

The Senate Finance Committee offered the following substitute to HB 318:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 10 of Title 10 of the Official Code of Georgia Annotated, relating to the  
2 Seed-Capital Fund, so as to create the Invest Georgia Fund; to provide for legislative  
3 findings; to provide for definitions; to provide for a fund administrator; to provide for  
4 reports; to provide for conditions, procedures, and limitations; to amend Code Section  
5 48-7-40.30 of the Official Code of Georgia Annotated, relating to an income tax credit for  
6 certain qualified investments for a limited period of time, so as to extend such income tax  
7 credit; to amend Article 6 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,  
8 relating to the "Georgia Tourism Development Act," so as to revise certain definitions; to  
9 provide for procedures, conditions, and limitations; to provide for related matters; to provide  
10 for an effective date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

12 Chapter 10 of Title 10 of the Official Code of Georgia Annotated, relating to the  
13 Seed-Capital Fund, is amended by designating Code Sections 10-10-1 through 10-10-7 as  
14 Article 1.  
15

**SECTION 2.**

16 Said chapter is further amended by revising Code Section 10-10-1, relating to definitions, as  
17 follows:  
18

19 "10-10-1.

20 As used in this ~~chapter~~ article, the term:

21 (1) 'Board' means the Board of Regents of the University System of Georgia.

22 (2) 'Center' means the Advanced Technology Development Center created by the board  
23 and acknowledged and empowered to administer the fund by Article III, Section IX,  
24 Paragraph VI(g) of the Constitution of Georgia.

25 (3) 'Enterprise' means a corporation, partnership, limited liability company, or other legal  
26 entity that has its principal place of business in this state and that is engaged in an  
27 entrepreneurial business, including, but not limited to, tenants of incubators. For the  
28 purposes of this ~~chapter~~ article, an enterprise shall not be considered to be engaged in an  
29 entrepreneurial business unless it is engaged in innovative work in the areas of  
30 technology, bioscience, manufacturing, marketing, agriculture, or information related  
31 ventures that will increase the state's share of domestic or international markets. An  
32 enterprise engaged primarily in business of a mercantile nature shall not be considered  
33 engaged in an entrepreneurial business. An enterprise shall be required to be young, as  
34 determined by the center.

35 (4) 'Equity contribution' means:

36 (A) Moneys from the fund used to make direct investments by the state in qualified  
37 securities of enterprises; and

38 (B) The capital of an investment entity contributed by the fund, as created in Code  
39 Section 10-10-3, and contributed by other investors, which capital shall be used by the  
40 investment entity to make investments in qualified securities of one or more enterprises  
41 as provided by this ~~chapter~~ article and to pay the expenses of the investment entity but  
42 shall not include any current or accumulated income of the investment entity.

43 (5) 'Fund' means the Seed-Capital Fund created in Code Section 10-10-3.

44 (6) 'Incubator' means a facility that leases small units of space to tenants and which  
45 maintains or provides access to business development services for use by the tenants or  
46 member firms.

47 (7) 'Investment entity' means a limited partnership, a limited liability company, or other  
48 legal entity, including, without limitation, any such entity as to which the state is the sole  
49 limited liability owner, providing limited liability to its owners that is formed to receive,  
50 in part, an investment by the fund or an equity return of investment from a fund loan and  
51 for which a general partner or manager manages the equity contributions by making  
52 investments in qualified securities of one or more enterprises or, in the case of an  
53 investment entity as to which the state is the sole limited liability owner, in another  
54 investment entity, as permitted by this ~~chapter~~ article and by paying the expenses of the  
55 investment entity.

56 (8) 'Loan' means an advance of money from the fund to an enterprise or an investment  
57 entity on such terms as the center shall set, including, but not limited to, an absolute  
58 promise to repay the principal amount of the loan made by the recipient enterprise, and  
59 any return on investment that the center may require as a term or condition of the loan,  
60 which may include, but not be limited to, simple or compound interest or any form of  
61 equity participation.

- 62 (9) 'Qualified security' means any note, stock, treasury stock bond, debenture, evidence  
 63 of indebtedness, certificate of interest or participation in any profit-sharing agreement,  
 64 preorganization certificate or subscription, transferable share, investment contract,  
 65 certificate of deposit for a security, certificate of interest or participation in a patent or  
 66 application therefor or in royalty or other payments under such a patent or application,  
 67 or, in general, any interest or instrument commonly known as a security or any certificate  
 68 for, receipt for, guarantee of, or option, warrant, or right to subscribe to or purchase any  
 69 of the foregoing of an enterprise.
- 70 (10) 'State' means the State of Georgia."

71 **SECTION 3.**

72 Said chapter is further amended by revising Code Section 10-10-3, relating to moneys in the  
 73 fund to be handled in accordance with policies authorized by the board, as follows:

74 "10-10-3.

75 (a) The fund is created as a separate fund maintained by the board or a body designated  
 76 by the board and shall be expended only as provided in this ~~chapter~~ article. Pending their  
 77 use as equity contributions or as loans, the moneys in the fund may be invested and  
 78 reinvested in accordance with the investment policies authorized by the board or its  
 79 designee. The entire cost of administration of the fund, including expenses of the center  
 80 incurred in connection with the creation, operation, management, liquidation, and  
 81 investment of fund moneys in enterprises, directly or through investment entities, may be  
 82 paid from the assets of the fund. All moneys appropriated to or otherwise paid into the  
 83 fund shall be presumptively concluded to have been committed to the purpose for which  
 84 they have been appropriated or paid and shall not lapse.

85 (b) The fund shall consist of all moneys authorized by law for deposit in the fund,  
 86 including, but not limited to, gifts, grants, private donations, and funds by government  
 87 entities authorized to provide funding for the purposes authorized for use of the fund and  
 88 any payments or returns on investments made by the center.

