

House Bill 600 (AS PASSED HOUSE AND SENATE)

By: Representatives Powell of the 171st and Taylor of the 173rd

A BILL TO BE ENTITLED
AN ACT

1 To create the City of Bainbridge 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 their negotiability, sale, and use of proceeds from such sales; to provide
7 for conditions for issuance of such obligations; to prohibit the pledge of credit for the
8 payment of bonds; to provide for trust indentures; to provide for payment of bond proceeds;
9 to provide for bondholder remedies and protection; to provide for refunding bonds; to
10 provide for bond validation; to provide for venue and jurisdiction; to provide for trust funds;
11 to provide for the authority's purpose; to provide for charges; to provide for rules and
12 regulations; to provide for tort immunity; to provide for tax exemptions and exemptions from
13 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 Short title.

20 This Act shall be known and may be cited as the "City of Bainbridge 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 Bainbridge 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 Bainbridge and assisting the City of
 30 Bainbridge in providing facilities, equipment, and services to the citizens of the City of
 31 Bainbridge in the most efficient means possible. In connection with the exercise of any of
 32 its powers, the members of the authority may make findings or determinations that will
 33 promote the public good and general welfare of the citizens of the City of Bainbridge and
 34 assist the City of Bainbridge in providing facilities, equipment, and services, and such
 35 findings or determinations, if made, shall be conclusive and binding.

36

SECTION 3.

37

Definitions.

38 As used in this Act, the following words and terms shall have the meaning specified unless
 39 the context or use clearly indicates a different meaning or intent:

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

42 (2) "Cost of the project" means and includes:

43 (A) The cost of construction;

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

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

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

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

52 (F) The cost of construction, engineering, architectural, fiscal, accounting, inspection,
 53 and legal expenses relating to a project or to the financing or refinancing of any project
 54 and other expenses necessary or incident to determining the feasibility or practicability
 55 of any project; and

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

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

66 (3) "City" means the City of Bainbridge, Georgia, or its successor.

67 (4) "Project" means and includes the acquisition, construction, equipping, maintenance,
 68 and operation of any undertaking as defined in Code Section 36-82-61 of the O.C.G.A.;
 69 any undertaking, project, or service for which any governmental body contracting with
 70 the authority is authorized by law to undertake in the performance of its governmental,
 71 administrative, or proprietary functions; all personal property to be used in connection
 72 therewith; and the lease and sale of any part or all of such facilities, including real and
 73 personal property, so as to ensure the efficient and proper development, maintenance, and
 74 operation of such project deemed by the authority to be necessary, convenient, or
 75 desirable. A project may be composed exclusively of real or personal property,
 76 equipment, fixtures, machinery, or other property of any nature whatsoever used or useful
 77 in connection with the governmental, administrative, and proprietary functions of any
 78 governmental body contracting with the authority for its services or facilities.

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

82 **SECTION 4.**

83 Powers of the authority.

84 The authority shall have the power:

- 85 (1) To hold, own, lease, transfer, and convey real and personal property or interests
- 86 therein;
- 87 (2) To sue and be sued;
- 88 (3) To have and use a seal and to alter the same at its pleasure;
- 89 (4) To acquire, construct, purchase, own, equip, operate, extend, improve, lease, and sell
- 90 any project;

