

Senate Bill 295

By: Senator Gooch of the 51st

A BILL TO BE ENTITLED

AN ACT

1 To create and establish the City of Cleveland Building Authority; to provide that the
2 authority is a body corporate and politic and an instrumentality of the State of Georgia; to
3 authorize the authority to acquire, construct, equip, maintain, and operate certain projects,
4 including buildings and facilities for use by the City of Cleveland or any political subdivision
5 within the City of Cleveland for its governmental, proprietary, and administrative functions;
6 to provide for members of the authority and their terms, organization, and reimbursement;
7 to provide for vacancies; to provide for definitions; to confer powers and impose duties on
8 the authority; to grant limitations to the authority; to authorize the authority to enter into
9 contracts and leases pertaining to uses of such facilities, which contracts and leases may
10 obligate the lessees to make payment for the use of the facilities for the term thereof and to
11 pledge for that purpose money derived from taxation; to provide that no debt of City of
12 Cleveland or the State of Georgia shall be incurred by the exercise of any of the powers
13 granted; to authorize the issuance of revenue bonds of the authority payable from the
14 revenues, rents, and earnings and other functions of the authority; to authorize the collecting
15 and pledging of such revenues, rents, and earnings for the payment of such bonds; to
16 authorize the adoption of resolutions and the execution of trust indentures to secure the
17 payment of such bonds and to define the rights of the holders of such bonds; to provide for
18 a sinking fund; to make the bonds of the authority exempt from taxation; to authorize the

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19 issuance of refunding bonds; to provide for the validation of such bonds and to fix the venue
20 for jurisdiction of actions relating to any provision of this Act; to provide that property
21 acquired by the authority is for public purposes; to provide for immunity and exemption from
22 liability for torts and negligence; to provide that the property of the authority shall not be
23 subject to levy and sale; to provide that certain moneys are trust funds; to provide for liberal
24 construction of Act; to define the scope of the authority's operation; to provide for disposition
25 of property upon authority dissolution; to provide for severability; to provide for a short title;
26 to provide for related matters; to repeal conflicting laws; and for other purposes.

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

28 **SECTION 1.**

29 Short title.

30 This Act shall be known and may be cited as the "City of Cleveland Building Authority Act."

31 **SECTION 2.**

32 City of Cleveland Building Authority.

33 There is created a public body corporate and politic to be known as the City of Cleveland
34 Building Authority which shall be an instrumentality and a public corporation of the State
35 of Georgia, the purpose of which shall be to acquire, construct, equip, maintain, and operate
36 certain projects for use by the City of Cleveland for its governmental, proprietary, public, and
37 administrative functions. The authority shall not be a state institution, nor a department or
38 agency of the state, but shall be an instrumentality of the state, a mere creation of the state,
39 being a distinct corporate entity and being exempt from the provisions of Article 2 of
40 Chapter 17 of Title 50 of the O.C.G.A., the "Georgia State Financing and Investment

41 Commission Act." The authority shall have its principal office in the City of Cleveland, and
42 its legal situs or residence for the purposes of this chapter shall be the City of Cleveland.

43 **SECTION 3.**

44 **Membership.**

45 The authority shall consist of five members as follows: two shall be the members of the City
46 of Cleveland City Council, one shall be a member of the City of Cleveland Planning
47 Commission, and two shall be residents of the city. Each member shall be appointed by the
48 city council. The terms of office of the members who serve on the city council or the
49 planning commission shall be concurrent with their terms of office on such council or
50 commission. The terms of office of the remaining members of the authority shall be four
51 years and until their successors are appointed and qualified. Successors to such members
52 shall be appointed as the original members were appointed, as provided herein, and any
53 vacancies shall be filled by the appointing authority, as provided herein, for the unexpired
54 term. A majority of the members of the authority shall constitute a quorum, and no vacancy
55 on the authority shall impair the right of the quorum to exercise all the rights and perform all
56 the duties of the authority and, in every instance, a majority vote of a quorum shall authorize
57 any legal act of the authority, including all things necessary to authorize and issue revenue
58 bonds. The authority shall elect from its members a chairperson and vice-chairperson. The
59 authority shall elect a secretary and treasurer neither of whom need necessarily be a member
60 of the authority. The members of the authority shall not be entitled to compensation for their
61 services but shall be entitled to and shall be reimbursed for the actual expenses necessarily
62 incurred in the performance of their duties. The authority shall promulgate rules and
63 regulations for its own governance and it shall have perpetual existence. Any change in
64 name or composition of the authority shall in no way affect the vested rights of any person