89 (c) In return for equity contributions by the fund, at the discretion of the center, the state  
 90 ~~will~~ shall receive either direct ownership of qualified securities of an enterprise or a limited  
 91 liability ownership in an investment entity either directly or indirectly through an  
 92 investment entity as to which the state is the sole limited liability owner as permitted in  
 93 subsection (c) of Code Section 10-10-4 with rights accruing from investments in qualified  
 94 securities by the investment entity. With respect to loans made from the fund, the state  
 95 shall receive repayment of the loan in accordance with its terms, with cash proceeds or  
 96 other assets from such repayments being deposited in or held through the fund. Additional  
 97 returns to the state ~~will~~ shall be secured through the establishment and growth of innovative

98 enterprises that create new, value added products, processes, and services and encourage  
99 growth and diversification in the economy of the state.

100 (d) Disbursements from the fund shall be made upon the instruction of the center director  
101 in accordance with the policies of the board.

102 (e) The center, subject to the approval of the board or its designee, shall be authorized to  
103 contract and have contracts and other legal documents prepared to carry out the provisions  
104 of this ~~chapter~~ article.

105 (f) The board shall have the authority to issue policies governing the management and  
106 operation of the fund as needed."

107 **SECTION 4.**

108 Said chapter is further amended by revising Code Section 10-10-6, relating to distribution  
109 to be deposited in the fund, as follows:

110 "10-10-6.

111 All distributions made by an investment entity allocable to the state's limited partner  
112 interest or membership interest therein; all cash proceeds with respect to any loan, whether  
113 interest, the repayment of principal, or other amounts; or proceeds of the sale or transfer  
114 of qualified securities held directly by the fund shall be deposited in the fund for future  
115 investment in other investment entities, in other qualified securities of enterprises, for  
116 making loans as provided in this ~~chapter~~ article, or to pay the cost of administration of the  
117 fund as provided in this ~~chapter~~ article."

118 **SECTION 5.**

119 Said chapter is further amended by adding a new article to read as follows:

120 "ARTICLE 2

121 10-10-10.

122 Pursuant to the authority granted in Article III, Section IX, Paragraph VI(g) of the  
123 Constitution, there is hereby created the Invest Georgia Fund as a distinct component of  
124 the Seed-Capital Fund. The General Assembly declares that its purpose in creating the  
125 Invest Georgia Fund and enacting this legislation is to increase the amount of private  
126 investment capital available in this state for Georgia based business enterprises in the seed,  
127 early, or growth stages of business development and which require funding, as well as for  
128 established Georgia based business enterprises developing new methods or technologies,  
129 including the promotion of research and development purposes, thereby increasing  
130 employment, creating additional wealth, and otherwise benefitting the economic welfare

131 of the people of this state. Accordingly, it is the intention of the General Assembly that the  
132 Invest Georgia Fund make investments in support of Georgia based business enterprises  
133 in accordance with the investment policy authorized and required under this article and  
134 focus its investment policy principally on venture capital funds and private equity  
135 organizations that invest in Georgia based business enterprises.

136 10-10-11.

137 As used in this article, the term:

138 (1) 'Affiliate' means:

139 (A) A person who, directly or indirectly, beneficially owns, controls, or holds power  
140 to vote any outstanding voting securities or other voting ownership interests of a  
141 venture capital firm; or

142 (B) A person whose outstanding voting securities or other voting ownership interests  
143 are directly or indirectly beneficially owned, controlled, or held with power to vote by  
144 a venture capital firm.

145 (2) 'Board' means the Invest Georgia Board created under Code Section 10-10-12.

146 (3) 'Center' means the Advanced Technology Development Center.

147 (4) 'Contributed capital' means the amount of money contributed to the Invest Georgia  
148 Fund by any authorized method.

149 (5) 'Designated capital' means the amount of money committed and invested by the  
150 Invest Georgia Fund into individual early stage venture capital funds or growth stage  
151 venture capital funds.

152 (6) 'Early stage venture capital fund' means:

153 (A) A fund that has at least one principal employed to direct the investment of the  
154 designated capital;

155 (B) A fund whose principals have at least five years of experience in the venture  
156 capital, angel capital, or private equity sector by investing primarily in Georgia  
157 domiciled companies or a fund whose managers have been based, as defined by having  
158 an office, in the State of Georgia;

159 (C) At the discretion of the fund administrator and the board, one or more early stage  
160 venture capital funds that are first-time Georgia based funds, so long as the fund  
161 managers have at least five years of experience in venture capital or angel capital  
162 investing in Georgia based business enterprises; and

163 (D) A fund which has as its primary investment strategy the achievement of  
164 transformational economic development outcomes through focused investments of  
165 capital in seed or early stage businesses with high growth potential. The fund principals  
166 must have demonstrated the ability to lead investment rounds, advise and mentor

167 entrepreneurs, and facilitate follow-on investments. A minimum of 10 percent of the  
 168 committed capital of the fund must be committed by the institutional investors, fund  
 169 principals, or other accredited investors.

170 (7) 'Fund administrator' means a state appointed investment advisory firm consisting of  
 171 experienced investment professionals that will actively pursue investment opportunities  
 172 for the State of Georgia. The investment advisory firm will evaluate and select Georgia  
 173 based venture capital funds, in conjunction with the Invest Georgia Board, through a  
 174 rigorous due diligence process.

175 (8) 'Growth stage venture capital fund' means:

176 (A) A fund having its principal office and a majority of its employees in Georgia that  
 177 has at least two principals employed to direct the investment of the designated capital;

178 (B) A fund whose principals have at least five years of experience in the venture  
 179 capital, angel capital, or private equity sector by investing primarily in Georgia  
 180 domiciled companies or a fund whose principals have been based, as defined by having  
 181 an office in the State of Georgia; and

182 (C) A fund which has as its primary investment strategy the achievement of  
 183 transformational economic development outcomes through focused investments of  
 184 capital in growth stage businesses with high return potential. The fund principals must  
 185 have demonstrated the ability to lead investment rounds, advise and mentor  
 186 entrepreneurs, and facilitate follow-on investments. A minimum of 50 percent of the  
 187 committed capital of the fund must be committed by the institutional investors, fund  
 188 principals, or other accredited investors.

