

House Bill 1050

By: Representatives Stephens of the 164th, Harbin of the 118th, Battles of the 15th, and Geisinger of the 48th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 6 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the Georgia Tourism Development Act, so as to revise certain definitions; to
3 authorize the commissioner of the Department of Community Affairs to authorize sales tax
4 refunds for tourism attractions; to provide for conditions and limitations; to provide for the
5 commissioner to promulgate rules and regulations; to amend Code Section 36-82-61 of the
6 Official Code of Georgia Annotated, relating to definitions regarding revenue bonds, so as
7 to allow local governments to issue revenue bonds in support of tourism attractions; to
8 provide for related matters; to provide for an effective date; to repeal conflicting laws; and
9 for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 6 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to the
13 Georgia Tourism Development Act, is amended by revising Code Section 48-8-271, relating
14 to definitions regarding the Georgia Tourism Development Act, as follows:

15 "48-8-271.

16 As used in this article, the term:

17 (1) 'Agreement' means a tourism attraction agreement for a tourism attraction project
18 entered into, pursuant to Code Section 48-8-275, on behalf of the Department of
19 Community Affairs and an approved company.

20 (2) 'Approved company' means any corporation, limited liability company, partnership,
21 limited liability partnership, sole proprietorship, business trust, or any other entity that
22 is seeking to undertake a tourism attraction project pursuant to Code Section 48-8-275
23 and is approved, ~~pursuant to subsection (b) of Code Section 48-8-274, by the Governor~~
24 under the provisions of this article by the commissioner and by the governing authority
25 of the city where the tourism attraction project is to be located if within a city and by the
26 governing authority of the county where the tourism attraction project is to be located.

27 (3) 'Approved costs' means:

28 (A) For new tourism attractions:

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

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

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

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

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

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

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

51 (viii) The principal of and interest on revenue bonds and other forms of obligations;

52 (ix) Working capital;

53 (x) A capital outlay project, as such term is defined in paragraph (1) of Code Section
54 48-8-110; and

55 ~~(viii)~~(xi) All other costs comparable associated with those described in this
56 subparagraph; or

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

61 (4) 'Commissioner' means the commissioner of community affairs.

62 (5) 'Incremental sales and use tax' means those state and local sales and use taxes
63 generated by the tourism attraction project above the amount of such sales and use taxes

64 generated by the previous use of the property on which such project is located except as
65 otherwise provided in Code Section 48-8-278.

66 ~~(5)(6)~~ 'Tourism attraction' means ~~a cultural or historical site; a recreation or~~
67 ~~entertainment facility; a convention hotel and conference center; an automobile race track~~
68 ~~with other tourism amenities; a golf course facility with other tourism amenities; marinas~~
69 ~~and water parks with lodging and restaurant facilities designed to attract tourists to the~~
70 ~~State of Georgia; or a Georgia crafts and products center. A tourism attraction shall not~~
71 ~~include the following~~ an enterprise designed and geared to attract significant numbers of
72 visitors from outside of this state and may include any one or a combination of the
73 following: a cultural or historical site; a place of scenic or natural beauty; a recreation or
74 entertainment facility that includes tourism amenities, such as lodging or restaurant
75 facilities; a convention hotel and conference center that includes tourism amenities; a race
76 track that includes tourism amenities; a golf course that includes tourism amenities; a
77 marina that includes tourism amenities; a water park that includes tourism amenities; a
78 Georgia crafts and produce center that includes tourism amenities; or a major destination
79 tourism project that competes with major tourism projects in other states. A tourism
80 attraction shall not be:

81 ~~(A) Facilities that are primarily devoted to the retail sale of goods, shopping centers,~~
82 ~~restaurants, or movie theaters~~ Primarily devoted to the retail sale of goods; or

83 ~~(B) Recreational facilities that do not serve as likely destinations~~ A facility that does
84 not serve as a likely destination where individuals who are not residents of this state
85 would remain overnight in commercial lodging at the tourism attraction.