65 under the provisions of this Act or impair the obligations of any contracts existing under this
66 Act.

67 **SECTION 4.**

68 Definitions.

69 As used herein, the following words and terms shall have the following meanings unless a
70 different meaning clearly appears from the context:

71 (1) "Authority" shall mean the City of Cleveland Building Authority created by this Act.

72 (2) "City" shall mean the City of Cleveland, Georgia.

73 (3) "City council" shall mean the governing authority of the City of Cleveland.

74 (4) "Cost of project" shall include the cost of lands, buildings, improvements, machinery,
75 equipment, property, easements, rights, franchises, material, labor, services acquired or
76 contracted for, plans and specification, financing charges, construction costs, interest
77 prior to and during construction; architectural, accounting, engineering, inspection,
78 administrative, fiscal, and legal expenses; expenses incident to determining the feasibility
79 or practicability of the project; and expenses incident to the acquiring, constructing,
80 equipping, and operating of any project or any part thereof, and to the placing of the same
81 in operation.

82 (5) "County" shall mean White County, Georgia.

83 (6) "Project" shall mean and include real and personal property acquired or held by the
84 authority, including all land, buildings, structures, sanitary and surface water sewers, and
85 other public property determined by the authority to be desirable for the efficient
86 operation of any department, board, office, commission, or agency of the City of
87 Cleveland, any municipality or other political subdivision within the City of Cleveland,
88 or of the State of Georgia, in the performance of its governmental, proprietary, and
89 administrative functions.

90 (7) "Revenue bonds" shall mean revenue bonds issued under the provisions of Article 3
91 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," or under the
92 provisions of this Act. The obligations authorized under this Act may be issued by the
93 authority in the manner authorized under the "Revenue Bond Law."

94 **SECTION 5.**

95 Powers.

96 The authority shall have all the powers necessary or convenient to carry out and effectuate
97 the purposes and provisions of this Act including, but without limiting the generality of the
98 foregoing, the power:

99 (1) To sue and be sued;

100 (2) To adopt and alter a corporate seal;

101 (3) To make and execute with public and private persons and corporations contracts,
102 trusts, leases, rental agreements, and other instruments relating to its projects and in
103 furtherance of the purposes of the authority, including contracts for constructing, renting,
104 and leasing of its projects for the use of any county or municipality in this state;

105 (4) To acquire in its own name by purchase on such terms and conditions and in such
106 manner as it may deem proper or by gift, grant, lease, or otherwise, real and personal
107 property necessary or convenient for its corporate purposes, or rights and easements
108 therein, and to use the same so long as its corporate existence shall continue and to lease
109 or make contracts with respect to the use of or disposition of the same in any manner it
110 deems to the best advantage of the authority. Title to any such property shall be held by
111 the authority exclusively for the benefit of the public.

