

House Bill 765 (AS PASSED HOUSE AND SENATE)

By: Representatives Hill of the 3rd and Tarvin of the 2nd

A BILL TO BE ENTITLED

AN ACT

1 To create the Catoosa County Public Facilities Authority; to provide for a short title; to
2 confer powers and impose duties on the authority; to provide for the membership and the
3 appointment of members of the authority and their terms of office, qualifications, duties,
4 powers, and compensation; to provide for vacancies, organization, meetings, and expenses;
5 to provide for definitions; to provide for the issuance and sale of revenue bonds and other
6 obligations and their negotiability, sale, and use of proceeds from such sales; to provide for
7 conditions for issuance of such obligations; to prohibit the pledge of credit for the payment
8 of bonds; to provide for trust indentures; to provide for payment of bond proceeds; to provide
9 for bondholder remedies and protection; to provide for refunding bonds; to provide for bond
10 validation; to provide for venue and jurisdiction; to provide for trust funds; to provide for the
11 authority's purpose; to provide for charges; to provide for rules and regulations; to provide
12 for tort immunity; to provide that property of the authority is for public purpose; to provide
13 for exemptions from levy and sale; to provide for supplemental powers; to provide for effect
14 on other governments; to provide for liberal construction; to provide for severability; to
15 provide for related matters; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 765

- 1 -

17 **SECTION 1.**

18 Name of Act.

19 This Act shall be known and may be cited as the "Catoosa County Public Facilities Authority
20 Act."

21 **SECTION 2.**

22 Creation of authority; purpose.

23 There is created a body corporate and politic to be known as the "Catoosa County Public
24 Facilities Authority," which shall be deemed to be a public corporation. Such corporation
25 shall be separate and distinct from any public corporation or other entity heretofore created
26 by the General Assembly and shall be an instrumentality of the State of Georgia exercising
27 governmental powers. The authority is created for the purpose of promoting the public good
28 and general welfare of the citizens of Catoosa County and assisting Catoosa County in
29 providing facilities, equipment, and services to the citizens of Catoosa County and the
30 citizens located in the territories served by Catoosa County in the most efficient means
31 possible. In connection with the exercise of any of its powers, the members of the authority
32 may make findings or determinations regarding the public good and general welfare of
33 Catoosa County and the use of facilities, equipment, and services, and such findings or
34 determinations, if made, shall be conclusive and binding.

35 **SECTION 3.**

36 Definitions.

37 As used in this Act, the term:

38 (1) "Authority" means the Catoosa County Public Facilities Authority created in this Act.

39 (2) "Cost of the project" shall include:

40 (A) The cost of construction;

41 (B) The cost of all land or interests therein, properties, rights, easements, and
42 franchises acquired;

43 (C) The cost of acquiring, constructing, or erecting buildings, improvements, materials,
44 labor, and services;

45 (D) The cost of all machinery and equipment;

46 (E) Financing charges, including interest prior to and during construction or acquisition
47 of any project and for six months after such project is placed in service and operational
48 at the level intended;

49 (F) The cost of construction, engineering, architectural, fiscal, accounting, inspection,
50 and legal expenses, relating to a project or to the financing or refinancing of any project
51 and other expenses necessary or incident to determining the feasibility or practicability
52 of any project; or

53 (G) Administrative expenses relating to any project or to the financing or refinancing
54 thereof, and such other expenses as may be necessary or incident to the financing of a
55 project authorized by this Act, the acquisition, construction, renovation, reconstruction,
56 or remodeling of a project, and the placing of the same in operation. Any such
57 obligation or expense shall be regarded as a part of the cost of the project and may be
58 paid or reimbursed as such out of any funds of the authority, including proceeds of any
59 revenue bonds issued under the provisions of this Act for any such project or projects
60 and the proceeds of the sale of any contracts, lease agreements, or installment sale
61 agreements or the amounts payable thereunder, either directly or by the creation of
62 interests therein.