189 (9) 'Invest Georgia Fund' means the fund created under the provisions of Code Section  
 190 10-10-15 to hold the money collected for the purposes of this article.

191 (10) 'Qualified distribution' means any distribution or payment by the Invest Georgia  
 192 Fund in connection with any of the following:

193 (A) Costs and expenses of forming, syndicating, and organizing the Invest Georgia  
 194 Fund, including fees paid for professional services, and the costs of financing and  
 195 insuring the obligations of the Invest Georgia Fund, provided such payments are not  
 196 made to a participating investor;

197 (B) An annual management fee in accordance with a fund's partnership agreement, and  
 198 consistent with such fund's other private investors, to offset the costs and expenses of  
 199 managing and operating the Invest Georgia Fund; or

200 (C) Reasonable and necessary fees in accordance with industry custom for ongoing  
 201 professional services, including, but not limited to, legal and accounting services related  
 202 to the operation of the Invest Georgia Fund, but not including any lobbying or  
 203 governmental relations.

204 (11) 'Qualified early stage business' or 'seed' business means a business that, at the time  
 205 of the first investment in the business by a venture capital firm:

206 (A) Has its headquarters located in the State of Georgia;

207 (B) Has its principal business operations located in the State of Georgia and intends to  
 208 maintain its principal business operations in this state after receiving an investment  
 209 from the venture capital firm. In order to discourage the business from relocating  
 210 outside Georgia within three years from the date of an initial investment, the investment  
 211 in the business shall be subject to redemption by the venture capital firm within one  
 212 year from the time the business relocates its principal business operations outside this  
 213 state, unless the business maintains a significant presence in Georgia as determined by  
 214 relative number of employees or relative assets remaining in Georgia following the  
 215 relocation;

216 (C) Has 20 or fewer employees;

217 (D) Has a current gross annual revenue run rate of less than \$1 million;

218 (E) Has not obtained during its existence more than \$2 million in aggregate cash  
 219 proceeds from the issuance of its equity or debt investments, not including commercial  
 220 loans from chartered banks or savings and loan institutions; and

221 (F) Does not engage substantially in:

222 (i) Retail sales;

223 (ii) Real estate development or construction;

224 (iii) Entertainment, amusement, recreation, or athletic or fitness activity for which an  
 225 admission is charged;

226 (iv) The business of insurance, banking, lending, financial, brokerage, or investment  
 227 activities;

228 (v) Natural resource extraction, including, but not limited to, oil, gas, or biomass; or

229 (vi) The provision of professional services by accountants, attorneys, or physicians.

230 A business classified as a qualified early stage business at the time of the first qualified  
 231 investment in such business shall remain classified as a qualified early stage business and  
 232 may receive continuing qualified investments from venture capital firms participating in  
 233 the Invest Georgia Fund. Continuing investments shall constitute qualified investments  
 234 even though the business may not meet the definition of a qualified early stage business  
 235 at the time of such continuing investments.

236 (12) 'Qualified growth stage business' means a business that, at the time of the first  
 237 investment in the business by a venture capital firm:

238 (A) Has its headquarters located in the State of Georgia;

239 (B) Is a corporation, limited liability company, or a general or limited partnership  
 240 located in this state;

241 (C) Has its principal business operations located in the State of Georgia and intends to  
 242 maintain its principal business operations in this state after receiving an investment  
 243 from the venture capital firm. In order to discourage the business from relocating  
 244 outside Georgia within three years from the date of initial investment, the investment  
 245 in the business shall be subject to redemption by the venture capital firm within one  
 246 year from the time the business relocates its principal business operations outside this  
 247 state, unless the business maintains a significant presence in Georgia as determined by  
 248 relative number of employees or relative assets remaining in Georgia following the  
 249 relocation;

250 (D) Has 100 or fewer employees;

251 (E) Has a current gross annual revenue run rate of more than \$1 million; and

252 (F) Does not engage substantially in:

253 (i) Retail sales;

254 (ii) Real estate development or construction;

255 (iii) Entertainment, amusement, recreation, or athletic or fitness activity for which an  
 256 admission is charged;

257 (iv) The business of insurance, banking, lending, financial, brokerage, or investment  
 258 activities;

259 (v) Natural resource extraction, including, but not limited to, oil, gas, or biomass; or

260 (vi) The provision of professional services by accountants, attorneys, or physicians.

261 A business classified as a qualified growth stage business at the time of the first qualified  
 262 investment in such business shall remain classified as a qualified growth stage business  
 263 and may receive continuing qualified investments from venture capital firms participating  
 264 in the Invest Georgia Fund. Continuing investments shall constitute qualified  
 265 investments even though the business may not meet the definition of a qualified growth  
 266 stage business at the time of such continuing investments.

267 (13) 'Qualified investment' means the investment of money by the Invest Georgia Fund  
 268 in each early stage venture capital fund or growth stage venture capital fund selected by  
 269 the fund administrator.

270 10-10-12.

271 (a) There is hereby created the Invest Georgia Board, which shall exercise the powers and  
 272 perform the duties prescribed by this article. The exercise by the board of its powers and  
 273 duties is hereby declared to be an essential state governmental function. The board shall  
 274 be subject to all laws generally applicable to state agencies and public officials, to the  
 275 extent those laws do not conflict with the provisions of this article.

276 (b) The board shall consist of three members appointed by the Governor, one member  
277 appointed by the Lieutenant Governor, and one member appointed by the Speaker of the  
278 House of Representatives. Each appointed member shall be a resident of Georgia and shall  
279 have experience in at least one of the following areas:

280 (1) Early stage, angel, or venture capital investing;

281 (2) Growth stage venture capital investing;

282 (3) Fund of funds management; or

283 (4) Entrepreneurship.

