

The Senate State and Local Governmental Operations Committee offered the following substitute to SB 220:

A BILL TO BE ENTITLED
AN ACT

1 To create the Rabun County Convention and Visitors Bureau Authority as a public body
2 corporate and politic, a political subdivision of the state, and a public corporation, to have
3 the responsibility and authority to promote tourism, conventions, and trade shows in Rabun
4 County, Georgia; to provide for the creation and organization of the authority; to provide for
5 the appointment of the directorship of the authority and their terms of office, compensation,
6 and qualifications; to provide for meetings; to provide for legislative findings and declaration
7 of purpose; to provide for general powers; to provide for regulations; to provide for other
8 matters relative to the foregoing and relative to the general purposes of this Act; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Short title.

13 This Act shall be known and may be cited as the "Rabun County Convention and Visitors
14 Bureau Authority Act."

15 **SECTION 2.**

16 Definitions and references.

17 As used in this Act, the term:

18 (1) "Area" means the entirety of the geographic area of Rabun County, Georgia.

19 (2) "Authority" means the Rabun County Convention and Visitors Bureau Authority.

20 (3) "Board" means the board of directors of the Rabun County Convention and Visitors
21 Bureau Authority.

22 (4) "Cities" means the Cities of Clayton, Dillard, and Sky Valley.

23 (5) "County" means Rabun County, Georgia.

1 (6) "Special events" means events which, in the judgment of the authority, will promote
2 tourism in the area or privately contracted functions.

3 **SECTION 3.**

4 Creation of authority, status, tax exemption, and sovereign immunity.

5 (a) There is hereby created a body public and politic to be known as the Rabun County
6 Convention and Visitors Bureau Authority. The authority shall be deemed to be a political
7 subdivision of the state and a public corporation and, by that name, may contract and be
8 contracted with, sue and be sued, implead and be impleaded, and bring and defend actions.
9 The authority shall be a convention center and visitors bureau authority created by Act of the
10 General Assembly, and is intended to be an agency and instrumentality of the city and
11 county, and a governmental unit for purposes of Sections 103, 141, and 150 of the federal
12 Internal Revenue Code of 1986, as amended. The authority shall not be a state institution, nor
13 a department or agency of the state, but shall be a creation of the state, having a distinct
14 corporate identity. For the purposes of promotion and development of tourism as provided
15 in Code Section 48-13-51 of the Official Code of Georgia Annotated, the Rabun County
16 Convention and Visitors Bureau Authority established by this act shall serve as a permissible,
17 but not the exclusive, entity for the transfer of hotel and motel tax funds by the taxing entities
18 in Rabun County.

19 (b) The authority shall have its principal office within Rabun County, and its legal situs or
20 residence for the purposes of this Act shall be the county.

21 (c) The exercise of the powers conferred upon the authority in this Act shall constitute an
22 essential governmental function for a public purpose. The properties of the authority, both
23 real and personal, and the income of the authority are declared to be public properties and
24 income used for the benefit and welfare of the people of Rabun County and not for the
25 purpose of private or corporate benefit; and such properties, to the extent of the authority's
26 ownership thereof or other interest therein, and all income and obligations of the authority
27 shall be exempt from all taxes and special assessments of the state or any city, county, or
28 other political subdivision thereof. The authority shall have all of the exemptions and
29 exclusions from taxes as are now granted to cities and counties for the operation of properties
30 or facilities similar to the properties and facilities to be owned or operated, or both, by the
31 authority.

32 (d) The authority shall have the same immunity and exemption from liability for torts and
33 negligence as the state, and the officers, agents, and employees of the authority, when in
34 performance of work of the authority, shall have the same immunity and exemption from
35 liability for torts and negligence as officers, agents, and employees of the State of Georgia.