86 ~~(6)(7)~~ 'Tourism attraction project' or 'project' means the real estate acquisition, including
87 the acquisition of real estate by a leasehold interest with a minimum term of 30 years,
88 construction, and equipping of a tourism attraction; the construction and installation of
89 improvements to facilities necessary or desirable for the acquisition, construction, and
90 installation of a tourism attraction, including but not limited to surveys; installation of
91 utilities, which may include water, sewer, sewage treatment, gas, electricity,
92 communications, and similar facilities; and off-site construction of utility extensions if
93 paid for by the approved company. Such term shall not include the renovation of an
94 existing tourism attraction."

95 **SECTION 2.**

96 Said article is further amended by revising Code Section 48-8-273, relating to the terms and
97 execution of tourism tax agreements, as follows:

98 "48-8-273.

99 (a) ~~In the sole discretion of the Governor, in consideration of the execution of the~~
100 ~~agreement, each~~ Each approved company shall be granted a sales and use tax refund from
101 the incremental sales and use tax on the sales generated by the approved company and
102 arising at the tourism attraction.

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

106 (c) For all tourism attractions the term of the agreement granting the sales and use tax
107 refund shall be for a period of ten 25 years, commencing unless the commissioner
108 determines that a lesser period is required to make the findings required by Code Section
109 48-8-274.

110 (d) The refund shall commence on the later of:

- 111 (1) The final approval of the agreement for purposes of the sales and use tax refund; or
112 (2) The date the tourism attraction opens for business and begins to collect sales and use
113 taxes.

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

118 ~~(e)~~(f) The total sales and use tax refund allowed to the approved company over the term
119 of the agreement shall be equal to ~~the lesser of the total amount of the incremental sales and~~
120 ~~use tax liability of the approved company or 25 percent of the approved costs for the~~
121 ~~tourism attraction project. The incremental sales and use tax refund shall accrue over the~~
122 ~~term of the agreement in an annual amount equal to the lesser of the incremental sales and~~
123 ~~use tax liability of the approved company for that year or 2.5 percent of the approved costs~~
124 generated within the designated area of the tourist attraction.

125 ~~(f)~~(g) On or before March 31 of each year during the term of the agreement, an approved
126 company shall file with the Department of Revenue a claim for the incremental sales and
127 use tax refund collected by the approved company and remitted to the Department of
128 Revenue during the preceding calendar year pursuant to ~~subsection (e)~~ of this Code section.

129 ~~(g)~~(h) The Department of Revenue, in consultation with the Department of Community
130 Affairs and other appropriate state agencies, shall promulgate administrative regulations
131 and require the filing of a refund form designed by the Department of Revenue to reflect
132 the intent of this article.

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

135 ~~(i)~~(j) Any sales and use tax refund shall be first applied to any outstanding tax obligation
 136 of the approved company which is due and payable to the state."

137 **SECTION 3.**

138 Said article is further amended by revising Code Section 48-8-274, relating to standards for
 139 filing tourism attraction project applications, as follows:

140 "48-8-274.

141 (a) The commissioner ~~of community affairs~~, in consultation with the Governor and other
 142 appropriate state agencies, shall take into account the intent of this article in promulgating
 143 administrative regulations that establish standards for the filing ~~of an application for~~
 144 ~~tourism attraction projects by the promulgation of administrative regulations and approval~~
 145 of an application for a tourism attraction project.

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

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

150 (2) A description and location of the tourism attraction project, including an exact
 151 description of its boundaries;

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

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

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

157 (6) The anticipated revenues to be generated by the tourism attraction project;:

158 (7) The anticipated sales and use taxes and property taxes expected to be generated as
 159 a result of the establishment of the tourism attraction, both within the approved
 160 boundaries of the tourism attraction and in areas surrounding the tourism attraction;

161 (8) A description of the effect the tourism attraction is anticipated to have on the
 162 promotion to the public of the natural, cultural, and historical resources present in the part
 163 of this state where the tourism attraction is located; and

164 (9) The effect the tourism attraction is anticipated to have on economic development and
 165 employment in the part of this state where the tourism attraction is located.

166 (c) Following the filing of the application, the Department of Community Affairs shall
 167 submit the application to an independent consultant who shall perform an in depth analysis
 168 of the proposed project. The analysis shall include, but not be limited to, the projected
 169 economic benefits and losses to this state in granting the refund of the incremental sales

170 and use tax. All costs associated with such analysis shall be paid for by the approved
 171 company.

