

House Bill 1266

By: Representative Hill of the 180th

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 an exception to the prohibition of political subdivisions
10 to impose certain taxes; to provide for related matters; to repeal conflicting laws; and for
11 other purposes.

SECTION 1.

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

"ARTICLE 5

16 48-8-240.

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

18 48-8-241.

19 As used in this article, the term:

20 (1) 'Agreement' means a tourism attraction agreement entered into pursuant to Code
21 Section 48-8-244 by the Department of Economic Development and an approved
22 company with respect to a tourism attraction.

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 that has been approved by the commissioner
 26 pursuant to Code Section 48-8-244 and is approved by the governing authority of the city
 27 where the tourism attraction is to be located if within a city or by the governing authority
 28 of the county where the tourism attraction is to be located.

29 (3) 'Commissioner' means the commissioner of economic development.

30 (4) 'Costs' means any and all costs associated with a tourism attraction, including, but not
 31 limited to, the following:

32 (A) Labor, vendors, contractors, subcontractors, builders, suppliers, deliverymen, and
 33 materialmen;

34 (B) Real and personal property or rights in real and personal property and any costs
 35 incidental thereto;

36 (C) Construction materials and equipment;

37 (D) Contract bonds and insurance of every kind;

38 (E) Marketing, legal, planning, architectural, and engineering services, including, but
 39 not limited to, estimates, plans and specifications, preliminary investigations, and
 40 supervision of construction;

41 (F) The principal of and interest on revenue bonds or other obligations;

42 (G) Working capital; and

43 (H) Installation of utilities, including, but not limited to, water, storm water, sewer
 44 treatment, storm-water treatment, gas, electricity, cable, and communications.

45 (5) 'Department' means the Department of Economic Development.

46 (6) 'Incremental sales and use tax' means all Georgia sales and use tax and all local sales
 47 and use tax other than local sales and use tax for educational purposes generated by the
 48 tourism attraction above the amount of sales and use taxes generated by the previous use
 49 of the property on which the tourism attraction is located.

50 (7) 'Local tourism project tax' means a tax imposed by a city or county pursuant to Code
 51 Section 48-8-245.

52 (8) 'Revenue commissioner' means the commissioner of revenue.

53 (9) 'Tourism attraction' means a cultural or historical site or facility; a recreation or
 54 entertainment facility; an area of natural phenomenon or scenic beauty; a hotel or a
 55 conference center or a combination thereof; a convention center; a race track; a golf
 56 course; marinas and water parks; an entertainment destination center and associated retail
 57 businesses and all facilities and equipment related to the foregoing, provided that such
 58 tourism attraction is approved by the commissioner as provided in Code Section
 59 48-8-244.

60 48-8-242.

61 The General Assembly finds and declares that the general welfare and material well-being
62 of the citizens of the state depend in large measure upon the development of tourism in the
63 state; that it is in the best interest of the state to induce the creation of tourism attractions
64 within the state in order to advance the public purposes of relieving unemployment by
65 creating jobs; that the purposes to be accomplished under the provisions of this article are
66 proper governmental and public purposes for which public moneys may be expended; and
67 that the inducement of the creation and expansion of tourism attractions is of paramount
68 importance to the economy of the state, mandating that the provisions of this article be
69 liberally construed and applied in order to advance public purposes.

70 48-8-243.

71 (a) In consideration of the execution of the agreement, the approved company shall be
72 granted a sales and use tax refund of the incremental sales and use tax.

73 (b) The approved company shall have no obligation to refund or otherwise return any
74 amount of this sales and use tax refund to the persons from whom the sales and use tax was
75 collected, with the approved company having the right to use such sales and use tax
76 revenue for any purposes, including, but not limited to, the repayment of any revenue
77 bonds or other obligations issued in connection with the tourism attraction.

78 (c) The approved company shall receive the refund for a full 20 calendar years
79 commencing upon the completion of the tourism attraction. The year in which the tourism
80 attraction is completed shall not be taken into account.

81 (d) On or before March 31 of each year during the term of the agreement, the approved
82 company shall file with the department or such other state agencies specified by the
83 commissioner a claim for the refund of the incremental sales and use tax collected by the
84 approved company and remitted during the preceding calendar year.

