

House Bill 623

By: Representative Benton of the 31st

A BILL TO BE ENTITLED
AN ACT

1 To create the City of Commerce Public Facilities Authority; to provide for a short title and
2 legislative findings; to confer powers and impose duties on the authority; to provide for the
3 membership and the appointment of members of the authority and their terms of office,
4 qualifications, duties, powers, and compensation; to provide for vacancies, organization,
5 meetings, and expenses; to provide for definitions; to provide for the issuance and sale of
6 revenue bonds and other obligations and their negotiability, sale, and use of proceeds from
7 such sales; to provide for conditions for issuance of such obligations; to prohibit the pledge
8 of credit for the payment of bonds; to provide for trust indentures; to provide for payment of
9 bond proceeds; to provide for bondholder remedies and protection; to provide for refunding
10 bonds; to provide for bond validation; to provide for venue and jurisdiction; to provide for
11 trust funds; to provide for the authority's purpose; to provide for charges; to provide for rules
12 and regulations; to provide for tort immunity; to provide for tax exemptions and exemptions
13 from levy and sale; to provide for supplemental powers; to provide for effect on other
14 governments; to provide for liberal construction; to provide for severability; to provide an
15 effective date; to provide for related matters; to repeal conflicting laws; and for other
16 purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 Name of Act.

20 This Act shall be known and may be cited as the "City of Commerce Public Facilities
21 Authority Act."

22

SECTION 2.

23

Creation of authority; purpose.

24 There is created a body corporate and politic to be known as the "City of Commerce Public
 25 Facilities Authority," which shall be deemed to be a public corporation. Such corporation
 26 shall be separate and distinct from any public corporation or other entity heretofore created
 27 by the General Assembly and shall be an instrumentality of the State of Georgia exercising
 28 governmental powers. The authority is created for the purpose of promoting the public good
 29 and general welfare of the citizens of the City of Commerce and assisting the City of
 30 Commerce in providing facilities, equipment, and services to the citizens of the City of
 31 Commerce and the citizens located in the territories served by the City of Commerce in the
 32 most efficient means possible. In connection with the exercise of any of its powers, the
 33 members of the authority may make findings or determinations regarding the public good
 34 and general welfare of the citizens of the City of Commerce and the use of facilities,
 35 equipment, and services, and such findings or determinations, if made, shall be conclusive
 36 and binding.

37

SECTION 3.

38

Definitions.

39 As used in this Act, the term:

40 (1) "Authority" means the City of Commerce Public Facilities Authority created in this
 41 Act.

42 (2) "City" means the City of Commerce, Georgia, or its successor.

43 (3) "Cost of the project" means and includes:

44 (A) The cost of construction;

45 (B) The cost of all land or interests therein, properties, rights, easements, and
 46 franchises acquired;

47 (C) The cost of acquiring, constructing, or erecting buildings, improvements, materials,
 48 labor, and services;

49 (D) The cost of all machinery and equipment;

50 (E) Financing charges, including interest prior to and during construction or acquisition
 51 of any project and for six months after such project is placed in service and operational
 52 at the level intended;

53 (F) The cost of construction, engineering, architectural, fiscal, accounting, inspection,
 54 and legal expenses relating to a project or to the financing or refinancing of any project

55 and other expenses necessary or incident to determining the feasibility or practicability
56 of any project; and

57 (G) Administrative expenses relating to any project or to the financing or refinancing
58 thereof and such other expenses as may be necessary or incident to the financing of a
59 project authorized by this Act, the acquisition, construction, renovation, reconstruction,
60 or remodeling of a project, and the placing of the same in operation.

61 Any such obligation or expense shall be regarded as a part of the cost of the project and
62 may be paid or reimbursed as such out of any funds of the authority, including proceeds
63 of any revenue bonds issued under the provisions of this Act for any such project or
64 projects and the proceeds of the sale of any contracts, lease agreements, or installment
65 sale agreements or the amounts payable thereunder, either directly or by the creation of
66 interests therein.

