

House Bill 754 (AS PASSED HOUSE AND SENATE)

By: Representative Ralston of the 7th

A BILL TO BE ENTITLED
AN ACT

1 To create and establish the Gilmer County Building Authority, a body corporate and politic
2 and an instrumentality of the State of Georgia; to authorize the authority to acquire,
3 construct, equip, maintain, and operate certain projects, including buildings and facilities for
4 use by Gilmer County for its governmental, proprietary, and administrative functions; to
5 provide for members of the authority and their terms, organization, and reimbursement; to
6 provide for vacancies; to define certain terms and words; to confer powers and impose duties
7 on the authority; to grant limitations to the authority; to authorize the authority to enter into
8 contracts and leases pertaining to uses of such facilities, which contracts and leases may
9 obligate the lessees to make payment for the use of the facilities for the term thereof and to
10 pledge for that purpose money derived from taxation; to provide that no debt of Gilmer
11 County or the State of Georgia shall be incurred by the exercise of any of the powers granted;
12 to authorize the issuance of revenue bonds of the authority payable from the revenues, rents,
13 and earnings and other functions of the authority to pay the costs of such projects; to
14 authorize the collecting and pledging of such revenues, rents, and earnings for the payment
15 of such bonds; to authorize the adoption of resolutions and the execution of trust indentures
16 to secure the payment of such bonds and to define the rights of the holders of such bonds; to
17 provide for a sinking fund; to make the bonds of the authority exempt from taxation; to
18 provide the right and power for the authority to condemn property of every kind and
19 character; to authorize the issuance of refunding bonds; to provide for the validation of such
20 bonds and to fix the venue for jurisdiction of actions relating to any provision of this Act; to
21 exempt the property and income of the authority from taxation; to provide for immunity and
22 exemption from liability for torts and negligence; to provide that the property of the authority
23 shall not be subject to levy and sale; to provide that certain moneys are trust funds; to provide
24 that this Act shall be liberally construed; to define the scope of the authority's operation; to
25 provide for disposition of property upon authority dissolution; to provide for severability; to
26 provide an effective date; to repeal conflicting laws; and for other purposes.

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 754

SECTION 1.

Gilmer County Building Authority created.

There is created a public body corporate and politic to be known as the Gilmer County Building Authority, herein called "the authority," which shall be an instrumentality and a public corporation of the State of Georgia, the purpose of which shall be to acquire, construct, equip, maintain, and operate certain projects for use by Gilmer County for its governmental, proprietary, public, and administrative functions. The authority shall not be a state institution, nor a department or agency of the state, but shall be an instrumentality of the state, a mere creation of the state, being a distinct corporate entity and being exempt from the provisions of Article 2 of Chapter 17 of Title 50 of the O.C.G.A., the "Georgia State Financing and Investment Commission Act." The authority shall have its principal office in Gilmer County, and its legal situs or residence for the purposes of this chapter shall be Gilmer County.

SECTION 2.

Membership.

The authority shall consist of three members who shall be eligible to succeed themselves and who shall be elected by the Board of Commissioners of Gilmer County. No more than one member of the authority may be a member of said board of commissioners. Any member of the authority who is a member of said board of commissioners shall serve for a term of office concurrent with such person's term of office as a member of said board of commissioners. Each member of the authority who is not a member of said board of commissioners shall serve for a term of office of three years, except that the initial terms of office of those members first appointed to the authority shall be specified at the time of appointment to be one, two, and, if no such member is a member of the board of commissioners, three years. After such initial terms, those members who are not members of said board of commissioners shall serve for terms of office of three years each. Members of the authority shall serve for the terms of office so specified and until the appointment and qualification of their respective successors. Vacancies on the authority shall be filled by said board of commissioners for the remainder of the unexpired term and until the appointment and qualification of a successor. Immediately after their election, the members of the authority shall enter upon their duties. The authority shall elect one of its members as chairperson and one as vice chairperson. The secretary-treasurer of the authority shall be appointed by the authority and need not be a member of the authority. Two 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

1 all things necessary to authorize and issue revenue bonds. The members of the authority
 2 shall receive no compensation for their services but may be reimbursed by the authority for
 3 their actual expenses properly incurred in the performance of their duties. The authority shall
 4 make rules and regulations for its own government and shall have perpetual existence.