85 (e) The department, in consultation with other appropriate state agencies, shall promulgate
86 rules and regulations and require the filing of a refund form designed by the revenue
87 commissioner to reflect the intent of this article.

88 48-8-244.

89 (a) An application for a tourism attraction filed with the department shall include
90 marketing plans for the tourism attraction that target individuals who are not residents of
91 the state; a description and location of the tourism attraction; capital and other anticipated
92 expenditures for the tourism attraction and the anticipated sources of funding therefor; the
93 anticipated employment and wages to be paid at the tourism attraction; business plans
94 which indicate the average number of days in a year in which the tourism attraction will

95 be in operation and open to the public; and the anticipated revenues to be generated by the
 96 tourism attraction.

97 (b) The commissioner may approve the tourism attraction if costs are expected to exceed
 98 \$25 million and the commissioner determines that the tourism attraction will have a
 99 significant and positive economic impact on the state considering, among other factors, the
 100 extent to which the tourism attraction will compete directly with existing tourism
 101 attractions in the state the number of visitors that will be drawn to the tourism attraction
 102 from out of state, and the number of new jobs the tourism attraction will create.

103 (c) The commissioner may, in consultation with other appropriate state agencies, further
 104 establish standards for the filing of an application for and the approval of tourism
 105 attractions by the promulgation of administrative regulations.

106 (d) The commissioner, on behalf of the department, shall enter into an agreement with
 107 respect to each approved tourism attraction pursuant to Code Section 48-8-244.

108 (e) The department, upon final approval of a tourism attraction, shall enter into an
 109 agreement containing such terms and provisions deemed appropriate.

110 48-8-245.

111 (a) The city where the tourism attraction is to be located if within a city or the county
 112 where the tourism attraction is to be located may impose a tourism attraction tax. A
 113 tourism attraction tax shall be at a rate of up to 3 percent. Except as to rate, a tourism
 114 project tax imposed shall be levied upon all sales at the tourist attraction and shall
 115 correspond to the tax imposed by Article 1 of this chapter. The imposition, rate, and
 116 duration of the tourism attraction tax shall be determined by resolution or ordinance. No
 117 referendum or election shall be required.

118 (b) The proceeds of the tourism attraction tax may be used to pay the costs of a tourism
 119 attraction, including, but not limited to, the repayment of any revenue bonds or other
 120 obligations issued in connection with the tourism attraction.

121 (c) The tourism attraction tax shall be imposed on the first day of the calendar quarter
 122 which begins after the authorization of the tax. The tourism attraction tax shall cease to be
 123 imposed on the date determined by the authorizing resolution or ordinance.

124 48-8-246.

125 (a)(1) The governing authority of a city where a tourism attraction is to be located may
 126 deliver or mail a written copy of a resolution of such city governing authority calling for
 127 the imposition by the county pursuant to subparagraph (a)(1)(D) of Code Section
 128 48-8-111 in whole or in part for the purpose or purposes of a tourism attraction.

129 (2) Within ten days following the date of delivery of such resolution to the governing
 130 authority of such county, the governing authorities of such county and municipality may
 131 enter into an intergovernmental contract as authorized by Article IX, Section III of the
 132 Constitution which shall specify that the proceeds allocated to the city shall only be
 133 expended for the costs of a tourism attraction.

134 (3) Immediately following the entering into of the intergovernmental contract under
 135 paragraph (2) of this subsection, the governing authority of such county may select the
 136 next practicable date authorized under Code Section 21-2-540 for conducting a special
 137 election on the question of imposing such tax under Part 1 of Article 3 of this chapter.
 138 The governing authority of such county shall notify the county election superintendent
 139 by forwarding to the superintendent a copy of the resolution of the governing authority
 140 of such municipality calling for the imposition of the tax in such county. Following
 141 receipt of the resolution, the election superintendent shall issue the appropriate call for
 142 an election for the purpose of submitting the question of the imposition of the tax to the
 143 voters of such county in the manner specified in Code Section 48-8-111. If approved in
 144 such referendum, the tax shall be levied and imposed as provided in this Code section and
 145 Part 1 of Article 3 of this chapter.