- 91 (5) To exercise the powers conferred upon a public corporation or a public authority by
92 Article IX, Section III, Paragraph I of the Constitution of Georgia, and such authority is
93 expressly declared to be a public corporation or a public authority within the meaning of
94 such provision of the Constitution of Georgia;
- 95 (6) To acquire property and projects in its own name by gift or by purchase on such
96 terms and conditions and in such manner as it may deem proper. If the authority shall
97 deem it expedient to construct any project on real property or any interest therein or
98 usufruct which is subject to the control of the city, the city is authorized to convey such
99 real property or interest therein to the authority for no consideration or for such
100 consideration as may be agreed upon by the authority and the city, taking into
101 consideration the public benefit to be derived from such conveyance. The city may
102 transfer such property or interest therein without regard to any determination as to
103 whether or not such property or interest therein is surplus;
- 104 (7) To accept gifts and bequests for its corporate purposes;
- 105 (8) To appoint, select, and employ, with or without bidding, as the authority may choose,
106 officers, agents, and employees, including engineering, architectural, and construction
107 experts, fiscal agents, underwriters or other advisors, and attorneys, and to fix their
108 compensation;
- 109 (9) To make and execute with public and private persons and corporations contracts,
110 lease agreements, rental agreements, installment sale agreements, and other instruments
111 relating to its projects and incident to the exercise of the powers of the authority,
112 including contracts for constructing, renting, leasing, and selling its projects for the
113 benefit of the city; and, without limiting the generality of this paragraph, authority is
114 specifically granted to the authority and to the city to enter into contracts, lease
115 agreements, rental agreements, installment sale agreements, and related agreements for
116 a term not exceeding 50 years as provided in Article IX, Section III of the Constitution
117 of Georgia;
- 118 (10) To lease, sell, transfer, or otherwise dispose of any property, real or personal, or
119 assets of the authority or to assign its rights under its contracts, lease agreements, or
120 installment sale agreements or its right to receive payments thereunder, either directly or
121 through trust or custodial arrangements whereby interests are created in such contracts,
122 lease agreements, or installment sale agreements or the payments to be received
123 thereunder through the issuance of trust certificates, certificates of participation, custodial
124 receipts, or other similar instruments;
- 125 (11) To accept loans or grants of money or property of any kind from the United States,
126 the State of Georgia, or any political subdivision of the State of Georgia;

127 (12) To borrow money for any of its corporate purposes and to issue revenue bonds,
 128 notes, or other types of indebtedness payable solely from funds or revenues of the
 129 authority pledged for that purpose; to pledge and assign any of its revenues, income, rent,
 130 charges, and fees to provide for the payment of the same; and to provide for the rights of
 131 the holders of such revenue bonds;

132 (13) To enter into interest rate swaps, collars, or other types of interest rate management
 133 agreements or credit enhancement or liquidity agreements relating to any obligations of
 134 the authority, provided that the obligation of the authority under such agreements shall
 135 not be a general obligation of the authority but shall be a limited obligation of the
 136 authority payable from a specific source of funds identified for such purpose. The
 137 authority shall be exempt from any requirement of Georgia law requiring a swap
 138 management plan or other similar plan relating to interest swap agreements;

139 (14) To make such rules and regulations governing its employees and property as it may
 140 in its discretion deem proper;

141 (15) To be sued the same as any private corporation on any contractual obligation of the
 142 authority. The authority shall have the same rights to sue any other person or entity as
 143 any private corporation; and

144 (16) To issue its revenue bonds, notes, or other obligations to finance or refinance any
 145 project which may be financed by the city under Article 3 of Chapter 82 of Title 36 of the
 146 O.C.G.A., the "Revenue Bond Law."

147 **SECTION 5.**

148 **Members of the authority; terms of office.**

149 The authority shall consist of six to nine members. Six of the members shall be the persons
 150 at the time serving as the five duly elected members of the city council of the City of
 151 Bainbridge and the mayor of the City of Bainbridge, and they shall be eligible to succeed
 152 themselves. The members of the authority shall hold office for terms coinciding with their
 153 terms on the city council and his or her term as mayor and shall serve until their successors
 154 take office. The mayor and city council, in their capacities to the city, may nominate and
 155 appoint up to three additional members to the authority who possess knowledge or
 156 experience in matters within the power of the authority. The three additional members of the
 157 authority shall serve one-year terms and are eligible to be reappointed without limitation.
 158 In the event that the number of members of the city council is changed, then the number of
 159 members of the authority shall be correspondingly changed. Immediately after their official
 160 seating on the authority, the members of the authority shall enter upon their duties. A
 161 majority of the members of the authority shall constitute a quorum, and no vacancy on the

162 authority shall impair the right of the quorum to exercise all the rights and perform all the
163 duties of the authority, and in every instance, a majority vote of a quorum shall authorize any
164 legal act of the authority, including all things necessary to authorize and issue revenue bonds.
165 The authority shall elect one of its members as chairperson and shall elect a secretary and a
166 treasurer. The secretary and treasurer need not necessarily be members of the authority. The
167 chairperson shall be a nonvoting member of the authority; however, if at any time there are
168 an even number of members on the authority, the chairperson shall be allowed to vote but
169 only to break a tie. The authority may elect a vice chairperson or any number of assistant
170 secretaries or treasurers as it may from time to time deem necessary or desirable. The
171 members of the authority shall not be entitled to compensation for their services but shall be
172 entitled to and shall be reimbursed for their actual expenses necessarily incurred in the
173 performance of their duties. The authority shall make rules and regulations for its own
174 governance, and it shall have perpetual existence. Any change in name or composition of
175 the authority shall in no way affect the vested rights of any person under the provisions of
176 this Act or impair the obligations of any contracts existing under this Act.

