

House Bill 293 (AS PASSED HOUSE AND SENATE)

By: Representatives Bonner of the 72nd, Jackson of the 64th, Bazemore of the 63rd, Mathiak of the 73rd, and Stover of the 71st

A BILL TO BE ENTITLED
AN ACT

1 To create the City of Fayetteville Public Facilities Authority; to provide for a short title; to
2 provide for creation of the authority and its purpose; to provide for definitions; to provide for
3 the membership of the authority and their terms of office, qualifications, and compensation;
4 to provide for its powers; to provide for the issuance and sale of revenue bonds and other
5 obligations; to provide that such revenues and other obligations are not general obligations;
6 to provide for trust indentures; to provide for the security for the payment of revenue bonds
7 and other obligations; to provide for refunding revenue bonds and other obligations; to
8 provide for validation; to provide for no impairment of rights; to provide for trust funds and
9 investments; to provide for the power to set rates, fees, and charges; to provide for
10 exemptions from taxation; to provide for tort and negligence immunity; to provide for
11 exemptions from levy and sale; to provide for its area of operation; to provide for
12 supplemental powers; to provide for no power to impose taxes or exercise the power of
13 eminent domain; to provide for the conveyance of property upon dissolution; to provide for
14 a principal office and venue; to provide for liberal construction; to provide for related
15 matters; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 Short title.

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

21 **SECTION 2.**

22 Creation of the authority and purpose.

23 There is hereby created a body corporate and politic to be known as the "City of Fayetteville
 24 Public Facilities Authority," which shall be deemed to be a political subdivision of the state
 25 and a public corporation. Such corporation shall be separate and distinct from any public
 26 corporation or other entity heretofore created by the General Assembly and shall be an
 27 instrumentality of the state exercising governmental and proprietary powers. The authority
 28 shall have perpetual existence. The authority is created for the purpose of promoting the
 29 public good and general welfare of the citizens of the city and of the state and financing and
 30 providing facilities, equipment, and services within the city, for sale to, lease or sublease to,
 31 or operation by any public body or any private person, specifically including the city. In
 32 connection with the exercise of any of its powers, the members of the authority may make
 33 findings or determinations that the exercise of its powers as proposed will promote the public
 34 good and general welfare and will assist public bodies in providing facilities, equipment, and
 35 services within the city.

36 **SECTION 3.**

37 Definitions.

38 As used in this Act, the term:

- 39 (1) "Authority" means the City of Fayetteville Public Facilities Authority created by this
 40 Act.
- 41 (2) "City" means the City of Fayetteville, Georgia, or its successor.
- 42 (3) "Costs of the project" means:
- 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, renovating, erecting, or demolishing buildings,
 47 improvements, materials, labor, and services;
- 48 (D) The cost of all fixtures, furnishings, machinery, and equipment;
- 49 (E) Issuance costs, including, but not limited to, fees or discounts of underwriters or
 50 placement agents, the funding of reserve accounts, financing charges including interest
 51 prior to and during the construction or acquisition of any project and for up to one year
 52 after such project is placed into service and operational at the level intended;
- 53 (F) The costs of construction, engineering, architectural, fiscal, accounting, inspection,
 54 and legal expenses relating to a project or to the financing or refinancing of any project

55 and other expenses necessary or incident to determining the feasibility or practicability
 56 of any project; and

57 (G) Administrative expenses relating to any project or the financing or refinancing
 58 thereof, and such other expenses as may be necessary or incident to the financing or
 59 refinancing of a project herein authorized, the acquisition, construction, renovation,
 60 reconstruction, or remodeling of a project, and the placing of the same in operation.
 61 Any obligation or expense incurred for any of the foregoing purposes shall be regarded
 62 as part of the costs of the project and may be paid or reimbursed as such out of any
 63 funds of the authority, including proceeds of any revenue bonds or other obligations
 64 issued under the provisions hereof for any such project or projects and the proceeds of
 65 the sale of any contracts, lease agreements, or installment sales agreements or the
 66 amounts payable thereunder, either directly or indirectly by the creation of interests
 67 therein.

