

Senate Bill 87

By: Senators Lee of the 29th and Seabaugh of the 28th

AS PASSED

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local government,
2 so as provide a short title; to provide a statement of constitutional authority and intent; to
3 provide for exemption from taxation; to define certain terms; to create in each county and
4 municipal corporation a public safety and judicial facilities authority; to provide for
5 activation in certain circumstances; to provide for joint authorities; to provide for the
6 appointment and terms of members of the board of directors; to provide for officers,
7 compensation, the adoption of bylaws and regulations, and delegation of powers; to provide
8 for a quorum and majority vote; to provide for powers of the authority; to provide for
9 obligations of the authority, the use of proceeds, the status as revenue obligations, subsequent
10 series of bonds or notes, bond anticipation notes, and interest rates; to provide for validation;
11 to provide that indebtedness of the authority shall not constitute indebtedness of the state or
12 any political subdivision of the state; to provide for construction; to change the definition of
13 “undertaking” with regard to revenue bonds; to remove the referendum requirement with
14 respect to revenue certificates issued for gas generation and distribution systems; to provide
15 for matters relative to the foregoing; to provide an effective date; to repeal conflicting laws;
16 and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18

19

SECTION 1.

20 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
21 by inserting immediately following Chapter 74 a new chapter to read as follows:

22

“CHAPTER 75

23 36-75-1.

24 This Act shall be known and may be cited as the ‘War on Terrorism Local Assistance Act.’

25 36-75-2.

1 This chapter is enacted pursuant to authority granted to the General Assembly by the
2 Constitution of Georgia. Each authority created by this chapter is created for nonprofit and
3 public purposes; and it is found, determined, and declared that the creation of each such
4 authority and the carrying out of its corporate purposes is in all respects for the benefit of
5 the people of this state and that the authority is an institution of purely public charity and
6 will be performing an essential governmental function in the exercise of the power
7 conferred upon it by this chapter. For such reasons, the state covenants the holders of the
8 bonds issued under this chapter that such authority shall be required to pay no taxes or
9 assessments imposed by the state or any of its counties, municipal corporations, political
10 subdivisions, or taxing districts upon any property acquired by the authority or under its
11 jurisdiction, control, possession, or supervision or leased by it to others; or upon its
12 activities in the operation or maintenance of any such property or on any income derived
13 by the authority in the form of fees, recording fees, rentals, charges, purchase price,
14 installments, or otherwise; and that the bonds of such authority, their transfer, and the
15 income therefrom shall at all times be exempt from taxation within the state. The tax
16 exemption provided in this Code section shall not include any exemption from sales and
17 use tax on property purchased by the authority or for use by the authority.

18 36-75-3.

19 As used in this chapter, the term:

20 (1) 'Authority' means each public corporation created pursuant to this chapter.

21 (2) 'Cost of project' means all costs of site preparation and other start-up costs; all costs
22 of construction; all costs of real and personal property required for the purposes of the
23 project and facilities related thereto, including land and any rights or undivided interest
24 therein, easements, franchises, fees, permits, approvals, licenses, and certificates and the
25 securing of such permits, approvals, licenses, and certificates, and all machinery and
26 equipment, including motor vehicles which are used for project functions; financing
27 charges and interest prior to and during construction and during such additional period
28 as the authority may reasonably determine to be necessary for the placing of the project
29 in operation; costs of engineering, architectural, and legal services; cost of plans and
30 specifications and all expenses necessary or incident to determining the feasibility or
31 practicability of the project; administrative expenses; and such other expenses as may be
32 necessary or incidental to the financing authorized in this chapter. The costs of any
33 project may also include funds for the creation of a debt service reserve, a renewal and
34 replacement reserve, and such other reserves as may be reasonably required by the
35 authority for the operation of its projects and as may be authorized by any bond
36 resolution or trust agreement or indenture pursuant to the provisions of which the

1 issuance of any such bonds may be authorized. Any obligation or expense incurred for
 2 any of the foregoing purposes shall be regarded as a part of the cost of the project and
 3 may be paid or reimbursed as such out of the proceeds of revenue bonds or notes issued
 4 under this chapter for such project.

