

A BILL TO BE ENTITLED

AN ACT

To create the Effingham County Public Facilities Authority and to provide for the appointment of members of the Authority; to provide for a short title; to confer powers upon the Authority; to provide for purpose and scope of operations of the Authority; to provide for definitions; to authorize the issuance of revenue bonds of the Authority; to fix and provide the venue and jurisdiction of actions relating to any provisions of this Act; to provide for moneys received and trust funds; to provide for tort immunity; to provide for rates, charges, and revenues; to provide for essential governmental function and tax exemption; to provide for effect on other governments; to provide for construction of act and severability; 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.

Short title.

This Act shall be known and may be cited as the “Effingham County Public Facilities Authority Act.”

SECTION 2.

Effingham County Public Facilities Authority.

(a) There is hereby created a public body corporate and politic to be known as the “Effingham County Public Facilities Authority,” which shall be deemed to be a political subdivision of

the state and a public corporation, and by that name, style, and title such body may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts of law and equity. The Authority shall have perpetual existence.

(b) The Authority shall consist of three members who shall be appointed by the Board of Commissioners of Effingham County. Members of the Board of Commissioners of Effingham County may be appointed to the Authority. All appointments shall be made for terms of two years and until successors are appointed and qualified. Immediately after such appointments, the members of the Authority shall enter upon their duties. To be eligible for appointment as a member of the Authority, a person shall be at least 21 years of age and a resident of Effingham County, Georgia, for at least two years prior to the date of his or her appointment and shall not have been convicted of a felony. Any member of the Authority may be selected and appointed to succeed himself or herself. A member may be removed from office by the Board of Commissioners of Effingham County for failure to perform the appropriate duties of membership. Notwithstanding the foregoing eligibility requirements for members of the Authority, the County Manager and the Finance Director of Effingham County shall serve as *ex officio* members of the Authority and shall act as nonvoting members.

(c) The members shall not be compensated for their services; provided, however, that such members shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties.

(d) The members of the Authority shall elect one of their number as chairperson and another as vice chairperson. The members of the Authority shall also elect a secretary, who need not be a member of the Authority, and may also elect a treasurer, who need not be a member of the Authority. The secretary may also serve as treasurer. If the secretary and treasurer are not members of the Authority, such officers shall have no voting rights; and each shall serve for a period of one year and until their successors are duly elected and qualified.

(e) Two members of the Authority shall constitute a quorum. No vacancy on the Authority shall impair the right of the quorum to exercise all of the rights and perform all of the duties of the Authority.

SECTION 3.

Definitions.

As used in this Act, the term:

(1) “Authority” means the Effingham County Public Facilities Authority created by this Act.

(2) “Costs of the project” means and embraces the cost of construction; the cost of all lands, properties, rights, easements, and franchises acquired; the cost of all machinery and equipment; financing charges; interest prior to and during construction and for six months after completion of construction; the cost of engineering, architectural, fiscal agents' expenses, legal expenses, plans and specifications, and other expenses necessary or incidental to determining the feasibility or practicability of the project; administrative expenses and such other expenses as may be necessary or incidental to the financing authorized in this Act; working capital; and all other costs necessary to acquire, construct, add to, extend, improve, equip, operate, and maintain the project.

(3) “Project” means all buildings, facilities, and equipment necessary or convenient for the efficient operation of the County or any department, agency, division, or commission thereof permitted by the Revenue Bond Law.

(4) “Revenue Bond Law” means Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the “Revenue Bond Law.”

(5) “Revenue bonds” means revenue bonds authorized to be issued pursuant to the Revenue Bond Law.

(6) “Self-liquidating” means any project from which the revenues and earnings to be derived by the authority therefrom, including, but not limited to, any contractual payments with governmental or private entities, and all properties used, leased, and sold in connection herewith, together with any grants, will be sufficient to pay the costs of operating, maintaining, and repairing the project and to pay the principal and interest on the revenue

bonds or other obligations which may be issued for the purpose of paying the costs of the project.

(7) “State” means the State of Georgia.

