

Senate Bill 478

By: Senators Parent of the 42nd and Millar of the 40th

A BILL TO BE ENTITLED
AN ACT

1 To create the City of Brookhaven Public Facilities Authority and to provide for the
2 appointment of members of the authority; to confer powers upon the authority; to provide
3 definitions; to authorize the issuance of revenue bonds of the authority; to fix and provide
4 the venue and jurisdiction of actions relating to any provisions of this Act; to exempt the
5 property and revenue bonds of the authority from taxation; to provide for the separate
6 enactment of a certain provision of this Act; to provide a short title; to provide for related
7 matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Short title.

11 This Act shall be known and may be cited as the "City of Brookhaven Public Facilities
12 Authority Act."

13 **SECTION 2.**

14 City of Brookhaven Public Facilities Authority; creation.

15 (a) There is hereby created a public body corporate and politic to be known as the "City of
16 Brookhaven Public Facilities Authority," which shall be deemed to be a political subdivision
17 of the state and a public corporation, and by that name, style, and title, such body may
18 contract and be contracted with, sue and be sued, implead and be impleaded, and complain
19 and defend in all courts of law and equity. The authority shall have perpetual existence.

20 (b) The authority shall consist of five members who shall be appointed by the City Council
21 of the City of Brookhaven, who shall not be elected officials of the city. With respect to the
22 initial appointment, two members shall be appointed for a term of three years, two members
23 shall be appointed for a term of two years, and one member shall be appointed for a term of

24 one year. Thereafter, all appointments shall be made for terms of three years and until
 25 successors are appointed and qualified. Immediately after such appointments the members
 26 of the authority shall enter upon their duties. To be eligible for appointment as a member of
 27 the authority, a person shall be at least 21 years of age, and shall not have been convicted of
 28 a felony. Any member of the authority may be selected and appointed to succeed himself
 29 or herself.

30 (c) The members shall not be compensated for their services; provided, however, that such
 31 members shall be reimbursed for their actual expenses necessarily incurred in the
 32 performance of their duties.

33 (d) The members of the authority shall elect one of their number as chairperson and another
 34 as a vice chairperson. The members of the authority shall also elect a secretary, who need
 35 not be a member of the authority, and may also elect a treasurer, who need not be a member
 36 of the authority. The secretary may also serve as treasurer. If the secretary or the treasurer
 37 is not a member of the authority, such officer shall have no voting rights. Each of such
 38 officers shall serve for a period of one year and until their successors are duly elected and
 39 qualified.

40 (e) Three members of the authority shall constitute a quorum. No vacancy on the authority
 41 shall impair the right of the quorum to exercise all of the rights and perform all of the duties
 42 of the authority.

43 **SECTION 3.**

44 Purpose of the authority; scope of operations.

45 Without limiting the generality of any provision of this Act, the general purpose of the
 46 authority is declared to be that of providing buildings, facilities, equipment, and services for
 47 the citizens of the city.

48 **SECTION 4.**

49 Definitions.

50 As used in this Act, the term:

51 (1) "Authority" means the City of Brookhaven Public Facilities Authority created by this
 52 Act.

53 (2) "City" means the City of Brookhaven, Georgia.

54 (3) "Costs of the project" means and embraces the cost of construction; the cost of all
 55 lands, properties, rights, easements, and franchises acquired; the cost of all machinery and
 56 equipment; financing charges; interest prior to and during construction and for six months

57 after completion of construction; the cost of engineering, architectural, fiscal agent,
 58 accounting, and legal services, and of plans and specifications and expenses necessary or
 59 incidental to determining the feasibility or practicability of the project; administrative
 60 expenses; working capital; and all other costs necessary to acquire, construct, add to,
 61 extend, improve, equip, operate, maintain, or finance the project.

62 (4) "Project" means (i) all buildings, facilities, and equipment necessary or convenient for
 63 the efficient operation of the city or any department, agency, division, or commission
 64 thereof, and (ii) any "undertaking" permitted by the Revenue Bond Law.

65 (5) "Revenue Bond Law" means those provisions of law codified in Article 3 of
 66 Chapter 82 of Title 36 of the O.C.G.A., as amended, or any other similar law hereinafter
 67 enacted.

68 (6) "Revenue bonds" means revenue bonds authorized to be issued pursuant to this Act.