63 (3) "County" means Catoosa County, or its successor.

64 (4) "Project" means any capital project, located inside or outside the territorial
65 boundaries of the county, determined by the authority to promote the public good or

66 general welfare of the citizens of the county or to be necessary or convenient for the
67 efficient operation of the county, or any of its enterprises or systems, including, but not
68 limited to, the acquisition, construction, renovation, improvement, extension, addition,
69 or equipping of:

70 (A) Utility systems and improvements, including without limitation, water and sewer
71 systems and facilities, sewage and solid waste disposal systems and facilities, and
72 electric, gas, and other similar facilities or systems;

73 (B) Emergency facilities, including emergency, fire, sheriff, and rescue facilities;

74 (C) Recreational facilities, including parks, athletic fields, buildings, or facilities or
75 other similar facilities;

76 (D) Public safety facilities, including jails, sheriff's offices, facilities, or equipment,
77 state patrol or other law enforcement facilities or equipment;

78 (E) Healthcare facilities and equipment;

79 (F) Educational, cultural, or historical facilities and equipment;

80 (G) Transportation facilities and equipment;

81 (H) Administrative facilities and equipment;

82 (I) Any "undertaking" permitted by the Revenue Bond Law; and

83 (J) Any undertaking, project, or service for which the governmental body contracting
84 with the authority is authorized by law to undertake in the performance of its
85 governmental, proprietary, or administrative functions; all personal property to be used
86 in connection therewith; the lease and sale of any part or all of such facilities, including
87 real and personal property, so as to ensure the efficient and proper development,
88 maintenance, and operation of such project deemed by the authority to be necessary,
89 convenient, or desirable.

90 (5) "Revenue bonds" means revenue bonds issued by the authority pursuant to the terms
91 of this Act or under the Revenue Bond Law.

92 (6) "Revenue Bond Law" means Article 3 of Chapter 82 of Title 36 of the O.C.G.A.

SECTION 4.

Powers of the authority.

95 The authority shall have the power:

96 (1) To hold, own, lease, transfer, and convey real and personal property or interests;

97 (2) To sue and be sued;

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

99 (4) To acquire, construct, purchase, own, equip, operate, extend, improve, lease, and sell
100 any project;

101 (5) To exercise the powers conferred upon a "public corporation" or a "public authority"
102 by Article IX, Section III, Paragraph I of the Constitution of Georgia, such authority
103 being expressly declared to be a "public corporation" or a "public authority" within the
104 meaning of such provision of the Constitution of Georgia;

105 (6) To acquire property and projects in its own name by gift or by purchase on such
106 terms and conditions and in such manner as it may deem proper. If the authority shall
107 deem it expedient to construct any project on real property or any interest therein or
108 usufruct which is subject to the control of the county, the county is authorized to convey
109 such real property or interest therein to the authority for no consideration or for such
110 consideration as may be agreed upon by the authority and the county, taking into
111 consideration the public benefit to be derived from such conveyance. The county may
112 transfer such property or interest therein without the necessity of putting the same out for
113 bid and without regard to any determination as to whether or not such property or interest
114 therein is in surplus;

115 (7) To accept gifts and bequests for its corporate purposes;

116 (8) To appoint, select, and employ, with or without bidding, as the authority may choose,
117 officers, agents, and employees, including engineering, architectural, and construction

118 experts, fiscal agents, underwriters, or other advisors, and attorneys, and to fix their
119 compensation;

120 (9) To make and execute with public and private persons and corporations contracts,
121 lease agreements, rental agreements, installment sale agreements, and other instruments,
122 relating to its projects and incident to the exercise of the powers of the authority,
123 including contracts for constructing, renting, leasing, and selling its projects for the
124 benefit of the county; provided, without limiting the generality of this paragraph, that the
125 authority is specifically granted the power to enter into contracts, lease agreements, rental
126 agreements, installment sale agreements, and related agreements for a term not
127 exceeding 50 years as provided in Section III of Article IX of the Constitution of
128 Georgia;

