

House Bill 318 (COMMITTEE SUBSTITUTE)

By: Representatives Stephens of the 164th, Hatchett of the 150th, Coomer of the 14th, Battles of the 15th, Dempsey of the 13th, and others

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 provide for procedures, conditions, and limitations; to provide for related matters; to provide
4 for an effective date; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

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

10 "48-8-271.

11 As used in this article, the term:

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

15 (2) 'Annual sales and use tax' means state sales and use taxes remitted to the state that
16 were generated by sales to the general public at the approved tourism attraction during
17 the calendar year immediately preceding the date of filing the sales and use tax refund
18 claim.

19 (2)(3) 'Approved company' means ~~any corporation, limited liability company,~~
20 ~~partnership, limited liability partnership, sole proprietorship, business trust, or any other~~
21 the entity that is seeking has submitted an application to undertake a tourism attraction
22 project, which has been approved pursuant to Code Section 48-8-275 and is approved,
23 ~~pursuant to subsection (b) of Code Section 48-8-274, by the Governor and by the~~
24 ~~governing authority of the city where the tourism attraction project is to be located if~~
25 ~~within a city and by the governing authority of the county where the tourism attraction~~

26 ~~project is to be located.~~ For each tourism attraction project, only one company may be
 27 approved under this article.

28 ~~(3)~~(4) 'Approved costs' means:

29 (A) For new tourism attractions:

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

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

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

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

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

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

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

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

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

57 (5) 'Approved tourism attraction' means a project that was approved pursuant to Code
 58 Section 48-8-274 and that has since opened to the public and become operational as a
 59 tourism attraction.

60 (6) 'Expansion' means the addition of equipment, facilities, or real estate to an existing
 61 tourism attraction for the purpose of increasing its size, scope, or visitor capacity.

62 ~~(4)~~(7) 'Incremental sales and use tax' means ~~those state and local sales and use taxes~~
 63 ~~remitted to the state that were generated by the tourism attraction project above the~~
 64 ~~amount of such sales and use taxes generated by the previous use of the property on~~
 65 ~~which such project is located except as otherwise provided in Code Section 48-8-278~~
 66 ~~sales to the general public at the approved tourism attraction from the date on which~~
 67 ~~construction of the expansion project is completed through the end of the calendar year~~
 68 ~~immediately preceding the date of filing the incremental sales and use tax refund claim,~~
 69 ~~less the state sales and use taxes remitted to the state that were generated by sales to the~~
 70 ~~general public at the approved tourism attraction during the 12 month period immediately~~
 71 ~~preceding the commencement of construction of the expansion project.~~

72 (8) 'Incremental sales and use tax refund' is the amount equal to the lesser of the
 73 incremental sales and use tax or 2.5 percent of the total of all approved costs incurred at
 74 any time prior to January 1 of the year during which the claim for the incremental sales
 75 and use tax refund is filed.

76 (9) 'Local sales and use tax' means any sales and use tax that is levied and imposed in an
 77 area consisting of less than the entire state, however authorized.

78 (10) 'Renovation' means the restoration, rebuilding, redesign, repair, or replacement of
 79 worn elements so that the functionality, quality, or attractiveness of buildings or
 80 structures is equivalent to a former state.

81 (11) 'Sales and use tax refund' is the amount equal to the lesser of the annual sales and
 82 use tax or 2.5 percent of the total of all approved costs incurred at any time prior to
 83 January 1 of the year during which the claim for the sales and use tax refund is filed.

84 ~~(5)~~(12) 'Tourism attraction' means a cultural or historical site; a recreation or
 85 entertainment facility; a convention hotel and conference center; an automobile race
 86 track, including, but not limited to, Atlanta Motor Speedway, with other tourism
 87 amenities; a golf course facility with other tourism amenities; marinas and water parks
 88 with lodging and restaurant facilities designed to attract tourists to the State of Georgia;
 89 or a Georgia crafts and products center. A tourism attraction shall not ~~include the~~
 90 ~~following:~~ (A) ~~Facilities that are~~ be primarily devoted to the retail sale of goods,
 91 shopping centers, restaurants, or movie theaters, ~~or~~

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

95 ~~(6)~~(13) 'Tourism attraction project' or 'project' ~~means~~ includes the real estate acquisition,
 96 including the acquisition of real estate by a leasehold interest with a minimum term of 30
 97 years, construction, and equipping of a tourism attraction; the construction and
 98 installation of improvements to facilities necessary or desirable for the acquisition,

99 construction, and installation of a tourism attraction, including but not limited to surveys;
 100 installation of utilities, which may include water, sewer, sewage treatment, gas,
 101 electricity, communications, and similar facilities; and off-site construction of utility
 102 extensions if paid for by the approved company. Such term shall not include the
 103 renovation of an existing tourism attraction."

104 **SECTION 2.**

105 Said article is further amended by revising Code Section 48-8-273, relating to tourism
 106 attraction agreements, as follows:

107 "48-8-273.