68 (4) "Obligations" means revenue bonds, bond anticipation notes, other promissory notes,
 69 certificates of participation, custodial receipts, or other similar instruments creating
 70 interests in any contracts, lease agreements, or installment sales agreements or in the
 71 amounts payable to the authority, directly or indirectly, thereunder.

72 (5) "Private person" means any individual or any legal entity, other than a public body,
 73 whether operated for profit or not for profit.

74 (6) "Project" means any capital project that may be financed with revenue bonds under
 75 general laws in effect from time to time, which is located or to be located in the city, that
 76 is determined by the authority to promote the public good or general welfare of the
 77 citizens of the city, or of the state, or any of its enterprises or systems, including, but not
 78 limited to, the acquisition, construction, renovation, improvement, extension, addition,
 79 or equipping within the city of:

80 (A) Utility systems and improvements, including, without limitation, water and sewer
 81 systems and facilities, sewage and solid waste disposal systems and facilities, and
 82 electric, gas, and other similar systems and facilities;

83 (B) Emergency facilities, including emergency, fire, police, and rescue facilities or
 84 equipment;

85 (C) Recreational facilities, including parks, athletic fields, buildings, and other similar
 86 facilities or equipment;

87 (D) Jails and other structures and facilities which are necessary and convenient for the
 88 operation of jails; public safety facilities, including prisons, police stations, and related
 89 facilities or equipment, and state patrol or other law enforcement facilities or
 90 equipment;

91 (E) Educational, cultural, or historical facilities or equipment;

- 92 (F) Administrative facilities or equipment, including city municipal buildings and other
93 governmental buildings;
- 94 (G) Courthouses and public libraries;
- 95 (H) Facilities relating to aviation, including, but not limited to, airports, airfields,
96 airport terminals, hangars, control towers, or facilities for the repair and maintenance
97 of aircraft; and
- 98 (I) Other facilities which may be leased to, subleased to, operated by, or otherwise used
99 by the authority or any other public body or private person.
- 100 (7) "Public bodies" means the United States of America and any federal agency,
101 department, authority, or branch of its armed services; any county, political subdivision,
102 or municipality of the state; and any state or local government agency, department,
103 authority, board, or instrumentality.
- 104 (8) "Revenue bonds" means revenue bonds authorized to be issued by the authority
105 pursuant to this Act or under Article 3 of Chapter 82 of Title 36 of O.C.G.A., as
106 amended, the "Revenue Bond Law."
- 107 (9) "State" means the State of Georgia.

108 **SECTION 4.**

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

- 110 (a) The authority shall consist of five members who shall be residents of the city and who
111 shall be appointed by the mayor and members of the city council. The members of the
112 authority shall be appointed to serve for a term of one year from the date of such appointment
113 and until their successors shall have been selected and appointed.
- 114 (b) The mayor or any member of the city council may be appointed to serve as a member
115 of the authority. The term of office of any member of the authority who also serves as a
116 member of the appointing body shall expire when his or her term of office as a member of
117 such appointing body expires.
- 118 (c) Any member of the authority may be selected and appointed to succeed himself or
119 herself. Immediately after appointment, the members of the authority shall enter upon their
120 duties. Any vacancy on the authority shall be filled in the same manner as the original
121 appointment of the member whose termination of membership resulted in such vacancy and
122 the person so selected and appointed shall serve for the remainder of the unexpired term.
123 The authority shall elect one of its members as chairperson and another member as vice
124 chairperson; it shall also elect a secretary and treasurer, who does not necessarily have to be
125 a member of the authority and if not a member he or she shall have no voting rights.

126 (d) A majority of the members of the authority shall constitute a quorum and a majority vote
 127 of a quorum shall authorize any legal act of the authority, including all things necessary to
 128 authorize and issue revenue bonds and other obligations.

129 (e) No vacancy on the authority shall impair the right of the quorum to exercise the rights
 130 and perform the duties of the authority.

131 (f) The members of the authority shall not be entitled to compensation for their services as
 132 members of the authority but may be reimbursed for their actual expenses necessarily
 133 incurred in the performance of their duties.

134 (g) The authority shall make rules and regulations for its own governance.

