
115 years. The term for an agreement made pursuant to this subsection shall commence on the
116 later of:

117 (1) The final approval of the agreement for purposes of the sales and use tax refund; or

118 (2) The date the tourism attraction opens for business and begins to collect sales and use
119 taxes;

120 (d) Any sales and use tax collected by an approved company on sales transacted after final
121 approval but prior to the commencement of the term of the agreement shall be refundable
122 as if collected after the commencement of the term and applied to the approved company's
123 first year's refund after activation of the term and without changing the term.

124 (e) The total sales and use tax refund allowed to the approved company over the term of
125 the agreement shall be equal to the lesser of the total amount of the sales and use tax
126 liability of the approved company or 25 percent of the approved costs for the tourism
127 attraction project, subject to the following conditions:

128 (1) The sales and use tax refund shall accrue over the term of the agreement in an annual
129 amount equal to the lesser of the sales and use tax liability of the approved company for
130 that year or 2.5 percent of the approved costs; and

131 (2) Notwithstanding the 2.5 percent limitation of paragraph (1) of this subsection, any
132 unused sales and use tax refunds from a previous year may be carried forward to any
133 succeeding year during the term of the agreement.

134 (f) On or before March 31 of each year during the term of the agreement, an approved
135 company shall file with the department a claim for the sales and use tax refund collected
136 by the approved company and remitted to the department during the preceding calendar
137 year pursuant to subsection (e) of this Code section.

138 (g) The department, in consultation with other appropriate state agencies, shall promulgate
139 administrative regulations and require the filing of a refund form designed by the
140 department to reflect the intent of this article.

141 48-8-244.

142 (a) The commissioner of community affairs, in consultation with other appropriate state
143 agencies, shall establish standards for the filing of an application for tourism attraction
144 projects by the promulgation of administrative regulations.

145 (b) The commissioner of community affairs shall consult with an advisory committee
146 consisting of the commissioner of economic development, the state revenue commissioner,
147 and the director of the Office of Planning and Budget who shall assist and advise the
148 commissioner of community affairs in his or her review of applications filed by companies
149 that are considering the development of a tourism attraction project. Within a reasonable
150 time period after receiving a completed application, the commissioner of community affairs
151 shall make a determination as to whether the applicant meets the requirements of the
152 regulations, and the commissioner of community affairs shall recommend approval or
153 denial of the application to the state revenue commissioner.

154 (c) An application for a tourism attraction project filed with the Department of Community
155 Affairs shall include, but not be limited to:

156 (1) Marketing plans for the tourism attraction project that target individuals who are not
157 residents of this state;

158 (2) A description and location of the tourism attraction project;

159 (3) Capital and other anticipated expenditures for the tourism attraction project and the
160 anticipated sources of funding for such project;

161 (4) The anticipated employment and wages to be paid at the tourism attraction project;

162 (5) Business plans which indicate the average number of days in a year in which the
163 tourism attraction project will be in operation and open to the public; and

164 (6) The anticipated revenues to be generated by the tourism attraction project.

165 (d) The commissioner of community affairs and the local governing authority specified
166 in paragraph (2) of Code Section 48-8-241 may grant approval to the tourism attraction
167 project if the project:

168 (1) Creates not less than 50 full-time positions and have approved costs in excess of \$50
169 million, and such project is to be a tourism attraction.

170 (2) Creates not less than 25 full-time positions and have approved costs in excess of \$25
171 million if such project is to be a part of or an addition to an existing tourism attraction or,
172 if the existing tourism attraction can substantiate an increase in visitation to the tourism
173 attraction by adding physical improvements that cost less than \$25 million, represents
174 at the determination of the commissioner of community affairs a significant positive
175 economic impact on the region and this state;

176 (3) Has a significant and positive economic impact on the state considering, among other
177 factors, the extent to which the tourism attraction project will compete directly with
178 existing tourism attractions in this state and the amount by which increased state and local
179 tax revenues from the tourism attraction project will exceed the refund to be given to the
180 approved company;

181 (4) Is located in a geographic area that has been designated as an enterprise zone
182 pursuant to Code Section 36-88-5;

183 (5) Is located in a county that has been designated by the commissioner of community
184 affairs as a tier 1 or tier 2 county under the county tier program in Code Section 48-7-40;

185 (6) Produces sufficient revenues and public demand to be operating and open to the
186 public for a minimum of 200 days per year; and

187 (7) Does not adversely affect existing employment in the state.

188 48-8-245.

189 (a) The Department of Community Affairs shall enter into an agreement with any
190 approved company which may also include as a partner any local development authority,
191 and the terms and provisions of each agreement shall include, but not be limited to:

192 (1) The projected amount of approved costs, provided that any increase in approved costs
193 incurred by the approved company and agreed to by the Department of Community
194 Affairs shall apply retroactively for purposes of calculating the carry forward for unused
195 sales and use tax refunds as set forth in subsection (e) of Code Section 48-8-243 for tax
196 years commencing on or after July 1, 2010;

197 (2) A date certain by which the approved company shall have completed the tourism
198 attraction project and begun operations. Upon request from any approved company that
199 has received final approval, the Department of Community Affairs shall grant an
200 extension or change, which in no event shall exceed 18 months from the date of final

201 approval, to the completion date as specified in the agreement with an approved
202 company; and
203 (3) A statement specifying that the term shall be ten years from the later of:
204 (A) The date of the final approval of the tourism attraction project; or
205 (B) The original effective date specified in the agreement, if this effective date is within
206 three years of the date of the final approval of the tourism attraction project.
207 (b) If an approved company receives a refund under this article, the Department of
208 Community Affairs may deny the right to claim other economic development incentives
209 consisting of income tax credits granted under Chapter 7 of this title that it may otherwise
210 be eligible to claim on its state income tax return."

211 **SECTION 2.**

212 This Act shall become effective on July 1, 2010.

213 **SECTION 3.**

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