67 (4) "Project" means any capital project located inside or outside the territorial boundaries
68 of the city that is determined by the authority to promote the public good or general
69 welfare of the citizens of the city or to be necessary or convenient for the efficient
70 operation of the city, or any of its enterprises or systems, including, but not limited to, the
71 acquisition, construction, renovation, improvement, extension, addition, or equipping of:

72 (A) Utility systems and improvements, including without limitation water and sewer
73 systems and facilities, sewage and solid waste disposal systems and facilities, and
74 electric, gas, and other similar facilities or systems;

75 (B) Emergency facilities, including emergency, fire, sheriff, and rescue facilities;

76 (C) Recreational facilities, including parks, athletic fields, buildings, or facilities, or
77 other similar facilities;

78 (D) Public safety facilities, including jails, sheriff's offices, facilities, or equipment, and
79 state patrol or other law enforcement facilities or equipment;

80 (E) Health care facilities and equipment;

81 (F) Educational, cultural, or historical facilities and equipment;

82 (G) Transportation facilities and equipment;

83 (H) Administrative facilities and equipment;

84 (I) Any undertaking permitted by Article 3 of Chapter 82 of Title 36 of the O.C.G.A.,
85 the "Revenue Bond Law"; and

86 (J) Any undertaking, project, or service for which the governmental body contracting
87 with the authority is authorized by law to undertake in the performance of its
88 governmental, proprietary, or administrative functions; all personal property to be used
89 in connection therewith; and the lease and sale of any part or all of such facilities,
90 including real and personal property, so as to ensure the efficient and proper

91 development, maintenance, and operation of such project deemed by the authority to
 92 be necessary, convenient, or desirable.

93 (5) "Revenue bonds" means revenue bonds issued by the authority pursuant to the terms
 94 of this Act or under Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue
 95 Bond Law."

96 **SECTION 4.**

97 Powers of the authority.

98 The authority shall have the power:

- 99 (1) To hold, own, lease, transfer, and convey real and personal property or interests;
 100 (2) To sue and be sued;
 101 (3) To have and use a seal and to alter the same at its pleasure;
 102 (4) To acquire, construct, purchase, own, equip, operate, extend, improve, lease, and sell
 103 any project;
 104 (5) To exercise the powers conferred upon a public corporation or a public authority by
 105 Article IX, Section III, Paragraph I of the Constitution of Georgia if such authority is
 106 expressly declared to be a public corporation or a public authority within the meaning of
 107 such provision of the Constitution of Georgia;
 108 (6) To acquire property and projects in its own name by gift or by purchase on such
 109 terms and conditions and in such manner as it may deem proper. If the authority shall
 110 deem it expedient to construct any project on real property or any interest therein or
 111 usufruct which is subject to the control of the city, the city is authorized to convey such
 112 real property or interest therein to the authority for no consideration or for such
 113 consideration as may be agreed upon by the authority and the city, taking into
 114 consideration the public benefit to be derived from such conveyance. The city may
 115 transfer such property or interest therein without the necessity of putting the same out for
 116 bid and without regard to any determination as to whether or not such property or interest
 117 therein is in surplus;
 118 (7) To accept gifts and bequests for its corporate purposes;
 119 (8) To appoint, select, and employ, with or without bidding, as the authority may choose,
 120 officers, agents, and employees, including engineering, architectural, and construction
 121 experts, fiscal agents, underwriters, or other advisors, and attorneys, and to fix their
 122 compensation;
 123 (9) To make and execute with public and private persons and corporations contracts,
 124 lease agreements, rental agreements, installment sale agreements, and other instruments
 125 relating to its projects and incident to the exercise of the powers of the authority,