112 (5) To improve, extend, add to, reconstruct, renovate, or remodel any project or part
113 thereof already acquired;

- 114 (6) To pledge or assign any revenues, income, rent, charges, and fees received by the
115 authority;
- 116 (7) To appoint and select agents, engineers, architects, attorneys, fiscal agents,
117 accountants, and employees and to provide for their compensation and duties;
- 118 (8) To construct, reconstruct, acquire, own, alter, repair, remodel, maintain, extend,
119 improve, operate, manage, and equip projects located on land owned or leased by the
120 authority;
- 121 (9) To receive, accept, and use any contributions, loans, or grants by persons, firms, or
122 corporations, including the State of Georgia and the United States of America or any
123 agency or instrumentality thereof, and any other contributions;
- 124 (10) To pay all or part of the costs of any project from the proceeds of revenue bonds of
125 the authority or from other lawful sources available to it;
- 126 (11) To prescribe rules and regulations for the operation of and to exercise police powers
127 over the projects managed or operated by the authority;
- 128 (12) To accept, receive, and administer gifts, grants, loans and devises of money,
129 material, and property of any kind, including loans and grants from the State of Georgia
130 or the United States of America or any agency or instrumentality thereof, upon such
131 terms and conditions as the State of Georgia or the United States of America or such
132 agency or instrumentality may impose;
- 133 (13) To sell, lease, exchange, transfer, assign, pledge, mortgage, dispose of, grant in
134 trust, or grant options for any real or personal property or interest therein in furtherance
135 of the purposes of the authority;
- 136 (14) As security for repayment of authority obligations, to pledge, mortgage, convey,
137 assign, hypothecate, or otherwise encumber any property, real or personal, of such
138 authority and to execute any trust agreement, indenture, or security agreement containing
139 any provisions not in conflict with law, which trust agreement, indenture, or security
140 agreement may provide for foreclosure or forced sale of any property of the authority

141 upon default, on such obligations, either in payment of principal or interest or in the
142 performance of any term or condition, as are contained in such agreement or indenture;
143 (15) To borrow money for any of its corporate purposes, to issue revenue bonds payable
144 solely from funds pledged for that purpose, and to provide for the payment of the same
145 and for the rights of the holders thereof;

146 (16) To exercise all powers usually possessed by private corporations performing similar
147 functions which are not in conflict with the Constitution and laws of this state; and

148 (17) Pursuant to proper resolution of the authority, to issue revenue bonds payable from
149 the rents and revenues of the authority and its projects, which bonds may be issued in
150 either fully negotiable coupon form, in which event they shall have all the qualities and
151 incidents of negotiable instruments under the laws of this state, or they may be issued in
152 whole or in part in nonnegotiable fully registered form without coupons, payable to a
153 designated payee or to the registered assigns of the payee with such conversion privileges
154 as the authority may provide, for the purpose of paying all or any part of the cost
155 associated with the projects authorized by the authority, including the cost of
156 constructing, reconstructing, equipping, extending, adding to, or improving such projects,
157 or for the purpose of refunding, as herein provided, any such bonds of the authority
158 theretofore issued. If the proceeds of the bonds of any issue shall exceed the amount
159 required for the purpose for which such bonds were issued, the surplus shall be paid into
160 the fund provided for the payment of principal and interest on such bonds. All such
161 revenue bonds shall be issued and validated under and in accordance with the procedure
162 of Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," and in
163 accordance with all terms and provisions thereof not in conflict herewith and in
164 accordance with Code Section 50-17-1 of the O.C.G.A., relating to use of facsimile
165 signatures on public securities authorized, and, as security for the payment of any revenue
166 bonds so authorized, any rents and revenue of the authority may be pledged and assigned.
167 Such bonds are declared to be issued for an essential public and governmental purpose,

168 and such bonds and all income therefrom shall be exempt from all taxation within the
169 State of Georgia. For the purpose of the exemption from taxation of such bonds and the
170 income therefrom, the authority shall be deemed to be a political subdivision of the State
171 of Georgia.

