

House Bill 321

By: Representatives Stephens of the 164th, Carter of the 175th, Battles of the 15th, Hamilton of the 23rd, and Hatchett of the 143rd

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 Governor and the Department of Community Affairs and
7 the governing authorities of counties and municipalities; to provide for powers, duties, and
8 authority of the state revenue commissioner and the Department of Revenue; to provide for
9 related matters; to provide for an effective date; to repeal conflicting laws; and for other
10 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 6

16 48-8-270.

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

18 48-8-271.

19 As used in this article, the term:

20 (1) 'Agreement' means a tourism attraction agreement for a new tourism attraction
21 project entered into, pursuant to Code Section 48-8-275, 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 new tourism attraction project pursuant to Code Section
 26 48-8-275 and is approved, pursuant to subsection (b) of Code Section 48-8-274, by the
 27 commissioner of community affairs and by the governing authority of the city where the
 28 new tourism attraction project is to be located if within a city or otherwise by the
 29 governing authority of the county where the new tourism attraction project is to be
 30 located.

31 (3) 'Approved costs' means:

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

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

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

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

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

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

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

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

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

57 (5) 'New tourism attraction' means a cultural or historical site; a recreation or
 58 entertainment facility; a convention hotel and conference center; an automobile race track
 59 with other tourism amenities; a golf course facility with other tourism amenities; marinas

60 and water parks with lodging and restaurant facilities designed to attract tourists to the
 61 State of Georgia; or a Georgia crafts and products center. A new tourism attraction shall
 62 not include the following:

63 (A) Facilities that are primarily devoted to the retail sale of goods, shopping centers,
 64 restaurants, or movie theaters; or

65 (B) Recreational facilities that do not serve as likely destinations where individuals
 66 who are not residents of this state would remain overnight in commercial lodging at the
 67 new tourism attraction.

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

76 48-8-272.

77 The General Assembly finds and declares that the general welfare and material well-being
 78 of the citizens of this state depend in large measure upon the development of tourism in the
 79 state; that it is in the best interest of this state to induce the creation of new tourism
 80 attractions within this state in order to advance the public purposes of relieving
 81 unemployment by preserving and creating jobs that would not exist if not for the sales and
 82 use tax refund offered by the State of Georgia to approved companies and preserving and
 83 creating sources of tax revenues for the support of public services provided by the state;
 84 that the purposes to be accomplished under the provisions of this article are proper
 85 governmental and public purposes for which public moneys may be expended; and that the
 86 inducement of the creation of new tourism attraction projects is of paramount importance
 87 to the economy of the state, mandating that the provisions of this article are to be liberally
 88 construed and applied in order to advance public purposes.

89 48-8-273.

90 (a) In the sole discretion of the Governor, in consideration of the execution of the
 91 agreement, each approved company shall be granted a sales and use tax refund from the
 92 incremental sales and use tax on the sales generated by the approved company and arising
 93 at the new tourism attraction.

- 94 (b) The approved company shall have no obligation to refund or otherwise return any
95 amount of this sales and use tax refund to the persons from whom the sales and use tax was
96 collected.
- 97 (c) For all new tourism attractions the term of the agreement granting the sales and use tax
98 refund shall be ten years, commencing on the later of:
- 99 (1) The final approval of the agreement for purposes of the sales and use tax refund; or
100 (2) The date the new tourism attraction opens for business and begins to collect sales and
101 use taxes;
- 102 (d) Any sales and use tax collected by an approved company on sales transacted after final
103 approval but prior to the commencement of the term of the agreement shall be refundable
104 as if collected after the commencement of the term and applied to the approved company's
105 first year's refund after activation of the term and without changing the term.
- 106 (e) The total sales and use tax refund allowed to the approved company over the term of
107 the agreement shall be equal to the lesser of the total amount of the sales and use tax
108 liability of the approved company or 25 percent of the approved costs for the new tourism
109 attraction project, subject to the following conditions:
- 110 (1) The sales and use tax refund shall accrue over the term of the agreement in an annual
111 amount equal to the lesser of the sales and use tax liability of the approved company for
112 that year or 2.5 percent of the approved costs; and
- 113 (2) Notwithstanding the 2.5 percent limitation of paragraph (1) of this subsection, any
114 unused sales and use tax refunds from a previous year may be carried forward to any
115 succeeding year during the term of the agreement.
- 116 (f) On or before March 31 of each year during the term of the agreement, an approved
117 company shall file with the department a claim for the sales and use tax refund collected
118 by the approved company and remitted to the department during the preceding calendar
119 year pursuant to subsection (e) of this Code section.
- 120 (g) The department, in consultation with other appropriate state agencies, shall promulgate
121 administrative regulations and require the filing of a refund form designed by the
122 department to reflect the intent of this article.
- 123 (h) No sales and use tax refund shall be granted to an approved company which is during
124 a tax year simultaneously receiving any other tax incentive.
- 125 (i) Any sales and use tax refund shall be first applied to any outstanding tax obligation of
126 the approved company which is due and payable to the state.

