

Senate Bill 353

By: Senator Thompson of the 33rd

A BILL TO BE ENTITLED
AN ACT

1 To create the City of Austell Public Facilities Authority; to provide for a short title and
2 legislative findings; to confer powers and impose duties on the authority; to provide for the
3 membership and the appointment of members of the authority and their terms of office,
4 qualifications, duties, powers, and compensation; to provide for vacancies, organization,
5 meetings, quorum, and expenses; to provide for definitions; to provide for revenue bonds and
6 their negotiability, sale, and use of proceeds from such sales; to provide for condition for
7 issuance; to prohibit the pledge of credit for the payment of bonds; to provide for trust
8 indentures and sinking fund; to provide for payment of bond proceeds; to provide for
9 bondholder remedies and protection; to provide for refunding bonds; to provide for bond
10 validation; to provide for venue and jurisdiction; to provide for trust funds; to provide for
11 authority purpose; to provide for charges; to provide for rules and regulations; to provide for
12 tort immunity; to provide for tax exemptions and exemptions from levy and sale; to provide
13 for supplemental powers; to provide for effect on other governments; to provide for liberal
14 construction; to provide for severability and an effective date; to repeal conflicting laws; and
15 for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 Short title.

19 This Act shall be known and may be cited as the "City of Austell Public Facilities Authority
20 Act."

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

10 (3) "Project" means (i) all buildings, facilities, and equipment necessary or convenient
 11 for the efficient operation of the City of Austell, Georgia, or any department, agency,
 12 division, or commission thereof and (ii) any "undertaking" permitted by the Revenue
 13 Bond Law.

14 (4) "Revenue Bond Law," Article 3 of Chapter 82 of Title 36 of the O.C.G.A., means the
 15 Revenue Bond Law of the State of Georgia, as amended, or any other similar law
 16 hereinafter enacted.

17 (5) "Revenue bonds" means revenue bonds authorized to be issued pursuant to this Act.

18 (6) "Self-liquidating" means any project which the revenues and earnings to be derived
 19 by the authority therefrom, including but not limited to any contractual payments with
 20 governmental or private entities, and all properties used, leased, and sold in connection
 21 therewith, together with any grants, will be sufficient to pay the costs of operating,
 22 maintaining, and repairing the project and to pay the principal and interest on the revenue
 23 bonds or other obligations which may be issued for the purpose of paying the costs of the
 24 project.

25 (7) "State" means the State of Georgia.

26 **SECTION 4.**

27 Powers.

28 The authority shall have the power:

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

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

33 (3) To acquire in its own name by purchase, on such terms and conditions and in such
 34 manner as it may deem proper, or by condemnation, in accordance with the provisions
 35 of any and all existing laws applicable to the condemnation of property for public use,

1 real property or rights or easements therein or franchises necessary or convenient for its
2 corporate purposes, and to use the same so long as its corporate existence shall continue,
3 to lease or make contracts with respect to the use of the same or dispose of the same in
4 any manner it deems to the best advantage of the authority, the authority being under no
5 obligation to accept and pay for any property condemned under this Act, except from the
6 funds provided under the authority of this Act; and in any proceedings to condemn, such
7 orders may be made by the court having jurisdiction of the suit, action, or proceedings
8 as may be just to the authority and to the owners of the property to be condemned;
9 provided, however, no property shall be acquired under the provisions of this Act upon
10 which any lien or encumbrance exists, unless at the time such property is so acquired a
11 sufficient sum of money is to be deposited in trust to pay and redeem the fair value of
12 such lien or encumbrance;

13 (4) To appoint, select, and employ officers, agents, and employees, including
14 engineering, architectural, and construction experts, fiscal agents, and attorneys, and fix
15 their respective compensations;

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

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

25 (7) To pay the costs of the project with the proceeds of revenue bonds or other
26 obligations issued by the authority or from any grant or contribution from the United
27 States of America or any agency or instrumentality thereof or from the state or any
28 agency or instrumentality or other political subdivision thereof or from any other source
29 whatsoever;

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

34 (9) To accept loans or grants, or both, of money or materials or property of any kind
35 from the state or any agency or instrumentality or political subdivision thereof upon such
36 terms and conditions as the state or such agency or instrumentality or political
37 subdivision may require;