69 (7) "Self-liquidating" means any project which the revenues and earnings to be derived by
 70 the authority therefrom, including, but not limited to, any contractual payments with
 71 governmental or private entities, and all properties used, leased, and sold in connection
 72 therewith, together with any grants and any other available funds, will be sufficient to pay
 73 the costs of operating, maintaining, and repairing the project and to pay the principal and
 74 interest on the revenue bonds or other obligations which may be issued for the purpose of
 75 paying the costs of the project.

76 (8) "State" means the State of Georgia.

77 SECTION 5.

78 Powers.

79 The authority shall have the power:

80 (1) To have a seal and alter the same at its pleasure;

81 (2) To acquire by purchase, lease, gift, or otherwise, and with or without consideration, to
 82 hold, operate, maintain, lease, and dispose of real and personal property of every kind and
 83 character for its corporate purposes;

84 (3) To acquire in its own name by purchase, on such terms and conditions and in such
 85 manner as it may deem proper, real property or rights or easements therein, or franchises
 86 necessary or convenient for its corporate purposes, and to use the same so long as its
 87 corporate existence shall continue, and to lease or make contracts with respect to the use
 88 of or disposition of the same in any manner it deems to the best advantage of the authority,
 89 and no property shall be acquired under the provisions of this Act upon which any lien or
 90 encumbrance exists, unless at the time such property is so acquired a sufficient sum of

- 91 money is to be deposited in trust to pay and redeem the fair value of such lien or
92 encumbrance;
- 93 (4) To acquire, construct, add to, extend, improve, equip, operate, maintain, lease, and
94 dispose of projects;
- 95 (5) To execute contracts, leases, installment sale agreements, and other agreements and
96 instruments necessary or convenient in connection with the acquisition, construction,
97 addition, extension, improvement, equipping, operation, maintenance, disposition, or
98 financing of a project;
- 99 (6) To appoint, select, and employ officers, agents, and employees, including, but not
100 limited to, engineering, architectural, and construction experts, fiscal agents, and attorneys,
101 and fix their respective compensations;
- 102 (7) To pay the costs of the project with the proceeds of revenue bonds, certificates of
103 participation, notes, or other forms of obligations issued by the authority or from any grant
104 or contribution from the United States of America or any agency or instrumentality thereof
105 or from the state or any agency, instrumentality, municipality, or political subdivision
106 thereof, from any private foundation or other private source or from any other source
107 whatsoever;
- 108 (8) To pledge to the payment of revenue bonds, certificates of participation, notes, and
109 other forms of obligations issued by the authority any and all revenues and properties of
110 the authority, both real and personal;
- 111 (9) To accept loans or grants of money or materials or property of any kind from the
112 United States of America or any agency or instrumentality thereof, upon such terms and
113 conditions as the United States of America or such agency or instrumentality may require;
- 114 (10) To accept loans or grants of money or materials or property of any kind from the state
115 or any agency, instrumentality, municipality, or political subdivision thereof, upon such
116 terms and conditions as the state or such agency, instrumentality, municipality, or political
117 subdivision may require;
- 118 (11) To accept loans or grants of money or materials or property of any kind from any
119 public or private foundation or any other private source upon such terms and conditions as
120 such public or private foundation or other private source may require;
- 121 (12) To borrow money for any of its corporate purposes and to issue or execute revenue
122 bonds, certificates of participation, notes, and other forms of obligations, deeds to secure
123 debt, security agreements, and such other instruments as may be necessary or convenient
124 to evidence and secure such borrowing;
- 125 (13) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner
126 in which its business is transacted;

- 127 (14) To prescribe rules, regulations, service policies, and procedures for the operation of
128 any project;
- 129 (15) To exercise any power usually possessed by private corporations performing similar
130 functions; and
- 131 (16) To do all things necessary or convenient to carry out the powers expressly given in
132 this Act.

133 **SECTION 6.**

134 Revenue bonds.

135 The authority shall have power and is hereby authorized to provide by resolution for the
136 issuance of revenue bonds for the purpose of paying all or any part of the costs of the project
137 and for the purpose of refunding revenue bonds or other obligations previously issued. The
138 principal of and interest on such revenue bonds shall be payable solely from the revenues and
139 properties pledged to the payment of such revenue bonds. The revenue bonds issued by the
140 authority shall contain such terms as the authority shall determine are in the best interest of
141 the authority; provided, however, no revenue bonds shall have a maturity exceeding 40 years.