1 The authority may be sued the same as private corporations on any contractual obligation of
2 the authority. Any action to protect or to enforce any rights pursuant to the provisions of this
3 Act or any suit or action against the authority shall be brought in the Superior Court of Rabun
4 County, which shall have exclusive, original jurisdiction of such actions. The property of the
5 authority shall not be subject to levy and sale under legal process. The records of the
6 authority shall be public records which are subject to Article 4 of Chapter 18 of Title 50 of
7 the O.C.G.A. Nothing in this Act shall be construed to abridge or change the powers and
8 duties of other authorities, departments, boards, and like agencies of the city or county.

9 **SECTION 4.**

10 Directors and meetings.

11 (a) The property and business of the authority and the direction of its work shall be vested
12 in and managed under the direction of its board of directors. The board shall have full control
13 for setting policies, day-to-day operations, and approving annual budgets, as specified in
14 Section 8 of this Act, subject only to the limitation specified herein.

15 (b) The board shall consist of 22 directors, who shall be natural persons at least 21 years of
16 age and who shall be residents of the county. The city councils of the Cities of Clayton,
17 Dillard, and Sky Valley, the county board of commissioners, and the Rabun County Chamber
18 of Commerce shall appoint one director each, who may or may not be directors of the
19 respective council or board of commissioners, and who shall serve two-year terms. The five
20 initial appointees shall make 17 additional appointments, subject to confirmation by the city
21 council of each city, the county board of commissioners, and the chamber of commerce. In
22 order to achieve staggered terms, nine of such 17 appointments shall be designated as being
23 for one year and eight shall be designated for two years. Thereafter, all directors shall serve
24 for terms of two years. The terms of directors shall expire on the last day of January of the
25 year of expiration and appointments for the succeeding two-year term shall be made in
26 January with such appointments being effective as of the next February 1. Any director may
27 resign at any time by filing a written notice of resignation with the chairperson of the board.
28 Directors may be removed for cause by a majority vote of the directors of the authority. If
29 possible, the following shall be represented on the board:

- 30 (1) Rabun county resort properties;
- 31 (2) The Dillard hotel and motel industry;
- 32 (3) The Clayton hotel and motel industry;
- 33 (4) The Rabun County bed and breakfast industry;
- 34 (5) Clayton merchants;
- 35 (6) Dillard merchants;

1 (7) State or federal government, such as the U.S. Forest Service and state parks;

2 (8) The outdoor recreation industry;

3 (9) The agricultural tourism industry;

4 (10) Environmental or conservation groups;

5 (11) Rabun County restaurants including at least one major restaurant;

6 (12) Georgia Power Company or other Rabun County utilities;

7 (13) Rabun County banking industry;

8 (14) Rabun County realtors;

9 (15) Rabun County property rental companies; and

10 (16) Major resorts in the county.

11 (c) The board shall meet at such times as may be necessary to transact the business coming
12 before it, but not less often than monthly. Either the chairperson or any two other directors
13 together may call a special meeting of the board. Meetings of the board shall be open to the
14 public in accordance with the laws of the State of Georgia. Written minutes of all meetings
15 shall be kept, and within ten days following every meeting, a copy of the minutes shall be
16 furnished to the mayor and council of each city and to the county board of commissioners.
17 Meetings shall be conducted in accordance with the latest version of *Robert's Rules of Order*.

18 (d) At the first meeting of the board, and thereafter subsequent to the biennial new
19 appointments, the directors shall elect a chairperson and a vice chairperson from its voting
20 directorship. The chairperson shall preside at meetings of the board and shall vote on all
21 matters coming before the board except when an even number of directors are present and
22 creates the possibility of a tie vote. In such instance, the chairperson shall not vote except to
23 break a tie vote. The vice chairperson shall preside at meetings in the absence of the
24 chairperson. In the absence of both the chairperson and vice chairperson, the directors
25 present at a meeting shall elect a temporary chairperson to preside at that meeting, so long
26 as the chairperson and vice chairperson both remain absent from the meeting. A quorum shall
27 consist of at least 50 percent of the whole number of directors then in office for the
28 transaction of business at all meetings. Official action may be taken by majority vote of those
29 directors voting on a matter if a quorum is present and voting on such matter, except that the
30 bylaws of the authority shall be initially adopted or subsequently amended only by majority
31 vote of all directors. All directors present at a meeting, including the chairperson, vice
32 chairperson, or any other director presiding at such meeting, shall be entitled to vote on all
33 matters which shall come before the board. No vacancy on the board shall impair the right
34 of a quorum to exercise all the rights and perform all the duties of the authority.