129 (10) To lease, sell, transfer, or otherwise dispose of any property, real or personal, or
130 assets of the authority, or to assign its rights under its contracts, lease agreements, or
131 installment sale agreements or its right to receive payments thereunder, either directly or
132 through trusts or custodial arrangements whereby interests are created in such contracts,
133 lease agreements, or installment sale agreements or the payments to be received
134 thereunder through the issuance of trust certificates, certificates of participation, custodial
135 receipts, or other similar instruments. In connection with any such sale, lease, transfer
136 or assignment, the authority need not comply with any other provision of law requiring
137 public bidding or any announcement to the public of the sale of such property, assets, or
138 rights;

139 (11) To accept loans and grants of money or property of any kind from the United States,
140 the State of Georgia, or any political subdivision or municipal corporation of the State of
141 Georgia;

142 (12) To borrow money for any of its corporate purposes and to issue revenue bonds,
143 notes, or other types of indebtedness payable solely from funds or revenues of the
144 authority pledged for that purpose and to pledge and assign any of its revenues, income,

145 rent, charges, and fees to provide for the payment of the same and to provide for the
146 rights of the holders of such revenue bonds; provided, however, that the power conferred
147 by this paragraph may not be exercised after the expiration of four years from the
148 effective date of this Act;

149 (13) To enter into:

150 (A) Interest rate swaps, collars, or other types of interest rate management agreements;
151 or

152 (B) Credit enhancement or liquidity agreements relating to any obligations of the
153 authority,

154 Provided that the obligation of the authority under any such agreements shall not be a
155 general obligation of the authority but shall be a limited obligation of the authority payable
156 from a specific source of funds identified for such purpose. The authority shall be exempt
157 from any requirement of Georgia law requiring a swap management plan or other similar
158 plan relating to interest rate swap agreements;

159 (14) To make such rules and regulations governing its employees and property as it may
160 in its discretion deem proper;

161 (15) The authority may be sued the same as any private corporation on any contractual
162 obligation of the authority. The authority shall have the same rights to sue any other
163 person or entity as any private corporation; and

164 (16) To issue its revenue bonds, notes, or other obligations to finance or refinance any
165 project which may be financed by the county under the Revenue Bond Law of the State
166 of Georgia.

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SECTION 5.

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Members of the authority; terms of office.

169 The authority shall consist of five members who shall be appointed by the Board of
170 Commissioners of Catoosa County. Three members shall be members of the board of
171 commissioners, for terms to be concurrent with their terms of office as members of the board
172 of commissioners. Two members shall be residents of the county for terms of four years and
173 until their successors are appointed and qualified. Immediately after such appointments, the
174 members of the authority shall enter upon their duties. To be eligible for appointment as a
175 member of the authority, a person shall be at least 21 years of age and shall have been a
176 resident of Catoosa County, Georgia, for at least two years prior to the date of his or her
177 appointment and shall not have been convicted of a felony. Any member of the authority
178 may be selected and appointed to succeed himself or herself. A citizen member may be
179 removed from office by the board of commissioners for failure to perform the appropriate
180 duties of membership. A majority of the members of the authority shall constitute a quorum,
181 and no vacancy on the authority shall impair the right of the quorum to exercise all the rights
182 and perform all the duties of the authority and, in every instance, a majority vote of a quorum
183 shall authorize any legal act of the authority, including all things necessary to authorize and
184 issue revenue bonds. The board of commissioners shall elect one of their board members
185 who also serves on the authority as chairperson of the authority. The board shall appoint a
186 secretary and treasurer of the authority, who need not be members of the authority. The
187 authority may elect a vice chairperson or any number of assistant secretaries or treasurers as
188 it may from time to time deem necessary or desirable. The members of the authority shall
189 not be entitled to compensation for their services but shall be entitled to and shall be
190 reimbursed for the actual expenses necessarily incurred in the performance of their duties.
191 The authority shall make rules and regulations for its own governance and it shall have
192 perpetual existence. Any change in name or composition of the authority shall in no way

193 affect the vested rights of any person under the provisions of this Act or impair the
194 obligations of any contracts existing under this Act.

