

House Bill 377

By: Representatives Smith of the 129th, Smith of the 168th, Pruett of the 144th, Smith of the 131st, Abrams of the 84th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 and 36 of the Official Code of Georgia Annotated, relating, respectively,
2 to revenue and taxation and local government, so as to provide for the funding of tourism
3 attraction projects; to provide for a short title; to provide for a tourism project sales and use
4 tax; to provide for the levy, collection, and expenditure thereof; to provide for refunds of
5 state and local sales and use tax and the use of the proceeds thereof; to provide for
6 procedures, conditions, and limitations; to provide for powers, duties, and authority of the
7 commissioner of community affairs, the Department of Community Affairs, the state revenue
8 commissioner, and the Department of Revenue; to change certain provisions regarding the
9 ceiling on local sales and use taxes; to provide that tourism attractions shall constitute
10 undertakings for which revenue bonds may be issued; to provide for related matters; to repeal
11 conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

14 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
15 amended by adding a new article to read as follows:

16 style="text-align:center">"ARTICLE 6

17 48-8-280.

18 This article shall be known and may be cited as the 'Tourism and Community Development
19 Act.'

20 48-8-281.

21 As used in this article, the term:

22 (1) 'Affected local governments' means the county, the city or the consolidated
23 government that authorized the tourism project tax and, if applicable, the county, the city,

24 the consolidated government, and the school district that authorized the refund of
 25 incremental sales and use tax generated by the local sales and use tax.

26 (2) 'Agreement' means an agreement made between an approved company and the
 27 affected local governments.

28 (3) 'Approved company' means any corporation, limited liability company, partnership,
 29 limited liability partnership, sole proprietorship, business trust, or any other entity or
 30 person seeking to undertake a tourism attraction that has been approved by the
 31 commissioner.

32 (4) 'Commercial enterprise' means any enterprise or business that generates tourism
 33 attraction taxes within a tourism attraction district.

34 (5) 'Incremental sales and use tax' means all sales and use tax generated by a commercial
 35 enterprise within a tourism attraction district that is above the amount of sales and use tax
 36 generated by the commercial enterprise prior to the establishment of the tourism
 37 attraction district pursuant to subsection (b) of Code Section 48-8-285.

38 (6) 'Local sales and use tax' means the sales and use tax generated pursuant to Article 2
 39 of Title 48, Article 2A of Title 48, Article 3 of Title 48, and Article VIII, Section VI,
 40 Paragraph IV of the Constitution of the state.

41 (7) 'Redevelopment plan' means a redevelopment plan prepared in accordance with the
 42 redevelopment powers law.

43 (8) 'Redevelopment powers law' means Chapter 44 of Title 36 of the Official Code of
 44 Georgia Annotated.

45 (9) 'Sales tax term' means the period that begins at the time the first tourism attraction
 46 taxes are generated and ends at the earlier of either the time specified in the agreement
 47 or 30 years.

48 (10) 'State sales and use tax' means the sales and use tax generated pursuant to Article
 49 1 of this chapter.

50 (11) 'Tax commissioner' means the tax commissioner of the county or consolidated
 51 government in which the tourism project tax is authorized.

52 (12) 'Tourism attraction' means any and all enterprises that will attract tourism, whether
 53 or not commercial, including, but not limited to, those related to retail destination centers,
 54 natural, historic, and cultural resources, convention centers, hotels, museums, recreation,
 55 and sports.

56 (13) 'Tourism attraction account' means an account held and administered by the county,
 57 the city, or consolidated government that authorized the tourism project tax.

58 (14) 'Tourism attraction district' means the geographic boundary within which a tourism
 59 attraction is located.

60 (15) 'Tourism attraction taxes' means the incremental sales and use tax and the tourism
 61 project tax.