5 (3) 'County' means any county of this state or a governmental entity formed by the
 6 consolidation of a county and one or more municipal corporations.

7 (4) 'Detention facilities' means facilities used or to be used for the incarceration of adult
 8 and juvenile offenders and juveniles subject to the jurisdiction of the juvenile court and
 9 administration and support structures for such facilities.

10 (5) 'Governing body' means the elected or duly appointed officials constituting the
 11 governing body of each county and municipal corporation in the state.

12 (6) 'Judicial facilities' means facilities used or to be used for the administration of justice
 13 and related activities, including all adult and juvenile courts, prosecutorial and public
 14 defender services, and their respective administrative and support structures.

15 (7) 'Municipal corporation' means any incorporated municipality in this state.

16 (8) 'Project' means the acquisition, construction, equipping, operation, maintenance, and
 17 repairing of county or municipal corporation judicial, detention, or public safety facilities.

18 (9) 'Public safety facilities' means facilities used or to be used by or in direct support of
 19 management and operation of homeland security, police, fire, rescue, and emergency
 20 medical services.

21 36-75-4.

22 (a) There is created in and for each county and municipal corporation in this state a public
 23 body corporate and politic, to be known as the "public safety and judicial facilities
 24 authority" of such county. No authority shall transact any business or exercise any powers
 25 under this chapter until the governing body of the county or municipal corporation, as the
 26 case may be, by proper ordinance or resolution, declares that there is a need for an
 27 authority to function in the county or municipal corporation and declares that such
 28 jurisdiction is at the time of such ordinance or resolution imposing a sales tax levied for the
 29 purposes of a metropolitan area system of public transportation.

30 (b) Any number of counties or municipal corporations or a combination of counties and
 31 municipal corporations may jointly form an authority, to be known as the "joint public
 32 safety and judicial facilities authority" for such counties or municipal corporations or both.
 33 No authority shall transact any business or exercise any powers under this chapter until the
 34 governing authority of each county and municipal corporation involved declare, by
 35 ordinance or resolution, that there is a need for an authority to function and declare that
 36 such jurisdiction is at the time of such ordinance or resolution imposing a sales tax levied

1 for the purposes of a metropolitan area system of public transportation and until the
2 governing authority of each county and municipal corporation approves an agreement with
3 the other counties or municipal corporations for the activation of an authority and such
4 agreement is executed.

5 (c) A copy of such ordinances, resolutions, and agreements shall be filed with the
6 Secretary of State, who shall maintain a record of all authorities activated under this
7 chapter.

8 36-75-5.

9 Control and management of the authority shall be vested in a board of directors whose
10 members shall be residents of the county or municipal corporation, as applicable. Directors
11 shall be appointed, and may be reappointed, for terms of four years. The resolution or
12 ordinance activating the authority shall state the number of directors and the appointing
13 authority for each. No member of the governing authority of a county or municipal
14 corporation that activates an authority is eligible to be appointed as a director while serving
15 a term of office as a member of the governing authority of such county or municipal
16 corporation. The directors shall elect one of their members as chairperson and another as
17 vice chairperson and shall also elect a secretary and a treasurer or a secretary-treasurer,
18 either of whom may be a director. The directors shall receive no compensation for their
19 services but shall be reimbursed for their actual expenses incurred in the performance of
20 their duties. The directors may make bylaws and regulations for the governing of the
21 authority and may delegate to one or more of the officers, agents, and employees of the
22 authority such powers and duties as may be deemed necessary and proper.

23 36-75-6.

24 A majority of the directors shall constitute a quorum for the transaction of business of the
25 authority. However, any action with respect to any project of the authority must be
26 approved by the affirmative vote of a majority of the directors.

27 36-75-7.