195 **SECTION 6.**

196 Issuance and sale of revenue bonds.

197 The authority shall have power and is authorized from time to time to provide for the
198 issuance and sale of negotiable revenue bonds in the manner provided by the Revenue Bond
199 Law, for the purpose of paying all or any part of the cost of any one or more projects,
200 including the cost of constructing, reconstructing, equipping, extending, adding to, or
201 improving any such project, or for the purpose of refunding, as herein provided, any such
202 bonds of the authority or any other authority or public body previously issued to finance or
203 refinance the cost of a project. The resolution of the authority authorizing the issuance of
204 such revenue bonds must be approved by at least four board members of the authority. The
205 principal of and interest on such revenue bonds shall be a limited obligation of the authority
206 payable solely from the source or sources of funds specified in the indenture or resolution
207 of the authority authorizing the issuance of such revenue bonds. The revenue bonds of each
208 issue shall be issued and validated under and in accordance with the provisions of the
209 Revenue Bond Law. Such revenue bonds shall mature on such dates, bear interest at such
210 rate or rates, whether fixed or variable, be subject to redemption and have such other terms
211 as the authority may provide in the indenture or resolution relating thereto. Such revenue
212 bonds shall not be subject to any provision of Georgia law limiting the rate of interest
213 payable thereon and may be sold in a negotiated sale or in a public sale as the authority may
214 determine.

215 **SECTION 7.**

216 Power to incur loans or issue notes.

217 The authority shall also have the power to incur indebtedness from time to time for the
218 purpose of financing or refinancing any project or refunding any obligations previously
219 issued for such purpose, or for any other purpose, whether in the form of a loan or through
220 the issuance of notes, and the principal of and interest on such notes or loans shall be a
221 limited obligation of the authority payable solely from the source or sources of funds
222 specified in the resolution or trust indenture of the authority authorizing such loan or the
223 issuance of such notes. Any such loan or notes shall not be required to be validated as a
224 condition to the issuance thereof and shall have such terms as may be specified by the
225 authority in the resolution or indenture authorizing the same.

226 **SECTION 8.**

227 Negotiable instruments; bonds and other obligations exempt from taxation.

228 All revenue bonds issued under the provisions of this Act shall have all the qualities and
229 incidents of negotiable instruments under the negotiable instruments law of this state. All
230 such bonds, and any loan incurred or note issued as provided in this Act, are declared to be
231 issued or incurred for an essential public and governmental purpose, and such obligations and
232 the interest thereon shall be exempt from all taxation within this state.

233 **SECTION 9.**

234 Revenue bonds or notes not a debt or general obligation.

235 Revenue bonds or notes issued under the provisions of this Act or any loan incurred as
236 authorized herein shall not constitute a debt or a pledge of the faith and credit of the State of

237 Georgia or of any political subdivision or municipal corporation thereof, including the
238 county, but shall be payable solely from the sources as may be designated in the resolution
239 or indenture of the authority authorizing the issuance of the same. The issuance of such
240 obligations shall not directly, indirectly, or contingently obligate the State of Georgia or any
241 political subdivision or municipal corporation thereof, including the county, to levy or to
242 pledge any form of taxation for the payment thereof. No holder of any bond or receiver or
243 trustee in connection therewith shall have the right to enforce the payment thereof against
244 any property of the State of Georgia or any political subdivision or municipal corporation
245 thereof, including the county, nor shall any such bond constitute a charge, lien, or
246 encumbrance, legal or equitable, upon any such property. All such obligations shall contain
247 on their face a recital setting forth substantially the foregoing provisions of this section.
248 Nothing in this section shall be construed to prohibit the State of Georgia or any political
249 subdivision, municipal corporation or agency thereof, including the county, from obligating
250 itself to pay the amounts required under any contract entered into with the authority pursuant
251 to Article IX of the Constitution of the State of Georgia, or any successor provision,
252 including from funds received from taxes to be levied and collected for that purpose to the
253 extent necessary to pay the obligations contractually incurred with the authority, and from
254 any other source.