127 48-8-274.

128 (a) The commissioner of community affairs, in consultation with the Governor and other
129 appropriate state agencies, shall establish standards for the filing of an application for new
130 tourism attraction projects by the promulgation of administrative regulations.

131 (b) An application for a new tourism attraction project filed with the Department of
132 Community Affairs shall include, but not be limited to:

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

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

136 (3) Capital and other anticipated expenditures for the new tourism attraction project and
137 the anticipated sources of funding for such project;

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

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

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

143 (c) Following the filing of the application under subsection (b) of this Code section, the
144 Department of Community Affairs shall submit the application to an independent
145 consultant who shall perform an in depth analysis of the proposed project. All costs
146 associated with such analysis shall be paid for by the approved company.

147 (d) The Governor may, in the Governor's sole discretion, grant approval to the new tourism
148 attraction project if the project shall:

149 (1) Have approved costs in excess of \$1 million and such project is to be a new tourism
150 attraction;

151 (2) Have a significant and positive economic impact on the state considering, among
152 other factors, the extent to which the tourism attraction project will compete directly with
153 tourism attractions in this state and the amount by which increased state local tax
154 revenues from the new tourism attraction project will exceed the refund to be given to the
155 approved company;

156 (3) Produce sufficient revenues and public demand to be operating and open to the public
157 for a minimum of 100 days per year, including the first year of operation;

158 (4) Not adversely affect existing employment in the state;

159 (5) For each year following the third year of operation, attract a minimum of 25 percent
160 of its visitors from nonresidents of this state; and

161 (6) Meet such other criteria as deemed appropriate by the Governor.

162 48-8-275.

163 Following approval by the Governor, the Department of Community Affairs shall enter into
 164 an agreement with any approved company which may also include as a partner any local
 165 development authority, and the terms and provisions of each agreement shall include, but
 166 not be limited to:

167 (1) The projected amount of approved costs, provided that any increase in approved costs
 168 incurred by the approved company and agreed to by the Department of Community
 169 Affairs shall apply retroactively for purposes of calculating the carry forward for unused
 170 sales and use tax refunds as set forth in subsection (e) of Code Section 48-8-273 for tax
 171 years commencing on or after July 1, 2011;

172 (2) A date certain by which the approved company shall have completed the new tourism
 173 attraction project and begun operations. Upon request from any approved company that
 174 has received final approval, the Department of Community Affairs shall grant an
 175 extension or change, which in no event shall exceed 18 months from the date of final
 176 approval, to the completion date as specified in the agreement with an approved
 177 company; and

178 (3) A statement specifying the term of the agreement in accordance with subsection (c)
 179 of Code Section 48-8-273.

180 48-8-276.

181 In the event an approved company fails to abide by the terms of the agreement, then such
 182 agreement shall be void and all sales and use tax proceeds which were refunded shall
 183 become immediately due and payable back to the state.

184 48-8-277.

185 An approved company may, in the discretion of the Governor, transfer its rights, duties,
 186 and obligations under the agreement to a successor company if the successor company
 187 meets the qualifications of an approved company and, upon such approval by the Governor,
 188 such successor approved company shall be authorized to receive the sales and use tax
 189 refunds for the remaining duration of the agreement if it abides by the terms of the
 190 agreement."

191 **SECTION 2.**

192 This Act shall become effective on July 1, 2011.

193 **SECTION 3.**

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