62 (16) 'Tourism project costs' means any and all costs associated with a tourism attraction,
 63 including, but not limited to, the following:

64 (A) Labor, vendors, contractors, subcontractors, builders, suppliers, deliverymen, and
 65 materialmen;

66 (B) Real and personal property or rights in real and personal property and any expenses
 67 incidental thereto;

68 (C) Construction materials and equipment;

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

70 (E) Marketing, legal, planning, clerical, administrative, accounting, environmental,
 71 architectural, and engineering services, including, but not limited to estimates, supplies,
 72 plans and specifications, preliminary investigations, and expenses of supervision of
 73 construction;

74 (G) The principal of and interest on tax allocation bonds, revenue bonds, or other forms
 75 of debt;

76 (H) Working capital;

77 (I) Installation of utilities, including, but not limited to, water, storm water, sewer
 78 treatment, storm-water treatment, gas, geothermal, electrical, cable, fiber optic lines,
 79 energy generation and transmission systems, and communications;

80 (J) A capital outlay project, as such term is defined in Code Section 48-8-110; and

81 (K) Redevelopment costs as defined in the redevelopment powers law.

82 (17) 'Tourism project tax' means all sales and use tax generated by commercial
 83 enterprises pursuant to subsection (a) of Code Section 48-8-285.

84 48-8-282.

85 The General Assembly finds and declares that the general welfare and material well-being
 86 of the citizens of the state depend in large measure upon the development of tourism
 87 attractions in the state; that it is a substantial benefit to the state to induce the creation of
 88 tourism attractions within the state; that the creation of tourism attractions will relieve
 89 unemployment by creating jobs and will further the purposes intended to be served by
 90 Article IX, Section II, Paragraph VII of the Constitution of the state and the redevelopment
 91 powers law; that the purposes to be accomplished under the provisions of this article are
 92 proper governmental and public purposes for which public moneys may be expended; and
 93 that the provisions of this article be liberally construed and applied in order to advance
 94 public purposes.

95 48-8-283.

96 (a) A company or person wishing to develop a tourism attraction pursuant to this article
97 shall submit an application to the department for approval by the commissioner of
98 community affairs.

99 (b) An application for a tourism attraction filed with the department shall include:

100 (1) A description of the effect the tourism attraction is anticipated to have on tourism
101 development, economic development, and job creation in the tourism attraction district
102 together with a description of any and all other material benefits associated with the
103 tourism attraction, including, but not limited to the promotion and exposure to the public
104 of the natural, historic, and cultural resources of the part of the state where the tourism
105 attraction is located.

106 (2) Marketing plans for the tourism attraction that primarily targets individuals who are
107 not residents of the state;

108 (3) The geographical boundaries of the tourism attraction district, including any areas of
109 the tourism attraction district that are not contiguous with each other;

110 (4) Anticipated tourism project costs related to the development, construction, marketing,
111 and operation of the tourism attraction and the anticipated sources of funding therefor,
112 which may entirely consist of finding from tax allocation bonds, revenue bonds, or other
113 forms of debt paid with the proceeds of the tourism attraction taxes;

114 (5) The anticipated employment and wages expected to be paid at the tourism attraction;

115 (6) Business plans which indicate the average number of days in a year in which the
116 tourism attraction will be in operation and open to the public; and

117 (7) The anticipated sales tax revenues and ad valorem property tax revenues expected to
118 be generated within the tourism attraction district in the first five years of operation.

119 (c) The commissioner of community affairs shall approve or deny the application within
120 90 days of its submission. Applications that are denied shall not be submitted again until
121 at least 180 days have elapsed.

122 (d) The commissioner of community affairs shall approve the tourism attraction if:

123 (1) Tourism project costs are expected to exceed \$100 million;

124 (2) The commissioner of community affairs reasonably determines the tourism attraction
125 will have a positive economic impact within the tourism attraction district, including, but
126 not limited to the creation of new jobs or the tourism attraction will promote the natural,
127 historic, or cultural resources within the tourism attraction district; and

128 (3) The tourism attraction is expected to draw a significant number of visitors from out
129 of state.

130 48-8-284.

131 Subsequent to approval of the tourism attraction by the commissioner of community
132 affairs, and in order to continue the development of the tourism attraction, the approved
133 company shall enter into an agreement. The agreement shall delineate the tourism
134 attraction district and shall govern the timely application of tourism attraction taxes. The
135 agreement may also contain such other terms as the parties deem appropriate.

136 48-8-285.