135 (h) The mayor and members of the city council, as officers of the city, may vote on
 136 transactions between the city and the authority and the members of the authority may
 137 likewise vote on transactions between the city and the authority and the same shall not be
 138 deemed to create any conflict of interest.

139 **SECTION 5.**

140 Powers of the authority.

141 The authority shall have the power:

142 (1) To sue and be sued;

143 (2) To have and to use a seal and to alter the same at its pleasure;

144 (3) To acquire, construct, purchase, hold, own, lease as lessee, expand, improve,
 145 renovate, repair, maintain, and operate real and personal property or interests therein;

146 (4) To enter into contracts for operation, management, maintenance, and repair of any
 147 of its property and for other purposes;

148 (5) To sell, lease as lessor, or otherwise transfer, pledge, or dispose of any real and
 149 personal property or interests therein. In connection with any such lease, sale, transfer,
 150 assignment, or other disposition, to the extent allowed by general law, the authority need
 151 not comply with any other provision of law requiring public bidding or any notice to the
 152 public of such lease, sale, transfer, assignment, or other disposition;

153 (6) To exercise the powers conferred upon a public corporation or a public authority by
 154 Article IX, Section III, Paragraph I of the Constitution of Georgia, such authority being
 155 expressly declared to be a public corporation or a public authority within the meaning of
 156 such provision of the Constitution of Georgia;

157 (7) To acquire projects and other property in its own name by gift or by purchase on such
 158 terms and conditions and in such manner as it may deem proper. Any public body may
 159 transfer such real property or interests therein without regard to any determination as to
 160 whether or not such property or interest is surplus;

- 161 (8) To accept gifts and bequests for its corporate purposes;
- 162 (9) To appoint, select, and employ, with or without bidding as the authority may choose,
163 officers, agents, and employees, including engineering, architectural, and construction
164 experts, fiscal agents, underwriters or other advisers, and attorneys, and to fix their
165 compensation;
- 166 (10) To make and execute with one or more public bodies and private persons contracts,
167 lease agreements, rental agreements, installment sales agreements, and other instruments
168 relating to the property of the authority and incident to the exercise of the powers of the
169 authority, including contracts for constructing, renting, leasing, operating, using, and
170 selling its projects for the benefit of other public bodies, specifically including the city;
- 171 (11) To the extent not prohibited by the Constitution of the State of Georgia or by
172 general law, to be a co-owner, along with other public bodies and private persons, of any
173 property or business entity if the authority finds and determines that such co-ownership
174 is in the best interests of the authority and will serve the public purposes of the authority;
- 175 (12) To purchase policies of insurance as may be deemed appropriate for its corporate
176 purposes;
- 177 (13) To operate, lease, sell, transfer, or otherwise dispose of any property, real or
178 personal, or assets of the authority, or to assign its rights under its contracts, lease
179 agreements, or installment sales agreements or its right to receive payments thereunder,
180 either directly or through trust or custodial arrangements whereby interests are created
181 in such contracts, lease agreements, or installment sales agreements or the payments to
182 be received thereunder through the issuance of trust certificates, certificates of
183 participation, custodial receipts, or other similar instruments;
- 184 (14) To accept loans and grants of money or property of any kind from the United States
185 or any agency or instrumentality thereof or from any public body or private person; and
186 all public bodies are authorized to make grants to the authority, subject to any limitations
187 in the Constitution of Georgia and general law;
- 188 (15) To borrow money for any of its corporate purposes and to issue revenue bonds and
189 other obligations payable from funds or revenues of the authority pledged for that
190 purpose and to pledge and assign any of its revenues, income, rents, charges, and fees to
191 provide for payment of the same and to provide for the rights of the holders of such
192 obligations;
- 193 (16) To enter into:
- 194 (A) Interest rate swaps, collars, or other types of interest rate management agreements;
195 or
- 196 (B) Credit enhancement or liquidity agreements relating to any obligation of the
197 authority, provided that the obligation of the authority under such agreements shall not

198 be a general obligation of the authority but shall be a limited obligation of the authority
199 payable from a specific source of funds identified for such purpose;
200 (17) To make such rules and regulations governing its employees and property as it may
201 in its discretion deem proper;
202 (18) To issue revenue bonds or other obligations to finance or refinance any costs of the
203 project which may be financed by any public body; and
204 (19) To have and exercise the usual powers of private corporations, except such as are
205 inconsistent with this Act or inconsistent with general law, and to do any and all things
206 necessary and convenient to accomplish the purposes and powers of the authority as
207 herein stated.