172 **SECTION 6.**

173 Credit not pledged and debt not created by bonds.

174 Revenue bonds issued under the provisions of this Act shall not constitute a debt or a pledge
175 of the faith and credit of the State of Georgia or the City of Cleveland; but such bonds shall
176 be payable from the rentals, revenue, earnings, and funds of the authority as provided in the
177 resolution, trust agreement, or indenture authorizing the issuance and securing the payment
178 of such bonds. The issuance of such bonds shall not directly, indirectly, or contingently
179 obligate the state or said city to levy or pledge any form of taxation whatever for the payment
180 thereof. No holder of any bond or receiver or trustee in connection therewith shall have the
181 right to enforce the payment thereof against any property of the state or of said city, nor shall
182 any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon any such
183 property. All such bonds shall contain on their face a recital setting forth substantially the
184 foregoing provisions of this section.

185 **SECTION 7.**

186 Trust agreement.

187 In the discretion of the authority, any issue of revenue bonds may be secured by an
188 agreement or indenture made by the authority with a corporate trustee, which may be any
189 trust company or bank having the powers of a trust company within or without this state.
190 Such trust agreement or indenture may pledge and assign rents, fees, charges, revenues, and

191 earnings to be received by the authority. The resolution providing for the issuance of
192 revenue bonds and such trust agreements or indenture may contain provisions for protecting
193 and enforcing the rights and remedies of the bondholders, including the right of appointment
194 of a receiver upon default of the payment of any principal or interest obligation and the right
195 of any receiver or trustee to enforce collection of any rents, fees, charges, or revenues for use
196 of the project or projects necessary to pay all costs of operation and all reserves provided for,
197 all principal and interest on all bonds of the issue, all costs of collection, and all other costs
198 reasonably necessary to accomplish the collection of such sums in the event of any default
199 of the authority. Such resolution and such trust agreement or indenture may include
200 covenants setting forth the duties of the authority in relation to the acquisition of property for
201 and construction of the project and to the custody, safeguarding, and application of all funds
202 and covenants providing for the operation, maintenance, repair, and insurance of the project
203 or projects and may contain provisions concerning the conditions, if any, upon which
204 additional revenue bonds may be issued. Such trust agreement or indenture may set forth the
205 rights and remedies of the bondholders and of the trustee and may restrict the individual right
206 of action of bondholders as is customary in securing bonds and debentures of corporations
207 and may contain such other provisions as the authority may deem reasonable and proper for
208 the security of the bondholders. All expenses incurred in carrying out such trust may be
209 treated as a part of the cost of maintenance, operation, and repair of the project affected by
210 such trust.

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SECTION 8.

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Refunding bonds.

213 The authority is authorized to provide by resolution for the issuance of revenue bonds of the
214 authority for the purpose of calling, refunding, or refinancing any revenue bonds issued
215 under the provisions hereof and then outstanding and to include in the amount of such

216 refunding bonds all interest and any call premiums that may be required for the redemption
217 and refunding of such outstanding bonds.

218 **SECTION 9.**

219 Venue of actions, jurisdiction.

220 Any action to protect or enforce any rights under the provisions hereof or any action against
221 the authority brought in the courts of the State of Georgia shall be brought in the Superior
222 Court of White County; and any action pertaining to validation of any bonds issued under
223 the provisions hereof shall be brought in said court, which shall have exclusive, original
224 jurisdiction of such actions.

225 **SECTION 10.**

226 Revenue bond validation.

227 The petition for validation of all revenue bonds of the authority shall be brought against the
228 authority, and any contracting party whose obligation is pledged as security for the payment
229 of the bonds sought to be validated, as defendants, and the defendants shall be required to
230 show cause, if any exists, as to why such contract or contracts and the terms and conditions
231 thereof shall not be adjudicated to be in all respects valid and binding upon such contracting
232 parties. It shall be incumbent upon such defendants to defend against adjudication of the
233 validity and binding effect of such contract or contracts or be forever bound thereby. Notice
234 of such proceedings shall be included in the notice of the validation hearing required to be
235 issued and published by the clerk of the Superior Court of White County in which court such
236 validation proceedings shall be initiated.

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SECTION 11.

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Interest of bondholders protected.