177

SECTION 6.

178

Issuance and sale of revenue bonds.

179 The authority shall have power and is authorized from time to time to provide for the
180 issuance and sale of negotiable revenue bonds in the manner provided by Article 3 of
181 Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," for the purpose of paying
182 all or any part of the cost of any one or more projects, including the cost of constructing,
183 reconstructing, equipping, extending, adding to, or improving any such project, or for the
184 purpose of refunding, as provided in this Act, any such bonds of the authority or any other
185 authority or public body previously issued to finance or refinance the cost of a project. The
186 principal of and interest on such revenue bonds shall be a limited obligation of the authority
187 payable solely from the source or sources of funds specified in the indenture or resolution
188 of the authority authorizing the issuance of such revenue bonds. The revenue bonds of each
189 issue shall be issued and validated under and in accordance with the provisions of the
190 "Revenue Bond Law." Such revenue bonds shall mature on such dates, bear interest at such
191 rate or rates, whether fixed or variable, be subject to redemption, and have such other terms
192 as the authority may provide in the indenture or resolution relating thereto. Such revenue
193 bonds shall not be subject to any provision of Georgia law limiting the rate of interest
194 payable thereon and may be sold in a negotiated sale or in a public sale as the authority may
195 determine.

196

SECTION 7.

197

Power to incur loans or issue notes.

198 The authority shall also have the power to incur indebtedness from time to time for the
199 purpose of financing or refinancing any project or refunding any obligations previously
200 issued for such purpose, or for any other purpose, whether in the form of a loan or through
201 the issuance of notes, and the principal of and interest on such notes or loans shall be a
202 limited obligation of the authority payable solely from the source or sources of funds
203 specified in the resolution or indenture of the authority authorizing such loan or the issuance
204 of such notes. Any such loan or notes shall not be required to be validated as a condition to
205 the issuance thereof and shall have such terms as may be specified by the authority in the
206 resolution or indenture authorizing the same.

207

SECTION 8.

208

Negotiable instruments; bonds or other obligations exempt from taxation.

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

214

SECTION 9.

215

Revenue bonds or notes not a debt or general obligation.

216 Revenue bonds or notes issued under the provisions of this Act or any loan incurred as
217 authorized herein shall not constitute a debt or a pledge of the faith and credit of the State of
218 Georgia or of any political subdivision thereof, including the city, but shall be payable solely
219 from the sources as may be designated in the resolution or indenture of the authority
220 authorizing the issuance of the same. The issuance of such obligations shall not directly,
221 indirectly, or contingently obligate the State of Georgia or any political subdivision thereof,
222 including the city, to levy or pledge any form of taxation for the payment thereof. No holder
223 of any bond or receiver or trustee in connection therewith shall have the right to enforce the
224 payment thereof against any property of the State of Georgia or any political subdivision
225 thereof, including the city, nor shall any such bond constitute a charge, lien, or encumbrance,
226 legal or equitable, upon any such property. All such obligations shall contain on their face
227 a recital setting forth substantially the provisions of this section. Nothing in this section shall

228 be construed to prohibit the State of Georgia or any political subdivision or agency thereof,
229 including the city, from obligating itself to pay the amounts required under any contract
230 entered into with the authority pursuant to Article IX of the Constitution of Georgia or any
231 successor provision, including from funds received from taxes to be levied and collected for
232 that purpose to the extent necessary to pay the obligations contractually incurred by the
233 authority and from any other source.

