

House Bill 1039 (AS PASSED HOUSE AND SENATE)

By: Representatives Jasperse of the 11th and Ralston of the 7th

A BILL TO BE ENTITLED
AN ACT

1 To create the Big Canoe Water and Sewer Authority; to provide a short title; to define certain
2 terms; to provide for membership, appointment, terms, term limits, qualifications, officers,
3 quorums, vacancies, and audits of the authority; to provide for purposes; to provide for
4 powers and duties; to provide for the issuance of revenue bonds; to provide for the public
5 nature of authority property; to provide for limitations on debt; to provide for related matters;
6 to provide an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 This Act shall be known and may be cited as the "Big Canoe Water and Sewer Authority
10 Act."

11 **SECTION 2.**

12 There is hereby created a body corporate and politic, to be known as the Big Canoe Water
13 and Sewer Authority, which shall be a political subdivision of the State of Georgia and a
14 public corporation, and by that name, style, and title said body may contract and be
15 contracted with, sue and be sued, implead and be impleaded, and complain and defend in all
16 courts of law and equity. The Big Canoe Water and Sewer Authority shall have perpetual
17 existence and shall be deemed a governmental body within the meaning of the Revenue Bond
18 Law, specifically under subparagraph (C) of paragraph (2) of Code Section 36-82-61 of the
19 Official Code of Georgia Annotated.

20 **SECTION 3.**

21 As used in this Act, the term:

22 (1) "Authority" means the Big Canoe Water and Sewer Authority created by Section 2
23 of this Act.

24 (2) "Authority limits" means all those tracts or parcels of land lying and being in the 4th
 25 and 5th Districts, 2nd Section, Pickens County, Georgia and in the 5th District, 2nd
 26 Section, Dawson County, Georgia, as shown on those plats prepared for Big Canoe
 27 Corporation dated February 16, 1973, last revised March 26, 1973, and recorded in Plat
 28 Book E, Page 287 of the real property records of the clerk of the Superior Court of
 29 Pickens County, Georgia, and in Plat Book 3, Page 207 of the real property records of the
 30 clerk of the Superior Court of Dawson County, Georgia.

31 (3) "Project" means the acquisition, construction, and equipping of a self-liquidating
 32 water system, sewer system, or combined water and sewer system and all property used
 33 or useful in connection therewith for the treatment of water and sewage and the
 34 distribution and sale of water to users and consumers, including counties and
 35 municipalities, within the authority limits and the operation, maintenance, additions,
 36 improvements, and extensions of such facilities so as to assure an adequate water utility
 37 system deemed by the authority necessary or convenient for the efficient operation of
 38 such type of undertaking.

39 (4) "Revenue Bond Law" means Article 3 of Chapter 82 of Title 36 of the Official Code
 40 of Georgia Annotated, now and as may be hereafter amended.

41 (5) "Revenue bonds" and "bonds" mean revenue bonds, certificates, and other obligations
 42 of the authority, as defined and provided for in the Revenue Bond Law, and such type of
 43 obligations may be issued by the authority under this Act and as authorized under said
 44 law.

45 (6) "Self-liquidating" means any project regarding which the revenues and earnings to
 46 be derived by the authority therefrom will be sufficient to pay the cost of operating,
 47 maintaining and repairing, improving, and extending any project and to pay the principal
 48 and interest of the revenue bonds that may be issued for the cost of any such project.

49 (7) "System" means any water system or sewer system or combined water and sewer
 50 system of the authority.

51 (8) "Users of the system" shall mean those persons, firms, corporations, companies,
 52 organizations and political subdivisions who receive a bill from the authority for their use
 53 of the system.