28 Each authority shall have all of the powers necessary or convenient to carry out and
29 effectuate the purposes and provisions of this chapter, including, but without limiting the
30 generality of the foregoing, the power:

31 (1) To bring and defend actions;

32 (2) To adopt and amend a corporate seal;

33 (3) To acquire, construct, improve, or modify, to place into operation, and to operate or
34 cause to be placed into operation, either as owner of all or of any part in common with

1 others, a project or projects within the political subdivision in which the authority is
2 activated and within other political subdivisions, and to pay all or part of the cost of any
3 such project or projects from the proceeds of revenue bonds of the authority or from any
4 contribution or loans by persons, firms, or corporations or any other contribution, all of
5 which the authority is authorized to receive, accept, and use;

6 (4) To acquire, in its own name, by purchase on such terms and conditions and in such
7 manner as it may deem proper or by gift, grant, lease, or otherwise, real property or rights
8 and easements therein and franchises and personal property necessary or convenient for
9 its corporate purposes, which purposes shall include, but shall not be limited to, the
10 constructing or acquiring of a project, the improving, extending, adding to,
11 reconstructing, renovating, or remodeling of any project or part thereof already
12 constructed or acquired, or demolition to make room for such project or any part thereof,
13 and to insure the same against any and all risks as such insurance may, from time to time,
14 be available; the authority may also use such property, rent or lease the same to or from
15 others, make contracts with respect to the use thereof, or sell, lease, exchange, transfer,
16 assign, pledge, or otherwise dispose of or grant options for any such property in any
17 manner which the authority deems to the best advantage of itself and its purposes;
18 provided, however, that the powers to acquire, use, and dispose of property as set forth
19 in this paragraph shall include the power to acquire, use, and dispose of any interest in
20 such property, whether divided or undivided, which acquisition may result in the
21 ownership of such property or any part thereof in common with any other party or parties,
22 public or private; and title to any such property of the authority, however, shall be held
23 by the authority exclusively for the benefit of the public;

24 (5) To make contracts and leases and to execute all instruments necessary or convenient,
25 including contracts for construction of projects and leases of projects or contracts with
26 respect to the use of projects which it causes to be acquired or constructed; provided that
27 all private persons, firms, and corporations, this state, and all political subdivisions,
28 departments, instrumentalities, or agencies of the state or of local government are
29 authorized to enter into contracts, leases, or agreements with the authority upon such
30 terms and for such purposes as they deem advisable; and without limiting the generality
31 of the above, authority is specifically granted to counties and municipal corporations and
32 to the authority to enter into contracts, lease agreements, or other undertakings relative
33 to the furnishing of project activities and facilities or either of them by the authority to
34 such political subdivisions and by such political subdivisions to the authority for a term
35 not exceeding 50 years;

36 (6) To exercise any one or more of the powers, rights, and privileges conferred by this
37 Code section either alone or jointly or in common with one or more other public or

1 private parties or public and private parties; in any such exercise of such powers, rights,
2 and privileges jointly or in common with others with respect to the construction,
3 operation, and maintenance of project facilities, the authority may own an undivided
4 interest in such facilities with any other party with which it may jointly or in common
5 exercise the rights and privileges conferred by this chapter; the authority may enter into
6 an agreement or agreements with respect to any such project facility with the other party
7 or parties participating therein; any such agreement may contain such terms, conditions,
8 and provisions, consistent with this chapter, as the parties thereto shall deem to be in their
9 best interests; any such agreement may include, but need not be limited to, provisions for
10 the construction, operation, and maintenance of such project facility by any one or more
11 party of the parties to such agreement, which party or parties shall be designated in or
12 pursuant to such agreement as agent or agents on behalf of itself and one or more of the
13 other parties thereto, or by such other means as may be determined by the parties thereto,
14 and may include provisions for a method or methods of determining and allocating,
15 among or between the parties, costs of construction, operation, maintenance, renewals,
16 replacements, improvements, and disposals with respect to such facility; in carrying out
17 its functions and activities as such agent with respect to construction, operation, and
18 maintenance of such a facility, such agent shall be governed by the laws and regulations
19 applicable to such agent as a separate legal entity and not by any laws or regulations
20 which may be applicable to any of the other participating parties; provided, however, the
21 agent shall act for the benefit of the public; notwithstanding anything contained in any
22 other law to the contrary, pursuant to the terms of any such agreement, the authority may
23 delegate its powers and duties with respect to the construction, operation, and
24 maintenance of such facility to the party acting as agent; and all actions taken by such
25 agent in accordance with the provisions of such agreement may be binding upon the
26 authority without further action or approval of the authority;