172 (d) The regulations promulgated pursuant to subsection (a) of this Code section shall
 173 further establish standards that require the commissioner to make a determination whether
 174 the tourism attraction is reasonably expected to:

175 (1) Have a significant and positive economic impact on this state that is greater than any
 176 negative effects attributable to the establishment of the tourism attraction, including
 177 among other factors the extent to which the tourism attraction is expected to compete
 178 directly with other tourism attractions in this state;

179 (2) Adversely impact existing employment in this state;

180 (3) Attract a minimum of 25 percent of its visitors from nonresidents of this state in each
 181 year following the third year of operation of the tourism attraction; and

182 (4) Produce jobs and economic benefits to this state that are greater than lost benefits
 183 projected to be attributable to the granting of the incremental sales and use tax refund.

184 ~~(d)(e) The Governor may, in the Governor's sole discretion, grant approval to the tourism~~
 185 ~~attraction project if the project shall: In order for a tourism attraction to be approved~~
 186 ~~pursuant to subsection (f) of this Code section, it must:~~

187 ~~(1) Have approved costs in excess of \$~~1~~ \$100 million and such project is to be a tourism~~
 188 ~~attraction;~~

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

194 ~~(3) Produce sufficient revenues and public demand to be operating and Be projected to~~
 195 ~~be operating and open to the public for a minimum of 100 days per year, including the~~
 196 ~~first year of operation;~~

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

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

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

201 ~~(3) Have marketing plans that call for the promotion to the public of the natural, cultural,~~
 202 ~~and historical resources of the part of this state where the tourism attraction is located;~~
 203 ~~and~~

204 ~~(4) Satisfy the standards and conditions contained in the regulations promulgated~~
 205 ~~pursuant to subsection (a) of this Code Section.~~

206 (f) The commissioner shall approve or deny an application under this Code section within
 207 120 days of its receipt. If the applicant satisfies the provisions set out in this article and in
 208 the regulations described in subsection (a) of this Code section, the commissioner shall
 209 approve the tourism attraction."

210 **SECTION 4.**

211 Said article is further amended by revising Code Section 48-8-275, relating to the authority
 212 of the Department of Community Affairs to enter into an agreement with a tourism attraction,
 213 as follows:

214 "48-8-275.

215 Following approval by the ~~Governor~~ commissioner, the Department of Community Affairs
 216 shall enter into an agreement with any approved company which may also include as a
 217 partner any local development authority, and the terms and provisions of each agreement
 218 shall include, but not be limited to:

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

224 (2) A date certain by which the approved company shall have ~~completed the tourism~~
 225 ~~attraction project and begun operations. Upon request from any approved company that~~
 226 ~~has received final approval, the Department of Community Affairs shall have the~~
 227 authority to grant an extension or change, ~~which in no event shall exceed 18 months from~~
 228 ~~the date of final approval~~, to the completion date as specified in the agreement with an
 229 approved company; and

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

232 **SECTION 5.**

233 Said article is further amended by revising Code Section 48-8-277, relating to the transfer
 234 of rights to a successor company, as follows:

235 "48-8-277.

236 An approved company may, ~~in the discretion of the Governor~~, transfer its rights, duties,
 237 and obligations under the agreement to a successor company if the successor company
 238 meets the qualifications of an approved company and, ~~upon such approval by the Governor,~~
 239 ~~such.~~ Such successor approved company shall be authorized to receive the incremental

240 sales and use tax refunds for the remaining duration of the agreement if it abides by the
241 terms of the agreement."

242 **SECTION 6.**

243 Code Section 36-82-61 of the Official Code of Georgia Annotated, relating to definitions
244 regarding revenue bonds, is amended in paragraph (4) by deleting "and" at the end of
245 subparagraph (K), deleting the period and adding "; and" at the end of subparagraph (L), and
246 adding a new subparagraph to read as follows:

247 "(M) Tourism attractions as defined in paragraph (6) of Code Section 48-8-271."

248 **SECTION 7.**

249 This Act shall become effective upon its approval by the Governor or upon its becoming law
250 without such approval.

251 **SECTION 8.**

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