137 (a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the
138 Constitution of the state, there is created within this state a special district corresponding
139 with the area of each tourism attraction district. The county, the city, or consolidated
140 government in which a tourism attraction district is to be located may impose a tourism
141 project tax. A tourism project tax may be levied at a rate of up to 3 percent. Except as to
142 rate, a tourism project tax shall be levied upon all sales and uses within the tourism
143 attraction district and shall correspond to the tax imposed by Article 1 of this chapter. The
144 imposition and rate of the tourism project tax shall be determined by resolution or
145 ordinance. No referendum or election shall be required. The tourism project tax shall be
146 collected during the sales tax term. All proceeds of the tourism project tax shall be used
147 to pay the tourism project costs in accordance with the agreement. The tourism project tax
148 shall be levied only within the tourism attraction district and is in addition to any other
149 sales and use taxes that may be levied by a county, city, consolidated government, or
150 school district.

151 (b) The incremental sales and use tax generated by the state sales and use tax shall be
152 refunded to the tax commissioner as provided in Code Section 48-8-286 during the sales
153 tax term. If a county, city, or consolidated government is authorized to exercise the powers
154 specified in Article IX, Section II, Paragraph VII(b) of the Constitution of the state and
155 relating to redevelopment purposes and programs, the incremental sales and use tax
156 generated by the local sales and use tax, or some part thereof, may also be refunded to the
157 tax commissioner as provided in Code Section 48-8-286 during the sales tax term provided
158 that the county, city, consolidated government, or school district generating the local sales
159 and use tax authorizes the refund by resolution or ordinance. The incremental sales and use
160 tax authorized to be refunded shall be used to pay for tourism project costs in accordance
161 with the agreement.

162 48-8-286.

163 As soon as practicable, the state revenue commissioner shall refund all incremental sales
164 and use tax and shall remit all tourism project tax to the tax commissioner. The tax
165 commissioner shall immediately deposit the money into the tourism attraction account.

166 48-8-287.

167 (a) Each commercial enterprise shall, at least 60 days prior to conducting any business,
168 notify, in writing, the state revenue commissioner that it is a commercial enterprise. A
169 commercial enterprise filing a sales tax return shall separately identify the location at which
170 any tourism attraction taxes remitted were collected and shall specify the amount of
171 tourism attraction taxes collected at each commercial enterprise for the period covered by
172 the return in order to facilitate the determination by the state revenue commissioner that all
173 taxes were collected according to situs of sale. The state revenue commissioner and each
174 commercial enterprise shall provide the approved company with copies of such sales tax
175 returns.

176 48-8-288.

177 In order to defray the administrative expenses associated with the collection and
178 disbursement of the tourism project tax, one percent of the tourism project tax collected by
179 the state revenue commissioner shall be paid into the general fund of the state treasury. No
180 administrative expenses associated with the incremental sales and use tax shall be charged
181 in addition to the administrative expenses otherwise authorized by law.

182 48-8-289.

183 (a) On an annual basis, the governing authority of each of the affected local governments
184 shall prepare records of the following related to each tourism attraction within its area:

185 (1) Original estimated cost of the tourism attraction;

186 (2) Current estimated cost of the tourism attraction;

187 (3) Amount and timing of tourism attraction taxes received from the state revenue
188 commissioner;

189 (4) Amount and timing of tourism attraction taxes distributed by the tax commissioner
190 into each tourism attraction account; and

191 (5) Amount, timing, and a line item schedule of all tourism project costs expended up to
192 that time.

193 (b) The auditor of such governing authority shall verify and test expenditures in a manner
194 sufficient to provide assurances that these statements and schedules are fairly presented.

195 48-8-290.

196 The state revenue commissioner and the commissioner of community affairs shall have the
 197 power and authority to promulgate such rules and regulations as shall be necessary for the
 198 effective and efficient administration and enforcement of this article.

199 48-8-291.