SECTION 4.

Powers.

The Authority shall have the power:

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

(2) To acquire by purchase, lease, gift, condemnation, or otherwise and to hold, operate, maintain, lease, and dispose of real and personal property of every kind and character for its corporate purposes;

(3) To acquire in its own name by purchase on such terms and conditions and in such manner as it may deem proper or by condemnation in accordance with the provisions of any and all existing laws applicable to the condemnation of property for public use, real property, or rights or easements therein, or franchises necessary or convenient for its corporate purposes; to use the same so long as its corporate existence shall continue; and to lease or make contracts with respect to the use of or disposal of the same in any manner it deems to the best advantage of the Authority. The Authority shall be under no obligation to accept and pay for any property condemned under this Act except from the funds provided under the authority of this Act. In any proceedings to condemn, such orders may be made by the court having jurisdiction of the suit, action, or proceedings as may be just to the Authority and to the owners of the property to be condemned. No property shall be acquired under the provisions of this Act upon which any lien or encumbrance exists, unless, at the time such property is so acquired, a sufficient sum of money is to be deposited in trust to pay and redeem the fair value of such lien or encumbrance;

(4) To appoint, select, and employ officers, agents, and employees, including engineering, architectural, and construction experts, fiscal agents, and attorneys, and to fix

their respective compensations;

(5) To execute contracts, leases, installment sale agreements, and other agreements and instruments necessary or convenient in connection with the acquisition, construction, addition, extension, improvement, equipping, operation, or maintenance of a project; and any and all persons, firms, corporations, and Effingham County are hereby authorized to enter into contracts, leases, installment sale agreements, and other agreements or instruments with the Authority upon such terms and for such purposes as they deem advisable and as they are authorized by law;

(6) To acquire, construct, add to, extend, improve, equip, hold, operate, maintain, lease, and dispose of projects;

(7) To pay the costs of the project with the proceeds of revenue bonds or other obligations issued by the Authority or from any grant or contribution from the United States or any agency or instrumentality thereof or from this state or any agency or any instrumentality or other political subdivision thereof or from any other source whatsoever;

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

(9) To accept loans or grants of money, materials, or property of any kind from this state or any agency or instrumentality or political subdivision or municipal corporation thereof, upon such terms and conditions as this state or such agency or instrumentality or political subdivision or municipal corporation may require;

(10) To borrow money for any of its corporate purposes, to issue revenue bonds, and to provide for the payment of the same and for the rights of the holders thereof;

(11) To exercise any power usually possessed by private corporations performing similar functions, including the power to incur short-term debt and to approve, execute, and deliver appropriate evidence of any such indebtedness;

(12) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business is transacted; and

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

SECTION 5.

Revenue bonds.

The Authority, or any authority or body which has or which may in the future succeed to the powers, duties, and liabilities vested in the Authority created by this Act, shall have power and is authorized, pursuant to the Revenue Bond Law, to provide by resolution for the issuance of revenue bonds of the Authority for the purpose of paying all or any part of the costs of a project and for the purpose of refunding revenue bonds or other obligations previously issued; provided, however, that no such revenue bonds shall be issued to finance a project for the Effingham County School District or any other political subdivision or municipal corporation of the state located within Effingham County other than Effingham County. Revenue bonds shall be undertaken, issued, priced, validated, sold, paid, redeemed, refunded, secured, and replaced in accordance with the provisions of the Revenue Bond Law.

SECTION 6.

Revenue bonds; conditions precedent to issuance.

The Authority shall adopt a resolution authorizing the issuance of the revenue bonds. In the resolution, the Authority shall determine that the project financed with the proceeds of such revenue bonds is self-liquidating. Revenue bonds may be issued without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions, and things which are specified or required by this Act. Any resolution providing for the issuance of revenue bonds under the provisions of this Act shall become effective immediately upon its passage and need not be published or posted, and any such resolution

may be passed at any regular, special, or adjourned meeting of the Authority by a majority of its members present and voting.

SECTION 7.

Credit not pledged.

