

Senate Bill 230

By: Senators Henson of the 41st and Harrell of the 40th

A BILL TO BE ENTITLED
AN ACT

To create the City of Tucker Public Facilities Authority and to provide for the appointment of members of the authority; to confer powers upon the authority; to provide for purpose and scope of operations of the authority; to provide for definitions; to authorize the issuance of revenue bonds of the authority; to fix and provide the venue and jurisdiction of actions relating to any provisions of this Act; to provide for monies received and trust funds; to provide for tort immunity; to provide for tax exemption, rates, charges, and revenues; to provide for effect on other governments; to provide for construction of act and severability; to provide for a short title; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Short title.

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

SECTION 2.

City of Tucker Public Facilities Authority; creation.

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

(b) The authority shall consist of five members who shall be appointed by the governing authority of the City of Tucker. With respect to the initial appointment, two members shall

be appointed for a term of three years, two members shall be appointed for a term of two years, and one member shall be appointed for a term of one year. Thereafter, all appointments shall be made for terms of three years and until successors are appointed and qualified. Immediately after such appointments the members of the authority shall enter upon their duties. To be eligible for appointment as a member of the authority, a person shall be at least 21 years of age, shall be a resident of the city for at least two years prior to the date of his or her appointment, and shall not have been convicted of a felony. Any member of the authority may be selected and appointed to succeed himself or herself.

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

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

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

SECTION 3.

Purpose of the authority; scope of operations.

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

SECTION 4.

Definitions.

As used in this Act, the term:

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

(2) "City" means the City of Tucker, Georgia.

(3) "Costs of the project" means and embraces the cost of construction; the cost of all lands, properties, rights, easements, and franchises acquired; the cost of all machinery and

equipment; financing charges; interest prior to and during construction and for six months after completion of construction; the cost of engineering, architectural, fiscal agent, accounting, and legal services, and of plans and specifications and expenses necessary or incidental to determining the feasibility or practicability of the project; administrative expenses; working capital; and all other costs necessary to acquire, construct, add to, extend, improve, equip, operate, maintain, or finance the project.

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

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

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

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

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

SECTION 5.

Powers.

The authority shall have the power:

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

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

(3) To acquire in its own name by purchase, on such terms and conditions and in such manner as it may deem proper, or by condemnation in accordance with the provisions of any and all existing laws applicable to the condemnation of property for public use, real property or rights or easements therein, or franchises necessary or convenient for its corporate purposes, and to use the same so long as its corporate existence shall continue, and to lease or make contracts with respect to the use of or disposition of the same in any manner it deems to the best advantage of the authority, the authority being under no

obligation to accept and pay for any property condemned under this Act, except from the funds provided under the authority of this Act, and in any proceedings to condemn, such orders may be made by the court having jurisdiction of the suit, action, or proceedings as may be just to the authority and to the owners of the property to be condemned, and no property shall be acquired under the provisions of this Act upon which any lien or encumbrance exists, unless at the time such property is so acquired a sufficient sum of money is to be deposited in trust to pay and redeem the fair value of such lien or encumbrance;

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

(5) To execute contracts, leases, installment sale agreements, and other agreements and instruments necessary or convenient in connection with the acquisition, construction, addition, extension, improvement, equipping, operation, maintenance, disposition, or financing of a project;

(6) To appoint, select, and employ officers, agents, and employees, including, but not limited to, engineering architectural and construction experts, fiscal agents, and attorneys, and fix their respective compensations;

(7) To pay the costs of the project with the proceeds of revenue bonds, certificates of participation, notes, or other forms of obligations issued by the authority or from any grant or contribution from the United States of America or any agency or instrumentality thereof or from the state or any agency, instrumentality, municipality, or political subdivision thereof, from any private foundation or other private source or from any other source whatsoever;

(8) To pledge to the payment of revenue bonds, certificates of participation, notes, and other forms of obligations issued by the authority any and all revenues and properties of the authority, both real and personal;

(9) To accept loans or grants of money or materials or property of any kind from the United States of America or any agency or instrumentality thereof, upon such terms and conditions as the United States of America or such agency or instrumentality may require;

(10) To accept loans or grants of money or materials or property of any kind from the state or any agency, instrumentality, municipality, or political subdivision thereof, upon such terms and conditions as the state or such agency, instrumentality, municipality, or political subdivision may require;

(11) To accept loans or grants of money or materials or property of any kind from any public or private foundation or any other private source upon such terms and conditions as such public or private foundation or other private source may require;

(12) To borrow money for any of its corporate purposes and to issue or execute revenue bonds, certificates of participation, notes, and other forms of obligations, deeds to secure debt, security agreements, and such other instruments as may be necessary or convenient to evidence and secure such borrowing;

(13) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business is transacted;

(14) To prescribe rules, regulations, service policies, and procedures for the operation of any project;

(15) To exercise any power usually possessed by private corporations performing similar functions; and

(16) To do all things necessary or convenient to carry out the powers expressly given in this Act.

SECTION 6.

Revenue bonds.

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

SECTION 7.

Same; signatures; seal.

