

House Bill 519

By: Representative Parrish of the 158<sup>th</sup>

A BILL TO BE ENTITLED

AN ACT

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

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19 exempt from taxation; to authorize the issuance of refunding bonds; to provide for the  
20 validation of such bonds and to fix the venue for jurisdiction of actions relating to any  
21 provision of this Act; to provide for immunity and exemption from liability for torts and  
22 negligence; to provide that the property of the authority shall not be subject to levy and sale;  
23 to provide that certain moneys are trust funds; to provide that this Act shall be liberally  
24 construed; to define the scope of the authority's operation; to provide for disposition of  
25 property upon dissolution of the authority; to provide for severability; to provide for a short  
26 title; 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 "Emanuel County Public Facilities  
31 Authority Act."

32 **SECTION 2.**

33 Emanuel County Public Facilities Authority.

34 There is created a public body corporate and politic to be known as the Emanuel County  
35 Public Facilities Authority, which shall be an instrumentality and a public corporation of the  
36 State of Georgia, the purpose of which shall be to acquire, construct, equip, maintain, and  
37 operate certain projects for use by Emanuel County, the Emanuel County School District, or  
38 any municipality or other political subdivision located within Emanuel County, for its  
39 governmental, proprietary, public, and administrative functions. The authority shall not be  
40 a state institution or a department or agency of the state, but shall be an instrumentality of the

41 state, a mere creation of the state, being a distinct corporate entity and exempt from the  
42 provisions of Article 2 of Chapter 17 of Title 50 of the O.C.G.A., the "Georgia State  
43 Financing and Investment Commission Act." The authority shall have its principal office in  
44 Emanuel County, and its legal situs or residence for the purposes of this Act shall be  
45 Emanuel County.

46 **SECTION 3.**

47 **Membership.**

48 The authority shall consist of five members who shall be eligible to succeed themselves and  
49 who shall be appointed by the Board of Commissioners of Emanuel County. No more than  
50 three members of the authority may be members of said board of commissioners or  
51 employees of Emanuel County. Any member of the authority who is a member of said board  
52 of commissioners shall serve for a term of office concurrent with such person's term of office  
53 as a member of said board of commissioners. Each member of the authority who is not a  
54 member of said board of commissioners shall serve for a term of office of three years, except  
55 that the initial terms of office of those members first appointed to the authority shall be  
56 specified at the time of appointment to be one, two, and, if no such member is a member of  
57 the board of commissioners, three years. After such initial terms, those members who are  
58 not members of said board of commissioners shall serve for terms of office of three years  
59 each. Members of the authority shall serve for the terms of office so specified and until the  
60 appointment and qualification of their respective successors. Vacancies on the authority  
61 shall be filled by said board of commissioners for the remainder of the unexpired term and  
62 until the appointment and qualification of a successor. Immediately after their appointment,  
63 the members of the authority shall enter upon their duties. The authority shall elect one of  
64 its members as chairperson and one as vice chairperson. The secretary-treasurer of the  
65 authority shall be appointed by the authority and need not be a member of the authority.

66 Three members of the authority shall constitute a quorum and no vacancy on the authority  
67 shall impair the right of the quorum to exercise all the rights and perform all the duties of the  
68 authority and, in every instance, a majority vote of a quorum shall authorize any legal act of  
69 the authority, including all things necessary to authorize and issue revenue bonds. The  
70 members of the authority shall receive no compensation for their services but may be  
71 reimbursed by the authority for the actual expenses necessarily incurred in the performance  
72 of their duties. The authority shall make rules and regulations for its own government and  
73 shall have perpetual existence.

#### 74 **SECTION 4.**

#### 75 **Definitions.**

76 As used in this Act, the following words and terms shall have the following meanings unless  
77 a different meaning clearly appears from the context:

78 (1) "Authority" shall mean the Emanuel County Public Facilities Authority created by  
79 this Act.