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

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

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

8 **SECTION 5.**

9 Revenue bonds.

10 The authority, or any authority or body which has or which may in the future succeed to the
11 powers, duties, and liabilities vested in the authority created hereby, shall have power and
12 is hereby authorized to provide by resolution for the issuance of revenue bonds of the
13 authority for the purpose of paying all or any part of the costs of the project and for the
14 purpose of refunding revenue bonds or other obligations previously issued. The principal of
15 and interest on such revenue bonds shall be payable solely from the special fund hereby
16 provided for such payment. The revenue bonds of each issue shall be dated, shall bear
17 interest at such rate or rates per annum, payable at such time or times, shall mature at such
18 time or times not exceeding forty years from their date or dates, shall be payable in such
19 medium of payment as to both principal and interest as may be determined by the authority,
20 and may be redeemable before maturity, at the option of the authority, at such price or prices
21 and under such terms and conditions as may be fixed by the authority in the resolution for
22 the issuance of such revenue bonds.

23 **SECTION 6.**

24 Same; form; denomination; registration; place of payment.

25 The authority shall determine the form of the revenue bonds and shall fix the denomination
26 or denominations of the revenue bonds. The revenue bonds may be issued in coupon or
27 registered form, or both, as the authority may determine, and provision may be made for
28 registration and exchangeability privileges. The authority shall fix the place or places of
29 payment of principal and interest thereon.

SECTION 7.

Same; signatures; seal.

3 All such revenue bonds shall bear the manual or facsimile signature of the chairperson or
4 vice chairperson of the authority and the attesting manual or facsimile signature of the
5 secretary, assistant secretary, or secretary-treasurer of the authority, and the official seal of
6 the authority shall be impressed or imprinted thereon. Any coupons attached thereto shall
7 bear the manual or facsimile signatures of the chairperson or vice chairperson and the
8 secretary, assistant secretary, or secretary-treasurer of the authority. Any revenue bonds or
9 coupons attached thereto may bear the manual or facsimile signature of such persons as at
10 the actual time of the execution of such revenue bonds or coupons shall be duly authorized
11 or hold the proper office, although at the date of issuance of such revenue bonds such person
12 may not have been so authorized or shall not have held such office. In case any officer
13 whose signature shall appear on any revenue bond or any coupon shall cease to be such
14 officer before the delivery of such revenue bond, such signature shall nevertheless be valid
15 and sufficient for all purposes in the same manner as if that person had remained in office
16 until such delivery.

SECTION 8.

Same; negotiability; exemption from taxation.

19 All revenue bonds shall have and are hereby declared to have all the qualities and incidents
20 of negotiable instruments under the laws of the state. All revenue bonds, their transfer, and
21 the income therefrom shall be exempt from all taxation within the state.

SECTION 9.

Same; sale; price; proceeds.

24 The authority may sell revenue bonds in such manner and for such price as it may determine
25 to be in the best interest of the authority. The proceeds derived from the sale of revenue
26 bonds shall be used solely for any purpose provided in the resolutions and proceedings
27 authorizing the issuance of such revenue bonds.

SECTION 10.

Same; interim receipts and certificates or temporary bonds.

Prior to the preparation of any definitive revenue bonds, the authority may, under like restrictions, issue interim receipts, interim certificates, or temporary revenue bonds, with or without coupons, exchangeable for definitive revenue bonds upon the issuance of the latter.

SECTION 11.

Same; replacement of lost or mutilated bonds.

The authority may provide for the replacement of any revenue bonds or coupons which shall become mutilated or be destroyed or lost.

SECTION 12.

Same; 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 the 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 or special or adjourned meeting of the authority by a majority of its members.

SECTION 13.

Credit not pledged.

Revenue bonds shall not be deemed to constitute a debt of the City of Austell, Georgia, nor a pledge of the faith and credit of said municipality, but such revenue bonds shall be payable solely from the fund hereinafter provided. The issuance of such revenue bonds shall not directly, indirectly, or contingently obligate said municipality to levy or to 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

1 or municipality to enter into an intergovernmental contract pursuant to which the political
2 subdivision or municipality agrees to pay amounts sufficient to pay operating charges and
3 other costs of the authority or any project including, without limitation, the principal of and
4 interest on revenue bonds in consideration for services or facilities of the authority.