126 including contracts for constructing, renting, leasing, and selling its projects for the
127 benefit of the city; provided, however, without limiting the generality of this paragraph,
128 that the authority is specifically granted the power to enter into contracts, lease
129 agreements, rental agreements, installment sale agreements, and related agreements for
130 a term not exceeding 50 years as provided in Article IX, Section III of the Constitution
131 of Georgia;

132 (10) To lease, sell, transfer, or otherwise dispose of any property, real or personal, or
133 assets of the authority or to assign its rights under its contracts, lease agreements, or
134 installment sale agreements or its right to receive payments thereunder, either directly or
135 through trusts or custodial arrangements whereby interests are created in such contracts,
136 lease agreements, or installment sale agreements or the payments to be received
137 thereunder through the issuance of trust certificates, certificates of participation, custodial
138 receipts, or other similar instruments. In connection with any such sale, lease, transfer,
139 or assignment, the authority need not comply with any other provision of law requiring
140 public bidding or any announcement to the public of the sale of such property, assets, or
141 rights;

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

145 (12) To borrow money for any of its corporate purposes and to issue revenue bonds,
146 notes, or other types of indebtedness payable solely from funds or revenues of the
147 authority pledged for that purpose and to pledge and assign any of its revenues, income,
148 rent, charges, and fees to provide for the payment of the same and to provide for the
149 rights of the holders of such revenue bonds; provided, however, that the power conferred
150 by this paragraph shall not be exercised after the expiration of four years from the
151 effective date of this Act;

152 (13) To enter into:

153 (A) Interest rate swaps, collars, or other types of interest rate management agreements,
154 or

155 (B) Credit enhancement or liquidity agreements relating to any obligations of the
156 authority,

157 provided that the obligation of the authority under any such agreements shall not be a
158 general obligation of the authority but shall be a limited obligation of the authority
159 payable from a specific source of funds identified for such purpose. The authority shall
160 be exempt from any requirement of Georgia law requiring a swap management plan or
161 other similar plan relating to interest rate swap agreements;

- 162 (14) To make such rules and regulations governing its employees and property as it may
 163 in its discretion deem proper;
- 164 (15) To be sued the same as any private corporation on any contractual obligation of the
 165 authority. The authority shall have the same rights to sue any other person or entity as
 166 any private corporation; and
- 167 (16) To issue its revenue bonds, notes, or other obligations to finance or refinance any
 168 project which may be financed by the city under Article 3 of Chapter 82 of Title 36 of the
 169 O.C.G.A., the "Revenue Bond Law."

170 **SECTION 5.**

171 Members of the authority; terms of office.

172 (a) The authority shall consist of eight members as follows:

- 173 (1) Seven members shall be the mayor and members of the city council; and
 174 (2) One member shall be a resident of the city and shall be appointed by the mayor and
 175 city council.

176 The terms of office of the members who are the mayor and members of the city council
 177 shall be concurrent with their terms of office as mayor and members of the city council.
 178 The term of office of the remaining member of the authority shall be four years and until
 179 his or her successor is appointed and qualified. Successors to such members shall be
 180 appointed as the original members were appointed, as provided herein, and any vacancies
 181 shall be filled by the appointing authority, as provided herein, for the unexpired term. A
 182 majority of the members of the authority shall constitute a quorum, and no vacancy on the
 183 authority shall impair the right of the quorum to exercise all the rights and perform all the
 184 duties of the authority, and in every instance, a majority vote of a quorum shall authorize
 185 any legal act of the authority, including all things necessary to authorize and issue revenue
 186 bonds. One of the members of the authority who is also the mayor or a member of the city
 187 council shall be the chairperson of the authority and shall be elected by the mayor and city
 188 council. The authority shall elect a secretary and treasurer who need not necessarily be
 189 members of the authority. The authority may elect a vice chairperson or any number of
 190 assistant secretaries or treasurers as it may from time to time deem necessary or desirable.
 191 The members of the authority shall not be entitled to compensation for their services but
 192 shall be entitled to and shall be reimbursed for the actual expenses necessarily incurred in
 193 the performance of their duties.