Revenue bonds of the Authority shall not be deemed to constitute a debt of Effingham County or the State of Georgia, nor a pledge of the faith and credit of this state or such county, but such revenue bonds shall be payable solely from the fund hereinafter provided for. The issuance of such revenue bonds shall not directly, indirectly, or contingently obligate this state or such county to levy or pledge any form of taxation whatsoever for payment of such revenue bonds or to make any appropriation for their payment, and all such revenue bonds shall contain recitals on their face covering substantially the foregoing provisions of this section. Notwithstanding the foregoing provisions, this Act shall not affect the ability of the Authority and any political subdivision to enter into an intergovernmental contract pursuant to which the political subdivision agrees to pay amounts sufficient to pay operating charges and other costs of the Authority or any project including, without limitation, the principal of and interest on revenue bonds in consideration for services or facilities of the Authority.

SECTION 8.

Trust indenture as security.

In the discretion of the Authority, any issuance of revenue bonds may be secured by a trust indenture by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without this state. Either the resolution providing for the issuance of the revenue bonds or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition and construction of the project, the maintenance, operation, repair, and insuring of the project, and the custody, safeguarding, and application of all money.

SECTION 9.

Trust indenture as security, remedies of bondholders.

Any holder of revenue bonds and the trustee under the trust indenture, if any, except to the extent that the rights given herein may be restricted by resolution passed before the issuance of the revenue bonds or by the trust indenture, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights it may have under the laws of the state, including specifically, but without limitation, the Revenue Bond Law, or granted hereunder or under such resolution or trust indenture and may enforce and compel performance of all duties required by this Act or by such resolution or trust indenture to be performed by the Authority or any officer thereof, including the fixing, charging, and collecting of revenues, fees, tolls, fines, and other charges for the use of the facilities and services furnished.

SECTION 10.

Trust indenture as security; validation.

Revenue bonds and the security therefor shall be issued, confirmed, and validated in accordance with the provisions of the Revenue Bond Law. The petition for validation shall also make Effingham County party defendant to such action if the county has contracted with the Authority for services or facilities relating to the project for which revenue bonds are to be issued and sought to be validated, and such defendant shall be required to show cause, if any exists, as to why such contract or contracts shall not be adjudicated as a part of the basis for the security for the payment of any such revenue bonds. The revenue bonds, when validated, and the judgment of validation shall be final and conclusive with respect to such revenue bonds and the security for the payment thereof and interest thereon and against the Authority and all other defendants.

SECTION 11.

To whom proceeds of bonds shall be paid.

In the resolution providing for the issuance of revenue bonds or in the trust indenture, the Authority shall provide for the payment of the proceeds of the sale of the revenue bonds to any officer or person who, or any agency, bank, or trust company which, shall act as trustee of such funds and shall hold and apply the same to the purposes thereof, subject to such regulations as this Act and such resolution or trust indenture may provide.

SECTION 12.

Sinking fund.

The money received pursuant to an intergovernmental contract and the revenues, fees, tolls, fines, charges, and earnings derived from any particular project or projects, regardless of whether or not such revenues, fees, tolls, fines, charges, and earnings were produced by a particular project for which revenue bonds have been issued, unless otherwise pledged and allocated, may be pledged and allocated by the Authority to the payment of the principal and interest on revenue bonds of the Authority as the resolution authorizing the issuance of the revenue bonds or the trust indenture may provide. Such funds so pledged from whatever source received may be set aside at regular intervals as may be provided in the resolution or trust indenture into a sinking fund, which sinking fund shall be pledged to and charged with the payment of:

- (1) The interest upon such revenue bonds as the same shall fall due;
- (2) The principal or purchase price of such revenue bonds as the same shall fall due;
- (3) Any premium upon such revenue bonds as the same shall fall due;
- (4) The purchase of such revenue bonds in the open market; and
- (5) The necessary charges of the paying agent for paying principal and interest.

The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the revenue bonds or in the trust indenture, but, except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be maintained as a trust account for the benefit of all revenue bonds without distinction or priority of one over another.

