

House Bill 1453

By: Representatives Pinholster of the 15th and Grasse of the 16th

A BILL TO BE ENTITLED
AN ACT

1 To create the Canton Building Authority as a public corporation and an instrumentality of
2 the State of Georgia; to authorize the authority to acquire, construct, own, and convey real
3 property and personal property and to sue and be sued; to authorize the authority to enter into
4 intergovernmental contracts and contracts with private persons; to confer upon the authority
5 the power of eminent domain; to authorize the authority to enter into contracts, lease
6 agreements, and installment sale agreements; to authorize the authority to accept grants and
7 gifts; to authorize the authority to fix and collect fees and charges for the use of or for the
8 rental of its facilities; to provide for the membership of the authority; to authorize the
9 authority to acquire, construct, equip, maintain, and operate projects; to authorize the
10 authority to acquire the necessary property therefor and to lease or sell any or all of such
11 facilities; to authorize the authority to sell its contracts, lease agreements, or installment sale
12 agreements or its right to receive payments thereunder, either directly or by creating interests
13 therein; to authorize the issuance of revenue bonds of the authority, payable from the
14 revenues, tolls, fees, charges, and earnings of the authority including, but not limited to,
15 amounts derived from leasing and selling facilities of the authority; to authorize the
16 collection and pledging of the revenues and earnings of the authority for the payment of such
17 bonds and to authorize the execution of trust indentures to secure the payment thereof and
18 to define the rights of the holders of such bonds or obligations; to provide that no debt of the
19 State of Georgia or of the City of Canton shall be incurred in the exercise of any powers
20 granted by this Act; to make the bonds of the authority exempt from taxation; to authorize
21 the issuance of refunding bonds; to fix the venue of actions relating to any provision of this
22 Act and to provide for the validation of bonds issued by the authority and of contracts
23 between the authority and the City of Canton; to confine the activities of the authority to the
24 territorial limits of Cherokee County; to prohibit the authority from levying any tax; to
25 provide for the separate enactment of each provision of this Act; to provide an effective date;
26 to repeal conflicting laws; and for other purposes.

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 1453

SECTION 1.

This Act may be cited as the "Canton Building Authority Act."

SECTION 2.

There is hereby created a body corporate and politic to be known as the Canton Building Authority, which shall be deemed to be a political subdivision of the State of Georgia and a public corporation by that name, style, and title to be known. Such corporation shall be separate and distinct from any public corporation heretofore created by the General Assembly and shall be an instrumentality of the State of Georgia exercising governmental powers. All property owned by such corporation shall be public property held and owned for governmental purposes and shall be exempt from taxation.

SECTION 3.

The Canton Building Authority shall have the power:

(a) To hold, own, and convey real and personal property;

(b) To sue and be sued;

(c) To have and to use a seal and to alter the same at pleasure;

(d) To acquire, construct, purchase, own, equip, operate, extend, improve, lease, and sell any project as hereinafter defined;

(e) To exercise the powers conferred upon a public corporation or a public authority by Article IX, Section III, Paragraph I of the Constitution of Georgia, such authority being hereby expressly declared to be a public corporation or a public authority within the meaning of such provision of the Constitution of Georgia;

(f) 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 of the State of Georgia applicable to the condemnation of property for public use, including the power to proceed as a condemning body under the provisions of Article 2 of Chapter 2 of Title 22 of the O.C.G.A., relating to proceedings before a special master, or by gift, grant, lease, or otherwise, real property or rights and easements therein and franchises and personal property necessary or convenient for its corporate purposes and to use the same so long as its corporate existence shall continue and to lease or make contracts with respect to the use, sale, or disposition of the same in any manner it deems to the best advantage of the authority. Title to any such property shall be held by the authority exclusively for the benefit of the public. The Canton Building Authority shall be under no obligation to accept and pay for any property condemned as provided herein except from the funds provided therefor and, 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

1 owners of the property to be condemned; and no property shall be acquired as provided
2 herein upon which any lien or other encumbrance exists, unless at the time such property is
3 so acquired a sufficient sum of money shall be deposited in trust to pay and redeem the
4 amount of such lien or encumbrance. If the Canton Building Authority shall deem it
5 expedient to construct any project on lands which are subject to the control of the City of
6 Canton, the City of Canton is authorized to convey such lands to the Canton Building
7 Authority for such consideration as may be agreed upon by the Canton Building Authority
8 and the City of Canton, taking into consideration the public benefit to be derived from such
9 conveyance;