200 This article is intended to further the purposes intended to be served by Article IX,
 201 Section II, Paragraph VII of the Constitution of the state and the redevelopment powers
 202 law. Therefore, to the extent possible, this article shall be interpreted so that it furthers the
 203 powers granted in the redevelopment powers laws. Without limiting the generality of the
 204 foregoing, if a county, city, or consolidated government is authorized to exercise the
 205 powers specified in Article IX, Section II, Paragraph VII(b) of the Constitution of the state
 206 and relating to redevelopment purposes and programs, the tourism attraction district may
 207 be coterminous with the tax allocation district created pursuant to the redevelopment
 208 powers law; the tourism attraction taxes may be included as payments under a
 209 redevelopment plan and may be used to pay tax allocation bonds, notes, or other
 210 obligations authorized by the redevelopment powers law; and the agreement may be part
 211 of the redevelopment plan. Notwithstanding anything in this article to the contrary, a
 212 county, city, or consolidated government is not required to have the powers specified in
 213 Article IX, Section II, Paragraph VII(b) of the Constitution of the state and relating to
 214 redevelopment purposes and programs in order to exercise the powers granted in this
 215 article."

216

SECTION 2.

217 Said title is further amended in Code Section 48-8-6, relating to a ceiling on local sales and
 218 use taxes, by revising subsection (a) as follows:

219 "(a) There shall not be imposed in any jurisdiction in this state or on any transaction in this
 220 state local sales taxes, local use taxes, or local sales and use taxes in excess of 2 percent.
 221 For purposes of this prohibition, the taxes affected are any sales tax, use tax, or sales and
 222 use tax which is levied in an area consisting of less than the entire state, however
 223 authorized, including such taxes authorized by or pursuant to constitutional amendment,
 224 except that the following taxes shall not count toward or be subject to such 2 percent
 225 limitation:

226 (1) A sales and use tax for educational purposes exempted from such limitation under
 227 Article VIII, Section VI, Paragraph IV of the Constitution;

228 (2) Any tax levied for purposes of a metropolitan area system of public transportation,
 229 as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page

230 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d)
 231 of the Constitution; and the laws enacted pursuant to such constitutional amendment;
 232 provided, however, that the exception provided for under this paragraph shall only apply:

233 (A) In a county in which a tax is being imposed under subparagraph (a)(1)(D) of Code
 234 Section 48-8-111 in whole or in part for the purpose or purposes of a water capital
 235 outlay project or projects, a sewer capital outlay project or projects, a water and sewer
 236 capital outlay project or projects, water and sewer projects and costs as defined under
 237 paragraph (4) of Code Section 48-8-200, or any combination thereof and with respect
 238 to which the county has entered into an intergovernmental contract with a municipality,
 239 in which the average waste-water system flow of such municipality is not less than 85
 240 million gallons per day, allocating proceeds to such municipality to be used solely for
 241 water and sewer projects and costs as defined under paragraph (4) of Code Section
 242 48-8-200. The exception provided for under this subparagraph shall apply only during
 243 the period the tax under said subparagraph (a)(1)(D) is in effect. The exception
 244 provided for under this subparagraph shall not apply in any county in which a tax is
 245 being imposed under Article 2A of this chapter; or

246 (B) In a county in which the tax levied for purposes of a metropolitan area system of
 247 public transportation is first levied after January 1, 2010, and before November 1, 2012.
 248 Such tax shall not apply to the following:

249 (i) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport. For
 250 purposes of this division, a 'qualifying airline' means any person which is authorized
 251 by the Federal Aviation Administration or another appropriate agency of the United
 252 States to operate as an air carrier under an air carrier operating certificate and which
 253 provides regularly scheduled flights for the transportation of passengers or cargo for
 254 hire. For purposes of this division, a 'qualifying airport' means any airport in the state
 255 that has had more than 750,000 takeoffs and landings during a calendar year; and

256 (ii) The sale of motor vehicles;

257 (3) In the event of a rate increase imposed pursuant to Code Section 48-8-96, only the
 258 amount in excess of the initial 1 percent sales and use tax and in the event of a newly
 259 imposed tax pursuant to Code Section 48-8-96, only the amount in excess of a 1 percent
 260 sales and use tax;

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

262 (5) A sales and use tax levied under Article 5 of this chapter; ~~and~~

263 (6) A tourism project sales and use tax levied under Article 6 of this chapter.