208 SECTION 6.

209 Issuance and sale of revenue bonds and other obligations.

210 The authority shall have power and is authorized from time to time to provide by resolution
211 for the issuance and sale of negotiable revenue bonds in the manner provided by Article 3
212 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," and may issue other
213 obligations for the purpose of paying all or any part of the costs of the project, including the
214 cost of constructing, reconstructing, equipping, extending, adding to, or improving any such
215 project, or for the purpose of refunding, as herein provided, any such bonds or other
216 obligations of the authority or to refund bonds or other obligations of any other authority or
217 public body previously issued to finance or refinance the costs of the project. The principal
218 of and interest on such revenue bonds or other obligations shall be a limited obligation of the
219 authority payable solely from the source or sources of funds specified in the indenture or
220 resolution of the authority authorizing the issuance of such revenue bonds or other
221 obligations. Such revenue bonds or other obligations shall mature on such dates, bear
222 interest at such rate or rates, whether fixed or variable, be subject to redemption, and have
223 such other terms as the authority may provide for in the indenture or resolution relating
224 thereto. Such revenue bonds or other obligations may be issued for cash, property, or other
225 consideration and may be sold in a negotiated sale or in a public sale at such prices and on
226 such terms as the authority may determine. The offer, sale, or issuance of bonds or other
227 obligations of the authority shall be exempt from registration to the extent provided in
228 Chapter 5 of Title 10 of the O.C.G.A., as amended, the "Georgia Uniform Securities Act of
229 2008," or any other law.

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SECTION 7.

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Revenue bonds and obligations; credit not debt or pledge.

232 Revenue bonds or other obligations issued under the provisions of this Act or any loan
 233 incurred as authorized herein shall not constitute a debt or a pledge of the faith and credit of
 234 any other public body, but shall be payable solely from the sources as may be designated in
 235 the resolution or indenture of the authority authorizing the issuance of the same. The
 236 issuance of such obligations shall not directly, indirectly, or contingently obligate any public
 237 body to levy or to pledge any form of taxation whatsoever for the payment thereof, unless
 238 otherwise provided by an intergovernmental contract executed by such public body. No
 239 holder of any bond or other obligation or receiver or trustee in connection therewith shall
 240 have the right to enforce the payment thereof against any property of any other public body
 241 nor shall any such bond or other obligation constitute a charge, lien, or encumbrance, legal
 242 or equitable, upon any such property unless otherwise provided by an intergovernmental
 243 contract executed by such other public body and the authority. All such obligations shall
 244 contain on their face a recital setting forth substantially the foregoing provisions of this
 245 section. Nothing in this section shall be construed to prohibit any other public body from
 246 obligating itself to pay the amounts required under any intergovernmental contract entered
 247 into with the authority pursuant to Article IX, Section III, Paragraph I of the Constitution of
 248 the State of Georgia or any successor provision, including, if such other public body has
 249 taxing power, from funds received from taxes to be levied and collected by such other public
 250 body for that purpose and from any other source.

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SECTION 8.

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Issuance under resolution or trust indenture.

253 In the discretion of the authority, any issuance of revenue bonds or other obligations may be
 254 secured by a trust indenture by and between the authority and a trustee, which may be any
 255 trust company or bank having the powers of a trust company within or without the state. The
 256 resolution providing for the issuance of revenue bonds or other obligations may contain such
 257 provisions for protecting and enforcing the rights and remedies of the owners of such bonds
 258 or obligations as may be reasonable and proper and not in violation of law, including
 259 covenants setting forth the duties of the authority or any lessee or purchaser in relation to the
 260 acquisition and construction of any project, the maintenance, operation, repair, and financing
 261 of any project, and the custody, safeguarding, and application of all moneys, including the
 262 proceeds derived from the sale or lease of any project or from the sale of any such revenue
 263 bonds or other obligations, and may contain provisions concerning the conditions, if any,

264 upon which additional bonds or other obligations may be issued, whether on parity with or
265 subordinate to any other obligations issued by the authority. Such indenture or resolution
266 may set forth the rights and remedies of the owners of such obligations and of the trustee.
267 In addition to the foregoing, a trust indenture may contain such other provisions as the
268 authority may deem reasonable and proper for the security of the owners of such bonds or
269 other obligations or otherwise necessary or convenient in connection with the issuance of
270 such obligations. All expenses incurred in carrying out such trust indenture may be treated
271 as a part of the cost of maintenance, operation, and repair of the project affected by such
272 indenture.