27 (7) To extend credit or make loans to any person, firm, corporation, or other industrial
28 entity for the planning, design, construction, acquisition, or carrying out of any project,
29 which credit or loans shall be secured by loan agreements, mortgages, security
30 agreements, contracts, and all other instruments or fees or charges, upon such terms and
31 conditions as the authority shall determine reasonable in connection with such loans,
32 including provision for the establishment and maintenance of reserves and insurance
33 funds, and in the exercise of powers granted by this Code section in connection with a
34 project for such person, firm, corporation, or other industrial entity, to require the
35 inclusion in any contract, loan agreement, security agreement, or other instrument of such
36 provisions for guaranty, insurance, construction, use, operation, maintenance, and
37 financing of a project as the authority may deem necessary or desirable;

1 (8) To acquire, accept, or retain equitable interests, security interests, or other interest in
2 any property, real or personal, by mortgage, assignment, security agreement, pledge,
3 conveyance, contract, lien, loan agreement, or other consensual transfer in order to secure
4 the repayment of any moneys loaned or credit extended by the authority;

5 (9) To accept, receive, and administer gifts, grants, appropriations, and donations of
6 money, materials, and property of any kind, including loans and grants from the United
7 States of America, this state, or a unit of local government or any of their agencies,
8 departments, authorities, or instrumentalities upon such terms and conditions as the
9 United States of America, this state, or a unit of local government or any of their
10 agencies, departments, authorities, or instrumentalities shall impose; to administer trusts;
11 and to sell, lease, transfer, convey, appropriate, and pledge any and all of its property and
12 assets;

13 (10) To invest any accumulation of its funds in any fund or reserve in any manner that
14 public funds of this state or its political subdivisions may be invested;

15 (11) To do any and all things necessary or proper for the accomplishment of the
16 objectives of this chapter and to exercise any power usually possessed by private
17 corporations performing similar functions which is not in conflict with the Constitution
18 and laws of this state, including the power to employ professional and administrative staff
19 and personnel and to retain legal, engineering, fiscal, accounting, and other professional
20 services; the power to purchase all kinds of insurance, including, without limitation,
21 insurance against tort liability and against risks of damage to property; the power to
22 borrow money for any of the corporate purposes of the authority; the power to indemnify
23 and hold harmless any parties contracting with the authority or its agents from damage
24 to persons or property; and the power to act as self-insurer with respect to any loss or
25 liability; provided, however, that obligations of the authority other than revenue bonds,
26 for which provision is made in this chapter, shall be payable from the general funds of
27 the authority and shall not be a charge against any special fund allocated to the payment
28 of revenue bonds;

29 (12) To mortgage, convey, pledge, or assign any properties, revenues, income, tolls,
30 charges, or fees owned or received by the authority;

31 (13) To borrow money and issue its revenue bonds and bond anticipation notes from
32 time to time and to use the proceeds thereof for the purpose of paying all or part of the
33 cost of any project, including the cost of extending, adding to, or improving such project,
34 or for the purpose of refunding any such bonds of the authority theretofore issued; and
35 to otherwise carry out the purposes of this chapter and to pay all other costs of the
36 authority incident to, or necessary and appropriate to, such purposes, including the
37 providing of funds to be paid into any fund or funds to secure such bonds and notes,

1 provided that all such bonds and notes shall be issued in accordance with the procedures
2 and subject to the limitations set forth in Code Section 36-63-9; provided, however, that
3 the maximum aggregate amount of bonds issued shall be \$50 million; and

4 (14) As security for repayment of authority obligations, to pledge, mortgage, convey,
5 assign, hypothecate, or otherwise encumber any property, real or personal, of such
6 authority and to execute any trust agreement, indenture, or security agreement containing
7 any provisions not in conflict with law, which trust agreement, indenture, or security
8 agreement may provide for foreclosure or forced sale of any property of the authority
9 upon default on such obligations either in payment of principal or interest or in the
10 performance of any term or condition contained in such agreement or indenture; this
11 state, on behalf of itself and each county, municipal corporation, political subdivision, or
12 taxing district therein waives any right which it or such county, municipal corporation,
13 political subdivision, or taxing district may have to prevent the forced sale or foreclosure
14 of any property of the authority so mortgaged or encumbered, and any such mortgage or
15 encumbrance may be foreclosed in accordance with law and the terms thereof.