264 If the imposition of any otherwise authorized local sales tax, local use tax, or local sales
 265 and use tax would result in a tax rate in excess of that authorized by this subsection, then
 266 such otherwise authorized tax may not be imposed."

267

SECTION 3.

268 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
 269 in Code Section 36-82-61, relating to definitions regarding the "Revenue Bond Law," by
 270 revising paragraph (4) as follows:

271 "(4) 'Undertaking' includes the following revenue-producing undertakings or any
 272 combination of two or more of such undertakings, whether now existing or hereafter
 273 acquired or constructed:

274 (A) Causeways, tunnels, viaducts, bridges, and other crossings;

275 (B) Highways, parkways, airports, docks, piers, wharves, terminals, and other
 276 facilities;

277 (C) Systems, plants, works, instrumentalities, and properties:

278 (i) Used or useful in connection with the obtaining of a water supply and the
 279 conservation, treatment, and disposal of water for public and private uses;

280 (ii) Used or useful in connection with the collection, treatment, and disposal of
 281 sewage, waste, and storm water; together with all parts of any such undertaking and
 282 all appurtenances thereto, including lands, easements, rights in land, water rights,
 283 contract rights, franchises, approaches, dams, reservoirs, generating stations, sewage
 284 disposal plants, intercepting sewers, trunk connecting and other sewer and water
 285 mains, filtration works, pumping stations, and equipment;

286 (iii) Used or useful in connection with the collection, treatment, reuse, or disposal of
 287 solid waste; or

288 (iv) Used or useful in connection with buying, constructing, extending, operating, and
 289 maintaining gas or electric generating and distribution systems together with all
 290 necessary appurtenances thereof; provided, further, any revenue certificates issued to
 291 buy, construct, extend, operate, and maintain electric generating and distribution
 292 systems shall, before being undertaken, be authorized by a majority of those voting
 293 at an election held for the purpose in the county, municipal corporation, or political
 294 subdivision affected, the election for such to be held in the same manner as is used in
 295 issuing bonds of such county, municipal corporation, or political subdivision and the
 296 said elections shall be called and provided for by officers in charge of the fiscal affairs
 297 of said county, municipal corporation, or political subdivision affected;

298 (D) Dormitories, laboratories, libraries, and other related facilities;

299 (E) Parks, golf links and fairways, tennis courts, swimming pools, playgrounds, athletic
 300 fields, grandstands and stadiums; buildings to be used for various types of sports,
 301 including baseball and football; buildings to be constructed and used for the housing
 302 of exhibits for fairs and educational purposes; buildings to be used for the housing of
 303 livestock, horses, cattle, swine, poultry, and agricultural exhibits for exhibition

304 purposes; the erection and construction of buildings to be used for amusement purposes
 305 or educational purposes or a combination of the two; and such buildings to be used for
 306 fairs, expositions, or exhibitions in connection therewith;

307 (F) Combinations of sea wall, groin, and beach erosion protection systems;

308 (G) Public parking areas and public parking buildings;

309 (H) Purchase of lands used by the United States government as army camps for the
 310 training of soldiers during the war, when and if the same is declared surplus by the
 311 United States government or its authority, provided that a county shall only be allowed
 312 to purchase lands which were within its boundaries at the time such lands were acquired
 313 by the United States government or any division of the United States government;

314 (I) Parking meters on streets, thoroughfares, parkways, and any avenue of traffic, such
 315 meters to be located thereon or immediately adjacent thereto for the purpose of
 316 providing space for vehicles and authorizing the use of same for parking purposes upon
 317 the payment of a charge therefor;

318 (J) Purchase of existing public common carriers of passengers for hire and facilities
 319 necessary, incident, or needful thereto by the use of motor buses, trackless trolleys,
 320 electric trolleys, or any other means of transportation of passengers on the streets and
 321 highways;

322 (K) The purchase of land and the construction thereon of facilities for lease to
 323 industries, so as to relieve abnormal unemployment conditions; ~~and~~

324 (L) Jails and all other structures and facilities which are necessary and convenient for
 325 the operation of jails; and

326 (M) Tourism attractions as defined in Code Section 48-8-281."

SECTION 4.

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