

Senate Bill 202

By: Senator Dean of the 31st

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

To create the Cartersville Building Authority; to provide for a short title and legislative findings; to confer powers and impose duties on the authority; to provide for the membership and the appointment of members of the authority and their terms of office, qualifications, duties, powers, and compensation; to provide for vacancies, organization, meetings, and expenses; to provide for definitions; to provide for revenue bonds and their negotiability, sale, and use of proceeds from such sales; to provide for condition for issuance; to prohibit the pledge of credit for the payment of bonds; to provide for trust indentures and sinking fund; to provide for payment of bond proceeds; to provide for bondholder remedies and protection; to provide for refunding bonds; to provide for bond validation; to provide for venue and jurisdiction; to provide for trust funds; to provide for authority purpose; to provide for charges; to provide for rules and regulations; to provide for tort immunity; to provide for tax exemptions and exemptions from levy and sale; to provide for supplemental powers; to provide for effect on other governments; to provide for liberal construction; to provide for severability and 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 may be cited as the "Cartersville Building Authority Act."

SECTION 2.

Cartersville Building Authority created.

There is hereby created a body corporate and politic to be known as the Cartersville Building Authority (herein called the "authority"), which shall be deemed to be a public corporation by that name, style, and title to be known. Such corporation shall be separate and distinct

1 from any public corporation heretofore created by the General Assembly and shall be an
2 instrumentality of the State of Georgia exercising governmental powers. All property owned
3 by such corporation shall be public property held and owned for governmental purposes and
4 shall be exempt from taxation.

5 **SECTION 3.**

6 General powers.

7 The authority shall have the power:

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

9 (2) To sue and be sued;

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

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

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

17 (6) To acquire in its own name by purchase on such terms and conditions and in such
18 manner as it may deem proper or by condemnation in accordance with the provisions of
19 any and all existing laws of the State of Georgia applicable to the condemnation of
20 property for public use, including the power to proceed as a condemning body under the
21 provisions of Article 2 of Chapter 2 of Title 22 of the O.C.G.A., relating to proceedings
22 before a special master, or by gift, grant, lease, or otherwise, real property or rights and
23 easements therein and franchises and personal property necessary or convenient for its
24 corporate purposes and to use the same so long as its corporate existence shall continue
25 and to lease or make contracts with respect to the use, sale, or disposition of the same in
26 any manner it deems to the best advantage of the authority. Title to any such property
27 shall be held by the authority exclusively for the benefit of the public. The authority shall
28 be under no obligation to accept and pay for any property condemned as provided herein
29 except from the funds provided therefor and, in any proceedings to condemn, such orders
30 may be made by the court having jurisdiction of the suit, action, or proceedings as may
31 be just to the authority and to the owners of the property to be condemned; and no
32 property shall be acquired as provided herein upon which any lien or other encumbrance
33 exists, unless at the time such property is so acquired a sufficient sum of money shall be
34 deposited in trust to pay and redeem the amount of such lien or encumbrance. If the
35 authority shall deem it expedient to construct any project on lands which are subject to

the control of the City of Cartersville, Georgia, the City of Cartersville, Georgia, is authorized to convey such lands to the authority for such consideration as may be agreed upon by the authority and the City of Cartersville, Georgia, taking into consideration the public benefit to be derived from such conveyance;

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

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

(9) To make and execute with public and private persons and corporations contracts, lease agreements, rental agreements, installment sale agreements, and other instruments relating to its projects and incident to the exercise of the powers of the authority, including contracts for constructing, renting, leasing, and selling its projects for the benefit of the City of Cartersville, Georgia; and, without limiting the generality of the foregoing, authority is specifically granted to the City of Cartersville, Georgia, to enter into contracts, lease agreements, rental agreements, installment sale agreements, and related agreements with the authority for a term not exceeding 50 years;

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

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

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

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

SECTION 4.

Membership.