10 (g) To accept gifts and bequests for its corporate purposes;

11 (h) To appoint, select, and employ officers, agents, and employees, including engineering,
12 architectural, and construction experts, fiscal agents, and attorneys, and to fix their
13 compensation;

14 (i) To make and execute with public and private persons and corporations contracts, lease
15 agreements, rental agreements, installment sale agreements, and other instruments relating
16 to its projects and incident to the exercise of the powers of the authority, including contracts
17 for constructing, renting, leasing, and selling its projects for the benefit of the City of Canton;
18 and, without limiting the generality of the foregoing, authority is specifically granted to the
19 City of Canton to enter into contracts, lease agreements, rental agreements, installment sale
20 agreements, and related agreements with the Canton Building Authority for a term not
21 exceeding 50 years;

22 (j) To sell or assign its rights under its contracts, lease agreements, or installment sale
23 agreements or its right to receive payments thereunder, either directly or through trust or
24 custodial arrangements whereby interests are created in such contracts, lease agreements, or
25 installment sale agreements or the payments to be received thereunder through the issuance
26 of trust certificates, certificates of participation, custodial receipts, or other similar
27 instruments;

28 (k) To accept loans and grants of money or property of any kind from the United States, the
29 State of Georgia, or any political subdivision of the State of Georgia;

30 (l) To borrow money for any of its corporate purposes and to issue revenue bonds payable
31 solely from funds or revenues of the authority pledged for that purpose and to pledge and
32 assign any of its revenues, income, rent, charges, and fees to provide for the payment of the
33 same and to provide for the rights of the holders of such revenue bonds; and

34 (m) To make such rules and regulations governing its employees and property as it may in
35 its discretion deem proper.

SECTION 4.

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 2 The Canton Building Authority shall consist of five members who shall be residents of the
 3 City of Canton, who shall be eligible to succeed themselves, and who shall be appointed by
 4 the mayor and council of the City of Canton. The mayor and members of the council shall
 5 be eligible to be appointed to and to serve on the Canton Building Authority. The members
 6 of the authority shall hold office for terms of four years and until their successors shall be
 7 appointed; provided, however, that of the original members appointed to the authority, three
 8 shall be appointed for terms of one year each and two shall be appointed for terms of three
 9 years. Upon the expiration of each of such initial terms, the successors shall be appointed
 10 for terms of four years. Any vacancy on the authority shall be filled for the unexpired term
 11 by the mayor and council. Immediately after their appointment, the members of the authority
 12 shall enter upon their duties. Three members of the authority shall constitute a quorum, and
 13 no vacancy on the authority shall impair the right of the quorum to exercise all the rights and
 14 perform all the duties of the authority and, in every instance, a majority vote of a quorum
 15 shall authorize any legal act of the authority, including all things necessary to authorize and
 16 issue revenue bonds. The Canton Building Authority shall elect one of its members as
 17 chairperson and shall elect a secretary and treasurer who need not necessarily be a member
 18 of the authority. The members of the authority shall not be entitled to compensation for their
 19 services but shall be entitled to and shall be reimbursed for their actual expenses necessarily
 20 incurred in the performance of their duties. The authority shall make rules and regulations
 21 for its own government. It shall have perpetual existence. Any change in name or
 22 composition of the authority shall in no way affect the vested rights of any person under the
 23 provisions of this Act or impair the obligations of any contracts existing under this Act.

SECTION 5.

24
 25 As used in this Act, the following words and terms shall have the following meanings unless
 26 a different meaning clearly appears from the context:

- 27 (1) "Authority" shall mean the Canton Building Authority created in Section 2 of this Act.
 28 (2) "Cost of the project" shall include the cost of construction, the cost of all lands,
 29 properties, rights, easements, and franchises acquired, the cost of buildings,
 30 improvements, materials, labor, and services contracted for, the cost of all machinery and
 31 equipment, financing charges, interest prior to and during construction and for one year
 32 after the completion of construction, engineering, architectural, fiscal, accounting,
 33 inspection, and legal expenses, cost of plans and specifications, and other expenses
 34 necessary or incident to determining the feasibility or practicability of the project,
 35 administrative expenses, and such other expenses as may be necessary or incident to the
 36 financing herein authorized, the acquisition, construction, renovation, reconstruction, or

1 remodeling of any project, the placing of the same in operation, and the condemnation
2 of property necessary for such construction and operation. Any obligation or expense
3 incurred for any of the foregoing purposes shall be regarded as a part of the cost of the
4 project and may be paid or reimbursed as such out of any funds of the authority,
5 including proceeds of any revenue bonds issued under the provisions of this Act for any
6 such project or projects and the proceeds of the sale of any contracts, lease agreements,
7 or installment sale agreements or the amounts payable thereunder, either directly or by
8 the creation of interests therein.