273 **SECTION 9.**

274 Security for payment of bonds and obligations.

275 The authority may assign or pledge any property or revenues and its interest in any contracts,
276 lease agreements, or installment sales agreements, or the amounts payable thereunder, to the
277 payment of the principal and interest on revenue bonds and other obligations of the authority
278 as the resolution authorizing the issuance of the bonds or other obligations or the trust
279 indenture may provide. The use and disposition of such property or revenues assigned to the
280 payment of bonds or other obligations shall be subject to the indenture or resolution
281 authorizing the issuance of such revenue bonds or obligations. Any lien created by the
282 authority for the payment of such bonds or obligations may be a first lien or a subordinate
283 lien as the authority may provide, and any such indenture or resolution may provide, at the
284 option of the authority, for the issuance of additional bonds or other obligations sharing any
285 lien on a parity or subordinate basis.

286 **SECTION 10.**

287 Refunding bonds or obligations.

288 The authority is authorized to provide by resolution for the issuance of obligations, whether
289 revenue bonds or other obligations, for the purpose of refunding any revenue bonds or other
290 obligations issued under the provisions of this Act or under any other provision of state law
291 so long as such bonds or other obligations were issued for a purpose or project for which the
292 authority is authorized to issue bonds or other obligations. The issuance of such refunding
293 bonds or other obligations and all the details thereof, the rights of holders thereof, and the
294 duties of the authority with respect to the same shall be governed by the provisions of this
295 Act insofar as the same may be applicable.

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SECTION 11.

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Validation of bonds; elective validation of other obligations.

298 Revenue bonds of the authority shall be confirmed and validated in accordance with the
299 procedure set forth in Article 3 of Chapter 82 of Title 36 of the O.C.G.A., as amended, the
300 "Revenue Bond Law." At the election of the authority, other obligations of the authority may
301 be validated as if they were revenue bonds. The petition for validation shall name the
302 authority as a defendant and may also make a party defendant to such action any other
303 private person or public body that has contracted or will contract with the authority with
304 respect to the project for which revenue bonds or other obligations are to be issued and are
305 sought to be validated. The bonds or other obligations, when validated, and the judgment of
306 validation shall be final and conclusive with respect to the validity of such bonds or other
307 obligations and the security therefor against the authority, other parties to the validation, and
308 all other private persons and public bodies. Any action pertaining to the validation of any
309 revenue bonds or other obligations issued under the provisions of this Act and for the
310 validation of any instruments entered or to be entered into by the authority or other private
311 persons or public bodies securing the same shall be brought in the Superior Court of Fayette
312 County, and such court shall have exclusive original jurisdiction of such actions.

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SECTION 12.

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No impairment of rights.

315 While any of the bonds or other obligations issued by the authority or any interests in
316 contracts of the authority remain outstanding, the powers, duties, or existence of the authority
317 or of its officers, employees, or agents shall not be diminished or impaired in any manner that
318 will affect adversely the interests and rights of the holders of such bonds or obligations or
319 such interests in contracts of the authority. The provisions of this section shall be for the
320 benefit of the authority and of the holders of any such bonds or obligations or interests in
321 contracts of the authority and, upon the issuance of bonds or obligations or the creation of
322 interests in contracts of the authority under the provisions of this Act, shall constitute a
323 contract with the holders of such bonds or obligations or such interests in contracts of the
324 authority.

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SECTION 13.

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Trust funds; permitted investments.