5 **SECTION 14.**

6 Trust indenture as security.

7 In the discretion of the authority, any issuance of revenue bonds may be secured by a trust
8 indenture by and between the authority and a corporate trustee, which may be any trust
9 company or bank having the powers of a trust company within or outside the state. Either
10 the resolution providing for the issuance of the revenue bonds or such trust indenture may
11 contain such provisions for protecting and enforcing the rights and remedies of the
12 bondholders as may be reasonable and proper and not in violation of law, including
13 covenants setting forth the duties of the authority in relation to the acquisition and
14 construction of the project, the maintenance, operation, repair, and insuring of the project,
15 and the custody, safeguarding, and application of all moneys.

16 **SECTION 15.**

17 To whom proceeds of bonds shall be paid.

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

23 **SECTION 16.**

24 Sinking fund.

25 The moneys received pursuant to an intergovernmental contract and the revenues, fees, tolls,
26 charges, and earnings derived from any particular project or projects, regardless of whether
27 or not such revenues, fees, tolls, fines, charges, and earnings were produced by a particular
28 project for which revenue bonds have been issued, unless otherwise pledged and allocated,
29 may be pledged and allocated by the authority to the payment of the principal and interest
30 on revenue bonds of the authority as the resolution authorizing the issuance of the revenue
31 bonds or in the trust indenture may provide, and such funds so pledged from whatever source

1 received shall be set aside at regular intervals as may be provided in the resolution or trust
 2 indenture into a sinking fund, which said sinking fund shall be pledged to and charged with
 3 the payment of:

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

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

14 **SECTION 17.**

15 Remedies of bondholders.

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

26 **SECTION 18.**

27 Validation.

28 Revenue bonds and the security therefor shall be confirmed and validated in accordance with
 29 the procedure of the Revenue Bond Law. The petition for validation shall also make party
 30 defendant to such action the state and any institution, department, or other agency thereof,
 31 and any county, municipality, or other political subdivision or authority of the state which
 32 has contracted with the authority for services or facilities relating to the project for which
 33 revenue bonds are to be issued and sought to be validated, and such defendant shall be

1 required to show cause, if any exists, why such contract or contracts shall not be adjudicated
2 as a part of the basis for the security for the payment of any such revenue bonds. The revenue
3 bonds, when validated, and the judgment of validation shall be final and conclusive with
4 respect to such revenue bonds and the security for the payment thereof and interest thereon
5 and against the authority and all other defendants.

6 **SECTION 19.**

7 Venue and jurisdiction.

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

13 **SECTION 20.**

14 Interest of bondholders protected.

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

24 **SECTION 21.**

25 Moneys received considered trust funds.

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

SECTION 22.

Purpose of the authority.

Without limiting the generality of any provision of this Act, the general purpose of the authority is declared to be that of providing buildings, facilities, equipment, and services for the citizens in the City of Austell, Georgia.

SECTION 23.

Rates, charges and revenues; use.

The authority is hereby authorized to prescribe and fix rates and to revise the 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 herein provided 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 24.

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

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

SECTION 25.

Tort immunity.

To the extent permitted by law, the authority shall have the same immunity and exemption from liability for torts and negligence as the City of Austell, Georgia; 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 the City of Austell, Georgia, when in the performance of their public duties or work of said municipality.

SECTION 26.

Tax-exempt status of authority.

The properties of the authority, both real and personal, are declared to be public properties used for the benefit and welfare of the people of the state and not for purposes of private or corporate benefit and income, and such properties and the authority shall be exempt from all taxes and special assessments of any municipality, county, or the state and any political subdivision thereof.

SECTION 27.

Effect on other governments.

This Act shall not and does not in any way take from the City of Austell, Georgia, the authority to own, operate, and maintain public facilities or to issue revenue bonds as provided by the Revenue Bond Law.

SECTION 28.

Liberal construction of Act.

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

SECTION 29.

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 30.

Effective date.

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

- 1 **SECTION 31.**
- 2 General repealer.

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