35 (e) Directors shall receive no compensation for their services as directors of the authority
36 but may be reimbursed for their proper and reasonable expenses incurred in the performance
37 of their duties, subject to any limitations imposed by general law upon the reimbursement

1 of public officials and subject to any limitations which may be contained, from time to time,
2 in the bylaws of the authority.

3 (f)(1) As used in this subsection, the term "substantial interest or involvement" means
4 any interest or involvement which reasonably may be expected to result in a direct
5 financial benefit to a director, as determined by the authority directors by vote, which
6 determination shall be final and not subject to review.

7 (2) The provisions of Code Section 45-10-3 of the O.C.G.A. shall apply to the directors
8 of the authority, and a director of the authority shall not engage in any transaction with
9 the authority. The provisions of this paragraph and the provisions of paragraph (9) of
10 such Code section shall be deemed to have been complied with and the authority may
11 purchase from, sell to, borrow from, loan to, contract with, or otherwise deal with any
12 director or any organization or person with which any director of the authority is in any
13 way interested or involved, provided that:

14 (A) Any interest or involvement by such director is disclosed in advance to the
15 directors of the authority who will be voting on the matter or transaction and such
16 disclosure is recorded in the minutes of the board;

17 (B) No director having such a substantial interest or involvement may be present at that
18 portion of any meeting of the authority during which discussion of such matter or
19 transaction is conducted; and

20 (C) No director having a substantial interest or involvement may participate in any
21 decision of the authority directors relating to any such matter or transaction. A director
22 who has any such substantial interest or involvement shall be entitled to participate in
23 discussions of whether such interest or involvement is a substantial interest or
24 involvement but shall not be entitled to vote on the question.

25 (3) Nothing contained in this subsection or in Code Section 45-10-3 of the O.C.G.A.
26 shall be deemed to prohibit any director from providing legal services to the authority,
27 being paid for such services and related expenses, or participating in discussions relating
28 to his or her engagement, scope of services, compensation, or related matters or from
29 voting on such matters.

30 SECTION 5.

31 Purpose.

32 The purpose of the authority is to promote tourism, conventions, special events, and trade
33 shows within the area in such manner and manners as the authority shall determine to be
34 appropriate.

SECTION 6.

Duty of the authority.

It shall be the duty of the authority to promote tourism, conventions, special events, and trade shows within the area and to operate the authority and its facilities in a fiscally responsible manner.

SECTION 7.

Powers.

(a) The authority shall have all powers allowed by law and consistent with the provisions of this Act as are necessary or convenient to carry out its corporate purpose, including, without limitation, the power to:

- (1) Adopt and alter a corporate seal;
- (2) Purchase advertising promoting tourism, conventions, trade shows, and special events;
- (3) Encourage, solicit, promote, procure, sponsor, cosponsor, and service conventions, trade shows, and special events;
- (4) Lend financial support through grants, contributions, or otherwise to other governmental entities in furtherance of its corporate purpose;
- (5) Lend financial support through grants, contributions, or otherwise to private sector for profit and not for profit entities in furtherance of its corporate purpose, specifically provided that the authority determines that the residents of the area shall receive a substantial benefit and provided that it does so by written agreement;
- (6) Conduct activities to foster better public understanding on the part of individuals and businesses of the importance of tourism and the convention and visitors industry to the economy of the cities, of the county, and of the area;
- (7) Conduct activities to encourage and to assist the cooperation between the businesses and industries servicing tourists, conventions, trade shows, and special events;
- (8) Engage in fundraising activities in furtherance of its corporate purpose;
- (9) Acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real and personal property of every kind and character for its corporate purposes;
- (10) Dispose of personal property in its discretion; to dispose of real property; or to acquire in its own name by purchase, upon terms and conditions and in a manner it may deem proper, real property or rights of easements therein or franchises necessary or convenient for its corporate purpose, to use the same so long as its corporate existence shall continue, or to lease or make contracts with respect to the use of the same. If the