9 (3) "Project" shall mean and include real and personal property, including buildings and
10 related facilities and equipment, which are necessary or convenient for the efficient
11 operation of the City of Canton.

12 (4) "Revenue bonds" shall mean revenue bonds issued by the authority pursuant to the
13 terms of this Act and Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known as the
14 "Revenue Bond Law."

15 (5) "Self-liquidating" means if, in the judgment of the authority, the revenues and
16 earnings to be derived by the authority therefrom and all properties used, leased, and sold
17 in connection therewith will be sufficient to pay the cost of operating, maintaining, and
18 repairing the project and to pay the principal of and interest on the revenue bonds which
19 may be issued to finance, in whole or in part, the cost of such project or projects.

20 SECTION 6.

21 The Canton Building Authority shall have power and is hereby authorized from time to time
22 to provide by resolution for the issuance of negotiable revenue bonds in the manner provided
23 by Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known as the "Revenue Bond Law,"
24 for the purpose of paying all or any part of the cost of any one or more projects, including
25 the cost of constructing, reconstructing, equipping, extending, adding to, or improving any
26 such project, or for the purpose of refunding, as herein provided, any such bonds of the
27 authority previously issued. The principal of and interest on such revenue bonds shall be
28 payable solely from such part of the revenues and earnings of such project or projects as may
29 be designated in the resolution of the authority authorizing the issuance of such revenue
30 bonds. The revenue bonds of each issue shall be issued and validated under and in
31 accordance with the provisions of Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known
32 as the "Revenue Bond Law."

33 SECTION 7.

34 All revenue bonds issued under the provisions of this Act shall have and are hereby declared
35 to have all the qualities and incidents of negotiable instruments under the negotiable

1 instruments law of this State. Such bonds are declared to be issued for an essential public
2 and governmental purpose and such bonds and the income thereof shall be exempt from all
3 taxation within this State.

4 **SECTION 8.**

5 Revenue bonds issued under the provisions of this Act shall not constitute a debt or a pledge
6 of the faith and credit of the State of Georgia or of the City of Canton, but such bonds shall
7 be payable solely from such part of the revenues and earnings of such project or projects as
8 may be designated in the resolution of the Canton Building Authority authorizing the
9 issuance of such bonds. The issuance of such revenue bonds shall not directly, indirectly,
10 or contingently obligate the State of Georgia or the City of Canton to levy or to pledge any
11 form of taxation whatever for the payment thereof. No holder of any bond or receiver or
12 trustee in connection therewith shall have the right to enforce the payment thereof against
13 any property of the State of Georgia or the City of Canton nor shall any such bond constitute
14 a charge, lien, or encumbrance, legal or equitable, upon any such property. All such bonds
15 shall contain on their face a recital setting forth substantially the foregoing provisions of this
16 section. The City of Canton, however, may obligate itself to pay the amounts required under
17 any contract entered into with the Canton Building Authority from funds received from taxes
18 to be levied and collected for that purpose to the extent necessary to pay the obligations
19 contractually incurred with the authority, and from any other source; and the obligation to
20 make such payments shall constitute a general obligation and a pledge of the full faith and
21 credit of the City of Canton but shall not constitute a debt of the City of Canton within the
22 meaning of the Constitution of the State of Georgia, Article IX, Section V, Paragraph I; and,
23 when the City of Canton contracts with the Canton Building Authority to make such
24 payments from taxes to be levied for that purpose, then the obligation shall be mandatory to
25 levy and collect such taxes from year to year in an amount sufficient to fulfill and fully
26 comply with the terms of such contract.