5 **SECTION 3.**

6 Definitions.

7 As used herein, the following words and terms shall have the following meanings unless a
 8 different meaning clearly appears from the context:

9 (1) The word "authority" shall mean the Gilmer County Building Authority created by
 10 this Act.

11 (2) The word "project" shall mean and include real and personal property acquired or
 12 held by the authority, including all land, buildings, structures, sanitary and surface water
 13 sewers, and other public property determined by the authority to be desirable for the
 14 efficient operation of any department, board, office, commission, or agency of Gilmer
 15 County, or of the State of Georgia, in the performance of its governmental, proprietary,
 16 and administrative functions.

17 (3) The term "cost of project" shall include the cost of lands, buildings, improvements,
 18 machinery, equipment, property, easements, rights, franchises, material, labor, services
 19 acquired or contracted for, plans and specification, financing charges, construction costs,
 20 interest prior to and during construction; architectural, accounting, engineering,
 21 inspection, administrative, fiscal, and legal expenses; expenses incident to determining
 22 the feasibility or practicability of the project; and expenses incident to the acquiring,
 23 constructing, equipping, and operating of any project or any part thereof, and to the
 24 placing of the same in operation and to the condemnation of any property incident to such
 25 construction and operation.

26 (4) The term "revenue bonds" shall mean revenue bonds issued under the provisions of
 27 Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the Revenue Bond Law, and under
 28 the provisions of this Act. The obligations authorized under this Act may be issued by
 29 the authority in the manner authorized under the Revenue Bond Law.

30 **SECTION 4.**

31 Powers.

32 The authority shall have all the powers necessary or convenient to carry out and effectuate
 33 the purposes and provisions of this Act including, but without limiting the generality of the
 34 foregoing, the power:

35 (1) To sue and be sued;

- 1 (2) To adopt and alter a corporate seal;
- 2 (3) To make and execute with public and private persons and corporations contracts,
3 trusts, leases, rental agreements, and other instruments relating to its projects and in
4 furtherance of the purposes of the authority, including contracts for constructing, renting,
5 and leasing of its projects for the use of any county or municipality in this state;
- 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 condemnation in accordance with the provisions of
8 any and all existing laws of the State of Georgia applicable to the condemnation of
9 property for public use, including the power to proceed as a condemning body under the
10 provisions of Article 2 of Chapter 2 of Title 22 of the O.C.G.A., relating to proceedings
11 before a special master, or by gift, grant, lease, or otherwise, real property, or rights and
12 easements therein and franchises and personal property necessary or convenient for its
13 corporate purposes and to use the same so long as its corporate existence shall continue
14 and to lease or make contracts with respect to the use of or disposition of the same in any
15 manner it deems to the best advantage of the authority. Title to any such property shall
16 be held by the authority exclusively for the benefit of the public. The authority shall be
17 under no obligation to accept and pay for any property condemned as provided herein
18 except from the funds provided therefor and, in proceedings to condemn, such orders may
19 be made by the court having jurisdiction of the suit, action, or proceedings as may be just
20 to the authority and to the owners of the property to be condemned; and no property shall
21 be acquired as provided herein upon which any lien or other encumbrance exists, unless
22 at the time such property is so acquired a sufficient sum of money shall be deposited in
23 trust to pay and redeem the amount of such lien or encumbrance;
- 24 (5) To improve, extend, add to, reconstruct, renovate, or remodel any project or part
25 thereof already acquired;
- 26 (6) To pledge or assign any revenues, income, rent, charges, and fees received by the
27 authority;
- 28 (7) To appoint and select agents, engineers, architects, attorneys, fiscal agents,
29 accountants, and employees and to provide for their compensation and duties;
- 30 (8) To construct, reconstruct, acquire, own, alter, repair, remodel, maintain, extend,
31 improve, operate, manage, and equip projects located on land owned or leased by the
32 authority;
- 33 (9) To receive, accept, and use any contributions, loans, or grants by persons, firms, or
34 corporations, including the State of Georgia and the United States of America, and any
35 other contributions;
- 36 (10) To pay all or part of the costs of any project from the proceeds of revenue bonds of
37 the authority or from other lawful sources available to it;

1 (11) To prescribe rules and regulations for the operation of and to exercise police powers
2 over the projects managed or operated by the authority;

3 (12) To accept, receive, and administer gifts, grants, loans and devises of money,
4 material, and property of any kind, including loans and grants from the State of Georgia
5 or the United States of America or any agency or instrumentality thereof, upon such
6 terms and conditions as the State of Georgia or the United States of America or such
7 agency or instrumentality may impose;