1 authority deems it expedient to acquire and construct any facility on any lands, the title
2 to which shall then be held by the city, the county, or any other municipality incorporated
3 in said county, the governing authority or body of the city, the county, or any of the said
4 municipalities is authorized to convey title to such lands to the authority upon the receipt
5 of such lawful consideration as may be determined by the parties for such conveyance or
6 upon payment for the credit of the general finds of said county or municipalities of the
7 reasonable value of such lands, such value to be determined by mutual consent of said
8 county or municipality and the chairperson of the authority;

9 (11) Appoint, select, and employ an executive director, officers, agents, and employees,
10 and independent consultants including but not limited to engineering, architectural, and
11 construction experts, fiscal agents, auditors, economists, and attorneys and fix their
12 respective compensations; and to delegate to the executive director the authority and
13 responsibility necessary to administer properly the day-to-day business of the authority
14 within policies set by the board and subject to its review. The powers delegated to the
15 executive director may, at the election of the board, include the making of
16 recommendations as to the hiring and termination of other employees and their
17 compensation, the management of the authority's offices and properties, the making of
18 budget recommendations, and the hiring of independent consultants. The board shall
19 ensure that the executive director and any other employees of the authority shall be
20 evaluated on their performance no less than on an annual basis.

21 (12) Appoint an advisory committee and other committees of persons from the public
22 and private sectors without regard to their places of residence;

23 (13) Make contracts of every kind and character, and, without limitation, any and all
24 persons, firms, and corporations and the state and any and all political subdivisions,
25 departments, institutions, or agencies of the state, including, but not limited to, the county
26 and the cities, are authorized to enter into contracts, leases, or agreements with the
27 authority upon such terms and for such purposes as they deem advisable; and, without
28 limiting the generality of the above, the authority shall be permitted to enter into the
29 following:

30 (A) Contracts under which the authority purchases administrative and financial
31 management services from the city or county to be performed by personnel at the city's
32 or county's cost, which shall include the costs of payroll, employee benefits, supplies,
33 and overhead reasonably allocable to the performance of such services; and

34 (B) Lease contracts relating to leases of real property, personal property, or both real
35 and personal property;

1 (14) Accept loans and grants of money or materials or property of any kind from the
2 United States or any agency or instrumentality thereof, upon such terms and conditions
3 as the United States or such agency or instrumentality may impose;

4 (15) Accept loans and grants of money or materials or property of any kind from the
5 State of Georgia or any agency or instrumentality or political division thereof, upon such
6 terms and conditions as the State of Georgia or such agency or instrumentality or political
7 subdivision may impose;

8 (16) Sell, lease, grant, exchange, or otherwise dispose of any personal property or
9 interest therein;

10 (17) Sue and be sued in contract and in tort and to complain and defend in all courts;

11 (18) Advise and recommend plans to other public and private sector entities for the
12 promotion of tourism, conventions, trade shows, and special events;

13 (19) Conduct studies and develop plans for improving tourism in the area;

14 (20) Receive and disburse public funds appropriated by the city and county and to
15 receive and disburse funds from private sources and other revenues which may be
16 received from time to time which would assist in the accomplishment of its corporate
17 purpose; and

18 (21) Do all things necessary or convenient to accomplish its corporate purpose and to
19 exercise any power permitted by the laws of this state to be exercised by private
20 corporations which will further the authority's ability to accomplish such purpose, so
21 long as the exercise of such power is not in conflict with the Constitution or laws of this
22 state.

23 (b) The powers enumerated in each paragraph of subsection (a) of this section are
24 cumulative of and in addition to those powers enumerated in the other paragraphs of
25 subsection (a) of this section and any other powers elsewhere in this Act or which may
26 reasonably be inferred from the provisions of this Act. This Act shall be liberally construed
27 to affect the described purposes, and in interpreting this Act, the courts are not to apply
28 "Dillon's Rule."