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While any of the bonds issued by the authority remain outstanding, the powers, duties, or existence of the authority or of its officers, employees, or agents shall not be diminished, impaired, or affected in any manner that will affect adversely the interest and rights of the holders of such bonds. The provisions hereof shall be for the benefit of the authority and the holders of any such bonds and, upon the issuance of bonds under the provisions hereof, shall constitute a contract with the holders of such bonds.

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SECTION 12.

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Revenues, earnings, rents, and charges; use.

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(a) For the purpose of earning sufficient revenue to make possible the financing of the construction of the project or projects of the authority with revenue bonds, the authority is authorized and empowered to fix, revise, and collect rents, fees, and charges on each project which it shall cause to be acquired or constructed. Such rents, fees, or charges to be paid for the use of such project or projects shall be so fixed and adjusted as to provide a fund sufficient with other revenue, if any, of such project or projects or of the authority to:

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(1) Pay the cost of operating, maintaining, and repairing the project or projects, including reserves for insurance and extraordinary repairs and other reserves required by the resolution or trust agreement or indenture pertaining to such bonds and the issuance thereof, unless such cost shall be otherwise provided for;

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(2) Pay the principal of and interest on such revenue bonds as the same shall become due, including call premium, if any, the proceeds of which shall have been or will be used to pay the cost of such project or projects;

- 261 (3) Comply with any sinking fund requirements contained in the resolution or trust
262 agreement or indenture pertaining to the issuance of and security for such bonds;
- 263 (4) Perform fully all provisions of such resolution and trust agreement or indenture
264 relating to the issuance of or security for such bonds to the payment of which such rent
265 is pledged;
- 266 (5) Accumulate any excess income which may be required by the purchasers of such
267 bonds or may be dictated by the requirements of such resolution, trust agreement, or
268 indenture, or of achieving ready marketability of and low interest rates on such bonds;
269 and
- 270 (6) Pay any expenses in connection with such bond issue or of such project or projects,
271 including but not limited to trustees', attorneys', and fiscal agents' fees.
- 272 (b) Such rent shall be payable at such intervals as may be agreed upon and set forth in the
273 rental contract or lease providing therefor, and any such contract or lease may provide for
274 the commencement of rent payments to the authority prior to the completion of the
275 undertaking by the authority of any such project and may provide for the payment of rent
276 during such times as such project or projects may be partially or wholly untenable.
- 277 (c) Such rental contract or lease may obligate the tenants or lessees to operate, maintain,
278 and keep in good repair, including complete reconstruction, if necessary, the rented or
279 leased premises and projects, regardless of the cause of the necessity of such maintenance,
280 repair, or reconstruction.
- 281 (d) Such rental contract or lease may obligate the tenants or lessees to indemnify and save
282 harmless the authority from any and all damage to persons and property occurring on or
283 by reason of the leased property or improvements thereon and to undertake, at the expense
284 of the tenants or lessees, the defense of any action brought against the authority by reason
285 of injury or damages to persons or property occurring on or by reason of the leased
286 premises.

287 (e) In the event of any failure or refusal on the part of the tenants or lessees to perform
288 punctually any covenant or obligation contained in any such rental contract or lease, the
289 authority may enforce performance by any legal or equitable process against the tenants
290 or lessees.

291 (f) The authority shall be permitted to assign any rent payable to it, pursuant to such rental
292 contract or lease, to a trustee or paying agent as may be required by the terms of the
293 resolution or trust agreement or indenture relating to the issuance of and security for such
294 bonds.

295 (g) The use and disposition of the authority's revenue shall be subject to the provisions of
296 the resolution authorizing the issuance of such bonds or of the trust agreement or indenture,
297 if any, securing the same.