8 (13) To sell, lease, exchange, transfer, assign, pledge, mortgage, dispose of, grant in
9 trust, or grant options for any real or personal property or interest therein in furtherance
10 of the purposes of the authority;

11 (14) As security for repayment of authority obligations, to pledge, mortgage, convey,
12 assign, hypothecate, or otherwise encumber any property, real or personal, of such
13 authority and to execute any trust agreement, indenture, or security agreement containing
14 any provisions not in conflict with law, which trust agreement, indenture, or security
15 agreement may provide for foreclosure or forced sale of any property of the authority
16 upon default, on such obligations, either in payment of principal or interest or in the
17 performance of any term or condition, as are contained in such agreement or indenture;

18 (15) To borrow money for any of its corporate purposes, to issue revenue bonds payable
19 solely from funds pledged for that purpose, and to provide for the payment of the same
20 and for the rights of the holders thereof;

21 (16) To exercise all powers usually possessed by private corporations performing similar
22 functions which are not in conflict with the Constitution and laws of this state; and

23 (17) Pursuant to proper resolution of the authority, to issue revenue bonds payable from
24 the rents and revenues of the authority and its projects, which bonds may be issued in
25 either fully negotiable coupon form, in which event they shall have all the qualities and
26 incidents of negotiable instruments under the law of Georgia, or they may be issued in
27 whole or in part in nonnegotiable fully registered form without coupons, payable to a
28 designated payee or to the registered assigns of the payee with such conversion privileges
29 as the authority may provide, for the purpose of paying all or any part of the cost
30 associated with the projects authorized by the authority, including the cost of
31 constructing, reconstructing, equipping, extending, adding to, or improving such projects,
32 or for the purpose of refunding, as herein provided, any such bonds of the authority
33 theretofore issued. If the proceeds of the bonds of any issue shall exceed the amount
34 required for the purpose for which such bonds were issued, the surplus shall be paid into
35 the fund provided for the payment of principal and interest on such bonds. All such
36 revenue bonds shall be issued and validated under and in accordance with the procedure
37 of Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the Revenue Bond Law, and in

1 accordance with all terms and provisions thereof not in conflict herewith and in
2 accordance with Code Section 50-17-1 of the O.C.G.A., relating to use of facsimile
3 signatures on public securities, and, as security for the payment of any revenue bonds so
4 authorized, any rents and revenue of the authority may be pledged and assigned. Such
5 bonds are declared to be issued for an essential public and governmental purpose, and
6 such bonds and all income therefrom shall be exempt from all taxation within the State
7 of Georgia. For the purpose of the exemption from taxation of such bonds and the
8 income therefrom, the authority shall be deemed to be a political subdivision of the State
9 of Georgia.

10 **SECTION 5.**

11 Credit not pledged and debt not created by bonds.

12 Revenue bonds issued under the provisions of this Act shall not constitute a debt or a pledge
13 of the faith and credit of the State of Georgia or Gilmer County; but such bonds shall be
14 payable from the rentals, revenue, earnings, and funds of the authority as provided in the
15 resolution, trust agreement, or indenture authorizing the issuance and securing the payment
16 of such bonds; and the issuance of such bonds shall not directly, indirectly, or contingently
17 obligate the state or said county to levy or pledge any form of taxation whatever for the
18 payment thereof. No holder of any bond or receiver or trustee in connection therewith shall
19 have the right to enforce the payment thereof against any property of the state or of said
20 county, nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable,
21 upon any such property. All such bonds shall contain on their face a recital setting forth
22 substantially the foregoing provisions of this section.

23 **SECTION 6.**

24 Trust agreement.

25 In the discretion of the authority, any issue of revenue bonds may be secured by an
26 agreement or indenture made by the authority with a corporate trustee, which may be any
27 trust company or bank having the powers of a trust company within or without the State of
28 Georgia. Such trust agreement or indenture may pledge and assign rents, fees, charges,
29 revenues, and earnings to be received by the authority. The resolution providing for the
30 issuance of revenue bonds and such trust agreements or indenture may contain provisions for
31 protecting and enforcing the rights and remedies of the bondholders, including the right of
32 appointment of a receiver upon default of the payment of any principal or interest obligation
33 and the right of any receiver or trustee to enforce collection of any rents, fees, charges, or
34 revenues for use of the project or projects necessary to pay all costs of operation and all
35 reserves provided for, all principal and interest on all bonds of the issue, all costs of