234 **SECTION 10.**

235 Issuance of bonds or obligations under indentures or resolutions.

236 In the discretion of the authority, any issuance of such revenue bonds, notes, or other
237 obligations may be secured by a trust indenture by and between the authority and a trustee,
238 which may be any trust company or bank having the powers of a trust company within or
239 outside of the State of Georgia. Such trust indenture may pledge or assign fees, tolls, rents
240 revenues, and earnings to be received by the authority, including the proceeds derived from
241 the financing, sale, or lease, from time to time, of any project. Either the resolution
242 providing for the issuance of revenue bonds or other obligations or such trust indenture may
243 contain such provisions for protecting and enforcing the rights and remedies of the owners
244 of such bonds or obligations as may be reasonable and proper and not in violation of law,
245 including covenants setting forth the duties of the authority or any lessee or purchaser in
246 relation to the acquisition and construction of any project, the maintenance, operation, repair,
247 and issuance of any project, and the custody, safeguarding, and application of all moneys,
248 including the proceeds derived from the sale or lease of any project or from the sale of any
249 such bonds, notes, or other obligations, and may contain provisions concerning the
250 conditions, if any, upon which additional bonds, notes, or other obligations may be issued,
251 whether on a parity with or subordinate to any other obligations issued by the authority.
252 Such indenture or resolution may set forth the rights and remedies of the owners of such
253 obligations and of the trustee. Such trust indenture may contain such other provisions as the
254 authority may deem reasonable and proper for the security of the owners of such bonds or
255 other obligations or otherwise necessary or convenient in connection with the issuance of
256 such obligations. All expenses incurred in carrying out such trust indenture may be treated
257 as a part of the cost of maintenance, operation, and repair of the project affected by such
258 indenture.

259 **SECTION 11.**

260 Security of the payment of bonds or other obligations.

261 The authority may assign or pledge any property or revenues to the payment of the principal
262 of and interest on revenue bonds of the authority as the resolution authorizing the issuance
263 of the bonds or the trust indenture may provide. The use and disposition of such property or
264 revenues assigned to the payment of bonds or other obligations shall be subject to the
265 indenture or resolution authorizing the issuance of such revenue bonds or obligations. Any
266 lien created by the authority for the payment of such bonds or obligations may be a first lien
267 or a subordinate lien as the authority may provide, and any such indenture or resolution may
268 provide, at the option of the authority, for the issuance of additional bonds or other
269 obligations sharing any lien on a parity or subordinate lien basis.

270 **SECTION 12.**

271 Refunding bonds or obligations.

272 The authority is authorized to provide by resolution for the issuance of obligations, whether
273 revenue bonds, notes, or other obligations, for the purpose of refunding any revenue bonds
274 or other obligations issued under the provisions of this Act or under any other provision of
275 Georgia law so long as such bonds or other obligations were issued for a purpose or project
276 for which the authority could issue bonds. The issuance of such refunding bonds or other
277 obligations and all the details thereof, the rights of holders thereof, and the duties of the
278 authority with respect to the same shall be governed by the provisions of this Act insofar as
279 the same may be applicable.

280 **SECTION 13.**

281 Principal office; venue.

282 The principal office of the authority shall be in the city, and the venue of any action against
283 it shall be in Decatur County. Any action pertaining to the validation of any bonds issued
284 under the provisions of this Act and for the validation of any contract entered into by the
285 authority shall be brought in the Superior Court of Decatur County, and such court shall have
286 exclusive original jurisdiction of such actions. Service upon the authority of any process,
287 subpoena, or summons shall be effected by serving the same personally upon any member
288 of the authority.

289

SECTION 14.

290

Validation of revenue bonds.

291 Revenue bonds of the authority shall be confirmed and validated in accordance with the
292 procedure set forth in Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond
293 Law," as the same now exists or may hereafter be amended. The petition for validation shall
294 also make a party defendant to such action the city, if the city has or will contract with the
295 authority with respect to the project for which bonds are to be issued and are sought to be
296 validated. The bonds, when validated, and the judgment of validation shall be final and
297 conclusive with respect to the validity of such bonds against the authority and against all
298 other persons or entities, regardless of whether such persons or entities were parties to such
299 validation proceedings.

300

SECTION 15.

301

No impairment of rights.