80 (2) "Project" shall mean and include real and personal property acquired or held by the  
81 authority, including all land; buildings; structures; sanitary and surface water sewers;  
82 utilities, including natural gas distribution, telecommunications, fiber, cable, and  
83 broadband services; and other public property determined by the authority to be desirable  
84 for the efficient operation of any department, board, office, commission, or agency of  
85 Emanuel County, the Emanuel County School District, or any municipality or other  
86 political subdivision located in Emanuel County, or the State of Georgia in the  
87 performance of its governmental, proprietary, and administrative functions.

88 (3) "Cost of project" shall include the cost of lands, buildings, improvements, machinery,  
89 equipment, property, easements, rights, franchises, material, labor, services acquired or  
90 contracted for, plans and specification, and financing charges; construction costs; interest

91 prior to and during construction; architectural, accounting, engineering, inspection,  
92 administrative, fiscal, and legal expenses; expenses incident to determining the feasibility  
93 or practicability of the project; and expenses incident to the acquiring, constructing,  
94 equipping, and operating of any project or any part thereof and to the placing of the same  
95 in operation.

96 (4) "Revenue bonds" shall mean revenue bonds issued under the provisions of Article 3  
97 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," or under the  
98 provisions of this Act. The obligations authorized under this Act may be issued by the  
99 authority in the manner authorized under the Revenue Bond Law.

## 100 SECTION 5.

### 101 Powers.

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

105 (1) To sue and be sued;

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

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

111 (4) To acquire in its own name by purchase on such terms and conditions and in such  
112 manner as it may deem proper or by gift, grant, lease, or otherwise, real and personal  
113 property necessary or convenient for its corporate purposes, or rights and easements  
114 therein, and to use the same so long as its corporate existence shall continue and to lease  
115 or make contracts with respect to the use of or disposition of the same in any manner it

116 deems to the best advantage of the authority. Title to any such property shall be held by  
117 the authority exclusively for the benefit of the public.

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

120 (6) To pledge or assign any revenues, income, rent, charges, and fees received by the  
121 authority;

122 (7) To appoint and select agents, engineers, architects, attorneys, fiscal agents,  
123 accountants, and employees and to provide for their compensation and duties;

124 (8) To construct, reconstruct, acquire, own, alter, repair, remodel, maintain, extend,  
125 improve, operate, manage, and equip projects located on land owned or leased by the  
126 authority;

127 (9) To receive, accept, and use any contributions, loans, or grants by persons, firms, or  
128 corporations, including the State of Georgia and the United States of America, and any  
129 other contributions;

130 (10) To pay all or part of the costs of any project from the proceeds of revenue bonds of  
131 the authority or from other lawful sources available to it;

132 (11) To prescribe rules and regulations for the operation of and to exercise police powers  
133 over the projects managed or operated by the authority;

134 (12) To accept, receive, and administer gifts, grants, loans and devises of money,  
135 material, and property of any kind, including loans and grants from the State of Georgia  
136 or the United States of America or any agency or instrumentality thereof, upon such  
137 terms and conditions as the State of Georgia or the United States of America or such  
138 agency or instrumentality may impose;

139 (13) To sell, lease, exchange, transfer, assign, pledge, mortgage, dispose of, grant in  
140 trust, or grant options for any real or personal property or interest therein in furtherance  
141 of the purposes of the authority;