1 collection, and all other costs reasonably necessary to accomplish the collection of such sums
2 in the event of any default of the authority. Such resolution and such trust agreement or
3 indenture may include covenants setting forth the duties of the authority in relation to the
4 acquisition of property for and construction of the project and to the custody, safeguarding,
5 and application of all funds and covenants providing for the operation, maintenance, repair,
6 and insurance of the project or projects and may contain provisions concerning the
7 conditions, if any, upon which additional revenue bonds may be issued. Such trust
8 agreement or indenture may set forth the rights and remedies of the bondholders and of the
9 trustee and may restrict the individual right of action of bondholders as is customary in
10 securing bonds and debentures of corporations and may contain such other provisions as the
11 authority may deem reasonable and proper for the security of the bondholders. All expenses
12 incurred in carrying out such trust may be treated as a part of the cost of maintenance,
13 operation, and repair of the project affected by such trust.

14 **SECTION 7.**

15 Refunding bonds.

16 The authority is authorized to provide by resolution for the issuance of revenue bonds of the
17 authority for the purpose of calling, refunding, or refinancing any revenue bonds issued
18 under the provisions hereof and then outstanding and to include in the amount of such
19 refunding bonds all interest and any call premiums that may be required for the redemption
20 and refunding of such outstanding bonds.

21 **SECTION 8.**

22 Venue of actions, jurisdiction.

23 Any action to protect or enforce any rights under the provisions hereof or any action against
24 the authority brought in the courts of the State of Georgia shall be brought in the Superior
25 Court of Gilmer County, Georgia; and any action pertaining to validation of any bonds issued
26 under the provisions hereof shall be brought in said court, which shall have exclusive,
27 original jurisdiction of such actions.

28 **SECTION 9.**

29 Revenue bond validation.

30 The petition for validation of all revenue bonds of the authority shall be brought against the
31 authority, and any contracting party whose obligation is pledged as security for the payment
32 of the bonds sought to be validated, as defendants, and the defendants shall be required to
33 show cause, if any exists, why such contract or contracts and the terms and conditions thereof
34 shall not be adjudicated to be in all respects valid and binding upon such contracting parties.

1 It shall be incumbent upon such defendants to defend against adjudication of the validity and
 2 binding effect of such contract or contracts or be forever bound thereby. Notice of such
 3 proceedings shall be included in the notice of the validation hearing required to be issued and
 4 published by the clerk of the Superior Court of Gilmer County in which court such validation
 5 proceedings shall be initiated.

6 **SECTION 10.**

7 Interest of bondholders protected.

8 While any of the bonds issued by the authority remain outstanding, the powers, duties, or
 9 existence of the authority or of its officers, employees, or agents shall not be diminished,
 10 impaired, or affected in any manner that will affect adversely the interest and rights of the
 11 holders of such bonds. The provisions hereof shall be for the benefit of the authority and the
 12 holders of any such bonds and, upon the issuance of bonds under the provisions hereof, shall
 13 constitute a contract with the holders of such bonds.

14 **SECTION 11.**

15 Revenues, earnings, rents, and charges; use.

16 (a) For the purpose of earning sufficient revenue to make possible the financing of the
 17 construction of the project or projects of the authority with revenue bonds, the authority is
 18 authorized and empowered to fix, revise, and collect rents, fees, and charges on each project
 19 which it shall cause to be acquired or constructed. Such rents, fees, or charges to be paid for
 20 the use of such project or projects shall be so fixed and adjusted as to provide a fund
 21 sufficient with other revenue, if any, of such project or projects or of the authority:

22 (1) To pay the cost of operating, maintaining, and repairing the project or projects,
 23 including reserves for insurance and extraordinary repairs and other reserves required by
 24 the resolution or trust agreement or indenture pertaining to such bonds and the issuance
 25 thereof, unless such cost shall be otherwise provided for;

26 (2) To pay the principal of and interest on such revenue bonds as the same shall become
 27 due, including call premium, if any, the proceeds of which shall have been or will be used
 28 to pay the cost of such project or projects;

29 (3) To comply with any sinking fund requirements contained in the resolution or trust
 30 agreement or indenture pertaining to the issuance of and security for such bonds;

31 (4) To perform fully all provisions of such resolution and trust agreement or indenture
 32 relating to the issuance of or security for such bonds to the payment of which such rent
 33 is pledged;

34 (5) To accumulate any excess income which may be required by the purchasers of such
 35 bonds or may be dictated by the requirements of such resolution, trust agreement, or

1 indenture, or of achieving ready marketability of and low interest rates on such bonds;
2 and

3 (6) To pay any expenses in connection with such bond issue or of such project or
4 projects, including but not limited to trustees', attorneys', and fiscal agents' fees.

