

House Bill 818 (AS PASSED HOUSE AND SENATE)

By: Representatives Dickson of the 6th, Williams of the 4th, and Forster of the 3rd

A BILL TO BE ENTITLED
AN ACT

1 To create the Dalton-Whitfield Economic Development Authority as a public body corporate
2 and politic, a political subdivision of the state, and a public corporation, to have the
3 responsibility and authority to promote economic development in Dalton and Whitfield
4 County, Georgia; to provide for the creation and organization of the authority; to provide for
5 the appointment of the membership 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 "Dalton-Whitfield Economic Development
14 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 Whitfield County, Georgia.
19 (2) "Authority" means the Dalton-Whitfield Economic Development Authority.
20 (3) "City" means the City of Dalton.
21 (4) "County" means Whitfield County, Georgia.

SECTION 3.

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

(a) There is hereby created a body public and politic to be known as the Dalton-Whitfield Economic Development Authority. The authority shall be deemed to be a political subdivision of the state and a public corporation and, by that name, may contract and be contracted with, sue and be sued, implead and be impleaded, and bring and defend actions.

Said authority shall be an economic development authority created by Act of the General Assembly, and is intended to be an agency and instrumentality of the city and county, and a governmental unit for purposes of Section 103, 141, and 150 of the Internal Revenue Code of 1986, as amended. The authority shall not be a state institution, nor a department or agency of the state, but shall be a creation of the state, having a distinct corporate identity.

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

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

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

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

1 county.

2 **SECTION 4.**

3 **Members and meetings.**

4 (a) The authority shall consist of seven members, who shall be natural persons who shall be
5 at least 21 years of age and who shall be residents of the county. Both the mayor and council
6 of the city and the county board of commissioners shall appoint two members each, who may
7 or may not be a member of the respective council or board of commissioners and who shall
8 serve one-year terms. The four initial appointees shall make the additional three
9 appointments, subject to confirmation by the mayor and council of the city and the county
10 board of commissioners, as follows: one member shall represent the interests of the carpet
11 industry within Whitfield County and may be a member in good standing of any organized
12 trade group organized to represent such interests, whose initial term shall be for one year,
13 with subsequent terms of two years; one member shall represent the interests of the
14 development and building trades within Whitfield County and may be a member in good
15 standing of any organized trade group organized to represent such interests, whose initial and
16 subsequent terms shall be for two years; and one member shall represent the interests of area
17 businesses and may be a member in good standing of any locally designated chamber of
18 commerce, whose initial term shall be for three years, with subsequent terms of two years.
19 The staggered terms of members shall expire on the last day of January of the year of
20 expiration and appointments for the succeeding two-year term shall be made in January with
21 such appointments being effective as of the next February 1. Any member may resign at any
22 time by filing a written notice of resignation with the chairperson of the authority. Members
23 may be removed for cause by a majority vote of the members of the authority. The city
24 administrator, the county administrator, the chief executive officer of Dalton Utilities, and
25 the president of the Dalton-Whitfield Chamber of Commerce shall sit on the authority as ex
26 officio, nonvoting members during their terms of employment in such capacity.

27 (b) The authority shall meet at such times as may be necessary to transact the business
28 coming before it, but not less often than monthly. Either the chairperson or any two other
29 members together may call a special called meeting of the authority. Meetings of the
30 authority shall be open to the public in accordance with the laws of the State of Georgia.
31 Written minutes of all meetings shall be kept, and within ten days following every meeting,
32 a copy of the minutes shall be furnished to the mayor and council of the city and to the
33 county board of commissioners. Meetings shall be conducted in accordance with the latest
34 version of *Robert's Rules of Order*.

35 (c) At the first meeting of the authority, the members shall elect a chairperson and a vice

1 chairperson from its voting membership. Commencing in the year 2006, at the first meeting
2 of the authority in February of each year, the members shall elect a chairperson and a vice
3 chairperson from its voting membership. The chairperson shall preside at meetings of the
4 authority and shall vote on all matters coming before the authority except when an even
5 number of authority members is present and creates the possibility of a tie vote. In such
6 instance, the chairperson shall not vote except to break a tie vote. The vice chairperson shall
7 preside at meetings in the absence of the chairperson. In the absence of both the chairperson
8 and vice chairperson, the members present at a meeting shall elect a temporary chairperson
9 to preside at that meeting, so long as the chairperson and vice chairperson both remain absent
10 from the meeting. Four voting members shall constitute a quorum. Official action may be
11 taken by majority vote of those members voting on a matter if a quorum is present and voting
12 on such matter, except that the bylaws of the authority shall be initially adopted or
13 subsequently amended only by majority vote of all members. All voting members present at
14 a meeting, including the chairperson, vice chairperson, or any other member presiding at
15 such meeting, shall be entitled to vote on all matters which shall come before the authority.
16 No vacancy on the authority shall impair the right of a quorum of four to exercise all the
17 rights and perform all the duties of the authority.

18 (d) Members shall receive no compensation for their services as members of the authority
19 but may be reimbursed for their proper and reasonable expenses incurred in the performance
20 of their duties, subject to any limitations imposed by general law upon the reimbursement
21 of public officials and subject to any limitations which may be contained, from time to time,
22 in the bylaws of the authority.