284 No member of the board shall be an affiliate of any venture capital fund that is selected to  
285 perform services for the board or of an insurance company.

286 (c) The commissioner of economic development and a member of the One Georgia  
287 Authority or their designees shall serve as nonvoting members of the board.

288 (d) Initial appointees to the board shall serve staggered terms, with all of the initial terms  
289 beginning within 30 days of the effective date of this Code section. The terms of one  
290 member appointed by the Governor and the members appointed by the Lieutenant  
291 Governor and the Speaker of the House of Representatives shall expire on December 31,  
292 2016. The terms of the other two initial appointments by the Governor shall expire on  
293 December 31, 2018. Thereafter, terms of office for all appointees shall be for four years,  
294 with each term ending on the same day of the same month as did the term that it succeeds.

295 A vacancy on the board shall be filled in the same manner as the original appointment,  
296 except that a person appointed to fill a vacancy shall be appointed to the remainder of the  
297 unexpired term. Any appointed member of the board shall be eligible for reappointment.

298 (e) A member of the board may be removed by such member's appointing official for  
299 misfeasance, willful neglect of duty, or other cause, after notice and a public hearing,  
300 unless the notice and hearing are waived in writing by such member.

301 (f) Members of the board shall serve without compensation. The Governor shall designate  
302 a member of the board to serve as chairperson. A majority of the voting members of the  
303 board shall constitute a quorum, and the affirmative vote of a majority of the voting  
304 members present shall be necessary for any action taken by the board. A vacancy in the  
305 membership of the board shall not impair the right of a quorum to exercise all rights and  
306 perform all duties of the board.

307 (g) The board shall have the power:

308 (1) To have a seal and alter the same at its pleasure;

309 (2) To acquire by purchase, lease, or otherwise, including acquisition of land from the  
310 state government, and to hold, lease, and dispose of real and personal property of every  
311 kind and character for its corporate purpose and to enter into any contracts, leases, or  
312 other charges for the use of property or services of the board and collect and use the same

313 as necessary to operate the board; and to accomplish any of the purposes of this article  
314 and make any purchases or sales necessary for such purposes;  
315 (3) To acquire in its own name by purchase, on such terms and conditions and in such  
316 manner as it may deem proper, real property, or rights or easements therein, or franchises  
317 necessary or convenient for its corporate purpose, and to use the same so long as its  
318 corporate existence shall continue, and to lease or make contracts with respect to the use  
319 of such property, or dispose of the same in any manner it deems to be to the best  
320 advantage of the board;  
321 (4) To appoint, select, and employ officers, agents, and employees, including real estate,  
322 environmental, engineering, architectural, and construction experts, fiscal agents, and  
323 attorneys, and to fix their respective compensations;  
324 (5) To make contracts and leases and to execute all instruments necessary or convenient.  
325 Any and all persons, firms, and corporations and any and all political subdivisions,  
326 departments, institutions, authorities, or agencies of the state and federal government are  
327 authorized to enter into contracts, leases, or agreements with the board upon such terms  
328 and for such purposes as they deem advisable; and, without limiting the generality of the  
329 foregoing, authority is specifically granted to municipal corporations, counties, political  
330 subdivisions, and to the board relative to entering into contracts, lease agreements, or  
331 other undertakings authorized between the board and private corporations, both inside  
332 and outside this state, and between the board and public bodies, including counties and  
333 cities outside this state and the federal government;  
334 (6) To accept loans and grants of money or materials or property of any kind from the  
335 United States of America or any agency or instrumentality thereof upon such terms and  
336 conditions as the United States of America or such agency or instrumentality may  
337 require;  
338 (7) To accept loans and grants of money or materials or property of any kind from the  
339 State of Georgia or any authority, agency, or instrumentality or political subdivision  
340 thereof upon such terms and conditions as the State of Georgia or such authority, agency,  
341 or instrumentality or political subdivision may require;  
342 (8) To exercise any power usually possessed by private corporations performing similar  
343 functions, provided that no such power is in conflict with the Constitution or general laws  
344 of this state; and  
345 (9) To do all things necessary or convenient to carry out the powers expressly given in  
346 this article.  
347 (h) The center shall provide the board with office space and such technical assistance as  
348 the board requires, and the board shall be attached to the center for administrative purposes.

349 The center shall also consult with the board in connection with the administration of the  
350 Invest Georgia Fund created under this article.

351 10-10-13.

352 The board's primary responsibilities shall include:

353 (1) Establishing an investment policy for the selection of a fund administrator;

354 (2) Selecting a fund administrator to administer the provisions of this article;

355 (3) Giving final approval to allocations of designated capital to the venture capital funds  
356 selected by the fund administrator;

357 (4) Executing and overseeing the contracts of the fund administrator in order to assure  
358 compliance with this article; and

359 (5) Establishing a policy with respect to use of capital and profits returned to the state  
360 pursuant to the provisions of Code Section 10-10-19.

361 10-10-14.

362 (a) The fund administrator shall be selected by the board through a transparent open bid  
363 process and shall be responsible for administering the Invest Georgia Fund and for making  
364 all venture capital fund selections in accordance with the investment policies developed by  
365 the board or contained in this article.

366 (b) The fund administrator shall be responsible for selecting a group of Georgia based  
367 venture capital funds in two categories, seed or early stage venture capital funds and  
368 growth stage venture capital funds.

369 (c) The early stage venture capital funds shall invest primarily in early or seed stage  
370 businesses and shall be selected using a transparent open bid process pursuant to guidelines  
371 developed by the board. The fund administrator shall ensure that a diverse cross section  
372 of industry sectors is represented by the selected funds, including technology, health care,  
373 life sciences, agribusiness, logistics, energy, and advanced manufacturing.

