

Senate Bill 478

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

AS PASSED

**A BILL TO BE ENTITLED
AN ACT**

1 To create the City of Brookhaven Public Facilities Authority and to provide for the members
2 of the authority; to confer powers upon the authority; to provide definitions; to authorize the
3 issuance of revenue bonds of the authority; to fix and provide the venue and jurisdiction of
4 actions relating to any provisions of this Act; to exempt the property and revenue bonds of
5 the authority from taxation; to provide for the separate enactment of a certain provision of
6 this Act; to provide a short title; to provide for related matters; to provide an effective date;
7 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 the City Council of the City of
21 Brookhaven whose terms as members of the authority shall be the same as their respective
22 terms of office as members of the city council.

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

26 (d) The members of the authority shall elect one of their number as chairperson and another
 27 as a vice chairperson. The members of the authority shall also elect a secretary, who need
 28 not be a member of the authority, and may also elect a treasurer, who need not be a member
 29 of the authority. The secretary may also serve as treasurer. If the secretary or the treasurer
 30 is not a member of the authority, such officer shall have no voting rights. Each of such
 31 officers shall serve for a period of one year and until their successors are duly elected and
 32 qualified.

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

36 **SECTION 3.**

37 Purpose of the authority; scope of operations.

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

41 **SECTION 4.**

42 Definitions.

43 As used in this Act, the term:

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

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

47 (3) "Costs of the project" means and embraces the cost of construction; the cost of all
 48 lands, properties, rights, easements, and franchises acquired; the cost of all machinery and
 49 equipment; financing charges; interest prior to and during construction and for six months
 50 after completion of construction; the cost of engineering, architectural, fiscal agent,
 51 accounting, and legal services, and of plans and specifications and expenses necessary
 52 or incidental to determining the feasibility or practicability of the project; administrative
 53 expenses; working capital; and all other costs necessary to acquire, construct, add to,
 54 extend, improve, equip, operate, maintain, or finance the project.

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

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

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

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

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

70 SECTION 5.

71 Powers.

72 The authority shall have the power:

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

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

77 (3) To acquire in its own name by purchase, on such terms and conditions and in such
 78 manner as it may deem proper, real property or rights or easements therein, or franchises
 79 necessary or convenient for its corporate purposes, and to use the same so long as its
 80 corporate existence shall continue, and to lease or make contracts with respect to the use
 81 of or disposition of the same in any manner it deems to the best advantage of the
 82 authority, and no property shall be acquired under the provisions of this Act upon which
 83 any lien or encumbrance exists, unless at the time such property is so acquired a sufficient
 84 sum of money is to be deposited in trust to pay and redeem the fair value of such lien or
 85 encumbrance;

86 (4) To acquire, construct, add to, extend, improve, equip, operate, maintain, lease, and
 87 dispose of projects;

88 (5) To execute contracts, leases, installment sale agreements, and other agreements and
 89 instruments necessary or convenient in connection with the acquisition, construction,