142 **SECTION 7.**

143 Same; signatures; seal.

144 All such revenue bonds shall bear the manual or facsimile signature of the chairperson or
145 vice-chairperson of the authority and the attesting manual or facsimile signature of the
146 secretary or secretary-treasurer of the authority, and the official seal of the authority shall be
147 impressed or imprinted thereon. Any revenue bonds may bear the manual or facsimile
148 signature of such persons as at the actual time of the execution of such revenue bonds shall
149 be duly authorized or hold the proper office, although at the date of issuance of such revenue
150 bonds such person may not have been so authorized or shall not have held such office. In
151 case any officer whose signature shall appear on any revenue bond shall cease to be such
152 officer before the delivery of such revenue bond, such signature shall nevertheless be valid
153 and sufficient for all purposes, the same as if that person had remained in office until such
154 delivery.

155 **SECTION 8.**

156 Same; negotiability; exemption from taxation.

157 All revenue bonds shall have and are hereby declared to have all the qualities and incidents
158 of negotiable instruments under the general laws of the State. All revenue bonds, their
159 transfer, and the income therefrom shall be exempt from all taxation within the state as
160 provided by the Revenue Bond Law.

161 **SECTION 9.**

162 Same; conditions precedent to issuance.

163 The authority shall adopt a resolution authorizing the issuance of the revenue bonds. In the
164 resolution, the authority shall determine that the project financed or refinanced with the
165 proceeds of the revenue bonds is self-liquidating. Revenue bonds may be issued without any
166 other proceedings or the happening of any other conditions or things other than those
167 proceedings, conditions, and things which are required by the Revenue Bond Law. Any
168 resolution providing for the issuance of revenue bonds under the provisions of this Act shall
169 become effective immediately upon its adoption and need not be published or posted, and
170 any such resolution may be adopted at any regular or special meeting of the authority.

171 **SECTION 10.**

172 Same; credit not pledged.

173 Revenue bonds shall not be deemed to constitute a debt of the state or the city nor a pledge
174 of the faith and credit of the state or the city. Revenue bonds shall be payable solely from
175 the revenues and properties pledged to the payment of such revenue bonds. The issuance of
176 revenue bonds shall not directly, indirectly, or contingently obligate the state or the city to
177 levy or to pledge any form of taxation whatsoever for the payment of such revenue bonds or
178 to make any appropriation for their payment. All revenue bonds shall contain recitals on
179 their face covering substantially the foregoing provisions of this section. Notwithstanding
180 the foregoing provisions, this Act shall not affect the ability of the authority and the city to
181 enter into an intergovernmental contract pursuant to which the city agrees to pay amounts
182 sufficient to pay operating charges and other costs of the authority or any project including,
183 without limitation, the principal of and interest on revenue bonds, in consideration for
184 services, facilities, or equipment of the authority.

185 **SECTION 11.**

186 Same; trust indenture as security.

187 In the discretion of the authority, any issuance of revenue bonds may be secured by a trust
188 indenture by and between the authority and a corporate trustee, which may be any trust
189 company or bank having the powers of a trust company within or without the state. Such
190 trust indenture may contain such provisions for protecting and enforcing the rights and
191 remedies of the bondholders as may be reasonable and proper and not in violation of law,
192 including covenants setting forth the duties of the authority in relation to the acquisition and
193 construction of the project, the maintenance, operation, repair, and insuring of the project,
194 and the custody, safeguarding, and application of all moneys.

195 **SECTION 12.**

196 Same; remedies of bondholders.

197 Any holder of revenue bonds and the trustee under the trust indenture, if any, except to the
198 extent the rights herein given may be restricted by resolution passed before the issuance of
199 the revenue bonds or by the trust indenture, may, either at law or in equity, by suit, action,
200 mandamus, or other proceedings, protect and enforce any and all rights it may have under
201 the laws of the state, including specifically, but without limitation, the Revenue Bond Law,
202 or granted hereunder or under such resolution or trust indenture, and may enforce and compel
203 performance of all duties required by this Act or by such resolution or trust indenture to be
204 performed by the authority or any officer thereof, including the fixing, charging, and
205 collecting of revenues, fees, tolls, fines, and other charges for the use of the facilities and
206 services furnished.