142 (14) As security for repayment of authority obligations, to pledge, mortgage, convey,  
143 assign, hypothecate, or otherwise encumber any property, real or personal, of such  
144 authority and to execute any trust agreement, indenture, or security agreement containing  
145 any provisions not in conflict with law, which trust agreement, indenture, or security  
146 agreement may provide for foreclosure or forced sale of any property of the authority  
147 upon default, on such obligations, either in payment of principal or interest or in the  
148 performance of any term or condition, as are contained in such agreement or indenture;  
149 (15) To borrow money for any of its corporate purposes, to issue revenue bonds payable  
150 solely from funds pledged for that purpose, and to provide for the payment of the same  
151 and for the rights of the holders thereof;  
152 (16) To exercise all powers usually possessed by private corporations performing similar  
153 functions which are not in conflict with the Constitution and laws of this state; and  
154 (17) Pursuant to proper resolution of the authority, to issue revenue bonds payable from  
155 the rents and revenues of the authority and its projects, which bonds may be issued in  
156 either fully negotiable coupon form, in which event they shall have all the qualities and  
157 incidents of negotiable instruments under the laws of the State of Georgia, or which  
158 bonds may be issued in whole or in part in nonnegotiable fully registered form without  
159 coupons, payable to a designated payee or to the registered assigns of the payee with such  
160 conversion privileges as the authority may provide, for the purpose of paying all or any  
161 part of the cost associated with the projects authorized by the authority, including the cost  
162 of constructing, reconstructing, equipping, extending, adding to, or improving such  
163 projects or for the purpose of refunding, as provided in this Act, any such bonds of the  
164 authority theretofore issued. If the proceeds of the bonds of any issue shall exceed the  
165 amount required for the purpose for which such bonds were issued, the surplus shall be  
166 paid into the fund provided for the payment of principal and interest on such bonds. All  
167 such revenue bonds shall be issued and validated under and in accordance with the  
168 procedures of Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the Revenue Bond

169 Law, and in accordance with all terms and provisions thereof not in conflict with this Act,  
170 and in accordance with Code Section 50-17-1 of the O.C.G.A., relating to use of  
171 facsimile signatures on public securities, and, as security for the payment of any revenue  
172 bonds so authorized, any rents and revenue of the authority may be pledged and assigned.  
173 Such bonds shall be declared to be issued for an essential public and governmental  
174 purpose, and such bonds and all income therefrom shall be exempt from all taxation  
175 within the State of Georgia. For the purpose of the exemption from taxation of such  
176 bonds and the income therefrom, the authority shall be deemed to be a political  
177 subdivision of the State of Georgia.

178 **SECTION 6.**

179 Credit not pledged and debt not created by bonds.

180 Revenue bonds issued under the provisions of this Act shall not constitute a debt or a pledge  
181 of the faith and credit of the State of Georgia, Emanuel County, the Emanuel County School  
182 District, or any municipality or other political subdivision located in Emanuel County, but  
183 such bonds shall be payable from the rentals, revenue, earnings, and funds of the authority  
184 as provided in the resolution or trust agreement or indenture authorizing the issuance and  
185 securing the payment of such bonds. The issuance of such bonds shall not directly,  
186 indirectly, or contingently obligate the state or said county to levy or pledge any form of  
187 taxation for the payment thereof. No holder of any bond or receiver or trustee in connection  
188 therewith shall have the right to enforce the payment thereof against any property of the state  
189 or of said county, nor shall any such bond constitute a charge, lien, or encumbrance, legal or  
190 equitable, upon any such property. All such bonds shall contain on their face a recital setting  
191 forth substantially the foregoing provisions of this section.

192  
193**SECTION 7.**

Trust agreement.

194 In the discretion of the authority, any issue of revenue bonds may be secured by an  
195 agreement or indenture made by the authority with a corporate trustee, which may be any  
196 trust company or bank having the powers of a trust company within or without the State of  
197 Georgia. Such trust agreement or indenture may pledge and assign rents, fees, charges,  
198 revenues, and earnings to be received by the authority. The resolution providing for the  
199 issuance of revenue bonds and such trust agreement or indenture may contain provisions for  
200 protecting and enforcing the rights and remedies of the bondholders, including the right of  
201 appointment of a receiver upon default of the payment of any principal or interest obligation  
202 and the right of any receiver or trustee to enforce collection of any rents, fees, charges, or  
203 revenues for use of the project or projects necessary to pay all costs of operation and all  
204 reserves provided for, all principal and interest on all bonds of the issue, all costs of  
205 collection, and all other costs reasonably necessary to accomplish the collection of such sums  
206 in the event of any default of the authority. Such resolution and such trust agreement or  
207 indenture may include covenants setting forth the duties of the authority in relation to the  
208 acquisition of property for and the construction of the project and to the custody,  
209 safeguarding, and application of all funds and covenants providing for the operation,  
210 maintenance, repair, and insurance of the project or projects and may contain provisions  
211 concerning the conditions, if any, upon which additional revenue bonds may be issued. Such  
212 trust agreement or indenture may set forth the rights and remedies of the bondholders and of  
213 the trustee and may restrict the individual right of action of bondholders as is customary in  
214 securing bonds and debentures of corporations and may contain such other provisions as the  
215 authority may deem reasonable and proper for the security of the bondholders. All expenses  
216 incurred in carrying out such trust may be treated as a part of the cost of maintenance,  
217 operation, and repair of the project affected by such trust.