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SECTION 10.

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Issuance of bonds or obligations under trust indentures or resolutions.

257 In the discretion of the authority, any issue of such revenue bonds, notes, or other obligations
258 may be secured by a trust indenture by and between the authority and a trustee, which may
259 be any trust company or bank having the powers of a trust company within or outside of the
260 State of Georgia. Such trust indenture may pledge or assign fees, tolls, rents, revenues, and
261 earnings to be received by the authority, including the proceeds derived from the financing,

262 sale, or lease, from time to time, of any project. Either the resolution providing for the
263 issuance of revenue bonds or other obligations or such trust indenture may contain such
264 provisions for protecting and enforcing the rights and remedies of the owners of such bonds
265 or obligations as may be reasonable and proper and not in violation of law, including
266 covenants setting forth the duties of the authority or any lessee or purchaser in relation to the
267 acquisition and construction of any project, the maintenance, operation, repair, and issuance
268 of any project, and the custody, safeguarding, and application of all moneys, including the
269 proceeds derived from the sale or lease of any project or from the sale of any such bonds,
270 notes, or other obligations and may also contain provisions concerning the conditions, if any,
271 upon which additional bonds notes or other obligations may be issued, whether on a parity
272 with, or subordinate to any other obligations issued by the authority. Such trust indenture
273 or resolution may set forth the rights and remedies of the owners of such obligations and of
274 the trustee. In addition to the foregoing, such trust indenture or resolution may contain such
275 other provisions as the authority may deem reasonable and proper for the security of the
276 owners of such bonds or other obligations or otherwise necessary or convenient in
277 connection with the issuance of such obligations. All expenses incurred in carrying out such
278 trust indenture or resolution may be treated as a part of the cost of maintenance, operation,
279 and repair of the project affected by such trust indenture or resolution.

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SECTION 11.

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Security for the payment of bonds or other obligations.

282 The authority may assign or pledge any property or revenues to the payment of the principal
283 and interest on revenue bonds of the authority as the resolution authorizing the issuance of
284 the bonds or the trust indenture may provide. The use and disposition of such property or
285 revenues assigned to the payment of bonds or other obligations shall be subject to the trust
286 indenture or resolution authorizing the issuance of such revenue bonds or obligations. Any

287 lien created by the authority for the payment of such bonds or obligations may be a first lien
288 or a subordinate lien as the authority may provide, and any such trust indenture or resolution
289 may provide, at the option of the authority, for the issuance of additional bonds or other
290 obligations sharing any lien on a parity or subordinate lien basis.

291 **SECTION 12.**

292 Refunding bonds or obligations.

293 The authority is authorized to provide by resolution for the issuance of obligations, whether
294 revenue bonds, notes, or other obligations, for the purpose of refunding any revenue bonds
295 or other obligations issued under the provisions of this Act or under any other provision of
296 Georgia law so long as such bonds or other obligations were issued for a purpose or project
297 for which the authority could issue bonds. The issuance of such refunding bonds or other
298 obligations and all the details thereof, the rights of the holders thereof, and the duties of the
299 authority with respect to the same shall be governed by the foregoing provisions of this Act
300 insofar as the same may be applicable.

301 **SECTION 13.**

302 Principal office; venue.

303 The principal office of the authority shall be in the county, and the venue of any action
304 against it shall be in Catoosa County, Georgia. Any action pertaining to the validation of any
305 bonds issued under the provisions of this Act and for the validation of any contract entered
306 into by the authority shall be brought in the Superior Court of Catoosa County, and such
307 court shall have exclusive original jurisdiction of such actions. Service upon the authority
308 of any process, subpoena, or summons shall be effected by serving the same personally upon
309 any member of the authority.