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All moneys received by the authority pursuant to this Act, whether as proceeds from the sale of revenue bonds or obligations of the authority, as grants or other contributions, or as revenues, income, fees, and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this Act and in such resolutions and trust indentures as may be adopted and entered into by the authority pursuant to this Act. Any such moneys or funds may be invested from time to time in such investments as may be permitted under the indenture, agreement, or resolution establishing the fund or account in which such funds are held, or if not held in such a fund or account, in such investments as would be permitted for investments of a development authority created under Chapter 62 of Title 36 of the O.C.G.A.

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SECTION 14.

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Rates, fees, and charges.

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The authority is authorized to operate, sell, or lease any project and to prescribe and fix rates, fees, tolls, rents, and charges and to revise, from time to time, and collect such revised rates, fees, tolls, rents, and charges for the services, facilities, or commodities furnished, including leases, concessions, and subleases of its projects, and to determine the price and terms at and under which its projects may be sold, leased, or otherwise disposed of. The authority may establish in its discretion procedures for contracting for any work done for the authority or for the acquisition, sale, transfer, lease, management, or operation of any property, real or personal, of the authority. The authority may contract with others, including private persons, for services relating to the management, operation, sale, or lease of any project.

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SECTION 15.

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Revenue bonds and obligations exempt from taxation.

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All revenue bonds or other obligations issued as provided in this Act are declared to be issued or incurred for an essential public and governmental purpose and such obligations and the interest thereon shall, to the extent not prohibited by general law, be exempt from all taxation within this state, whether or not the income on such bonds or other obligations is excludable from the gross income of the holders thereof for federal income tax purposes.

354 **SECTION 16.**

355 Essential government function; no taxes or assessments.

356 It is found, determined, and declared that the creation of the authority and the carrying out
357 of its corporate purpose are in all respects for the benefit of the people of this state and
358 constitute a public purpose and that the authority will be performing an essential
359 governmental function in the exercise of the powers conferred upon it by this Act. The
360 property of the authority is declared to be public property that is exempt from taxes under
361 subparagraph (a)(1)(A) of Code Section 48-5-41 of the O.C.G.A. To the extent not
362 prohibited by general law, the tax exemption for property of the authority shall extend to
363 leasehold interests of lessees thereof.

364 **SECTION 17.**

365 Immunity of authority and members.

366 The authority shall have the same immunity and exemption from liability for torts and
367 negligence as the city and the officers, agents, and employees of the authority when in the
368 performance of the work of the authority.

369 **SECTION 18.**

370 Property not subject to levy and sale.

371 The property of the authority shall not be subject to levy and sale under legal process. This
372 provision shall not preclude a sale or foreclosure of any property under the terms of any deed
373 to secure debt, mortgage, assignment, or security agreement that the authority has executed.

374 **SECTION 19.**

375 Area of operation.

376 The scope of the authority's operations shall be limited to the territory embraced by the
377 territorial limits of the city, as the same now or may hereafter exist; provided, however, that
378 nothing in this section shall prevent the authority from contracting with any entity or body,
379 public or private, outside of the city with respect to any project located within the city or
380 located outside of the city in furtherance of its public purposes.

381 **SECTION 20.**

382 Supplemental powers.

383 This Act shall not and does not in any way take from the authority any power which may be
384 conferred upon it by law but is supplemental thereto.

385 **SECTION 21.**

386 No power to impose taxes.

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

388 **SECTION 22.**

389 Eminent domain.

390 The authority shall not have the right to exercise the power of eminent domain.

391 **SECTION 23.**

392 Conveyance of property upon dissolution.

393 Should the authority for any reason be dissolved after full payment of all revenue bonds of
394 the authority and the termination of any leases, contracts, or options to which the authority
395 is a party, the interest and any redemption premiums thereon, title to the items of property
396 and funds of the authority held at the time of dissolution shall, prior to such dissolution, be
397 conveyed and transferred to one or more public bodies, as the authority shall elect.

398 **SECTION 24.**

399 Principal office; venue.

400 The principal office of the authority shall be within the territorial limits of the city, and the
401 venue of any action against it shall be in Fayette County, Georgia. Service upon the
402 authority of any process, subpoena, or summons shall be effected by serving the same
403 personally upon any member of the authority.

404 **SECTION 25.**

405 Act to be liberally construed.

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

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SECTION 26.

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Repealer.

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