27 **SECTION 9.**

28 In the discretion of the Canton Building Authority, any issue of such revenue bonds may be
29 secured by a trust indenture by and between the authority and a corporate trustee, which may
30 be any trust company or bank having the powers of a trust company within or outside of the
31 State of Georgia. Such trust indenture may pledge or assign fees, tolls, rents, revenues, and
32 earnings to be received by the authority, including the proceeds derived from the sale or
33 lease, from time to time, of any project. Either the resolution providing for the issuance of
34 revenue bonds or such trust indenture may contain such provisions for protecting and
35 enforcing the rights and remedies of the bondholders as may be reasonable and proper and

1 not in violation of law, including covenants setting forth the duties of the Canton Building
2 Authority in relation to the acquisition and construction of any project, the maintenance,
3 operation, repair, and insurance of any project, and the custody, safeguarding and application
4 of all monies, including the proceeds derived from the sale or lease of any project, and may
5 also provide that any project shall be acquired and constructed under the supervision and
6 approval of consulting engineers or architects employed or designated by the Canton
7 Building Authority and satisfactory to the original purchasers of the bonds issued therefor,
8 and may also require that the security given by contractors and by any depository of the
9 proceeds of the bonds or revenues or other monies be satisfactory to such purchasers, and
10 may also contain provisions concerning the conditions, if any, upon which additional revenue
11 bonds pledging all or any part of the revenues and earnings of such project or projects may
12 be issued. Such indenture may set forth the rights and remedies of the bondholders and of
13 the trustee. In addition to the foregoing, such trust indenture may contain such other
14 provisions as the authority may deem reasonable and proper for the security of the
15 bondholders. All expenses incurred in carrying out such trust indenture may be treated as
16 a part of the cost of maintenance, operation, and repair of the project affected by such
17 indenture.

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SECTION 10.

19 The revenues, fees, tolls, and earnings derived from any particular project or projects,
20 regardless of whether or not such fees, earnings, and revenues were produced by a particular
21 project for which bonds have been issued and any monies derived from the sale of any
22 properties, both real and personal, of the Canton Building Authority, unless otherwise
23 pledged and allocated, may be pledged and allocated by the authority to the payment of the
24 principal and interest on revenue bonds of the authority as the resolution authorizing the
25 issuance of the bonds or the trust indenture may provide, and such funds so pledged, from
26 whatever source received, which such pledge may include funds received from one or more
27 or all sources not previously pledged and allocated, shall be set aside at regular intervals, as
28 may be provided in the resolution or trust indenture, into a sinking fund, which such sinking
29 fund shall be pledged to and charged with the payments of the interest upon such revenue
30 bonds as such interest shall fall due, the principal of the bonds as the same shall fall due, the
31 necessary charges of any paying agent or agents for paying principal and interest, and any
32 premium upon bonds retired by call or purchase. The use and disposition of such sinking
33 fund shall be subject to such regulations as may be provided in the resolution authorizing the
34 issuance of the revenue bonds or in the trust indenture, but, except as may otherwise be
35 provided in such resolution or trust indenture, such sinking fund shall be a fund for the

1 benefit of all revenue bonds issued pursuant to such resolution or trust indenture without
2 distinction or priority of one over another.

3 **SECTION 11.**

4 The Canton Building Authority is hereby authorized to provide by resolution for the issuance
5 of revenue refunding bonds of the authority for the purpose of refunding any revenue bonds
6 issued under the provisions of this Act and then outstanding, together with accrued interest
7 thereon and any premium required for the payment of such bonds prior to maturity. The
8 issuance of such revenue bonds and all the details thereof, the rights of the holders thereof,
9 and the duties of the authority with respect to the same, shall be governed by the foregoing
10 provisions of this Act insofar as the same may be applicable.

11 **SECTION 12.**

12 The principal office of the Canton Building Authority shall be in the City of Canton and the
13 venue of any action against it shall be in Cherokee County. Any action pertaining to the
14 validation of any bonds issued under the provisions of this Act and for the validation of any
15 contract entered into by the Canton Building Authority shall be brought in the Superior Court
16 of Cherokee County, and such court shall have exclusive original jurisdiction of such actions.
17 Service upon the authority of any process, subpoena, or summons shall be effected by
18 serving the same personally upon any member of the authority.