54 **SECTION 4.**

55 (a) The authority shall consist of five members, all of whom shall be residents of Pickens
 56 County or Dawson County, at least a majority of whom shall reside within the authority
 57 limits, and the remaining members shall have their place of business within the authority
 58 limits and at the time of appointment such place of business shall be a user of the system.
 59 Two of the members of the authority shall be appointed by the governing authority of

60 Dawson County with initial terms of office expiring on June 30, 2020, two of the members
61 shall be appointed by the governing authority of Pickens County with initial terms of office
62 expiring on June 30, 2021, and the appointment of the fifth member, with an initial term
63 of office expiring on June 30, 2022, shall alternate each term between the governing
64 authority of Dawson County and the governing authority of Pickens County, with the
65 governing authority of Dawson County making the initial appointment.

66 (b) The initial members of the authority shall enter upon the duties of their office on the
67 effective date of this Act and shall serve until the expiration of their respective initial terms
68 of office or until their successors are duly elected and qualified. Thereafter, members of
69 the authority shall serve terms of office of four years and until his or her successor is duly
70 elected and qualified. Except as otherwise provided herein, each member shall enter upon
71 the duties of his or her office on July 1. Members of the authority shall serve without
72 compensation, but shall be reimbursed for their actual expenses necessarily incurred in the
73 performance of their duties. The authority shall have the power to establish bylaws and to
74 promulgate and adopt rules and regulations necessary or convenient for the governance of
75 the authority.

76 (c) To be eligible for appointment as a member of the authority, a person shall be at least
77 18 years of age and shall not have been convicted of a felony. No member of the authority
78 shall be appointed to more than three consecutive terms.

79 (d) The members of the authority shall elect one of their number as chairperson and
80 another as vice chairperson, and may also elect a secretary and a treasurer, or a secretary
81 or a treasurer, who need not be a member of the authority. Such officers shall serve for a
82 period of one year and until their successors are duly elected and qualified.

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

86 (f) In the event of a vacancy of a member's position by reason of death, disqualification,
87 resignation, or otherwise, the remaining members of the authority shall elect, by majority
88 vote, a qualified person to fill the vacancy until the termination of the vacant term. A
89 vacancy shall exist in the office of any member of the authority indicted or convicted of a
90 felony, or who removes his or her residence from the authority limits.

91 (g) The authority shall have a complete audit of its financial condition made at least once
92 in each calendar year by a certified public accountant. Such audit shall remain on file at
93 the office of the authority for public inspection.

94

SECTION 5.

95 (a) Without limiting the generality of any provision of this Act, the general purposes of the
 96 authority are declared to be those of acquiring, constructing, equipping, maintaining, and
 97 operating adequate water supply, treatment, and distribution facilities and sewage
 98 collection, treatment, and distribution facilities to serve those persons, firms, corporations,
 99 companies, organizations, and political subdivisions within the authority limits, and further
 100 for the general purpose of gathering and treatment of waste, both individual and industrial,
 101 but such general purpose shall not restrict the authority from selling and delivering water
 102 direct to consumers in those areas where there does not now exist water distribution
 103 systems or furnishing sewer facilities to such consumers and areas where neither any
 104 county, nor municipal corporation deems it desirable or feasible to furnish water in such
 105 locality.

106 (b) The authority shall not have the authority to construct water lines for the distribution
 107 of water directly to consumers or provide sewer services within any water or sewer district,
 108 county, or municipal corporation without first obtaining the express written consent of the
 109 appropriate governing authority.

110

SECTION 6.

111 The authority shall have the following powers and duties:

112 (1) To have a seal and to alter same at its pleasure;

113 (2) To operate a self-liquidating water and sewer system or systems, including, but not
 114 limited to, a unified water or sewer system, or both, and to provide water services and
 115 sewer services to its customers. The authority shall operate its system or systems in
 116 conformity with all applicable regulations, licenses, and permits and shall be liable to pay
 117 any fines or assessments resulting from failure to conform to same;