146 (b) If the governing authority of the county takes no action under paragraph (2) or (3) of
 147 subsection (a) of this Code section, it shall provide notice thereof by resolution to the
 148 governing authority of the city not later than ten days following the date of delivery of such
 149 city's resolution to the county under subsection (a) of this Code section. Upon receipt by
 150 the governing authority of the city of such county resolution or if timely notice of no action
 151 is not provided by the governing authority of the county to the governing authority of the
 152 city or if the county referendum is conducted but is not approved by the voters, the
 153 governing authority of any city in this state may, subject to the requirement of referendum
 154 approval and the other requirements of this article, immediately commence proceedings to
 155 seek to impose within the city a special sales and use tax for a limited period of time for
 156 the purpose of funding the costs of a tourism attraction. Any tax imposed under this article
 157 shall be at the rate of 1 percent. Except as to rate, a tax imposed under this article shall
 158 correspond to the tax imposed by Article 1 of this chapter.

159 48-8-247.

160 (a) A municipal governing authority voting to impose the tourism attraction tax shall
 161 notify the municipal election superintendent by forwarding to the superintendent a copy of
 162 the resolution or ordinance of the municipal governing authority calling for the imposition
 163 of the tourism attraction tax. Such ordinance or resolution shall specify the following:

164 (1) The maximum period of time of the tax, to be stated in calendar years or calendar
 165 quarters and not to exceed five years;

166 (2) The aggregate maximum costs of the tourism attraction which will be funded from
 167 the proceeds of the tax, which aggregate maximum cost shall also be the maximum
 168 amount of net proceeds to be raised by the tax; and

169 (3) If general obligation debt is to be issued in conjunction with the imposition of the tax,
 170 as authorized by this article, the principal amount of the debt to be issued, the interest rate
 171 or rates or the maximum interest rate or rates which such debt is to bear, and the amount
 172 of principal to be paid in each year during the life of the debt.

173 (b) Upon receipt of the resolution or ordinance, the municipal election superintendent shall
 174 issue the call for an election for the purpose of submitting the question of the imposition
 175 of the tax to the voters of the city. The municipal election superintendent shall issue the
 176 call and shall conduct the election on a date and in the manner authorized under Code
 177 Section 21-2-540. The municipal election superintendent shall cause the date and purpose
 178 of the election to be published once a week for four weeks immediately preceding the date
 179 of the election in the legal organ of the county or in a newspaper having general circulation
 180 in the city at least equal to that of the legal organ. If general obligation debt is to be issued
 181 in conjunction with the imposition of the tax, the notice published by the municipal election
 182 superintendent shall also include, in such form as may be specified by the municipal
 183 governing authority, the principal amount of the debt, the rate or rates of interest or the
 184 maximum rate or rates of interest the debt will bear, and the amount of principal to be paid
 185 in each year during the life of the debt. Such publication of notice by the municipal election
 186 superintendent shall take the place of the notice otherwise required by Code Section
 187 36-80-11 or by subsection (b) of Code Section 36-82-1, which notice shall not be required.

188 (c)(1) The ballot shall have written or printed thereon the following:

189 '() YES Shall a special 1 percent sales and use tax be imposed in _____ for
 a period of time not to exceed _____ and for the raising of not
 190 () NO more than \$ _____ for the purpose of funding a tourism attraction?'

191 (2) If debt is to be issued, the ballot shall also have written or printed thereon, following
 192 the language specified by paragraph (1) of this subsection, the following:

193 'If imposition of the tax is approved by the voters, such vote shall also constitute
 194 approval of the issuance of general obligation debt of _____ in the
 195 principal amount of \$ _____ for the above purpose.'

196 (d) All persons desiring to vote in favor of imposing the tax shall vote 'Yes,' and all
 197 persons opposed to levying the tax shall vote 'No.' If more than one-half of the votes cast
 198 are in favor of imposing the tax, then the tax shall be imposed as provided in this article.
 199 Otherwise, the tax shall not be imposed and the question of imposing the tax shall not again

200 be submitted to the voters of the city until after 12 months immediately following the
201 month in which the election was held; provided, however, that if an election date
202 authorized under Code Section 21-2-540 occurs during the twelfth month immediately
203 following the month in which such election was held, the question of imposing the tax may
204 be submitted to the voters of the city on such date. The municipal election superintendent
205 shall hold and conduct the election under the same rules and regulations as govern special
206 elections. The municipal election superintendent shall canvass the returns, declare the result
207 of the election, and certify the result to the Secretary of State and to the commissioner. The
208 expense of the election shall be paid from municipal funds.