23 (e)(1) As used in this subsection, the term "substantial interest or involvement" means any
24 interest or involvement which reasonably may be expected to result in a direct or indirect
25 financial benefit to a member, as determined by the authority members by vote, which
26 determination shall be final and not subject to review.

27 (2) The provisions of Code Section 45-10-3 of the O.C.G.A. shall apply to the members
28 of the authority, and a member of the authority shall not engage in any transaction with the
29 authority. The provisions of the immediately preceding sentence and the provisions of
30 paragraph (9) of such Code section shall be deemed to have been complied with and the
31 authority may purchase from, sell to, borrow from, loan to, contract with, or otherwise deal
32 with any member or any organization or person with which any member of the authority
33 is in any way interested or involved, provided that:

34 (A) Any interest or involvement by such member is disclosed in advance to the members
35 of the authority who will be voting on the matter or transaction and such disclosure is
36 recorded in the minutes of the authority;

37 (B) No member having such a substantial interest or involvement may be present at that

1 portion of any meeting of the authority during which discussion of such matter or
2 transaction is conducted; and

3 (C) No member having a substantial interest or involvement may participate in any
4 decision of the authority members relating to any such matter or transaction. A member
5 who has any such substantial interest or involvement shall be entitled to participate in
6 discussions of whether such interest or involvement is a substantial interest or
7 involvement but shall not be entitled to vote on the question.

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

13 **SECTION 5.**

14 Purpose.

15 The purpose of the authority is to promote diverse economic development within the area in
16 such manner as the authority shall determine to be appropriate.

17 **SECTION 6.**

18 Duty of the authority.

19 It shall be the duty of the authority to promote diverse economic development within the area
20 and to operate the authority and its facilities in a fiscally responsible manner.

21 **SECTION 7.**

22 Powers.

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

26 (1) Adopt and alter a corporate seal;

27 (2) Purchase advertising promoting Dalton and Whitfield County to prospective businesses
28 and other employers;

29 (3) Encourage, promote, sponsor, and co-sponsor Dalton and Whitfield County at
30 conventions, trade shows, and special events;

31 (4) Lend financial support through grants, contributions, or otherwise to other

- 1 governmental entities in furtherance of its corporate purpose;
- 2 (5) Lend financial support through grants, contributions, or otherwise to private sector for
3 profit and not for profit entities in furtherance of its corporate purpose, specifically
4 provided that the authority determines that the residents of the area shall receive a
5 substantial benefit therefrom and provided that it does so by written agreement;
- 6 (6) Conduct activities to foster better public understanding on the part of individuals and
7 businesses of the importance of economic development to the economy of the city, of the
8 county, and of the area;
- 9 (7) Conduct activities to encourage and to assist the cooperation between the businesses
10 and industries servicing conventions, trade shows, and special events;
- 11 (8) Engage in fundraising activities in furtherance of its corporate purpose;
- 12 (9) Subject to formal pre-approval by city and county, acquire by purchase, lease, or
13 otherwise and to hold, lease, and dispose of real and personal property of every kind and
14 character for its corporate purposes;
- 15 (10) Acquire in its own name by purchase, upon such terms and conditions and in such
16 manner as it may deem proper, real property or rights of easements therein or franchises
17 necessary or convenient for its corporate purpose, to use the same so long as its corporate
18 existence shall continue, to lease or make contracts with respect to the use of the same, or
19 to dispose of personal property in its discretion, or to dispose of real property upon the
20 concurrence of the city and county. If the authority shall deem it expedient to acquire and
21 construct any such facility on any lands, the title to which shall then be held by the city, the
22 county, or any other municipality incorporated in said county, the governing authority or
23 body of the city, the county, or any of the said municipalities is authorized to convey title
24 to such lands to the authority upon the receipt of such lawful consideration as may be
25 determined by the parties to such conveyance or upon payment for the credit of the general
26 funds of said county or municipalities of the reasonable value of such lands, such value to
27 be determined by mutual consent of said county or municipality and the chairperson of the
28 authority;
- 29 (11) Appoint, select, and employ an executive director, officers, agents, and employees,
30 and independent consultants including but not limited to engineering, architectural, and
31 construction experts, fiscal agents, auditors, economists, and attorneys and fix their
32 respective compensations; and to delegate to the executive director the authority and
33 responsibility necessary to administer properly the day-to-day business of the authority
34 within policies set by the authority and subject to its review. The powers delegated to the
35 executive director may, at the election of the authority, include the making of
36 recommendations as to the hiring and termination of other employees and their
37 compensation, the management of the authority's offices and properties, the making of