The authority shall consist of five members who shall be residents of the City of Cartersville, Georgia, who shall be eligible to succeed themselves, and who shall be appointed by the city

council of the City of Cartersville, Georgia. Neither the mayor nor any member of the city council shall be eligible to be appointed to or serve on the authority. The members of the authority shall hold office for terms of four years and until their successors shall be appointed; provided, however, that of the original members appointed to the authority, three shall be appointed for terms of one year each and two shall be appointed for terms of three years. Upon the expiration of each of such initial terms, the successors shall be appointed for terms of four years. Any vacancy on the authority shall be filled for the unexpired term by the city council. Immediately after their appointment, the members of the authority shall enter upon their duties. Three members of the authority shall constitute a quorum, and no vacancy on the authority shall impair the right of the quorum to exercise all the rights and perform all the duties of the authority and, in every instance, a majority vote of a quorum shall authorize any legal act of the authority, including all things necessary to authorize and issue revenue bonds. The authority shall elect one of its members as chairperson and shall elect a secretary and treasurer who need not necessarily be a member of the authority. The members of the authority shall not be entitled to compensation for their services but shall be entitled to and shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties. The authority shall make rules and regulations for its own government. It shall have perpetual existence. Any change in name or composition of the authority shall in no way affect the vested rights of any person under the provisions of this Act or impair the obligations of any contracts existing under this Act.

SECTION 5.

Definitions.

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

(1) "Authority" shall mean the Cartersville Building Authority created in Section 2 of this Act.

(2) "Project" shall mean and include real and personal property, including buildings and related facilities and equipment, which are necessary or convenient for the efficient operation of the City of Cartersville, Georgia.

(3) "Cost of the project" shall include the cost of construction, the cost of all lands, properties, rights, easements, and franchises acquired, the cost of buildings, improvements, materials, labor, and services contracted for, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after the completion of construction, engineering, architectural, fiscal, accounting, inspection, and legal expenses, cost of plans and specifications, and other expenses

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

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

21 **SECTION 6.**

22 Revenue bonds.

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

SECTION 7.

Revenue bonds; negotiability and exemption from taxation.

All revenue bonds issued under the provisions of this Act shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of this state. Such bonds are declared to be issued for an essential public and governmental purpose and such bonds and the income thereof shall be exempt from all taxation within this state.

SECTION 8.

Credit not pledged.

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

SECTION 9.

Revenue bonds; trust indenture as security.

In the discretion of the authority, any issue of such 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 outside of the State of Georgia. Such trust indenture may pledge or assign fees, tolls, rents, revenues, and earnings to be received by the authority, including the proceeds derived from the sale or lease, from time to time, of any project. Either the resolution providing for the issuance of 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 any project, the maintenance, operation, repair, and insurance of any project, and the custody, safeguarding and application of all monies, including the proceeds derived from the sale or lease of any project, and may also provide that any project shall be acquired and constructed under the supervision and approval of consulting engineers or architects employed or designated by the authority and satisfactory to the original purchasers of the bonds issued therefor, and may also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues or other monies be satisfactory to such purchasers, and may also contain provisions concerning the conditions, if any, upon which additional revenue bonds pledging all or any part of the revenues and earnings of such project or projects may be issued. Such indenture may set forth the rights and remedies of the bondholders and of the trustee. In addition to the foregoing, such trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project affected by such indenture.

SECTION 10.

Revenue bonds; sinking fund.

The revenues, fees, tolls, and earnings derived from any particular project or projects, regardless of whether or not such revenues, fees, tolls, and earnings were produced by a particular project for which bonds have been issued, and any monies derived from the sale of any properties, both real and personal, of the authority, 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

bonds or the trust indenture may provide, and such funds so pledged, from whatever source received, which such pledge may include funds received from one or more or all sources not previously pledged and allocated, shall be set aside at regular intervals, as may be provided in the resolution or trust indenture, into a sinking fund, which such sinking fund shall be pledged to and charged with the payments of:

(1) The interest upon such revenue bonds as such interest shall fall due;

(2) The principal of the bonds as the same shall fall due;

(3) The necessary charges of any paying agent or agents for paying principal and interest; and

(4) Any premium upon bonds retired by call or purchase.

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 a fund for the benefit of all revenue bonds issued pursuant to such resolution or trust indenture without distinction or priority of one over another.