194 (b) The authority shall make rules and regulations for its own governance, and it shall have
 195 perpetual existence. Any change in name or composition of the authority shall in no way

196 affect the vested rights of any person under the provisions of this Act or impair the
197 obligations of any contracts existing under this Act.

198 **SECTION 6.**

199 Issuance and sale of revenue bonds.

200 The authority shall have power and is authorized from time to time to provide for the
201 issuance and sale of negotiable revenue bonds in the manner provided by Article 3 of
202 Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," for the purpose of paying
203 all or any part of the cost of any one or more projects, including the cost of constructing,
204 reconstructing, equipping, extending, adding to, or improving any such project, or for the
205 purpose of refunding, as provided in this Act, any such bonds of the authority or any other
206 authority or public body previously issued to finance or refinance the cost of a project. The
207 principal of and interest on such revenue bonds shall be a limited obligation of the authority
208 payable solely from the source or sources of funds specified in the indenture or resolution
209 of the authority authorizing the issuance of such revenue bonds. The revenue bonds of each
210 issue shall be issued and validated under and in accordance with the provisions of Article 3
211 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law." Such revenue bonds
212 shall mature on such dates, bear interest at such rate or rates, whether fixed or variable, be
213 subject to redemption, and have such other terms as the authority may provide in the
214 indenture or resolution relating thereto. Such revenue bonds shall not be subject to any
215 provision of Georgia law limiting the rate of interest payable thereon and may be sold in a
216 negotiated sale or in a public sale as the authority may determine.

217 **SECTION 7.**

218 Power to incur loans or issue notes.

219 The authority shall also have the power to incur indebtedness from time to time for the
220 purpose of financing or refinancing any project or refunding any obligations previously
221 issued for such purpose or for any other purpose, whether in the form of a loan or through
222 the issuance of notes, and the principal of and interest on such notes or loans shall be a
223 limited obligation of the authority payable solely from the source or sources of funds
224 specified in the resolution or trust indenture of the authority authorizing such loan or the
225 issuance of such notes. Any such loan or notes shall not be required to be validated as a
226 condition to the issuance thereof and shall have such terms as may be specified by the
227 authority in the resolution or indenture authorizing the same.

228 **SECTION 8.**

229 Negotiable instruments; bonds and other obligations exempt from taxation.

230 All revenue bonds issued under the provisions of this Act shall have all the qualities and
231 incidents of negotiable instruments under the negotiable instruments law of this state. All
232 such bonds and any loan incurred or note issued as provided in this Act are declared to be
233 issued or incurred for an essential public and governmental purpose, and such obligations and
234 the interest thereon shall be exempt from all taxation within this state.

235 **SECTION 9.**

236 Revenue bonds or notes not a debt or general obligation.

237 Revenue bonds or notes issued under the provisions of this Act or any loan incurred as
238 authorized herein shall not constitute a debt or a pledge of the faith and credit of the State of
239 Georgia or of any political subdivision or municipal corporation thereof, including the city,
240 but shall be payable solely from the sources as may be designated in the resolution or
241 indenture of the authority authorizing the issuance of the same. The issuance of such
242 obligations shall not directly, indirectly, or contingently obligate the State of Georgia or any
243 political subdivision or municipal corporation thereof, including the city, to levy or pledge
244 any form of taxation for the payment thereof. No holder of any bond or receiver or trustee
245 in connection therewith shall have the right to enforce the payment thereof against any
246 property of the State of Georgia or any political subdivision or municipal corporation thereof,
247 including the city, nor shall any such bond constitute a charge, lien, or encumbrance, legal
248 or equitable, upon any such property. All such obligations shall contain on their face a recital
249 setting forth substantially the provisions of this section. Nothing in this section shall be
250 construed to prohibit the State of Georgia or any political subdivision, municipal corporation
251 or agency thereof, including the city, from obligating itself to pay the amounts required under
252 any contract entered into with the authority pursuant to Article IX of the Constitution of
253 Georgia, or any successor provision, including from funds received from taxes to be levied
254 and collected for that purpose to the extent necessary to pay the obligations contractually
255 incurred with the authority and from any other source.

