

The House Committee on Ways and Means offers the following substitute to HB 321:

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 or expanding existing tourism attractions; to provide for a short title; to
4 provide for definitions; to provide for legislative findings; to provide for conditions of
5 eligibility and approval; to provide for agreements; to provide for procedures, conditions, and
6 limitations; to provide for powers, duties, and responsibilities of the commissioner of
7 community affairs, the Department of Community Affairs, and the governing authorities of
8 counties and municipalities; to provide for powers, duties, and authority of the state revenue
9 commissioner and the Department of Revenue; to provide for related matters; to provide for
10 an effective date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 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 "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 tourism attraction project
21 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 tourism attraction project pursuant to Code Section 48-8-275
 26 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 tourism attraction project is to be located if within a city and by the governing authority
 29 of the county where the tourism attraction project is to be located.

30 (3) 'Approved costs' means:

31 (A) For new tourism attractions:

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

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

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

39 (iv) 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
 41 installation of a new tourism attraction project which is not paid by the vendor,
 42 supplier, deliveryman, or contractor or otherwise provided;

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

54 (viii) All other costs comparable with those described in this subparagraph; or

55 (B) For existing tourism attractions, any approved costs otherwise specified in
 56 subparagraph (A) of this paragraph; provided, however, that such costs are limited to
 57 the expansion only of an existing tourism attraction and not the renovation of an
 58 existing tourism attraction.

59 (4) 'Incremental sales and use tax' means those state and local sales and use taxes
 60 generated by the tourism attraction project above the amount of such sales and use taxes
 61 generated by the previous use of the property on which such project is located except as
 62 otherwise provided in Code Section 48-8-278.

63 (5) 'Tourism attraction' means a cultural or historical site; a recreation or entertainment
 64 facility; a convention hotel and conference center; an automobile race track with other
 65 tourism amenities; a golf course facility with other tourism amenities; marinas and water
 66 parks with lodging and restaurant facilities designed to attract tourists to the State of
 67 Georgia; or a Georgia crafts and products center. A tourism attraction shall not include
 68 the following:

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

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

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

83 48-8-272.

84 The General Assembly finds and declares that the general welfare and material well-being
 85 of the citizens of this state depend in large measure upon the development of tourism in the
 86 state; that it is in the best interest of this state to induce the creation of tourism attractions
 87 or expansion of existing tourism attractions within this state in order to advance the public
 88 purposes of relieving unemployment by preserving and creating jobs that would not exist
 89 if not for the sales and use tax refund offered by the State of Georgia to approved
 90 companies and preserving and creating sources of tax revenues for the support of public
 91 services provided by the state; that the purposes to be accomplished under the provisions
 92 of this article are proper governmental and public purposes for which public moneys may
 93 be expended; and that the inducement of the creation of tourism attraction projects is of

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

96 48-8-273.

97 (a) In consideration of the execution of the agreement, each approved company shall be
98 granted a sales and use tax refund from the incremental sales and use tax on the sales
99 generated by the approved company and arising at the tourism attraction.

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

103 (c) For all tourism attractions the term of the agreement granting the sales and use tax
104 refund shall be ten years, commencing on the later of:

105 (1) The final approval of the agreement for purposes of the sales and use tax refund; or
106 (2) The date the tourism attraction opens for business and begins to collect sales and use
107 taxes;

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

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

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

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

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

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

129 (h) No sales and use tax refund shall be granted to an approved project which is during a
130 tax year simultaneously receiving any other state tax incentive.

131 (i) Any sales and use tax refund shall be first applied to any outstanding tax obligation of
132 the approved company which is due and payable to the state.

133 48-8-274.

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

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

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

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

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

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

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

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

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

152 (d) The commissioner of community affairs may grant approval to the tourism attraction
153 project if the project shall:

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

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

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

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

164 (5) For each year following the third year of operation, attract a minimum of 25 percent
165 of its visitors from nonresidents of this state.

166 48-8-275.

167 Following approval by the commissioner of community affairs, the Department of
168 Community Affairs shall enter into an agreement with any approved company which may
169 also include as a partner any local development authority, and the terms and provisions of
170 each agreement shall include, but not be limited to:

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

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

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

184 48-8-276.

185 In the event an approved company fails to abide by the terms of the agreement, then such
186 agreement shall be void and all sales and use tax proceeds which were refunded shall
187 become immediately due and payable back to the state and to the governing authority of
188 any county or municipality whose approval was required under paragraph (2) of Code
189 Section 48-8-271.

190 48-8-277.

191 An approved company may, subject to approval by the commissioner of community affairs,
192 transfer its rights, duties, and obligations under the agreement to a successor company if
193 the successor company meets the qualifications of an approved company and, upon such
194 approval by the commissioner of community affairs, such successor approved company
195 shall be authorized to receive the sales and use tax refunds for the remaining duration of
196 the agreement if it abides by the terms of the agreement.

197 48-8-278.

198 This chapter shall not apply to the sales tax for educational purposes levied pursuant to Part
199 2 of Article 3 of this chapter and Article VIII, Section VI, Paragraph IV of the
200 Constitution."

201 **SECTION 2.**

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

203 **SECTION 3.**

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