- 90 addition, extension, improvement, equipping, operation, maintenance, disposition, or
91 financing of a project;
- 92 (6) To appoint, select, and employ officers, agents, and employees, including, but not
93 limited to, engineering, architectural, and construction experts, fiscal agents, and
94 attorneys, and fix their respective compensations;
- 95 (7) To pay the costs of the project with the proceeds of revenue bonds, certificates of
96 participation, notes, or other forms of obligations issued by the authority or from any
97 grant or contribution from the United States of America or any agency or instrumentality
98 thereof or from the state or any agency, instrumentality, municipality, or political
99 subdivision thereof, from any private foundation or other private source or from any other
100 source whatsoever;
- 101 (8) To pledge to the payment of revenue bonds, certificates of participation, notes, and
102 other forms of obligations issued by the authority any and all revenues and properties of
103 the authority, both real and personal;
- 104 (9) To accept loans or grants of money or materials or property of any kind from the
105 United States of America or any agency or instrumentality thereof, upon such terms and
106 conditions as the United States of America or such agency or instrumentality may
107 require;
- 108 (10) To accept loans or grants of money or materials or property of any kind from the
109 state or any agency, instrumentality, municipality, or political subdivision thereof, upon
110 such terms and conditions as the state or such agency, instrumentality, municipality, or
111 political subdivision may require;
- 112 (11) To accept loans or grants of money or materials or property of any kind from any
113 public or private foundation or any other private source upon such terms and conditions
114 as such public or private foundation or other private source may require;
- 115 (12) To borrow money for any of its corporate purposes and to issue or execute revenue
116 bonds, certificates of participation, notes, and other forms of obligations, deeds to secure
117 debt, security agreements, and such other instruments as may be necessary or convenient
118 to evidence and secure such borrowing;
- 119 (13) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the
120 manner in which its business is transacted;
- 121 (14) To prescribe rules, regulations, service policies, and procedures for the operation
122 of any project;
- 123 (15) To exercise any power usually possessed by private corporations performing similar
124 functions; and
- 125 (16) To do all things necessary or convenient to carry out the powers expressly given in
126 this Act.

127 **SECTION 6.**

128 Revenue bonds.

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

136 **SECTION 7.**

137 Same; signatures; seal.

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

149 **SECTION 8.**

150 Same; negotiability; exemption from taxation.

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

155 **SECTION 9.**

156 Same; conditions precedent to issuance.

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

165 **SECTION 10.**

166 Same; credit not pledged.

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

179 **SECTION 11.**

180 Same; trust indenture as security.

181 In the discretion of the authority, any issuance of revenue bonds may be secured by a trust
182 indenture by and between the authority and a corporate trustee, which may be any trust
183 company or bank having the powers of a trust company within or without the state. Such
184 trust indenture may contain such provisions for protecting and enforcing the rights and
185 remedies of the bondholders as may be reasonable and proper and not in violation of law,

186 including covenants setting forth the duties of the authority in relation to the acquisition and
187 construction of the project, the maintenance, operation, repair, and insuring of the project,
188 and the custody, safeguarding, and application of all moneys.

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SECTION 12.

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Same; remedies of bondholders.

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

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SECTION 13.

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Same; validation.

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

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SECTION 14.

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Same; interest of bondholders protected.

215 While any of the revenue bonds issued by the authority remain outstanding, the powers,
216 duties, or existence of the authority or its officers, employees, or agents, shall not be

217 diminished or impaired in any manner that will affect adversely the interests and rights of the
218 holders of such revenue bonds, and no other entity, department, agency, or authority will be
219 created which will compete with the authority to such an extent as to affect adversely the
220 interest and rights of the holders of such revenue bonds. The provisions of this Act shall be
221 for the benefit of the authority and the holders of any such revenue bonds under the
222 provisions hereof shall constitute a contract with the holders of such revenue bonds.

223 **SECTION 15.**

224 Venue and jurisdiction.

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

230 **SECTION 16.**

231 Moneys received considered trust funds.

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

235 **SECTION 17.**

236 Tort immunity.

237 To the extent permitted by law, the authority shall have the same immunity and exemption
238 from liability for torts and negligence as the city. The officers, agents, and employees of the
239 authority when in the performance of the work of the authority shall have the same immunity
240 and exemption from liability for torts and negligence as the officers, agents, and employees
241 of the city when in the performance of their public duty or work of the city.

242 **SECTION 18.**

243 Tax exemption.

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

248 **SECTION 19.**

249 Rates, charges, and revenues; use.

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

256 **SECTION 20.**

257 Effect on other governments.

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

261 **SECTION 21.**

262 Liberal construction of Act.

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

265 **SECTION 22.**

266 Severability; effect of partial invalidity of Act.

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

270 **SECTION 23.**

271 Effective date.

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

274 **SECTION 24.**

275 Repealer.

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