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SECTION 14.

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Validation of revenue bonds.

312 Revenue bonds of the authority shall be confirmed and validated in accordance with the
313 procedure now or hereafter set forth in Revenue Bond Law, as the same now exists or may
314 hereafter be amended. The petition for validation shall also make a party defendant to such
315 action the county, if the county has or will contract with the authority with respect to the
316 project for which bonds are to be issued and are sought to be validated. The bonds, when
317 validated, and the judgment of validation shall be final and conclusive with respect to the
318 validity of such bonds against the authority and against all other persons or entities,
319 regardless of whether such persons or entities were parties to such validation proceedings.

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SECTION 15.

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No impairment of rights.

322 While any of the bonds or other obligations issued by the authority or any interests in
323 contracts of the authority remain outstanding, the powers, duties, or existence of the authority
324 or of its officers, employees, or agents shall not be diminished or impaired in any manner that
325 will affect adversely the interest and rights of the holders of such bonds or obligations or
326 such interests in contracts of the authority. The provisions of this section of this Act shall
327 be for the benefit of the authority and of the holders of any such bonds or obligations and
328 interests in contracts of the authority and, upon the issuance of bonds or obligations or the
329 creation of interests in contracts of the authority under the provisions of this Act, shall
330 constitute a contract with the holders of such bonds or obligations or such interests in
331 contracts of the authority.

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SECTION 16.

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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 the 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 investments for a development authority created under O.C.G.A. Section 36-62-1, et seq., as amended.

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SECTION 17.

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Power to set rates, fees, and charges.

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The authority is authorized to prescribe and fix and collect 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, or 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.

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SECTION 18.

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Property held for governmental purposes.

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All property or interests in property owned by the authority shall be public property held and owned for governmental purposes and shall to the extent permitted by general law be exempt from ad valorem taxation. The exercise of the powers conferred upon the authority hereunder shall constitute an essential governmental function for a public purpose, and the authority to the extent permitted by general law shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation and maintenance of property acquired by it or of buildings erected or acquired by it or any fees, rentals, or other charges for the use of such property or buildings or other income received by the authority. Nothing herein provided shall include an exemption from sales and use tax on property purchased by or for the use of the authority.

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SECTION 19.

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Immunity of authority and members.

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

371 **SECTION 20.**

372 Authority property not subject to levy and sale.

373 To the extent permitted by general law, the property of the authority shall not be subject to
374 levy and sale under legal process.

375 **SECTION 21.**

376 Authority area of operation.

377 The scope of the authority's operations shall be limited to the territory embraced within the
378 territorial limits of the county and within the territorial limits of any project owned and/or
379 operated by the county, as the same now or may hereafter exist; provided, however, that
380 nothing in this section shall prevent the authority from contracting with any entity, public or
381 private, outside of the county with respect to any project located in the county or any project
382 located outside of the county, if the authority shall determine that entering into such contract
383 is in the best interest of the authority and in furtherance of its public purposes.

384 **SECTION 22.**

385 Supplemental powers.

386 This Act does not in any way take away from the authority any power which may be
387 conferred upon it by law but is supplemental thereto.

388 **SECTION 23.**

389 No power to impose taxes.

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

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SECTION 24.

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Act to be liberally construed.

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

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SECTION 25.

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Severability of provisions.

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Should any sentence, clause, phrase, or part of this Act be declared for any reason to be

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unconstitutional or invalid, the same shall not affect the remainder of this Act, or any part

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hereof, other than the part so held to be invalid, but the remaining provisions of this Act shall

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remain in full force and effect, and it is the express intention of this Act to enact each

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provision of this Act independently of any other provision hereof.

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SECTION 26.

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Conflicting laws.

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