- 1 budget recommendations, and the hiring of independent consultants;
- 2 (12) Appoint an advisory committee and other committees of persons from the public and
3 private sectors without regard to their place of residence;
- 4 (13) Make contracts of every kind and character, and, without limitation, any and all
5 persons, firms, and corporations and the state and any and all political subdivisions,
6 departments, institutions, or agencies of the state, including, but not limited to, the county
7 and the city, are authorized to enter into contracts, leases, or agreements with the authority
8 upon such terms and for such purposes as they deem advisable; and, without limiting the
9 generality of the above, the authority shall be permitted to enter into the following: (A)
10 contracts under which the authority purchases administrative and financial management
11 services from the city or county to be performed by personnel at the city or county's cost,
12 which shall include the costs of payroll, employee benefits, supplies, and overhead
13 reasonably allocable to the performance of such services, and (B) lease contracts relating
14 to leases of real property, personal property, or both real and personal property;
- 15 (14) Accept loans and grants of money or materials or property of any kind from the
16 United States of America or any agency or instrumentality thereof, upon such terms and
17 conditions as the United States of America or such agency or instrumentality may impose;
- 18 (15) Accept loans and grants of money or materials or property of any kind from the State
19 of Georgia or any agency or instrumentality or political division thereof, upon such terms
20 and conditions as the State of Georgia or such agency or instrumentality or political
21 subdivision may impose;
- 22 (16) Sell, lease, grant, exchange, or otherwise dispose of any personal property or interest
23 therein;
- 24 (17) Sue and be sued in contract and in tort and to complain and defend in all courts;
- 25 (18) Advise and recommend plans to other public and private sector entities for the
26 promotion of economic development;
- 27 (19) Conduct studies and develop plans for improving diverse economic development in
28 the area;
- 29 (20) Receive and disburse public funds appropriated by the city and county and to receive
30 and disburse funds from private sources and other revenues which may be received from
31 time to time which would assist in the accomplishment of its corporate purpose;
- 32 (21) To issue revenue bonds pursuant to the provisions of Article 3 of Chapter 82 of Title
33 36 of the O.C.G.A., the "Revenue Bond Law"; and
- 34 (22) Do all things necessary or convenient to accomplish its corporate purpose and to
35 exercise any power permitted by the laws of the state to be exercised by private
36 corporations which will further the authority's ability to accomplish such purpose, so long
37 as the exercise of such power is not in conflict with the Constitution or laws of this state.

1 (b) The powers enumerated in each paragraph of subsection (a) of this section are
2 cumulative of and in addition to those powers enumerated in the other paragraphs of
3 subsection (a) of this section and any other powers elsewhere in this Act or which may
4 reasonably be inferred from the provisions of this Act. This Act shall be liberally construed
5 to effect the described purposes, and in interpreting this Act, the courts are not to apply
6 "Dillon's Rule."

7 **SECTION 8.**

8 Budget and finances.

9 On or before April 30 of each year, the authority shall receive its verified audit for the prior
10 year. Prior to October 1 of each year, the chairperson of the authority shall appoint one
11 member of the authority to confer jointly with the city administrator and with the county
12 administrator and to act as liaison with regard to a proposed budget for the authority for the
13 ensuing year. Such three persons shall annually be known as the Budget Committee. The
14 Budget Committee shall produce a proposed budget for approval by the authority and
15 submission, by October 1 of each year, to the mayor and council of the city and to the county
16 board of commissioners. If the Budget Committee does not unanimously present a proposed
17 budget to the authority for approval and submission, then the authority shall submit a
18 continuation budget not greater than the total approved budget for the current year. The
19 continuation budget shall include any upward or downward adjustment necessary to meet all
20 debt service requirements and any downward adjustment necessary to apportion out budget
21 funds exclusively applicable to the encouragement of diverse economic development should
22 such operation become separate from the authority in the future. If either the city or county,
23 or both, shall fail or refuse to approve the budget as submitted by the authority by December
24 31, then the continuation budget, as set forth above, shall become automatically effective in
25 order to ensure operational continuity of the authority. Commencing Fiscal Year 2006, the
26 city and county shall each be required to fund one-half of any deficit of operations, capital
27 improvements, or debt service, or any combination thereof, of the authority. The
28 continuation budget as set forth above shall remain in effect until the next budget cycle. In
29 the event of a failure to reach budget agreement at that time or in subsequent years, then a
30 percentage increase shall automatically apply to all line items of the budget equivalent to the
31 percentage increase for the relevant time period as determined by the Blue Book CPI index
32 for all consumer goods.

SECTION 9.

Bylaws.

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3 The authority may, by affirmative vote of a majority of all members, adopt bylaws to govern
4 the authority, its employees, and operation and may, by affirmative vote of all members,
5 repeal, replace, or amend such bylaws.

SECTION 10.

Liability limited.

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

SECTION 11.

Neither city nor county bound.

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

SECTION 12.

Oversight.

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

SECTION 13.

Dissolution.

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28 Should the authority, for any reason, be dissolved after full payment of all indebtedness

1 previously incurred, both as to principal and interest, title to all property of any kind and
2 nature, real and personal, held by the authority at the time of such dissolution shall be
3 conveyed to the city and to the county as tenants in common or title to any such property may
4 be conveyed prior to such dissolution in accordance with provisions which may be made
5 therefor in any resolution or trust instrument relating to such property, subject to any liens,
6 leases, or other encumbrances outstanding against or in respect to such property at the time
7 of such conveyance.

8 **SECTION 14.**

9 Repealer.

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