29 **SECTION 8.**

30 Budget and finances.

31 (a) A budget committee consisting of the directors appointed by the governing authority of
32 the county and by the chamber of commerce shall prepare the initial budget for the authority.
33 Such budget shall be approved by unanimous vote of the committee, after which it shall be
34 submitted to the full board of directors for approval by majority vote. Such initial budget
35 shall not become effective until it has been approved by the governing authorities of the

1 county and each city. The same process shall govern the second budget year, after which the
2 procedures provided in subsection (b) of this section shall apply; provided, however, that if
3 the second year budget fails to receive the required approval of the budget committee, the
4 board of directors, or a governing authority, the provisions of subsection (b) of this section
5 shall take effect immediately.

6 (b) On or before April 30 of each year, the authority shall receive its verified audit for the
7 prior year. Prior to October 1 of each year, the chairperson of the board shall appoint one
8 director of the authority to confer jointly with the administrators or mayor of each city that
9 collects hotel motel taxes and with the county administrator and to act as liaison with regard
10 to a proposed budget for the authority for the ensuing year. Such persons shall annually be
11 known as the Budget Committee. The Budget Committee shall produce a proposed budget
12 for approval by the board and submission, by October 1 of each year, to the mayors and
13 councils of the cities that collect hotel motel taxes and to the county board of commissioners.
14 If the Budget Committee does not unanimously present a proposed budget to the board for
15 approval and submission, then the board shall submit a continuation budget not greater than
16 the total approved budget for the current year. The continuation budget shall include any
17 upward or downward adjustment necessary to meet all debt service requirements. If either
18 the cities or county, or both, shall fail or refuse to approve the budget as submitted by the
19 board by December 31, then the continuation budget, as set forth above, shall become
20 automatically effective in order to ensure operational continuity of the authority.
21 Commencing Fiscal Year 2005, the cities and county shall each be required to provide
22 funding to the authority as provided in paragraph (5.3) of Code Section 48-13-51 of the
23 O.C.G.A. The continuation budget as set forth above shall remain in effect until the next
24 budget cycle. In the event of a failure to reach budget agreement at that time or in subsequent
25 years, then a percentage increase shall automatically apply to all line items of the budget
26 equivalent to the percentage increase for the relevant time period as determined by the Blue
27 Book CPI index for all consumer goods.

28 **SECTION 9.**

29 **Bylaws.**

30 The authority may, by affirmative vote of a majority of all directors, adopt bylaws to govern
31 the authority, its employees, and operation and may, by affirmative vote of two-thirds of the
32 directors, repeal, replace, or amend such bylaws.

SECTION 10.

Liability limited.

Neither the directors of the authority nor any person executing notes, leases, or other agreements or obligations on behalf of the authority shall be personally liable thereon by reason of such execution.

SECTION 11.

Neither cities nor county bound.

The authority shall have no power or authority to bind the cities or the county by any contract, agreement, financial obligation, indebtedness, or otherwise; and no contract, agreement, financial obligation, or indebtedness incurred by the authority shall ever be a claim or charge against the cities or county; provided, however, that both the authority and the cities or county shall be bound to each other by contracts, agreements, financial obligations, or indebtedness between themselves.

SECTION 12.

Oversight.

Either the mayor and council of any of the cities or the county board of commissioners, or the designees of either, shall be authorized to inspect at their pleasure the state and condition of the authority, its properties, and all books and records pertaining to the authority and its affairs, and the authority shall give them such books and records and furnish them with assistance in making such inspections.

SECTION 13.

Dissolution.

Should the authority, for any reason, be dissolved after full payment of all indebtedness previously incurred, both as to principal and interest, title to all property of any kind and nature, real and personal, held by the authority at the time of such dissolution shall be conveyed to the cities and to the county as tenants in common as may be appropriate; or title to any such property may be conveyed prior to such dissolution in accordance with provisions which may be made therefor in any resolution or trust instrument relating to such property, subject to any liens, leases, or other encumbrances outstanding against or in respect to such property at the time of such conveyance.

SECTION 14.

Repealer.

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