16 36-75-8.

17 (a) Subject to the limitations and procedures provided by this Code section, the obligations
18 of any authority evidenced by bonds, bond anticipation notes, trust indentures, deeds to
19 secure obligations, security agreements, or mortgages executed in connection therewith
20 may contain such provisions not inconsistent with law as shall be determined by the board
21 of directors of the authority. The authority, in such instruments, may provide for the
22 pledging of all or any part of its revenues, income, or charges and for the mortgaging,
23 encumbering, or conveying of all or any part of its real or personal property; may covenant
24 against pledging any or all of its revenues, income, or charges; and may further provide for
25 the disposition of proceeds realized from the sale of any bonds and bond anticipation notes,
26 for the replacement of lost, destroyed, stolen, or mutilated bonds and notes, and for the
27 payment and redemption of such bonds and notes. Similarly, subject to the limitations and
28 procedures of this Code section, undertakings of an authority may prescribe the procedure
29 by which bondholders and noteholders may enforce rights against the authority and provide
30 for rights upon breach of any covenant, condition, or obligation of the authority. Bonds,
31 resolutions, trust indentures, mortgages, or deeds to secure obligations executed by an
32 authority and bond anticipation notes executed by an authority may contain such provisions
33 not otherwise contrary to law as the authority shall deem necessary or desirable.

34 (b) The proceeds derived from the sale of all bonds and bond anticipation notes issued by
35 an authority shall be held and used for the ultimate purpose of paying, directly or indirectly
36 as permitted in this chapter, all or part of the cost of any project, including the cost of

1 extending, financing, adding to, or improving such project, or for the purpose of refunding
2 any bond anticipation notes issued in accordance with this chapter or refunding any
3 previously issued bonds of the authority.

4 (c) All bonds and bond anticipation notes issued by an authority shall be revenue
5 obligations of such authority and may be made payable out of any revenues or other
6 receipts, funds, or moneys of the authority, subject only to any agreements with the holders
7 of other bonds or bond anticipation notes or to particular security agreements pledging any
8 particular revenues, receipts, funds, or moneys.

9 (d) Issuance by an authority of one or more series of bonds or bond anticipation notes for
10 one or more purposes shall not preclude it from issuing other bonds or notes in connection
11 with the same project or with any other projects, but the proceeding wherein any
12 subsequent bonds or bond anticipation notes shall be issued shall recognize and protect any
13 prior pledge or mortgage made in any prior security agreement or made for any prior issue
14 of bonds or bond anticipation notes, unless in the resolution authorizing such prior issue
15 the right is expressly reserved to the authority to issue subsequent bonds or bond
16 anticipation notes on a parity with such prior issue.

17 (e) An authority shall have the power and is authorized, whenever revenue bonds of the
18 authority have been validated as provided in this chapter, to issue, from time to time, its
19 notes in anticipation of the issuance of such bonds as validated and to renew from time to
20 time any such notes by the issuance of new notes, whether the notes to be renewed have
21 or have not matured. The authority may issue notes only to provide funds which would
22 otherwise be provided by the issuance of the bonds as validated. The notes may be
23 authorized, sold, executed, and delivered in the same manner as bonds. As with its bonds,
24 the authority may sell such notes at public or private sale. Any resolution or resolutions
25 authorizing notes of the authority or any issue thereof may contain any provisions which
26 the authority is authorized to include in any such resolution or resolutions; and the
27 authority may include in any notes any terms, covenants, or conditions which it is
28 authorized to include in any bonds. Validation of such bonds shall be a condition
29 precedent to the issuance of the notes, but it shall not be required that such notes be
30 judicially validated. Bond anticipation notes shall not be issued in an amount exceeding
31 the par value of the bonds in anticipation of which they are to be issued.