SECTION 11.

Revenue bonds; refunding bonds.

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

SECTION 12.

Venue; jurisdiction; service.

The principal office of the authority shall be in the City of Cartersville, Georgia, and the venue of any action against it shall be in Bartow County. Any action pertaining to the validation of any bonds issued under the provisions of this Act and for the validation of any contract entered into by the authority shall be brought in the Superior Court of Bartow County, and such court shall have exclusive original jurisdiction of such actions. Service upon the authority of any process, subpoena, or summons shall be effected by serving the same personally upon any member of the authority.

SECTION 13.

Revenue bonds; validation.

Revenue bonds of the authority shall be confirmed and validated in accordance with the procedure now or hereafter set forth in Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known as the "Revenue Bond Law," as the same now exists or may hereafter be amended. The petition for validation shall also make a party defendant to such action the City of Cartersville, Georgia, if such city has or will contract with the authority with respect to the project for which bonds are to be issued and are sought to be validated, and the City of Cartersville, Georgia, shall be required to show cause, if any exists, why such contract and the terms and conditions thereof should not be inquired into by the court and the validity of the terms thereof be determined and the contract adjudicated as security for the payment of any such bonds of the authority. The bonds, when validated, and the judgment of validation shall be final and conclusive with respect to the validity of such bonds against the authority, and the validity of the contract and of the terms and conditions thereof, when validated, and the judgment of validation shall be final and conclusive against the City of Cartersville, Georgia, if it be a party to the validation proceeding as herein provided for.

SECTION 14.Interest of bondholders and holders of interests
in authority contracts protected.

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

SECTION 15.

Monies received considered trust funds.

All monies received by the authority pursuant to this Act, whether as proceeds from the sale of revenue bonds or contracts of the authority, as grants or other contributions, or as

1 revenues, income, fees, and earnings, shall be deemed to be the trust funds to be held and
2 applied solely as provided in this Act and in such resolutions and trust indentures as may be
3 adopted and entered into by the authority pursuant to this Act.

4 **SECTION 16.**

5 Rates, charges, and revenues of projects.

6 The authority is hereby authorized to prescribe and fix and collect rates, fees, tolls, rents, and
7 charges and to revise, from time to time, and collect such revised rates, fees, tolls, rents, and
8 charges for the services, facilities, or commodities furnished, including leases, concessions,
9 or subleases of its projects, and to determine the price and terms at and under which its
10 projects may be sold.

11 **SECTION 17.**

12 Exemption from taxation.

13 The exercise of the powers conferred upon the authority hereunder shall constitute an
14 essential governmental function for a public purpose and the authority shall be required to
15 pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction,
16 control, possession, or supervision or upon its activities in the operation and maintenance of
17 property acquired by it or of buildings erected or acquired by it or any fees, rentals, or other
18 charges for the use of such property or buildings or other income received by the authority.
19 The tax exemption herein provided shall not include an exemption from sales and use tax on
20 property purchased by or for the use of the authority.

21 **SECTION 18.**

22 Immunity from tort actions.

23 The authority shall have the same immunity and exemption from liability for torts and
24 negligence as the State of Georgia, and the officers, agents, and employees of the authority,
25 when in performance of work of the authority, shall have the same immunity and exemption
26 from liability for torts and negligence as officers, agents, and employees of the State of
27 Georgia. The authority may be sued the same as any private corporations on any contractual
28 obligation of the authority.

SECTION 19.

Property not subject to levy and sale.

The property of the authority shall not be subject to levy and sale under legal process.

SECTION 20.

Scope of operations.

The scope of the authority's operation shall be limited to the territory embraced within the territorial limits of Bartow County, as the same now or may hereafter exist.

SECTION 21.

Powers declared supplemental and additional.

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

SECTION 22.

Authority without taxing power.

The authority shall not have the right to impose any tax on any person or property.

SECTION 23.

Liberal construction of Act.

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

SECTION 24.

Effect of partial invalidity of Act.

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

2 Effective date.

6 Repeal.

7 All laws and parts of laws in conflict herewith are hereby repealed.