302 While any of the bonds or other obligations issued by the authority or any interests in
303 contracts of the authority remain outstanding, the powers, duties, or existence of the authority
304 or its officers, employees, or agents shall not be diminished or impaired in any manner that
305 will affect adversely the interest and rights of the holders of such bonds or obligations or
306 such interests in contracts of the authority. The provisions of this section shall be for the
307 benefit of the authority and the holders of any such bonds or obligations and interests in
308 contracts of the authority and, upon the issuance of bonds or obligations or the creation of
309 interests in contracts of the authority under the provisions of this Act, shall constitute a
310 contract with the holders of such bonds or obligations or such interests in contracts of the
311 authority.

312

SECTION 16.

313

Trust funds; permitted investments.

314 All moneys received by the authority pursuant to this Act, whether as proceeds from the sale
315 of revenue bonds or obligations of the authority, as grants or other contributions, or as
316 revenues, income, fees, and earnings, shall be deemed to be trust funds to be held and applied
317 solely as provided in this Act and in such resolutions and trust indentures as may be adopted
318 and entered into by the authority pursuant to this Act. Any such moneys or funds may be
319 invested from time to time in such investments as may be permitted under the indenture,
320 agreement, or resolution establishing the fund or account in which such funds are held, or if

321 not held in such a fund or account, in such investments as would be permitted for
322 investments of a development authority created under Code Section 36-62-1, et seq., of the
323 O.C.G.A.

324 **SECTION 17.**

325 Power to set rates, fees, and charges.

326 The authority is authorized to prescribe and fix rates, fees, tolls, rents, and charges and to
327 revise, from time to time, and collect such revised rates, fees, tolls, rents, and charges for the
328 services, facilities, or commodities furnished, including leases, concessions, and subleases
329 of its projects, and to determine the price and terms at and under which its projects may be
330 sold, leased, or otherwise disposed. The authority may establish in its discretion procedures
331 for contracting for any work done for the authority or for the acquisition, sale, transfer, or
332 lease of any property, real or personal, of the authority.

333 **SECTION 18.**

334 Essential governmental function; no taxes or assessments.

335 All property or interests in property owned by the authority shall be public property held and
336 owned for governmental purposes and shall be exempt from ad valorem taxation. The
337 exercise of the powers conferred upon the authority hereunder shall constitute an essential
338 governmental function for a public purpose and the authority shall not be required to pay
339 taxes or assessments upon any of the property acquired by it or under its jurisdiction, control,
340 possession, or supervision or upon its activities in the operation and maintenance of property
341 acquired by it or of buildings acquired or erected by it or any fees, rentals, or other charges
342 for the use of such property or buildings or other income received by the authority. The tax
343 exemption herein provided shall not include an exemption from sales and use tax on property
344 purchased by or for the use of the authority.

345 **SECTION 19.**

346 Immunity of authority and members.

347 The authority shall have the same immunity and exemption from liability for torts and
348 negligence as the City of Bainbridge; and the officers, agents, and employees of the
349 authority, when in the performance of the work of the authority, shall have the same
350 immunity and exemption from liability for torts and negligence as the officers, agents, and
351 employees of the City of Bainbridge.

352 **SECTION 20.**

353 Authority property not subject to levy and sale.

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

355 **SECTION 21.**

356 Authority area of operation.

357 The scope of the authority's operations shall be limited to the territory embraced within the
358 territorial limits of the city, as the same now or may hereafter exist; provided, however, that
359 nothing in this section shall prevent the authority from contracting with any entity, public or
360 private, outside of the city with respect to any project located in or outside of the city if the
361 authority shall determine that entering into such contract is in the best interest of the
362 authority and in furtherance of its public purposes.

363 **SECTION 22.**

364 Supplemental powers.

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

367 **SECTION 23.**

368 No power to impose taxes.

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

370 **SECTION 24.**

371 Act to be liberally construed.

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

373 **SECTION 25.**

374 Severability of provisions.

375 Should any sentence, clause, phrase, or part of this Act be declared for any reason to be
376 unconstitutional or invalid, the same shall not affect the remainder of this Act, or any part
377 hereof, other than the part so held to be invalid, but the remaining provisions of this Act shall

378 remain in full force and effect, and it is the express intention of this Act to enact each
379 provision of this Act independently of any other provision hereof.

380 **SECTION 26.**

381 Effective date.

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

384 **SECTION 27.**

385 Conflicting laws.

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