374 (d) The growth stage venture capital funds shall be selected using a transparent open bid  
375 process pursuant to guidelines developed by the board. The fund administrator shall ensure  
376 that a diverse cross section of industry sectors is represented by the selected funds,  
377 including technology, health care, life sciences, agribusiness, logistics, energy, and  
378 advanced manufacturing.

379 (e) In the selection of the early stage venture capital funds and the growth stage venture  
380 capital funds, the fund administrator shall consider the following factors:

381 (1) The management structure of the venture capital fund, including:

382 (A) The investment experience of the principals;

- 383 (B) The applicant's reputation in the venture capital firm industry and the applicant's  
384 ability to attract coinvestment capital and syndicate investments in qualified businesses  
385 in Georgia;
- 386 (C) The knowledge, experience, and capabilities of the applicant in subject areas  
387 relevant to venture stage businesses in Georgia; and
- 388 (D) The tenure and turnover history of principals and senior investment professionals  
389 of the venture capital fund;
- 390 (2) The venture capital fund's investment strategy, including:
- 391 (A) The applicant's record of performance in investing in early and growth stage  
392 businesses;
- 393 (B) The applicant's history of attracting coinvestment capital and syndicate  
394 investments;
- 395 (C) The soundness of the applicant's investment strategy and the compatibility of that  
396 strategy with business opportunities in Georgia; and
- 397 (D) The applicant's history of job creation through investment;
- 398 (3) The venture capital fund's commitment to making investments that, to the fullest  
399 extent possible:
- 400 (A) Create employment opportunities in Georgia;
- 401 (B) Lead to the growth of the Georgia economy and qualified businesses in Georgia;
- 402 (C) Complement the research and development projects of Georgia academic  
403 institutions; and
- 404 (D) Foster the development of technologies and industries that present opportunities  
405 for the growth of qualified businesses in Georgia; and
- 406 (4) The venture capital fund's commitment to Georgia, including:
- 407 (A) The applicant's presence in Georgia through permanent local offices or affiliation  
408 with local investment firms;
- 409 (B) The local presence of senior investment professionals;
- 410 (C) The applicant's history of investing in early and growth stage businesses in  
411 Georgia;
- 412 (D) The applicant's ability to identify investment opportunities through working  
413 relationships with Georgia research and development institutions and Georgia based  
414 businesses; and
- 415 (E) The applicant's commitment to investing an amount that matches or exceeds the  
416 amount of the applicant's designated capital received under this article in Georgia based  
417 qualified early stage businesses and qualified growth stage businesses.

418 (f) A venture capital fund shall file an application with the board in the form required by  
419 the fund administrator. The board shall begin accepting applications no later than 60 days  
420 after the initial appointments.

421 10-10-15.

422 (a) The Invest Georgia Fund is created as a separate fund maintained by the board, and  
423 moneys shall be expended only as provided in this article.

424 (b) The Invest Georgia Fund shall be capitalized through grants from the Seed-Capital  
425 Fund, designated appropriations to the center, and private contributions to the board.

426 (c) The capital raised shall be periodically distributed to the venture capital funds selected  
427 by the fund administrator pursuant to Code Section 10-10-14.

428 (d) All moneys appropriated to or otherwise paid into the Invest Georgia Fund shall be  
429 presumptively concluded to have been committed to the purpose for which they have been  
430 appropriated or paid and shall not lapse.

431 (e) The entire cost of administration of the Invest Georgia Fund, including expenses of the  
432 center incurred in connection with the creation, operation, management, liquidation, and  
433 investment of fund moneys may be paid from the assets of the Invest Georgia Fund.

434 10-10-16.

435 The Invest Georgia Fund shall be funded over a five-year period through guidelines  
436 developed by the board. In the first year of the Invest Georgia Fund, the state shall provide  
437 \$10 million to the Invest Georgia Fund; in the second year, \$15 million; in the third year,  
438 \$15 million; in the fourth year, \$25 million; and in the fifth year, \$35 million.

439 10-10-17.

440 (a) As soon as practicable after the board receives contributed capital, the board and each  
441 selected venture capital fund that has been allocated designated capital shall enter into a  
442 contract under which the allocated amount of designated capital shall be committed by the  
443 board to the selected venture capital funds for investment pursuant to this article.

444 (b) The board shall allocate designated capital as follows:

445 (1) Early stage venture capital funds: 40 percent of the total contributed capital in the  
446 Invest Georgia Fund shall be allocated among the early stage venture capital funds, in  
447 accordance with the following eligibility conditions and requirements:

448 (A) Each early stage venture capital fund shall be eligible for a minimum of \$10  
449 million, up to a maximum of \$15 million allocation over a five-year period or in  
450 accordance with the early stage venture capital fund's partnership agreement and

451 concurrent with the contributions of the early stage venture capital fund's other  
452 investors;

453 (B) Each early stage venture capital fund shall be required to obtain other independent  
454 investors. A minimum of 10 percent of the committed capital of the early stage venture  
455 capital fund shall be committed by independent institutional investors, early stage  
456 venture capital fund principals, or other accredited investors; and

457 (C) Each early stage venture capital fund shall be required to commit, via a side letter  
458 or otherwise, to invest in Georgia based qualified early stage businesses and qualified  
459 growth stage businesses an amount that matches or exceeds the amount of the early  
460 stage venture capital fund's designated capital received under this article;

461 (2) Growth stage venture capital funds: 60 percent of the total contributed capital in the  
462 Invest Georgia Fund shall be allocated among the growth stage venture capital funds, in  
463 accordance with the following eligibility conditions and requirements:

464 (A) Each growth stage venture capital fund shall be eligible for an allocation of a  
465 minimum of \$10 million designated capital over a five-year period or in accordance  
466 with the growth stage venture capital fund's partnership agreement and concurrent with  
467 the contributions of the growth stage venture capital fund's other investors;

468 (B) Each growth stage venture capital fund shall be required to obtain other  
469 independent investors. A minimum of 50 percent of the committed capital of the  
470 growth stage venture capital fund shall be committed by independent institutional  
471 investors, growth stage venture capital fund principals, or other accredited investors;  
472 and

473 (C) Each growth stage venture capital fund shall be required to commit, via a side letter  
474 or otherwise, to invest in Georgia based qualified early stage businesses and qualified  
475 growth stage businesses an amount that matches or exceeds the amount of the growth  
476 stage venture capital fund's designated capital received under this article.

