House Bill 318 (AS PASSED HOUSE AND SENATE)
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

To amend Chapter 10 of Title 10 of the Official Code of Georgia Annotated, relating to the Seed-Capital Fund, so as to create the Invest Georgia Fund; to provide for legislative findings; to provide for definitions; to provide for a fund administrator; to provide for reports; to provide for conditions, procedures, and limitations; to amend Code Section 48-7-40.30 of the Official Code of Georgia Annotated, relating to an income tax credit for certain qualified investments for a limited period of time, so as to extend such income tax credit; to amend Code Section 48-8-3 of the Official Code of Georgia Annotated, relating to exemptions from sales and use taxes, so as to provide a sales tax exemption for materials to be used in certain construction projects of zoological institutions; to amend Article 6 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to the "Georgia Tourism Development Act," so as to revise certain definitions; to provide for procedures, conditions, and limitations; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

SECTION 2.
Said chapter is further amended by revising Code Section 10-10-1, relating to definitions, as follows:
"10-10-1.

As used in this chapter article, the term:
(1) 'Board' means the Board of Regents of the University System of Georgia.
(2) 'Center' means the Advanced Technology Development Center created by the board and acknowledged and empowered to administer the fund by Article III, Section IX, Paragraph VI(g) of the Constitution of Georgia.

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

(4) 'Equity contribution' means:
   (A) Moneys from the fund used to make direct investments by the state in qualified securities of enterprises; and
   (B) The capital of an investment entity contributed by the fund, as created in Code Section 10-10-3, and contributed by other investors, which capital shall be used by the investment entity to make investments in qualified securities of one or more enterprises as provided by this chapter article and to pay the expenses of the investment entity but shall not include any current or accumulated income of the investment entity.

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

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

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

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

(9) ‘Qualified security’ means any note, stock, treasury stock bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, preorganization certificate or subscription, transferable share, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or application therefor or in royalty or other payments under such a patent or application, or, in general, any interest or instrument commonly known as a security or any certificate for, receipt for, guarantee of, or option, warrant, or right to subscribe to or purchase any of the foregoing of an enterprise.

(10) ‘State’ means the State of Georgia.”

SECTION 3.

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

10-10-3.

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

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

(c) In return for equity contributions by the fund, at the discretion of the center, the state will receive either direct ownership of qualified securities of an enterprise or a limited liability ownership in an investment entity either directly or indirectly through an investment entity as to which the state is the sole limited liability owner as permitted in subsection (c) of Code Section 10-10-4 with rights accruing from investments in qualified securities by the investment entity. With respect to loans made from the fund, the state
shall receive repayment of the loan in accordance with its terms, with cash proceeds or
other assets from such repayments being deposited in or held through the fund. Additional
returns to the state will be secured through the establishment and growth of innovative
enterprises that create new, value added products, processes, and services and encourage
growth and diversification in the economy of the state.
(d) Disbursements from the fund shall be made upon the instruction of the center director
in accordance with the policies of the board.
(e) The center, subject to the approval of the board or its designee, shall be authorized to
contract and have contracts and other legal documents prepared to carry out the provisions
of this chapter.
(f) The board shall have the authority to issue policies governing the management and
operation of the fund as needed."

SECTION 4.
Said chapter is further amended by revising Code Section 10-10-6, relating to distribution
to be deposited in the fund, as follows:
"10-10-6.
All distributions made by an investment entity allocable to the state's limited partner
interest or membership interest therein; all cash proceeds with respect to any loan, whether
interest, the repayment of principal, or other amounts; or proceeds of the sale or transfer
of qualified securities held directly by the fund shall be deposited in the fund for future
investment in other investment entities, in other qualified securities of enterprises, for
making loans as provided in this chapter, or to pay the cost of administration of the
fund as provided in this chapter."