209 (e)(1) If the proposal includes the authority to issue general obligation debt and if more
210 than one-half of the votes cast are in favor of the proposal, then the authority to issue such
211 debt in accordance with Article IX, Section V, Paragraph I of the Constitution is given
212 to the proper officers of the city; otherwise, such debt shall not be issued. If the authority
213 to issue such debt is so approved by the voters, then such debt may be issued without
214 further approval by the voters.

215 (2) If the issuance of general obligation debt is included and approved as provided in this
216 Code section, then the governing authority of the city may incur such debt either through
217 the issuance and validation of general obligation bonds or through the execution of a
218 promissory note or notes or other instrument or instruments. If such debt is incurred
219 through the issuance of general obligation bonds, such bonds and their issuance and
220 validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36. If such debt is
221 incurred through the execution of a promissory note or notes or other instrument or
222 instruments, no validation proceedings shall be necessary and such debt shall be subject
223 to Code Sections 36-80-10 through 36-80-14 except as specifically provided otherwise
224 in this article. In either event, such general obligation debt shall be payable first from the
225 separate account in which are placed the proceeds received by the city from the tax
226 authorized by this article. Such general obligation debt shall, however, constitute a
227 pledge of the full faith, credit, and taxing power of the city; and any liability on such debt
228 which is not satisfied from the proceeds of the tax authorized by this article shall be
229 satisfied from the general funds of the city.

230 (f) No general obligation debt shall be issued in conjunction with the imposition of the tax
231 unless the municipal governing authority determines that, and if the debt is to be validated
232 it is demonstrated in the validation proceedings that, during each year in which any
233 payment of principal or interest on the debt comes due the city will receive from the tax
234 authorized by this article net proceeds sufficient to fully satisfy such liability. General
235 obligation debt issued under this article shall be payable first from the separate account in
236 which are placed the proceeds received by the city from the tax authorized by this article.

237 Such debt, however, shall constitute a pledge of the full faith, credit, and taxing power of
 238 the city; and any liability on said debt which is not satisfied from the proceeds of the tax
 239 authorized by this article shall be satisfied from the general funds of the city.

240 48-8-248.

241 (a) If the imposition of the tax is approved by referendum, the tax shall be imposed on the
 242 first day of the next succeeding calendar quarter which begins more than 70 days after the
 243 date of the election at which the tax was approved by the voters.

244 (b) The tax shall cease to be imposed on the earliest of the following dates:

245 (1) If the resolution or ordinance calling for the imposition of the tax provided for the
 246 issuance of general obligation debt and such debt is the subject of validation proceedings,
 247 as of the end of the first calendar quarter ending more than 80 days after the date on
 248 which a court of competent jurisdiction enters a final order denying validation of such
 249 debt;

250 (2) On the final day of the maximum period of time specified for the imposition of the
 251 tax; or

252 (3) As of the end of the calendar quarter during which the revenue commissioner
 253 determines that the tax will have raised revenues sufficient to provide to the city net
 254 proceeds equal to or greater than the amount specified as the maximum amount of net
 255 proceeds to be raised by the tax.

256 (c)(1) No city shall impose at any time more than a single 1 percent tax pursuant to this
 257 article.

258 (2) A city in which a tax authorized by this article is in effect may, while the tax is in
 259 effect, adopt a resolution or ordinance calling for a reimposition of a tax as authorized by
 260 this article upon the termination of the tax then in effect; and a referendum may be held
 261 for this purpose while the tax is in effect. Proceedings for such reimposition shall be in
 262 the same manner as proceedings for the initial imposition of the tax as provided for in
 263 Code Section 48-8-247 and shall be solely within the discretion of the governing
 264 authority of the city without regard to any requirement of county participation otherwise
 265 specified under subsection (a) of Code Section 48-8-246. Such newly authorized tax
 266 shall not be imposed until the expiration of the tax then in effect; provided, however, that
 267 in the event of emergency conditions under which a city is unable to conduct a
 268 referendum so as to continue the tax then in effect without interruption, the commissioner
 269 may, if feasible administratively, waive the limitations of subsection (a) of this Code
 270 section to the minimum extent necessary so as to permit the reimposition of a tax, if
 271 otherwise approved as required under this Code section, without interruption, upon the
 272 expiration of the tax then in effect.