477 10-10-18.

478 (a) Not later than December 31 of each year, each venture capital fund shall report to the  
479 board:

480 (1) The amount of designated capital remaining uninvested at the end of the preceding  
481 calendar year;

482 (2) All qualified investments made during the preceding calendar year, including the  
483 number of employees of each business at the time the qualified investment was made and  
484 as of December 31 of that year;

485 (3) For any qualified investment in which the venture capital fund no longer has a  
 486 position as of the end of the calendar year, the number of employees of the business as  
 487 of the date the investment was terminated; and

488 (4) Any other information the board requires to ascertain the impact of this article on the  
 489 economy of Georgia.

490 (b) Not later than 180 days after the end of its fiscal year, each venture capital fund shall  
 491 provide to the board an audited financial statement that includes the opinion of an  
 492 independent certified public accountant.

493 (c) Not later than 60 days after the sale or other disposition of a qualified investment, the  
 494 selling venture capital fund shall provide to the board a report on the amount of the interest  
 495 sold or disposed of and the consideration received for the sale or disposition.

496 10-10-19.

497 Designated capital and investment returns resulting from the qualified investments made  
 498 under this article shall be retained and used to make additional qualified investments in  
 499 venture capital funds selected by the fund administrator; provided, however, that the Invest  
 500 Georgia Fund shall receive any and all returns representing the principal portion of  
 501 designated capital and shall receive 80 percent of investment returns in excess of  
 502 designated capital from each respective venture capital fund with the remaining 20 percent  
 503 of investment returns in excess of designated capital retained by each respective venture  
 504 capital fund in accordance with such venture capital fund's partnership agreement.

505 10-10-20.

506 (a)(1) On or before January 1, 2015, and January 1 of each subsequent year, the fund  
 507 administrator, through the board, shall submit a report on the implementation of this  
 508 article to the Governor, the Lieutenant Governor, the Speaker of the House of  
 509 Representatives, and the chairpersons of the Senate Finance Committee and the House  
 510 Committee on Ways and Means.

511 (2) The center shall also publish the report on the center's website in a publicly available  
 512 format.

513 (3) The report published on the website shall not include any proprietary or confidential  
 514 information.

515 (b) The report shall include:

516 (1) With respect to each venture capital fund or private equity organization that has  
 517 received an allocation of designated capital:

518 (A) The name and address of the venture capital fund or private equity organization;

519 (B) The names of the individuals making qualified investments under this article;

- 520 (C) The amount of designated capital received during the previous year;  
 521 (D) The cumulative amount of designated capital received;  
 522 (E) The amount of designated capital remaining uninvested at the end of the preceding  
 523 calendar year;  
 524 (F) The names and locations of qualified businesses receiving designated capital and  
 525 the amount of each qualified investment;  
 526 (G) The annual performance of each qualified investment, including the qualified  
 527 investment's fair market value as calculated according to generally accepted accounting  
 528 principles; and  
 529 (H) The amount of any qualified distribution or nonqualified distribution taken during  
 530 the prior year, including any management fee;  
 531 (2) With respect to the Invest Georgia Fund:  
 532 (A) The amount of designated capital received during the previous year;  
 533 (B) The cumulative amount of designated capital received;  
 534 (C) The amount of designated capital remaining uninvested at the end of the preceding  
 535 calendar year;  
 536 (D) The names and locations of qualified businesses receiving designated capital and  
 537 the amount of each qualified investment; and  
 538 (E) The annual performance of each qualified investment, including the qualified  
 539 investment's fair market value as calculated according to generally accepted accounting  
 540 principles; and  
 541 (3) With respect to the qualified businesses in which venture capital funds have invested:  
 542 (A) The classification of the qualified businesses according to the industrial sector and  
 543 the size of the business;  
 544 (B) The total number of jobs created in Georgia by the investment and the average  
 545 wages paid for the jobs; and  
 546 (C) The total number of jobs retained in Georgia as a result of the investment and the  
 547 average wages paid for the jobs."

548

**SECTION 6.**

549

Code Section 48-7-40.30 of the Official Code of Georgia Annotated, relating to an income  
 550 tax credit for certain qualified investments for a limited period of time, is amended by  
 551 revising subsections (d), (e), (f), and (i) as follows:

552

"(d) Any individual person making a qualified investment directly in a qualified business  
 553 in the 2011, 2012, ~~or~~ 2013, 2014, or 2015 calendar year shall be allowed a tax credit of 35  
 554 percent of the amount invested against the tax imposed by this chapter commencing on

555 January 1 of the second year following the year in which the qualified investment was  
556 made as provided in this Code section.

557 (e) Any pass-through entity making a qualified investment directly in a qualified business  
558 in the 2011, 2012, ~~or 2013, 2014, or 2015~~ calendar year shall be allowed a tax credit of 35  
559 percent of the amount invested against the tax imposed by this chapter commencing on  
560 January 1 of the second year following the year in which the qualified investment was  
561 made as provided in this Code section. Each individual who is a shareholder, partner, or  
562 member of an entity shall be allocated the credit allowed the pass-through entity in an  
563 amount determined in the same manner as the proportionate shares of income or loss of  
564 such pass-through entity would be determined. If an individual's share of the pass-through  
565 entity's credit is limited due to the maximum allowable credit under this Code section for  
566 a taxable year, the pass-through entity and its owners may not reallocate the unused credit  
567 among the other owners.