SECTION 5.
Said chapter is further amended by adding a new article to read as follows:

"ARTICLE 2
10-10-10.
Pursuant to the authority granted in Article III, Section IX, Paragraph VI(g) of the
Constitution, there is hereby created the Invest Georgia Fund as a distinct component of
the Seed-Capital Fund. The General Assembly declares that its purpose in creating the
Invest Georgia Fund and enacting this legislation is to increase the amount of private
investment capital available in this state for Georgia based business enterprises in the seed,
early, or growth stages of business development and which require funding, as well as for

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established Georgia based business enterprises developing new methods or technologies, including the promotion of research and development purposes, thereby increasing employment, creating additional wealth, and otherwise benefitting the economic welfare of the people of this state. Accordingly, it is the intention of the General Assembly that the Invest Georgia Fund make investments in support of Georgia based business enterprises in accordance with the investment policy authorized and required under this article and focus its investment policy principally on venture capital funds and private equity organizations that invest in Georgia based business enterprises.

10-10-11.

As used in this article, the term:

(1) 'Affiliate' means:

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

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

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

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

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

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

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

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

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

(C) At the discretion of the fund administrator and the board, one or more early stage venture capital funds that are first-time Georgia based funds, so long as the fund managers have at least five years of experience in venture capital or angel capital investing in Georgia based business enterprises; and
(D) A fund which has as its primary investment strategy the achievement of transformational economic development outcomes through focused investments of capital in seed or early stage businesses with high growth potential. The fund principals must have demonstrated the ability to lead investment rounds, advise and mentor entrepreneurs, and facilitate follow-on investments. A minimum of 10 percent of the committed capital of the fund must be committed by the institutional investors, fund principals, or other accredited investors.

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

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

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

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

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

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

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

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

(B) An annual management fee in accordance with a fund's partnership agreement, and consistent with such fund's other private investors, to offset the costs and expenses of managing and operating the Invest Georgia Fund; or
(C) Reasonable and necessary fees in accordance with industry custom for ongoing
professional services, including, but not limited to, legal and accounting services related
to the operation of the Invest Georgia Fund, but not including any lobbying or
governmental relations.

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

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

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

(C) Has 20 or fewer employees;

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

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

(F) Does not engage substantially in:

(i) Retail sales;

(ii) Real estate development or construction;

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

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

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

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

A business classified as a qualified early stage business at the time of the first qualified
investment in such business shall remain classified as a qualified early stage business and
may receive continuing qualified investments from venture capital firms participating in
the Invest Georgia Fund. Continuing investments shall constitute qualified investments
even though the business may not meet the definition of a qualified early stage business
at the time of such continuing investments.
(12) ‘Qualified growth stage business’ means a business that, at the time of the first investment in the business by a venture capital firm:

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

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

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

(D) Has 100 or fewer employees;

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

(F) Does not engage substantially in:

(i) Retail sales;

(ii) Real estate development or construction;

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

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

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

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

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

(13) ‘Qualified investment’ means the investment of money by the Invest Georgia Fund in each early stage venture capital fund or growth stage venture capital fund selected by the fund administrator.
(a) There is hereby created the Invest Georgia Board, which shall exercise the powers and perform the duties prescribed by this article. The exercise by the board of its powers and duties is hereby declared to be an essential state governmental function. The board shall be subject to all laws generally applicable to state agencies and public officials, to the extent those laws do not conflict with the provisions of this article.

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

   (1) Early stage, angel, or venture capital investing;
   (2) Growth stage venture capital investing;
   (3) Fund of funds management; or
   (4) Entrepreneurship.