273 48-8-249.

274 Both the local tourism project tax and the tourism attraction tax shall be exclusively
275 administered and collected by the revenue commissioner for the use and benefit of the
276 county or city imposing the tax. Such administration and collection shall be accomplished
277 in the same manner and subject to the same applicable provisions, procedures, and
278 penalties provided in Article 1 of this chapter; provided, however, that all moneys collected
279 from each taxpayer by the revenue commissioner shall be applied first to such taxpayer's
280 liability for taxes owed the state; and provided, further, that the revenue commissioner may
281 rely upon a representation by or in behalf of the city or the Secretary of State that such a
282 tax has been validly imposed, and the revenue commissioner and the revenue
283 commissioner's agents shall not be liable to any person for collecting any such tax which
284 was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax
285 due and accounted for and shall be reimbursed in the form of a deduction in submitting,
286 reporting, and paying the amount due if such amount is not delinquent at the time of
287 payment. The deduction shall be at the rate and subject to the requirements specified under
288 subsections (b) through (f) of Code Section 48-8-50.

289 48-8-250.

290 Each sales and use tax return remitting local tourism project taxes or tourism attraction
291 taxes shall separately identify the location of each retail establishment at which any of the
292 sales and use taxes remitted were collected and shall specify the amount of sales and the
293 amount of taxes collected at each establishment for the period covered by the return in
294 order to facilitate the determination by the revenue commissioner that all sales and use
295 taxes imposed by this article are collected and distributed according to situs of sale.

296 48-8-251.

297 The proceeds of the local tourism project taxes and the tourism attraction taxes collected
298 by the revenue commissioner under this article shall be disbursed as soon as practicable
299 after collection as follows:

300 (1) One percent of the amount collected shall be paid into the general fund of the state
301 treasury in order to defray the costs of administration; and

302 (2) The remaining proceeds of the tax shall be distributed to the governing authority of
303 the city imposing the tax.

304 48-8-252.

305 The revenue commissioner and the commissioner shall have the power and authority to
306 promulgate such rules and regulations as shall be necessary for the effective and efficient

307 administration and enforcement of the collection of the local tourism project tax and the
 308 tourism attraction tax.

309 48-8-253.

310 The tax authorized by this Article shall be in addition to any other local sales and use tax.

311 The imposition of any other local sales and use tax within a county, city, or special district

312 shall not affect the authority of a city to impose the tax authorized by this article and the

313 imposition of the tax authorized by this article shall not affect the imposition of any

314 otherwise authorized local sales and use tax within the county, city, or special district.

315 48-8-254.

316 The governing authority of the county or city shall maintain a record of each and every

317 tourism attraction and cost for which the proceeds of the local tourism project tax or the

318 tourism attraction tax are used. In each annual audit a schedule shall be included which

319 shows for each ongoing such project the original estimated cost, the current estimated cost

320 if it is not the original estimated cost, amounts expended in prior years, and amounts

321 expended in the current year. The auditor shall verify and test expenditures sufficient to

322 provide assurances that the schedule is fairly presented in relation to the financial

323 statements. The auditor's report on the financial statements shall include an opinion, or

324 disclaimer of opinion, as to whether the schedule is presented fairly in all material respects

325 in relation to the financial statements taken as a whole."

326 **SECTION 2.**

327 Said chapter is further amended in Part 1 of Article 1, relating to general provisions regarding

328 state sales and use taxes, by revising paragraphs (3) and (4) of Code Section 48-8-6, relating

329 to the prohibition of political subdivisions to impose various taxes, as follows:

330 "(3) In the event of a rate increase imposed pursuant to Code Section 48-8-96, only the

331 amount in excess of the initial 1 percent sales and use tax and in the event of a newly

332 imposed tax pursuant to Code Section 48-8-96, only the amount in excess of a 1 percent

333 sales and use tax; ~~and~~

334 (4) A sales and use tax levied under Article 4 of this chapter; and

335 (5) A sales and use tax levied under Article 5 of this chapter."

336 **SECTION 3.**

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