568 (f) Tax credits claimed pursuant to this Code section shall be subject to the following  
569 conditions and limitations:

570 (1) The qualified investor ~~is not~~ shall not be eligible for the credit for the taxable year in  
571 which the qualified investment is made but shall be eligible for the credit for the second  
572 taxable year beginning after the qualified investment is made as provided in subsection  
573 (d) or (e) of this Code section;

574 (2) The aggregate amount of credit allowed an individual for one or more qualified  
575 investments in a single taxable year under this Code section, whether made directly or by  
576 a pass-through entity and allocated to such individual, shall not exceed \$50,000.00;

577 (3) In no event shall the amount of the tax credit allowed an individual under this Code  
578 section for a taxable year exceed such individual's net income tax liability. Any unused  
579 credit amount shall be allowed to be carried forward for five years from the close of the  
580 taxable year in which the qualified investment was made. No such credit shall be allowed  
581 against prior years' tax liability;

582 (4) The qualified investor's basis in the common or preferred stock, equity interest, or  
583 subordinated debt acquired as a result of the qualified investment shall be reduced for  
584 purposes of this chapter by the amount of the allowable credit; and

585 (5) The credit shall not be transferrable by the qualified investor except to the heirs and  
586 legatees of the qualified investor upon his or her death and to his or her spouse or incident  
587 to divorce; ~~and.~~

588 ~~(6) To be eligible for the credit provided in this Code section, the qualified investor must~~  
589 ~~file an application for the credit with the commissioner on or before June 30 of the year~~  
590 ~~following the calendar year in which the qualified investment was made."~~

591 "(i)(1) A qualified investor seeking to claim a tax credit provided for under this Code  
 592 section ~~must~~ shall submit an application to the commissioner for tentative approval of  
 593 such tax credit between September 1 and October 31 of the year for which the tax credit  
 594 is claimed or allowed. The commissioner shall promulgate the rules and forms on which  
 595 the application is to be submitted. Amounts specified on such application shall not be  
 596 changed by the qualified investor after the application is approved by the commissioner.  
 597 The commissioner shall review such application and shall tentatively approve such  
 598 application upon determining that it meets the requirements of this Code section.

599 (2) The commissioner shall provide tentative approval of the applications by the date  
 600 provided in paragraph (3) of this subsection as follows:

601 (A) The total aggregate amount of all tax credits allowed to qualified investors or  
 602 pass-through entities for investments made in the 2011 calendar year and claimed and  
 603 allowed in the 2013 taxable year shall not exceed \$10 million in such year;

604 (B) The total aggregate amount of all tax credits allowed to qualified investors or  
 605 pass-through entities for investments made in the 2012 calendar year and claimed and  
 606 allowed in the 2014 taxable year shall not exceed \$10 million in such year; ~~and~~

607 (C) The total aggregate amount of all tax credits allowed to qualified investors or  
 608 pass-through entities for investments made in the 2013 calendar year and claimed and  
 609 allowed in the 2015 taxable year shall not exceed \$10 million in such year;

610 (D) The total aggregate amount of all tax credits allowed to qualified investors or  
 611 pass-through entities for investments made in the 2014 calendar year and claimed and  
 612 allowed in the 2016 taxable year shall not exceed \$5 million in such year; and

613 (E) The total aggregate amount of all tax credits allowed to qualified investors or  
 614 pass-through entities for investments made in the 2015 calendar year and claimed and  
 615 allowed in the 2017 taxable year shall not exceed \$5 million in such year.

616 (3) The commissioner shall notify each qualified investor of the tax credits tentatively  
 617 approved and allocated to such qualified investor by December 31 of the year in which  
 618 the application was submitted. In the event that the credit amounts on the tax credit  
 619 applications filed with the commissioner exceed the maximum aggregate limit of tax  
 620 credits under this subsection, then the tax credits shall be allocated among the qualified  
 621 investors who filed a timely application on a pro rata basis based upon the amounts  
 622 otherwise allowed by this Code section. Once the tax credit application has been  
 623 approved and the amount approved has been communicated to the applicant, the qualified  
 624 investor may then apply the amount of the approved tax credit to its tax liability for the  
 625 tax year for which the approved application applies."

**SECTION 7.**

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

"48-8-271.

As used in this article, the term:

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

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

~~(2)(3)~~ (3) 'Approved company' means ~~any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, or any other~~ the entity that is seeking has submitted an application to undertake a tourism attraction project, which has been approved pursuant to Code Section 48-8-275 and is approved, pursuant to subsection (b) of Code Section 48-8-274, by the Governor and by the governing authority of the city where the tourism attraction project is to be located if within a city and by the governing authority of the county where the tourism attraction project is to be located. For each tourism attraction project, only one company may be approved under this article.

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

(A) For new tourism attractions:

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

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

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

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

(v) All costs of architectural and engineering services, including, but not limited to, estimates, plans and specifications, preliminary investigations, and supervision of

663 construction and installation, as well as for the performance of all the duties required  
 664 by or consequent to the acquisition, construction, equipping, and installation of a new  
 665 tourism attraction project;

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

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

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

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

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

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

682 ~~(4)(7) 'Incremental sales and use tax' means those state and local sales and use taxes~~  
 683 ~~remitted to the state that were generated by the tourism attraction project above the~~  
 684 ~~amount of such sales and use taxes generated by the previous use of the property on~~  
 685 ~~which such project is located except as otherwise provided in Code Section 48-8-278~~  
 686 sales to the general public at the approved tourism attraction from the date on which  
 687 construction of the expansion project is completed through the end of the calendar year  
 688 immediately preceding the date of filing the incremental sales and use tax refund claim,  
 689 less the state sales and use taxes remitted to the state that were generated by sales to the  
 690 general public at the approved tourism attraction during the 12 month period immediately  
 691 preceding the commencement of construction of the expansion project.