218 **SECTION 8.**

219 Refunding bonds.

220 The authority is authorized to provide by resolution for the issuance of revenue bonds of the  
221 authority for the purpose of calling, refunding, or refinancing any revenue bonds issued  
222 under the provisions of this Act and then outstanding and to include in the amount of such  
223 refunding bonds all interest and any call premiums that may be required for the redemption  
224 and refunding of such outstanding bonds.

225 **SECTION 9.**

226 Venue of actions, jurisdiction.

227 Any action to protect or enforce any rights under the provisions of this Act or any action  
228 against the authority brought in the courts of the State of Georgia shall be brought in the  
229 Superior Court of Emanuel County, Georgia, and any action pertaining to validation of any  
230 bonds issued under the provisions of this Act shall be brought in said court, which shall have  
231 exclusive, original jurisdiction of such actions.

232 **SECTION 10.**

233 Revenue bond validation.

234 The petition for validation of all revenue bonds of the authority shall be brought against the  
235 authority, and any contracting party whose obligation is pledged as security for the payment  
236 of the bonds sought to be validated, as defendants, and the defendants shall be required to  
237 show cause, if any exists, why such contract or contracts and the terms and conditions thereof  
238 shall not be adjudicated to be in all respects valid and binding upon such contracting parties.  
239 It shall be incumbent upon such defendants to defend against adjudication of the validity and

240 binding effect of such contract or contracts or be forever bound thereby. Notice of such  
241 proceedings shall be included in the notice of the validation hearing required to be issued and  
242 published by the clerk of the Superior Court of Emanuel County in which court such  
243 validation proceedings shall be initiated.

244 **SECTION 11.**

245 Interest of bondholders protected.

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

252 **SECTION 12.**

253 Revenues, earnings, rents, and charges; use.

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

260 (1) To pay the cost of operating, maintaining, and repairing the project or projects,  
261 including reserves for insurance and extraordinary repairs and other reserves required by

262 the resolution or trust agreement or indenture pertaining to such bonds and the issuance  
263 thereof, unless such cost shall be otherwise provided for;

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

267 (3) To comply with any sinking fund requirements contained in the resolution or trust  
268 agreement or indenture pertaining to the issuance of and security for such bonds;

269 (4) To perform fully all provisions of such resolution or trust agreement or indenture  
270 relating to the issuance of or security for such bonds to the payment of which such rent  
271 is pledged;

272 (5) To accumulate any excess income which may be required by the purchasers of such  
273 bonds or may be dictated by the requirements of such resolution or trust agreement or  
274 indenture, or which may be required for achieving ready marketability of and low interest  
275 rates on such bonds; and

276 (6) To pay any expenses in connection with such bond issue or of such project,  
277 including, but not limited to, trustees', attorney's, and fiscal agents' fees.

278 (b) Such rent shall be payable at such intervals as may be agreed upon and set forth in the  
279 rental contract or lease providing therefor, and any such contract or lease may provide for the  
280 commencement of rent payments to the authority prior to the completion of the project by  
281 the authority and may provide for the payment of rent during such times as such project may  
282 be partially or wholly untenable.

283 (c) Such rental contract or lease may obligate the tenants or lessees to operate, maintain, and  
284 keep in good repair, including complete reconstruction, if necessary, the rented or leased  
285 premises and projects, regardless of the cause of the necessity of such maintenance, repair,  
286 or reconstruction.