32 (f) The interest rate on or rates to be borne by any bonds, notes, or other obligations issued
33 by the authority shall be fixed by the board of directors of the authority. Any limitations
34 with respect to interest rates found in Article 3 of Chapter 82 of this title or in the usury
35 laws of this state shall not apply to obligations issued under this chapter.

36 (g) All revenue bonds issued by an authority under this chapter shall be issued and
37 validated under and in accordance with Article 3 of Chapter 82 of this title, except as

1 provided in subsection (f) of this Code section and except as specifically set forth below
2 in this subsection:

3 (1) Revenue bonds issued by an authority may be in such form, either coupon or fully
4 registered, or both coupon and fully registered, and may be subject to such
5 exchangeability and transferability provisions as the bond resolution authorizing the
6 issuance of such bonds or any indenture or trust agreement may provide;

7 (2) Revenue bonds shall bear a certificate of validation. The signature of the clerk of the
8 superior court of the judicial circuit in which the issuing authority is located may be made
9 on the certificate of validation of such bonds by facsimile or by manual execution, stating
10 the date on which such bonds were validated; and such entry shall be original evidence
11 of the fact of judgment and shall be received as original evidence in any court in this
12 state; and

13 (3) In lieu of specifying the rate or rates of interest which revenue bonds to be issued by
14 an authority are to bear, the notice to the district attorney or the Attorney General and the
15 notice to the public of the time, place, and date of the validation hearing may state that
16 the bonds, when issued, will bear interest at a rate not exceeding a maximum per annum
17 rate of interest specified in such notices or, in the event the bonds are to bear different
18 rates of interest for different maturity dates, that none of such rates will exceed the
19 maximum rate specified in the notices; provided, however, that nothing contained in this
20 paragraph shall be construed as prohibiting or restricting the right of the authority to sell
21 such bonds at a discount, even if in so doing the effective interest cost resulting therefrom
22 would exceed the maximum per annum interest rate specified in such notices.

23 36-75-9.

24 No bonds or other obligations of and no indebtedness incurred by any authority shall
25 constitute an indebtedness or obligation of the State of Georgia or of any county, municipal
26 corporation, or political subdivision thereof, nor shall any act of any authority in any
27 manner constitute or result in the creation of an indebtedness of this state or of any such
28 county, municipal corporation, or political subdivision. All such bonds and obligations
29 shall be payable solely from the revenues therein pledged to such payment, including
30 pledged rentals, sales proceeds, insurance proceeds, and condemnation awards; and no
31 holder or holders of any such bonds or obligations shall ever have the right to compel any
32 exercise of the taxing power of this state or of any county, municipal corporation, or
33 political subdivision thereof, nor to enforce the payment thereof against any property of the
34 state or of any such county, municipal corporation, or political subdivision.

1 36-75-10.

2 This chapter shall be liberally construed to effect the purposes hereof. Sale or issuance of
3 bonds by any authority shall not be subject to regulation under Chapter 5 of Title 10, the
4 ‘Georgia Securities Law,’ or any other law. No proceeding or publication not required in
5 this chapter shall be necessary to the performance of any act authorized in this chapter, nor
6 shall any such act be subject to referendum.”

7 **SECTION 2.**

8 Said title is further amended by striking division (4)(C)(iv) of Code Section 36-82-61,
9 relating to definitions regarding Article 3 of Chapter 82 of Title 36, the “Revenue Bond
10 Law,” and inserting in lieu thereof a new division (4)(C)(iv) to read as follows:

11 “(iv) Used or useful in connection with buying, constructing, extending, operating,
12 and maintaining gas or electric generating and distribution systems together with all
13 necessary appurtenances thereof; provided, further, any revenue certificates issued to
14 buy, construct, extend, operate, and maintain ~~gas~~ or electric generating and
15 distribution systems shall, before being undertaken, be authorized by a majority of
16 those voting at an election held for the purpose in the county, municipal corporation,
17 or political subdivision affected, the election for such to be held in the same manner
18 as is used in issuing bonds of such county, municipal corporation, or political
19 subdivision and the said elections shall be called and provided for by officers in
20 charge of the fiscal affairs of said county, municipal corporation, or political
21 subdivision affected;”

22 **SECTION 3.**

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

25 **SECTION 4.**

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