5 (b) Such rent shall be payable at such intervals as may be agreed upon and set forth in the
6 rental contract or lease providing therefor, and any such contract or lease may provide for the
7 commencement of rent payments to the authority prior to the completion of the undertaking
8 by the authority of any such project and may provide for the payment of rent during such
9 times as such project or projects may be partially or wholly untenable.

10 (c) Such rental contract or lease may obligate the tenants or lessees to operate, maintain, and
11 keep in good repair, including complete reconstruction, if necessary, the rented or leased
12 premises and projects, regardless of the cause of the necessity of such maintenance, repair,
13 or reconstruction.

14 (d) Such rental contract or lease may obligate the tenants or lessees to indemnify and save
15 harmless the authority from any and all damage to persons and property occurring on or by
16 reason of the leased property or improvements thereon and to undertake, at the expense of
17 the tenants or lessees, the defense of any action brought against the authority by reason of
18 injury or damages to persons or property occurring on or by reason of the leased premises.

19 (e) In the event of any failure or refusal on the part of the tenants or lessees to perform
20 punctually any covenant or obligation contained in any such rental contract or lease, the
21 authority may enforce performance by any legal or equitable process against the tenants or
22 lessees.

23 (f) The authority shall be permitted to assign any rent payable to it, pursuant to such rental
24 contract or lease, to a trustee or paying agent as may be required by the terms of the
25 resolution or trust agreement or indenture relating to the issuance of and security for such
26 bonds.

27 (g) The use and disposition of the authority's revenue shall be subject to the provisions of
28 the resolution authorizing the issuance of such bonds or of the trust agreement or indenture,
29 if any, securing the same.

30 SECTION 12.

31 Sinking fund.

32 The revenue, rents, and earnings derived from any particular project or projects and any and
33 all revenue, rents, and earnings received by the authority, regardless of whether such
34 revenue, rents, and earnings were produced by a particular project for which bonds have been
35 issued, unless otherwise pledged, may be pledged by the authority to payment of the
36 principal of and interest on revenue bonds of the authority as may be provided in any

1 resolution authorizing the issuance of such bonds or in any trust instrument pertaining to such
2 bonds, and such funds so pledged, from whatever source received, may include funds
3 received from one or more or all sources and may be set aside at regular intervals into
4 sinking funds for which provision may be made in any such resolution or trust instrument
5 and which may be pledged to and charged with the payment of (1) the interest upon such
6 revenue bonds as such interest shall become due, (2) the principal of the bonds as the same
7 shall mature, (3) the necessary charges of any trustee or paying agent for paying such
8 principal and interest, and (4) any premium upon bonds retired by call or purchase; and the
9 use and disposition of any sinking fund may be subject to such regulation as may be provided
10 for in the resolution authorizing the issuance of the bonds or in the trust instrument securing
11 the payment of the same.

12 **SECTION 13.**

13 Exemption from taxation.

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

22 **SECTION 14.**

23 Immunity from tort actions.

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

30 **SECTION 15.**

31 Property not subject to levy and sale.

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

SECTION 16.

Trust funds.

All funds received pursuant to authority of Section 11 hereof, whether as proceeds from the sale of revenue bonds or as revenue, rents, fees, charges, or other earnings or as grants, gifts, or other contributions, shall be deemed to be trust funds to be held and applied by the authority, solely as provided herein; and the bondholders entitled to receive the benefits of such funds shall have a lien on all such funds until the same are applied as provided for in any such resolution or trust instrument of the authority.

SECTION 17.

Construction.

This Act and any other law enacted with reference to the authority shall be liberally construed for the accomplishment of its purposes.

SECTION 18.

Scope of operations.

The projects of the authority's operation shall be located in the territory embraced within the jurisdictional limits of Gilmer County as the same now or may hereafter exist.

SECTION 19.

Conveyance of property upon dissolution.

Should the authority for any reason be dissolved after full payment of all bonded indebtedness incurred hereunder, 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 Gilmer County; 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 said property at the time of such conveyance.

SECTION 20.

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 such 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.