287 (d) Such rental contract or lease may obligate the tenants or lessees to indemnify and save  
288 harmless the authority from any and all damage to persons and property occurring on or by

289 reason of the leased property or improvements thereon and to undertake, at the expense of  
290 the tenants or lessees, the defense of any action brought against the authority by reason of  
291 injury or damages to persons or property occurring on or by reason of the leased premises.

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

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

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

303 **SECTION 13.**

304 **Sinking fund.**

305 The revenue, rents, and earnings derived from any particular project or projects and any and  
306 all revenue, rents, and earnings received by the authority, regardless of whether such  
307 revenue, rents, and earnings were produced by a particular project for which bonds have been  
308 issued, unless otherwise pledged, may be pledged by the authority to payment of the  
309 principal of and interest on revenue bonds of the authority as may be provided in any  
310 resolution authorizing the issuance of such bonds or in any trust instrument pertaining to such  
311 bonds, and such funds so pledged, from whatever source received, may include funds  
312 received from one or more or all sources and may be set aside at regular intervals into  
313 sinking funds for which provision may be made in any such resolution or trust instrument

314 and which may be pledged to and charged with the payment of the interest upon such  
315 revenue bonds as such interest shall become due, the principal of the bonds as the same shall  
316 mature, the necessary charges of any trustee or paying agent for paying such principal and  
317 interest, and any premium upon bonds retired by call or purchase, and the use and disposition  
318 of any sinking fund may be subject to such regulation as may be provided for in the  
319 resolution authorizing the issuance of the bonds or in the trust instrument securing the  
320 payment of the same.

321 **SECTION 14.**

322 Taxation status.

323 The exercise of the powers conferred upon the authority under this Act shall constitute an  
324 essential governmental function for a public purpose, and to the maximum extent permitted  
325 by general law, the authority shall be required to pay no taxes or assessments upon any of the  
326 property acquired by it or under its jurisdiction, control, possession, or supervision or upon  
327 its activities in the operation and maintenance of property acquired by it or of buildings  
328 erected or acquired by it or any fees, rents, or other charges for the use of such property or  
329 buildings or other income received by the authority. This section shall not include an  
330 exemption from sales and use tax on property purchased by or for the use of the authority.

331 **SECTION 15.**

332 Immunity from tort actions.

333 The authority shall have the same immunity and exemption from liability for torts and  
334 negligence as Emanuel County, and the officers, agents, and employees of the authority,  
335 when in performance of work of the authority, shall have the same immunity and exemption  
336 from liability for torts and negligence as officers, agents, and employees of Emanuel County.

337 The authority may be sued the same as private corporations on any contractual obligation of  
338 the authority.

339 **SECTION 16.**

340 Property not subject to levy and sale.

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

342 **SECTION 17.**

343 Trust funds.

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

350 **SECTION 18.**

351 Construction.

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

354 **SECTION 19.**

355 Scope of operations.

356 The projects of the authority's operation shall be located in the territory embraced within the  
357 jurisdictional limits of Emanuel County as the same now or may hereafter exist.

358 **SECTION 20.**

359 Conveyance of property upon dissolution.

360 Should the authority for any reason be dissolved after full payment of all bonded  
361 indebtedness incurred under this Act, both as to principal and interest, title to all property of  
362 any kind and nature, real and personal, held by the authority at the time of such dissolution  
363 shall be conveyed to Emanuel County, or title to any such property may be conveyed prior  
364 to such dissolution in accordance with provisions which may be made therefor in any  
365 resolution or trust instrument relating to such property, subject to any liens, leases, or other  
366 encumbrances outstanding against or in respect to said property at the time of such  
367 conveyance.

368 **SECTION 21.**

369 Severability; effect of partial invalidity of Act.

370 Should any sentence, clause, phrase, or part of this Act be declared for any reason to be  
371 unconstitutional or invalid, the same shall not affect such remainder of this Act or any part  
372 hereof, other than the part so held to be invalid, but the remaining provisions of this Act shall  
373 remain in full force and effect, and it is the express intention of this Act to enact each  
374 provision of this Act independently of any other provision hereof.

375

**SECTION 22.**

376

General repealer.

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