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

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

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

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

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

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

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

(2) To acquire by purchase, lease, or otherwise, including acquisition of land from the state government, and to hold, lease, and dispose of real and personal property of every kind and character for its corporate purpose and to enter into any contracts, leases, or other charges for the use of property or services of the board and collect and use the same as necessary to operate the board; and to accomplish any of the purposes of this article and make any purchases or sales necessary for such purposes;

(3) To acquire in its own name by purchase, on such terms and conditions and in such manner as it may deem proper, real property, or rights or easements therein, or franchises necessary or convenient for its corporate purpose, and to use the same so long as its corporate existence shall continue, and to lease or make contracts with respect to the use of such property, or dispose of the same in any manner it deems to be to the best advantage of the board;

(4) To appoint, select, and employ officers, agents, and employees, including real estate, environmental, engineering, architectural, and construction experts, fiscal agents, and attorneys, and to fix their respective compensations;

(5) To make contracts and leases and to execute all instruments necessary or convenient. Any and all persons, firms, and corporations and any and all political subdivisions, departments, institutions, authorities, or agencies of the state and federal government are authorized to enter into contracts, leases, or agreements with the board upon such terms and for such purposes as they deem advisable; and, without limiting the generality of the foregoing, authority is specifically granted to municipal corporations, counties, political subdivisions, and to the board relative to entering into contracts, lease agreements, or other undertakings authorized between the board and private corporations, both inside and outside this state, and between the board and public bodies, including counties and cities outside this state and the federal government;

(6) To accept loans and grants of money or materials or property of any kind from the United States of America or any agency or instrumentality thereof upon such terms and conditions as the United States of America or such agency or instrumentality may require;

(7) To accept loans and grants of money or materials or property of any kind from the State of Georgia or any authority, agency, or instrumentality or political subdivision thereof upon such terms and conditions as the State of Georgia or such authority, agency, or instrumentality or political subdivision may require;
(8) To exercise any power usually possessed by private corporations performing similar functions, provided that no such power is in conflict with the Constitution or general laws of this state; and

(9) To do all things necessary or convenient to carry out the powers expressly given in this article.

(h) The center shall provide the board with office space and such technical assistance as the board requires, and the board shall be attached to the center for administrative purposes. The center shall also consult with the board in connection with the administration of the Invest Georgia Fund created under this article.

10-10-13.
The board’s primary responsibilities shall include:

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

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

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

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

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

10-10-14.

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

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

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

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

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

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

(A) The investment experience of the principals;
(B) The applicant's reputation in the venture capital firm industry and the applicant's ability to attract coinvestment capital and syndicate investments in qualified businesses in Georgia;
(C) The knowledge, experience, and capabilities of the applicant in subject areas relevant to venture stage businesses in Georgia; and
(D) The tenure and turnover history of principals and senior investment professionals of the venture capital fund;

(2) The venture capital fund's investment strategy, including:

(A) The applicant's record of performance in investing in early and growth stage businesses;
(B) The applicant's history of attracting coinvestment capital and syndicate investments;
(C) The soundness of the applicant's investment strategy and the compatibility of that strategy with business opportunities in Georgia; and
(D) The applicant's history of job creation through investment;

(3) The venture capital fund's commitment to making investments that, to the fullest extent possible:

(A) Create employment opportunities in Georgia;
(B) Lead to the growth of the Georgia economy and qualified businesses in Georgia;
(C) Complement the research and development projects of Georgia academic institutions; and
(D) Foster the development of technologies and industries that present opportunities for the growth of qualified businesses in Georgia; and

(4) The venture capital fund's commitment to Georgia, including:

(A) The applicant's presence in Georgia through permanent local offices or affiliation with local investment firms;
(B) The local presence of senior investment professionals;
(C) The applicant's history of investing in early and growth stage businesses in Georgia;
(D) The applicant's ability to identify investment opportunities through working relationships with Georgia research and development institutions and Georgia based businesses; and

(E) The applicant's commitment to investing an amount that matches or exceeds the amount of the applicant's designated capital received under this article in Georgia based qualified early stage businesses and qualified growth stage businesses.

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

10-10-15.

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

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

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

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

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

10-10-16.

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

10-10-17.

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

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

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

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

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

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

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

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

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

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

10-10-18.