19 **SECTION 13.**

20 Revenue bonds of the Canton Building Authority shall be confirmed and validated in
21 accordance with the procedure now or hereafter set forth in Article 3 of Chapter 82 of Title
22 36 of the O.C.G.A., as the same now exists or may hereafter be amended. The petition for
23 validation shall also make a party defendant to such action the City of Canton, if such city
24 has or will contract with the Canton Building Authority with respect to the project for which
25 bonds are to be issued and are sought to be validated, and the City of Canton shall be
26 required to show cause, if any exists, why such contract and the terms and conditions thereof
27 should not be inquired into by the court and the validity of the terms thereof be determined
28 and the contract adjudicated as security for the payment of any such bonds of the Canton
29 Building Authority. The bonds, when validated, and the judgment of validation shall be final
30 and conclusive with respect to the validity of such bonds against the authority, and the
31 validity of the contract and of the terms and conditions thereof, when validated, and the
32 judgment of validation shall be final and conclusive against the City of Canton if it be a party
33 to the validation proceeding as herein provided for.

SECTION 14.

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2 While any of the bonds issued by the Canton Building Authority or any interests in contracts
3 of the authority remain outstanding, the powers, duties, or existence of the Canton Building
4 Authority or of its officers, employees, or agents shall not be diminished or impaired in any
5 manner that will affect adversely the interest and rights of the holders of such bonds or such
6 interests in contracts of the authority. The provisions of this section of this Act shall be for
7 the benefit of the Canton Building Authority and of the holders of any such bonds and
8 interests in contracts of the authority and, upon the issuance of bonds or the creation of
9 interests in contracts of the authority under the provisions of this Act, shall constitute a
10 contract with the holders of such bonds or such interests in contracts of the authority.

SECTION 15.

11
12 All monies received by the Canton Building Authority pursuant to this Act, whether as
13 proceeds from the sale of revenue bonds or contracts of the authority, as grants or other
14 contributions, or as revenues, income, fees, and earnings, shall be deemed to be the trust
15 funds to be held and applied solely as provided in this Act and in such resolutions and trust
16 indentures as may be adopted and entered into by the authority pursuant to this Act.

SECTION 16.

17
18 The Canton Building Authority is hereby authorized to prescribe and fix and collect rates,
19 fees, tolls, rents, and charges and to revise, from time to time, and collect such revised rates,
20 fees, tolls, rents, and charges for the services, facilities, or commodities furnished, including
21 leases, concessions, or subleases of its projects, and to determine the price and terms at and
22 under which its projects may be sold.

SECTION 17.

23
24 The exercise of the powers conferred upon the Canton Building Authority hereunder shall
25 constitute an essential governmental function for a public purpose and the authority shall be
26 required to pay no taxes or assessments upon any of the property acquired by it or under its
27 jurisdiction, control, possession, or supervision or upon its activities in the operation and
28 maintenance of property acquired by it or of buildings erected or acquired by it or any fees,
29 rentals, or other charges for the use of such property or buildings or other income received
30 by the authority. The tax exemption herein provided shall not include an exemption from
31 sales and use tax on property purchased by or for the use of the authority.

SECTION 18.

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2 The Canton Building Authority shall have the same immunity and exemption from liability
3 for torts and negligence as the State of Georgia, and the officers, agents, and employees of
4 the authority, when in performance of work of the authority, shall have the same immunity
5 and exemption from liability for torts and negligence as officers, agents, and employees of
6 the State of Georgia. The authority may be sued the same as may private corporations on any
7 contractual obligation of the authority.

SECTION 19.

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9 The property of the Canton Building Authority shall not be subject to levy and sale under
10 legal process.

SECTION 20.

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12 The scope of the Canton Building Authority's operation shall be limited to the territory
13 embraced within the territorial limits of Cherokee County, as the same now or may hereafter
14 exist.

SECTION 21.

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16 This Act does not in any way take away from the Canton Building Authority any power
17 which may be conferred upon it by law but is supplemental thereto.

SECTION 22.

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19 The Canton Building Authority shall not have the right to impose any tax on any person or
20 property.

SECTION 23.

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22 This Act shall be liberally construed to effect the purposes hereof.

SECTION 24.

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24 Should any sentence, clause, phrase, or part of this Act be declared for any reason to be
25 unconstitutional or invalid, the same shall not affect the remainder of this Act or any part
26 hereof, other than the part so held to be invalid, but the remaining provisions of this Act shall
27 remain in full force and effect, and it is the express intention of this Act to enact each
28 provision of this Act independently of any other provision hereof.