118 (3) To acquire real and personal property in its own name by purchase, lease, exchange,
 119 gift, or otherwise, but not by condemnation, on such terms and conditions and in such a
 120 manner as it may deem proper, necessary, or convenient for its corporate purposes, to use
 121 the same so long as its corporate existence shall continue, to lease or make contracts with
 122 respect to the use of the same, or dispose of the same in any manner it deems to the best
 123 advantage of the authority. No property shall be acquired under the provisions of this Act
 124 upon which any lien or other encumbrance exists unless at the time such property is so
 125 acquired a sufficient sum of money shall be deposited in trust to pay and satisfy the face
 126 value of such lien or encumbrance;

127 (4) To appoint, select, and employ such officers, agents, and employees as shall be
 128 necessary in the judgment of the authority to accomplish the purposes of the authority,
 129 including accountants, auditors, attorneys, engineers, and other professionals; to fix their

130 respective compensation; and to provide for retirement plans for these officers, agents,
131 and employees;

132 (5) To formulate and adopt an annual operating budget of all its revenues and expenses
133 on or before December 31 of each year;

134 (6) To make contracts, leases, and to execute all instruments necessary or convenient,
135 including contracts for construction of projects and leases of projects or contracts with
136 respect to the use or projects which it causes to be erected or acquired, and any and all
137 persons, firms, and corporations and any and all political subdivisions, departments,
138 institutions, or agencies of the state are hereby authorized to enter into contracts, leases,
139 or agreements with the authority upon such terms and for such purposes as they deem
140 advisable; and without limiting the generality of the above.

141 (7) To construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve,
142 equip, operate, and manage projects, and to pay the cost of any project in whole or in part
143 from the proceeds of revenue bonds of the authority or from such proceeds and any grant
144 or contribution from the United States of America or any agency or instrumentality
145 thereof or from the State of Georgia or any political subdivision, agency, or
146 instrumentality thereof;

147 (8) To borrow money for any of its corporate purposes, to issue revenue bonds payable
148 solely from funds pledged for that purpose, and to provide for the payment of the same
149 and for the rights of the holders thereof;

150 (9) To exercise any power usually possessed by private corporations performing similar
151 functions, including the power to make short-term loans and approve, execute, and
152 deliver appropriate evidence of such indebtedness, provided no such power is in conflict
153 with the Constitution or general laws of this state;

154 (10) To be liable for payment of all charges and expenses of operating any system or
155 unified system and to receive all income from the operation of any system or unified
156 system;

157 (11) To prescribe, fix, and collect rates, fees, tolls, or charges and to revise fees from
158 time to time and collect such rates, fees, tolls, or charges, provided that such rates, fees,
159 tolls, or charges shall be calculated to cover the cost of providing services; to provide
160 capital to expand facilities; to maintain, replace, or expand existing facilities; to provide
161 a reasonable reserve for operations; to fund bond sinking funds; and to otherwise provide
162 for such other costs, expenses, and investments as determined by the authority. The
163 authority shall not make any distributions as defined in paragraph (9) of Code Section
164 14-3-140;

165 (12) To accept grants of money, materials, or property of any kind from the United States
166 of America or any agency or instrumentality thereof upon terms and conditions as the
167 United States of America or such agency or instrumentality may impose;

168 (13) To accept grants of money, materials, or property of any kind from the State of
169 Georgia or any agency or instrumentality or political subdivision thereof upon terms and
170 conditions as the State of Georgia or such agency or instrumentality or political
171 subdivision may impose;

172 (14) To accept grants of money, materials, or property of any kind from any other
173 source, private or public, provided that such grant or gift is not encumbered with any
174 terms or conditions; and

175 (15) To do all things necessary or convenient to carry out the powers and duties
176 expressly given in this Act.