All such revenue bonds shall bear the manual or facsimile signature of the chairperson or vice-chairperson of the authority and the attesting manual or facsimile signature of the secretary or secretary-treasurer of the authority, and the official seal of the authority shall be impressed or imprinted thereon. Any revenue bonds may bear the manual or facsimile signature of such persons as at the actual time of the execution of such revenue bonds shall be duly authorized or hold the proper office, although at the date of issuance of such revenue bonds such person may not have been so authorized or shall not have held such office. In case any officer whose signature shall appear on any revenue bond shall cease to be such officer before the delivery of such revenue bond, such signature shall nevertheless be valid

161 and sufficient for all purposes, the same as if that person had remained in office until such
162 delivery.

163 **SECTION 8.**

164 Same; negotiability; exemption from taxation.

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

169 **SECTION 9.**

170 Same; conditions precedent to issuance.

171 The authority shall adopt a resolution authorizing the issuance of the revenue bonds. In the
172 resolution, the authority shall determine that the project financed or refinanced with the
173 proceeds of the revenue bonds is self-liquidating. Revenue bonds may be issued without any
174 other proceedings or the happening of any other conditions or things other than those
175 proceedings, conditions, and things which are specified or required by this Act and the
176 Revenue Bond Law. Any resolution providing for the issuance of revenue bonds under the
177 provisions of this Act shall become effective immediately upon its adoption and need not be
178 published or posted, and any such resolution may be adopted at any regular or special
179 meeting of the authority.

180 **SECTION 10.**

181 Same; credit not pledged.

182 Revenue bonds shall not be deemed to constitute a debt of the state or the city nor a pledge
183 of the faith and credit of the state or the city. Revenue bonds shall be payable solely from
184 the revenues and properties pledged to the payment of such revenue bonds. The issuance of
185 revenue bonds shall not directly, indirectly, or contingently obligate the state or the city to
186 levy or to pledge any form of taxation whatsoever for the payment of such revenue bonds or
187 to make any appropriation for their payment. All revenue bonds shall contain recitals on
188 their face covering substantially the foregoing provisions of this section. Notwithstanding
189 the foregoing provisions, this Act shall not affect the ability of the authority and the city to
190 enter into an intergovernmental contract pursuant to which the city agrees to pay amounts
191 sufficient to pay operating charges and other costs of the authority or any project including,

192 without limitation, the principal of and interest on revenue bonds, in consideration for
193 services, facilities, or equipment of the authority.

194 **SECTION 11.**

195 Same; trust indenture as security.

196 In the discretion of the authority, any issuance of revenue bonds may be secured by a trust
197 indenture by and between the authority and a corporate trustee, which may be any trust
198 company or bank having the powers of a trust company within or without the state. Such
199 trust indenture may contain such provisions for protecting and enforcing the rights and
200 remedies of the bondholders as may be reasonable and proper and not in violation of law,
201 including covenants setting forth the duties of the authority in relation to the acquisition and
202 construction of the project, the maintenance, operation, repair, and insuring of the project,
203 and the custody, safeguarding, and application of all monies.

204 **SECTION 12.**

205 Same; remedies of bondholders.

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

216 **SECTION 13.**

217 Same; validation.

218 Revenue bonds and the security therefor shall be issued, confirmed, and validated in
219 accordance with the provisions of the Revenue Bond Law. The petition for validation shall
220 also make the city party defendant to such action if the city has contracted with the authority
221 for services or facilities relating to the project for which revenue bonds are to be issued and
222 sought to be validated, and such defendant shall be required to show cause, if any exists, why

223 such contract or contracts shall not be adjudicated as a part of the basis for the security for
224 the payment of any such revenue bonds. The revenue bonds when validated, and the
225 judgment of validation, shall be final and conclusive with respect to such revenue bonds and
226 the security for the payment thereof and interest thereon and against the authority and all
227 other defendants.

228 **SECTION 14.**

229 Same; interest of bondholders protected.

230 While any of the revenue bonds issued by the authority remain outstanding, the powers,
231 duties, or existence of the authority or its officers, employees, or agents, shall not be
232 diminished or impaired in any manner that will affect adversely the interests and rights of the
233 holders of such revenue bonds, and no other entity, department, agency, or authority shall be
234 created which will compete with the authority to such an extent as to affect adversely the
235 interest and rights of the holders of such revenue bonds. The provisions of this Act shall be
236 for the benefit of the authority and the holders of any such revenue bonds under the
237 provisions hereof shall constitute a contract with the holders of such revenue bonds.

238 **SECTION 15.**

239 Venue and jurisdiction.

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

245 **SECTION 16.**

246 Monies received considered trust funds.

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

250 **SECTION 17.**

251 Tort immunity.

252 To the extent permitted by law, the authority shall have the same immunity and exemption
253 from liability for torts and negligence as the city. The officers, agents, and employees of the
254 authority when in the performance of the work of the authority shall have the same immunity
255 and exemption from liability for torts and negligence as the officers, agents, and employees
256 of the city when in the performance of their public duties or work of the city.

257 **SECTION 18.**

258 Tax exemption.

259 The income of the authority, the properties of the authority, both real and personal, and all
260 revenue bonds, certificates of participation, notes, and other forms of obligations issued by
261 the authority shall be exempt from all state and local taxes and special assessments of any
262 kind to the extent permitted by and in accordance with the general laws of the state.

263 **SECTION 19.**

264 Rates, charges, and revenues; use.

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

271 **SECTION 20.**

272 Effect on other governments.

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

276 **SECTION 21.**

277 Liberal construction of act.

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

280 **SECTION 22.**

281 Severability; effect of partial invalidity of act.

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

285 **SECTION 23.**

286 Effective date.

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

289 **SECTION 24.**

290 Repealer.

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