256 **SECTION 10.**

257 Issuance of bonds or obligations under trust indentures or resolutions.

258 In the discretion of the authority, any issue of such revenue bonds, notes, or other obligations
259 may be secured by a trust indenture by and between the authority and a trustee, which may

260 be any trust company or bank having the powers of a trust company within or outside of the
261 State of Georgia. Such trust indenture may pledge or assign fees, tolls, rents, revenues, and
262 earnings to be received by the authority, including the proceeds derived from the financing,
263 sale, or lease, from time to time, of any project. Either the resolution providing for the
264 issuance of revenue bonds or other obligations or such trust indenture may contain such
265 provisions for protecting and enforcing the rights and remedies of the owners of such bonds
266 or obligations as may be reasonable and proper and not in violation of law, including
267 covenants setting forth the duties of the authority or any lessee or purchaser in relation to the
268 acquisition and construction of any project, the maintenance, operation, repair, and issuance
269 of any project, and the custody, safeguarding, and application of all moneys, including the
270 proceeds derived from the sale or lease of any project or from the sale of any such bonds,
271 notes, or other obligations, and may also contain provisions concerning the conditions, if any,
272 upon which additional bonds, notes, or other obligations may be issued, whether on a parity
273 with or subordinate to any other obligations issued by the authority. Such trust indenture or
274 resolution may set forth the rights and remedies of the owners of such obligations and of the
275 trustee. Such trust indenture or resolution may contain such other provisions as the authority
276 may deem reasonable and proper for the security of the owners of such bonds or other
277 obligations or otherwise necessary or convenient in connection with the issuance of such
278 obligations. All expenses incurred in carrying out such trust indenture or resolution may be
279 treated as a part of the cost of maintenance, operation, and repair of the project affected by
280 such trust indenture or resolution.

281 **SECTION 11.**

282 Security for the payment of bonds or other obligations.

283 The authority may assign or pledge any property or revenues to the payment of the principal
284 of and interest on revenue bonds of the authority as the resolution authorizing the issuance
285 of the bonds or the trust indenture may provide. The use and disposition of such property or
286 revenues assigned to the payment of bonds or other obligations shall be subject to the trust
287 indenture or resolution authorizing the issuance of such revenue bonds or obligations. Any
288 lien created by the authority for the payment of such bonds or obligations may be a first lien
289 or a subordinate lien as the authority may provide, and any such trust indenture or resolution
290 may provide, at the option of the authority, for the issuance of additional bonds or other
291 obligations sharing any lien on a parity or subordinate lien basis.

292

SECTION 12.

293

Refunding bonds or obligations.

294 The authority is authorized to provide by resolution for the issuance of obligations, whether

295 revenue bonds, notes, or other obligations, for the purpose of refunding any revenue bonds

296 or other obligations issued under the provisions of this Act or under any other provision of

297 Georgia law so long as such bonds or other obligations were issued for a purpose or project

298 for which the authority could issue bonds. The issuance of such refunding bonds or other

299 obligations and all the details thereof, the rights of the holders thereof, and the duties of the

300 authority with respect to the same shall be governed by the provisions of this Act insofar as

301 the same may be applicable.

302

SECTION 13.

303

Principal office; venue.

304 The principal office of the authority shall be in the city, and the venue of any action against

305 it shall be in Jackson County, Georgia. Any action pertaining to the validation of any bonds

306 issued under the provisions of this Act and for the validation of any contract entered into by

307 the authority shall be brought in the Superior Court of Jackson County, and such court shall

308 have exclusive original jurisdiction of such actions. Service upon the authority of any

309 process, subpoena, or summons shall be effected by serving the same personally upon any

310 member of the authority.

311

SECTION 14.