177 **SECTION 7.**

178 The authority, or such other entity or body which may in the future succeed to the powers,
179 duties, and liabilities vested in the authority created in this Act, shall have power and is
180 authorized at one time, or from time to time, to borrow money for the purpose of paying all
181 or any part of the cost of any one or more projects and to provide by resolution for issuance
182 of revenue bonds for that purpose. The bonds of each issue shall be dated, shall mature at
183 such time or times not exceeding 40 years from their date or dates, shall be payable in such
184 medium of payment as to both principal and interest as may be determined by the authority,
185 and may be made redeemable before maturity, at the option of the authority, at such price or
186 prices and under such terms and conditions as may be fixed by the authority in the resolution
187 providing for the issuance of the bonds. The interest rate or rates to be borne by any bonds
188 and the time of payment of such interest shall be fixed, and with respect to any interest rate
189 which floats in response to a variable, the method of calculation shall be fixed by the
190 authority in the resolution providing for the issuance of all bonds.

191 **SECTION 8.**

192 The authority is authorized to provide by resolution for the issuance of refunding bonds of
193 the authority for the purpose of refunding any revenue bonds issued under the provisions of
194 this Act and then outstanding, together with accrued interest thereon, and to refund any
195 revenue bonds issued by a county or the authority with respect to any facilities to be acquired
196 by the authority from a county, or other political subdivision or authority.

197 **SECTION 9.**

198 Any action to protect or enforce any rights under the provisions of this Act or any action
199 against the authority shall be brought in either the Superior Court of Pickens County or the
200 Superior Court of Dawson County, Georgia, and any action pertaining to validation of any
201 bonds issued under the provisions of this Act shall likewise be brought in either of such
202 courts.

203 **SECTION 10.**

204 Bonds of the authority shall be confirmed and validated in accordance with the procedure
205 provided for in the Revenue Bond Law. The petition for validation shall also make party
206 defendant to such action any municipal corporation, county, authority, subdivision, or
207 instrumentality of the State of Georgia which has contracted with the authority for services
208 and facilities of the system for which bonds are to be issued and sought to be validated, and
209 such municipal corporation, county, authority, subdivision, or instrumentality shall be
210 required to show cause, if any, why such contract or contracts and the terms and conditions
211 thereof should not be inquired into by the court and validity of the terms thereof be
212 determined and the contract or contracts adjudicated as security for the payment of any such
213 bonds of the authority. The bonds, when validated, and the judgment of the validation shall
214 be final and conclusive with respect to such bonds, against the authority issuing the same,
215 and any municipal corporation, county, authority, subdivision, or instrumentality contracting
216 with said authority.

217 **SECTION 11.**

218 Revenue bonds issued under the provisions of this Act shall not be deemed to constitute a
219 debt of the authority or a pledge of the faith and credit of said authority, but such bonds shall
220 be payable solely from the fund hereinafter provided for, and the issuance of such revenue
221 bonds shall not directly, indirectly, or contingently obligate the authority to levy or to pledge
222 any form of taxation whatever therefor, or to make any appropriation for the payment, and
223 all such bonds shall contain recitals on their face covering substantially the foregoing
224 provisions of this section.

225 **SECTION 12.**

226 All revenue bonds issued under the provisions of this Act shall have and are hereby declared
227 to have all the qualities and incidents of negotiable instruments under the negotiable
228 instruments law of the state.

229 **SECTION 13.**

230 The properties of the authority, both real and personal, are declared to be public properties
231 used for the benefit and welfare of the authority's customers and not for purposes of private
232 or corporate benefit and income.

233 **SECTION 14.**

234 This Act, being for the welfare of various political subdivisions of the state and its
235 inhabitants, shall be liberally construed to effect the purposes thereof.

236 **SECTION 15.**

237 Nothing in this Act shall be deemed to authorize Dawson County or Pickens County to incur
238 any debt on behalf of or for the benefit of the authority. The debts of the authority are those
239 of the authority alone and shall not constitute any obligation of Pickens County, Dawson
240 County, or any other political subdivision.

241 **SECTION 16.**

242 In no event shall the combined amount of indebtedness of the authority and the total
243 outstanding bond obligations of the authority exceed \$20 million.

244 **SECTION 17.**

245 This Act shall become effective July 1, 2018.

246 **SECTION 18.**

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