207 **SECTION 13.**

208 Same; validation.

209 Revenue bonds and the security therefor shall be issued, confirmed, and validated in
210 accordance with the provisions of the Revenue Bond Law. The petition for validation shall
211 also make the city party defendant to such action if the city has contracted with the authority
212 for services or facilities relating to the project for which revenue bonds are to be issued and
213 sought to be validated, and such defendant shall be required to show cause, if any exists, why
214 such contract or contracts shall not be adjudicated as a part of the basis for the security for
215 the payment of any such revenue bonds. The revenue bonds when validated, and the
216 judgment of validation, shall be final and conclusive with respect to such revenue bonds and

217 the security for the payment thereof and interest thereon and against the authority and all
218 other defendants.

219 **SECTION 14.**

220 Same; interest of bondholders protected.

221 While any of the revenue bonds issued by the authority remain outstanding, the powers,
222 duties, or existence of the authority or its officers, employees, or agents, shall not be
223 diminished or impaired in any manner that will affect adversely the interests and rights of the
224 holders of such revenue bonds, and no other entity, department, agency, or authority will be
225 created which will compete with the authority to such an extent as to affect adversely the
226 interest and rights of the holders of such revenue bonds. The provisions of this Act shall be
227 for the benefit of the authority and the holders of any such revenue bonds under the
228 provisions hereof shall constitute a contract with the holders of such revenue bonds.

229 **SECTION 15.**

230 Venue and jurisdiction.

231 Any action to protect or enforce any rights under the provisions of this Act or any suit or
232 action against such authority shall be brought in the Superior Court of DeKalb County,
233 Georgia, and any action pertaining to validation of any revenue bonds issued under the
234 provisions of this Act shall likewise be brought in such court, which shall have exclusive,
235 original jurisdiction of such actions.

236 **SECTION 16.**

237 Moneys received considered trust funds.

238 All moneys received pursuant to the authority of this Act, whether as proceeds from the sale
239 of revenue bonds, as grants or other contributions, or as revenue, income, fees, and earnings,
240 shall be deemed to be trust funds to be held and applied solely as provided in this Act.

241 **SECTION 17.**

242 Tort immunity.

243 To the extent permitted by law, the authority shall have the same immunity and exemption
244 from liability for torts and negligence as the city. The officers, agents, and employees of the

245 authority when in the performance of the work of the authority shall have the same immunity
246 and exemption from liability for torts and negligence as the officers, agents, and employees
247 of the city when in the performance of their public duty or work of the city.

248 **SECTION 18.**

249 Tax exemption.

250 The income of the authority, the properties of the authority, both real and personal, and all
251 revenue bonds, certificates of participation, notes, and other forms of obligations issued by
252 the authority shall be exempt from all state and local taxes and special assessments of any
253 kind in accordance with the general laws of the State.

254 **SECTION 19.**

255 Rates, charges, and revenues; use.

256 The authority is hereby authorized to prescribe and fix rates and to revise same from time to
257 time and to collect revenues, tolls, fees, and charges for the services, facilities, and
258 commodities furnished, and in anticipation of the collection of the revenues, to issue revenue
259 bonds, certificates of participation, notes, or other types of obligations as herein provided to
260 finance, in whole or in part, the costs of the project, and to pledge to the punctual payment
261 of such revenue bonds or other obligations, all or any part of the revenues.

262 **SECTION 20.**

263 Effect on other governments.

264 This Act shall not and does not in any way take from the city or any political subdivision the
265 right to own, operate, and maintain public facilities or to issue revenue bonds as provided by
266 the Revenue Bond Law.

267 **SECTION 21.**

268 Liberal construction of Act.

269 This Act being for the welfare of the city and various political subdivisions of the state and
270 its inhabitants, shall be liberally construed to effect the purposes hereof.

271 **SECTION 22.**

272 Severability; effect of partial invalidity of Act.

273 The provisions of this Act are severable, and if any of its provisions shall be held
274 unconstitutional by any court of competent jurisdiction, the decision of such court shall not
275 affect or impair any of the remaining provisions.

276 **SECTION 23.**

277 Effective date.

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

280 **SECTION 24.**

281 Repealer.

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