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

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

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

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

704 ~~(5)(12)~~ 'Tourism attraction' means a cultural or historical site; a recreation or  
 705 entertainment facility; a convention hotel and conference center; an automobile race  
 706 track, including, but not limited to, Atlanta Motor Speedway, with other tourism  
 707 amenities; a golf course facility with other tourism amenities; marinas and water parks  
 708 with lodging and restaurant facilities designed to attract tourists to the State of Georgia;  
 709 or a Georgia crafts and products center. A tourism attraction shall not ~~include the~~  
 710 ~~following:~~ (A) ~~Facilities that are~~ be primarily devoted to the retail sale of goods,  
 711 shopping centers, restaurants, or movie theaters, ~~or~~

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

715 ~~(6)(13)~~ 'Tourism attraction project' or 'project' ~~means~~ includes the real estate acquisition,  
 716 including the acquisition of real estate by a leasehold interest with a minimum term of 30  
 717 years, construction, and equipping of a tourism attraction; the construction and  
 718 installation of improvements to facilities necessary or desirable for the acquisition,  
 719 construction, and installation of a tourism attraction, including, but not limited to,  
 720 surveys; installation of utilities, which may include water, sewer, sewage treatment, gas,  
 721 electricity, communications, and similar facilities; and off-site construction of utility  
 722 extensions if paid for by the approved company. Such term shall not include the  
 723 renovation of an existing tourism attraction."

724

### SECTION 8.

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

727 "48-8-273.

728 (a) In the ~~sole~~ discretion of the ~~Governor~~ commissioner of economic development and the  
 729 commissioner of community affairs, in consideration of the execution of the agreement;  
 730 each and subject to the approved company's compliance with the terms of the agreement,  
 731 an approved company shall be granted a sales and use tax refund ~~from the incremental sales~~  
 732 ~~and use tax on the sales generated by the approved company and arising at the tourism~~

733 attraction for new projects or an incremental sales and use tax refund for expansions of  
 734 existing tourism attractions.

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

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

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

747 ~~(e) The total sales and use tax refund allowed to the approved company over the term of~~  
 748 ~~the agreement shall be equal to the lesser of the total amount of the incremental sales and~~  
 749 ~~use tax liability of the approved company or 25 percent of the approved costs for the~~  
 750 ~~tourism attraction project. The incremental sales and use tax refund shall accrue over the~~  
 751 ~~term of the agreement in an annual amount equal to the lesser of the incremental sales and~~  
 752 ~~use tax liability of the approved company for that year or 2.5 percent of the approved costs.~~

753 ~~(f)(d) On or before March 31 of each year~~ For each calendar year or partial calendar year  
 754 occurring during the term of the agreement, an approved company shall file with the  
 755 Department of Revenue a claim for ~~the incremental sales and use tax refund collected by~~  
 756 ~~the approved company and remitted to the Department of Revenue during the preceding~~  
 757 ~~calendar year pursuant to subsection (e) of this Code section~~ a refund under this article by  
 758 March 31 of the following year.

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

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

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

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

**SECTION 9.**

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

"48-8-274.

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

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

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

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

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

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

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

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

(7) Resolutions from the governing authority of the county or the city, if any, in which the tourism attraction will be located endorsing the tourism attraction project and, where applicable, including appropriate affirmative clauses regarding permitting, land use, local incentives, and the provision of local public infrastructure.

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

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

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

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

- 806 (3) Produce sufficient revenues and public demand to be operating and open to the public  
 807 for a minimum of 100 days per year, including the first year of operation;  
 808 (4) Not adversely affect existing employment in ~~the~~ this state; and  
 809 (5) For each year following the third year of operation, attract a minimum of 25 percent  
 810 of its visitors from nonresidents of this state; and  
 811 ~~(6) Meet such other criteria as deemed appropriate by the Governor."~~

812 **SECTION 10.**

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

815 "48-8-275.

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

- 820 (1) The projected amount of approved costs, ~~provided that any increase in approved costs~~  
 821 ~~incurred by the approved company and agreed to by the Department of Community~~  
 822 ~~Affairs shall apply retroactively for purposes of calculating the carry forward for unused~~  
 823 ~~sales and use tax refunds as set forth in subsection (e) of Code Section 48-8-273 for tax~~  
 824 ~~years commencing on or after July 1, 2011;~~  
 825 (2) A date certain by which the approved company shall have completed the tourism  
 826 attraction project and begun operations. Upon request from any approved company that  
 827 has received final approval, the Department of Community Affairs shall grant an  
 828 extension or change, which in no event shall exceed 18 months from the date of final  
 829 approval, to the completion date as specified in the agreement with an approved  
 830 company; and  
 831 (3) A statement specifying the term of the agreement in accordance with subsection (c)  
 832 of Code Section 48-8-273."

833 **SECTION 11.**

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

836 "48-8-276.

- 837 (a) Compliance with the agreement is subject to review by the Department of Community  
 838 Affairs.  
 839 (b) In the event an approved company fails to abide by the terms of the agreement, then  
 840 such agreement shall be void and all sales and use tax proceeds ~~which~~ that were refunded

841 shall become immediately due and payable back to the state ~~and to the governing authority~~  
842 ~~of any county or municipality whose approval was required under paragraph (2) of Code~~  
843 ~~Section 48-8-271."~~

844 **SECTION 12.**

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

847 "48-8-278.

848 This article shall not apply to ~~the sales tax for educational purposes levied pursuant to Part~~  
849 ~~2 of Article 3 of this chapter and Article VIII, Section VI, Paragraph IV of the Constitution~~  
850 any local sales and use tax levied or imposed at any time."

851 **SECTION 13.**

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

854 **SECTION 14.**

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