298 **SECTION 13.**

299 Sinking fund.

300 The revenue, rents, and earnings derived from any particular project or projects and any and
301 all revenue, rents, and earnings received by the authority, regardless of whether such
302 revenue, rents, and earnings were produced by a particular project for which bonds have been
303 issued, unless otherwise pledged, may be pledged by the authority to payment of the
304 principal of and interest on revenue bonds of the authority as may be provided in any
305 resolution authorizing the issuance of such bonds or in any trust instrument pertaining to such
306 bonds, and such funds so pledged, from whatever source received, may include funds
307 received from one or more or all sources and may be set aside at regular intervals into
308 sinking funds for which provision may be made in any such resolution or trust instrument
309 and which may be pledged to and charged with the payment of the interest upon such
310 revenue bonds as such interest shall become due, the principal of the bonds as the same shall
311 mature, the necessary charges of any trustee or paying agent for paying such principal and

312 interest, and any premium upon bonds retired by call or purchase. The use and disposition
313 of any sinking fund may be subject to such regulation as may be provided for in the
314 resolution authorizing the issuance of the bonds or in the trust instrument securing the
315 payment of the same.

316 **SECTION 14.**

317 Property acquired for public purpose.

318 The exercise of the powers conferred upon the authority hereunder shall constitute an
319 essential governmental function for a public purpose, and to the extent permitted by the
320 general laws of this state, the authority shall be required to pay no taxes or assessments upon
321 any of the property acquired by it or under its jurisdiction, control, possession, or supervision
322 or upon its activities in the operation and maintenance of property acquired by it or of
323 buildings or other improvements erected or acquired by it or any fees, rents, or other charges
324 for the use of such property or buildings or improvements or other income received by the
325 authority. Nothing herein provided shall include an exemption from sales and use tax on
326 property purchased by or for the use of the authority.

327 **SECTION 15.**

328 Immunity from tort actions.

329 The authority shall have the same immunity and exemption from liability for torts and
330 negligence as the city; and the officers, agents, and employees of the authority, when in
331 performance of work of the authority, shall have the same immunity and exemption from
332 liability for torts and negligence as officers, agents, and employees of the city. The authority
333 may be sued the same as private corporations on any contractual obligation of the authority.

334 **SECTION 16.**

335 Property not subject to levy and sale.

336 The property of the authority shall not be subject to levy and sale under legal process.

337 **SECTION 17.**

338 Trust funds.

339 All funds received pursuant to authority of Section 12, whether as proceeds from the sale of
340 revenue bonds or as revenue, rents, fees, charges, or other earnings or as grants, gifts, or
341 other contributions, shall be deemed to be trust funds to be held and applied by the authority,
342 solely as provided herein. The bondholders entitled to receive the benefits of such funds
343 shall have a lien on all such funds until the same are applied as provided for in any such
344 resolution or trust instrument of the authority.

345 **SECTION 18.**

346 Construction.

347 This Act and any other law enacted with reference to the authority shall be liberally
348 construed for the accomplishment of its purposes.

349 **SECTION 19.**

350 Scope of operations.

351 The projects of the authority's operation shall be located in the territory embraced within the
352 jurisdictional limits of the county as the same now or may hereafter exist.

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SECTION 20.

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Conveyance of property upon dissolution.

355 Should the authority for any reason be dissolved after full payment of all bonded
356 indebtedness incurred hereunder, both as to principal and interest, title to all property of any
357 kind and nature, real and personal, held by the authority at the time of such dissolution shall
358 be conveyed to the City of Cleveland. The title to any such property may be conveyed prior
359 to such dissolution in accordance with provisions which may be made therefor in any
360 resolution or trust instrument relating to such property, subject to any liens, leases, or other
361 encumbrances outstanding against or in respect to said property at the time of such
362 conveyance.

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SECTION 21.

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Effect of partial invalidity of Act.

365 Should any sentence, clause, phrase, or part of this Act be declared for any reason to be
366 unconstitutional or invalid, the same shall not affect such remainder of this Act or any part
367 hereof, other than the part so held to be invalid, but the remaining provisions of this Act shall
368 remain in full force and effect. It is the express intention of this Act to enact each provision
369 of this Act independently of any other provision hereof.

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SECTION 22.

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Repealer.

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