312

Validation of revenue bonds.

313 Revenue bonds of the authority shall be confirmed and validated in accordance with the

314 procedure set forth in Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond

315 Law," as the same now exists or may hereafter be amended. The petition for validation shall

316 also make a party defendant to such action the city, if the city has or will contract with the

317 authority with respect to the project for which bonds are to be issued and are sought to be

318 validated. The bonds, when validated, and the judgment of validation shall be final and

319 conclusive with respect to the validity of such bonds against the authority and against all

320 other persons or entities, regardless of whether such persons or entities were parties to such

321 validation proceedings.

322

SECTION 15.

323

No impairment of rights.

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

334

SECTION 16.

335

Trust funds; permitted investments.

336 All moneys received by the authority pursuant to this Act, whether as proceeds from the sale
337 of revenue bonds or obligations of the authority, as grants or other contributions, or as
338 revenues, income, fees, and earnings, shall be deemed to be the trust funds to be held and
339 applied solely as provided in this Act and in such resolutions and trust indentures as may be
340 adopted and entered into by the authority pursuant to this Act. Any such moneys or funds
341 may be invested from time to time in such investments as may be permitted under the
342 indenture, agreement, or resolution establishing the fund or account in which such funds are
343 held, or if not held in such a fund or account, in such investments as would be permitted
344 investments for a development authority created under Code Section 36-62-1, et seq., of the
345 O.C.G.A., as amended.

346

SECTION 17.

347

Power to set rates, fees, and charges.

348 The authority is authorized to prescribe and fix and collect rates, fees, tolls, rents, and
349 charges and to revise, from time to time, and collect such revised rates, fees, tolls, rents, and
350 charges for the services, facilities, or commodities furnished, including leases, concessions,
351 or subleases of its projects, and to determine the price and terms at and under which its
352 projects may be sold, leased, or otherwise disposed.

353 **SECTION 18.**

354 Essential governmental function; no taxes or assessments.

355 All property or interests in property owned by the authority shall be public property held and
356 owned for governmental purposes and shall be exempt from ad valorem taxation. The
357 exercise of the powers conferred upon the authority in this Act shall constitute an essential
358 governmental function for a public purpose, and the authority shall not be required to pay
359 taxes or assessments upon any of the property acquired by it or under its jurisdiction, control,
360 possession, or supervision or upon its activities in the operation and maintenance of property
361 acquired by it or of buildings erected or acquired by it or any fees, rentals, or other charges
362 for the use of such property or buildings or other income received by the authority. The tax
363 exemption provided in this section shall not include an exemption from sales and use tax on
364 property purchased by or for the use of the authority.

365 **SECTION 19.**

366 Immunity of authority and members.

367 The authority shall have the same immunity and exemption from liability for torts and
368 negligence as the State of Georgia, and the officers, agents, and employees of the authority,
369 when in performance of the work of the authority, shall have the same immunity and
370 exemption from liability for torts and negligence as officers, agents, and employees of the
371 State of Georgia.

372 **SECTION 20.**

373 Authority property not subject to levy and sale.

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

375 **SECTION 21.**

376 Authority area of operation.

377 The scope of the authority's operations shall be limited to the territory embraced within the
378 territorial limits of the city and within the territorial limits of any project owned or operated
379 by the city, as the same now or may hereafter exist; provided, however, that nothing in this
380 section shall prevent the authority from contracting with any entity, public or private, outside
381 of the city with respect to any project located in or outside of the city if the authority shall

382 determine that entering into such contract is in the best interest of the authority and in
383 furtherance of its public purposes.

384 **SECTION 22.**

385 Supplemental powers.

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

388 **SECTION 23.**

389 No power to impose taxes.

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

391 **SECTION 24.**

392 Act to be liberally construed.

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

394 **SECTION 25.**

395 Severability of provisions.

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

401 **SECTION 26.**

402 Effective date.

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

405

SECTION 27.

406

Conflicting laws.

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