SECTION 13.

Venue and jurisdiction.

Any action to protect or enforce any rights under the provisions of this Act or any suit or action against such Authority shall be brought in the Superior Court of Effingham County, and any action pertaining to validation of any revenue bonds issued under the provisions of this Act shall likewise be brought in said court which shall have exclusive, original jurisdiction of such actions.

SECTION 14.

Interest of bondholders protected.

While any of the revenue bonds issued by the Authority remain outstanding, the powers, duties, or existence of such Authority or its officers, employees, or agents shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such revenue bonds; and no other entity, department, agency, or authority shall be created which will compete with the Authority to such an extent as to affect adversely the interests and rights of the holders of such revenue bonds, nor shall the state itself so compete with the Authority. The provisions of this Act shall be for the benefit of the Authority and the holders of any such revenue bonds, and upon the issuance of such revenue bonds under the provisions of this Act, shall constitute a contract with the holders of such revenue bonds.

SECTION 15.

Money received considered trust funds.

All money received pursuant to the authority of this Act, whether as proceeds from the sale of revenue bonds, as grants or other contributions, or as revenue, income, fees, and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this Act.

SECTION 16.

Purpose of the Authority; reversion upon dissolution.

(a) The Authority is created for the purpose of promoting the public good and general welfare of the citizens of the Effingham County, and financing and providing facilities, equipment, and services within the county, for sale to, lease or sublease to, ownership, or operation by the county as otherwise authorized by law.

(b) Upon the dissolution of the Authority, all assets owned by the Authority shall become the property of the county.

SECTION 17.

Rates, charges, and revenues; use.

The Authority is hereby authorized to prescribe and fix rates and to revise same from time to time and to collect revenues, tolls, fees, and charges for the services, facilities, and commodities furnished and, in anticipation of the collection of the revenues, to issue revenue bonds or other types of obligations as provided in this Act to finance, in whole or in part, the costs of the project and to pledge to the punctual payment of said revenue bonds or other obligations all or any part of the revenues.

SECTION 18.

Rules, regulations, service policies, and procedures for operation of projects.

It shall be the duty of the Authority to prescribe rules, regulations, service policies, and procedures for the operation of any project or projects constructed or acquired under the provisions of this Act. The Authority may adopt bylaws.

SECTION 19.

Tort immunity.

To the extent permitted by law, the Authority shall have the same immunity and exemption from liability for torts and negligence as Effingham County; and the officers, agents, and employees of the Authority when in the performance of the work of the Authority shall have the same immunity and exemption from liability for torts and negligence as the officers, agents, and employees of Effingham County when in the performance of their public duties or work of the county.

SECTION 20.

Essential governmental function; no taxes or assessments; tax exemption.

All property or interests in property owned by the Authority shall be public property held and owned for governmental purposes and shall be exempt from ad valorem taxation. The exercise of the powers conferred upon the Authority hereunder shall constitute an essential governmental function for a public purpose, and the Authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation and maintenance of property acquired by it or of buildings erected or acquired by it or any fees, rentals, or other charges

for the use of such property or buildings or other income received by the Authority. The tax exemption herein provided shall not include an exemption from sales and use tax on property purchased by or for the use of the Authority. The income of the Authority, the properties of the Authority, both real and personal, and all revenue bonds, certificates of participation, notes, and other forms of obligations issued by the Authority shall be exempt from all state and local taxes and special assessments of any kind to the extent permitted by and in accordance with the general laws of the state.

SECTION 21.

Effect on other governments.

This Act shall not and does not in any way take from Effingham County or any county or municipal corporation the authority to own, operate, and maintain public facilities or to issue revenue bonds as provided by the Revenue Bond Law.

SECTION 22.

Liberal construction of Act.

This Act, being for the welfare of various political subdivisions of this state and its inhabitants, shall be liberally construed to effect the purposes hereof.

SECTION 23.

Severability; effect of partial invalidity of Act.

The provisions of this Act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

SECTION 24.

Effective date.

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

SECTION 25.

General repealer.

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