(a) Not later than December 31 of each year, each venture capital fund shall report to the board:
(1) The amount of designated capital remaining uninvested at the end of the preceding calendar year;

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

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

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

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

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

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

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

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

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

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

(A) The name and address of the venture capital fund or private equity organization;
(B) The names of the individuals making qualified investments under this article;
(C) The amount of designated capital received during the previous year;
(D) The cumulative amount of designated capital received;
(E) The amount of designated capital remaining uninvested at the end of the preceding calendar year;
(F) The names and locations of qualified businesses receiving designated capital and the amount of each qualified investment;
(G) The annual performance of each qualified investment, including the qualified investment's fair market value as calculated according to generally accepted accounting principles; and
(H) The amount of any qualified distribution or nonqualified distribution taken during the prior year, including any management fee;

(2) With respect to the Invest Georgia Fund:

(A) The amount of designated capital received during the previous year;
(B) The cumulative amount of designated capital received;
(C) The amount of designated capital remaining uninvested at the end of the preceding calendar year;
(D) The names and locations of qualified businesses receiving designated capital and the amount of each qualified investment; and
(E) The annual performance of each qualified investment, including the qualified investment's fair market value as calculated according to generally accepted accounting principles; and

(3) With respect to the qualified businesses in which venture capital funds have invested:

(A) The classification of the qualified businesses according to the industrial sector and the size of the business;
(B) The total number of jobs created in Georgia by the investment and the average wages paid for the jobs; and
(C) The total number of jobs retained in Georgia as a result of the investment and the average wages paid for the jobs."
SECTION 6.

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

“(d) Any individual person making a qualified investment directly in a qualified business in the 2011, 2012, or 2013, 2014, or 2015 calendar year shall be allowed a tax credit of 35 percent of the amount invested against the tax imposed by this chapter commencing on January 1 of the second year following the year in which the qualified investment was made as provided in this Code section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 6.1.

Code Section 48-8-3 of the Official Code of Georgia Annotated, relating to exemptions from sales and use taxes, is amended by revising paragraph (87) as follows:

"(87)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from July 1, 2009 until June 30, 2015, sales of tangible personal property used for and in the renovation or expansion of a zoological institution.

(B) As used in this paragraph, the term 'zoological institution' means a nonprofit wildlife park, terrestrial institution, or facility which is:

(i) open to the public, that exhibits and cares for a collection consisting primarily of animals other than fish, and has received accreditation from the Association of Zoos and Aquariums; and

(ii) located in this state and owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;"

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 an agreement for a tourism attraction project entered into, pursuant to Code Section 48-8-275, on behalf of the Department of Community Affairs and an approved company pursuant to Code Section 48-8-275.

(2) 'Annual sales and use tax' means those state and local sales and use taxes 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) 'Approved company' means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, or any other 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) '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, deliverymen, 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 construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a new tourism attraction project;

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

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

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

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

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

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

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

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

(9) 'Local sales and use tax' means any sales and use tax, excluding the sales tax for educational purposes levied pursuant to Part 2 of Article 3 of this chapter and Article VIII, Section VI, Paragraph IV of the Constitution, that is levied and imposed in an area consisting of less than the entire state, however authorized.

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

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

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

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

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

SECTION 8.

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

"48-8-273.

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

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

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

(d) Any sales and use tax collected by an approved company on sales transacted after final approval but prior to the commencement of the term of the agreement shall be refundable

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as if collected after the commencement of the term and applied to the approved company's first year's refund after activation of the term and without changing the term. 

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

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

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

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

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

(h) By resolution and at the discretion of the county and city, if any, where the tourism attraction project is to be located, the local sales and use tax may be refunded under the same terms and conditions as any refund of state sales and use taxes.

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

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SECTION 10.

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

"48-8-275.

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

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

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

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

SECTION 11.

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

"48-8-276.

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

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

SECTION 12.

Said article is further amended by repealing Code Section 48-8-278, relating to the application of Article 6 of Chapter 8, the "Georgia Tourism Development Act."
SECTION 13.

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

SECTION 14.

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