108 (a) In the ~~sole~~ discretion of the ~~Governor~~ commissioner of economic development and the
 109 commissioner of community affairs, in consideration of the execution of the agreement;
 110 ~~each and subject to the approved company's compliance with the terms of the agreement,~~
 111 an approved company shall be granted a sales and use tax refund from the incremental sales
 112 and use tax on the sales generated by the approved company and arising at the tourism
 113 attraction for new projects or an incremental sales and use tax refund for expansions of
 114 existing tourism attractions.

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

118 (c) ~~For all tourism attractions the~~ The term of the agreement granting the sales and use tax
 119 a refund under this article shall be ten years, commencing on ~~the later of: (1) The final~~
 120 ~~approval of the agreement for purposes of the sales and use tax refund; or (2) The~~ the date
 121 the tourism attraction opens for business and begins to collect sales and use taxes or, for
 122 an expansion, the date construction is complete.

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

127 (e) ~~The total sales and use tax refund allowed to the approved company over the term of~~
 128 ~~the agreement shall be equal to the lesser of the total amount of the incremental sales and~~
 129 ~~use tax liability of the approved company or 25 percent of the approved costs for the~~
 130 ~~tourism attraction project. The incremental sales and use tax refund shall accrue over the~~
 131 ~~term of the agreement in an annual amount equal to the lesser of the incremental sales and~~
 132 ~~use tax liability of the approved company for that year or 2.5 percent of the approved costs.~~

133 (f)(d) ~~On or before March 31 of each year~~ For each calendar year or partial calendar year
 134 occurring during the term of the agreement, an approved company shall file with the

135 Department of Revenue a claim for ~~the incremental sales and use tax refund collected by~~
 136 ~~the approved company and remitted to the Department of Revenue during the preceding~~
 137 ~~calendar year pursuant to subsection (e) of this Code section~~ a refund under this article by
 138 March 31 of the following year.

139 ~~(g)~~(e) The Department of Revenue, in consultation with the Department of Community
 140 Affairs and other appropriate state agencies, shall promulgate administrative regulations
 141 and require the filing of a refund form designed by the Department of Revenue to reflect
 142 the intent of this article.

143 ~~(h)~~(f) No sales and use tax refund shall be granted to an approved ~~project which~~ company
 144 that is during a tax year simultaneously receiving any other state tax incentive associated
 145 with any one tourism attraction project.

146 ~~(i)~~(g) Any sales and use tax refund shall be first applied to any outstanding tax obligation
 147 of the approved company ~~which~~ that is due and payable to the state.

148 (h) Refunds under this article shall be made without interest."

149 **SECTION 3.**

150 Said article is further amended by revising Code Section 48-8-274, relating to an application
 151 for a tourism project, as follows:

152 "48-8-274.

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

156 (b) In addition to any standards set forth pursuant to subsection (a) of this Code section,
 157 an ~~An~~ application for a tourism attraction project filed with the Department of Community
 158 Affairs shall include, ~~but not be limited to:~~

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

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

162 (3) Capital and other ~~anticipated~~ specific expenditures for the tourism attraction project
 163 and the anticipated sources of funding for such project;

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

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

167 (6) The anticipated revenues to be generated by the tourism attraction ~~project~~; and

168 (7) Resolutions from the governing authority of the county or the city, if any, in which
 169 the tourism attraction will be located endorsing the tourism attraction project and, where

170 applicable, including appropriate affirmative clauses regarding permitting, land use, local
 171 incentives, and the provision of local public infrastructure.

172 (c) Following the filing of the application, the Department of Community Affairs shall
 173 submit the application to an independent consultant who shall perform an in depth analysis
 174 of the proposed project. All costs associated with such application and analysis shall be
 175 paid for by the approved company.

176 (d) ~~The Governor may, in the Governor's sole discretion,~~ commissioner of economic
 177 development and the commissioner of community affairs may grant approval to the tourism
 178 attraction project if the project shall:

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

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

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

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

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

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

192 **SECTION 4.**

193 Said article is further amended by revising Code Section 48-8-275, relating to entering into
 194 an agreement with an approved company, as follows:

195 "48-8-275.

196 Following approval ~~by the Governor of a project,~~ the Department of Community Affairs
 197 shall enter into an agreement with any approved company. The agreement may ~~which may~~
 198 ~~also~~ include as a partner any local development authority. ~~The, and the~~ terms and
 199 provisions of each agreement shall include, but not be limited to:

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

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

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

213 **SECTION 5.**

214 Said article is further amended by revising Code Section 48-8-276, relating to a failure to
 215 abide by the terms of an agreement, as follows:

216 "48-8-276.

217 (a) Compliance with the agreement is subject to review by the Department of Community
 218 Affairs.

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

224 **SECTION 6.**

225 Said article is further amended by revising Code Section 48-8-278, relating to the application
 226 of the article, as follows:

227 "48-8-278.

228 This article shall not apply to the sales tax for educational purposes levied pursuant to Part
 229 2 of Article 3 of this chapter and Article VIII, Section VI, Paragraph IV of the Constitution
 230 any local sales and use tax levied or imposed at any time."

231 **SECTION 7.**

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

234 **SECTION 8.**

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