

House Bill 1600

By: Representative Santos of the 117th

A BILL TO BE ENTITLED

AN ACT

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

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

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

27 **SECTION 1.**

28 Short title.

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

31 **SECTION 2.**

32 City of McDonough Public Facilities Authority.

33 There is created a public body corporate and politic to be known as the City of McDonough
34 Public Facilities Authority, which shall be an instrumentality and a public corporation of the
35 State of Georgia, the purpose of which shall be to acquire, construct, equip, maintain, and
36 operate certain projects for use by the City of McDonough for its governmental, proprietary,
37 public, and administrative functions. The authority shall not be a state institution or a
38 department or agency of the state, but shall be an instrumentality of the state, a mere creation
39 of the state, being a distinct corporate entity and 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 McDonough,
42 and its legal situs or residence for the purposes of this Act shall be the City of McDonough.

43 **SECTION 3.**

44 **Membership.**

45 The authority shall consist of seven members who shall be eligible to succeed themselves and
46 who shall be appointed by the governing authority of the City of McDonough. The members
47 of the city council may be appointed as members of the authority. Any member of the
48 authority who is a member of said governing authority shall serve for a term of office
49 concurrent with such person's term of office as a member of said governing authority. Each
50 member of the authority who is not a member of said governing authority shall serve for a
51 term of office of three years, except that the initial terms of office of those members first
52 appointed to the authority shall be specified at the time of appointment to be one, two, and,
53 if no such member is a member of the governing authority, three years. After such initial
54 terms, those members who are not members of said governing authority shall serve for terms
55 of office of three years each. To be eligible for appointment as a member of the authority,
56 a person shall be at least 21 years of age, shall be a resident of the city for at least two years
57 prior to the date of his or her appointment, and shall not have been convicted of a felony.
58 Members of the authority shall serve for the terms of office so specified and until the
59 appointment and qualification of their respective successors. Vacancies on the authority
60 shall be filled by said governing authority for the remainder of the unexpired term and until
61 the appointment and qualification of a successor. Immediately after their appointment, the
62 members of the authority shall enter upon their duties. The authority shall elect one of its
63 members as chairperson and one as vice chairperson. The secretary-treasurer of the authority
64 shall be appointed by the authority and need not be a member of the authority. Four
65 members of the authority shall constitute a quorum and no vacancy on the authority shall

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

73 SECTION 4.

74 Definitions.

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

77 (1) "Authority" shall mean the City of McDonough Public Facilities Authority created
78 by this Act.

79 (2) "City" shall mean the City of McDonough.

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

88 (4) "Project" shall mean:

89 (A) All buildings, facilities, and equipment necessary or convenient for the efficient
90 operation of:

- 91 (i) The city or any department, agency, division, or commission thereof;
 92 (ii) The county school district; and
 93 (iii) The county or any department, agency, division, or commission thereof; and
 94 (B) Any "undertaking" permitted by Article 3 of Chapter 82 of Title 36 of the
 95 O.C.G.A., the "Revenue Bond Law," within the city limits; provided, however, that all
 96 projects for the county school district or the county must be located in the city limits.
 97 (5) "Revenue bonds" shall mean revenue bonds issued under the provisions of Article 3
 98 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," or under the
 99 provisions of this Act. The obligations authorized under this Act may be issued by the
 100 authority in the manner authorized under the "Revenue Bond Law."

101 **SECTION 5.**

102 Powers.

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

- 106 (1) To sue and be sued;
 107 (2) To adopt and alter a corporate seal;
 108 (3) To make and execute with public and private persons and corporations contracts,
 109 trusts, leases, rental agreements, and other instruments relating to its projects and in
 110 furtherance of the purposes of the authority, including contracts for the constructing,
 111 renting, and leasing of its projects for the use of any county or municipality in this state;
 112 (4) To acquire in its own name by purchase on such terms and conditions and in such
 113 manner as it may deem proper or by gift, grant, lease, or otherwise, real and personal
 114 property necessary or convenient for its corporate purposes, or rights and easements
 115 therein, and to use the same so long as its corporate existence shall continue and to lease

- 116 or make contracts with respect to the use of or disposition of the same in any manner it
117 deems to the best advantage of the authority. Title to any such property shall be held by
118 the authority exclusively for the benefit of the public;
- 119 (5) To improve, extend, add to, reconstruct, renovate, or remodel any project or part
120 thereof already acquired;
- 121 (6) To pledge or assign any revenues, income, rent, charges, and fees received by the
122 authority;
- 123 (7) To appoint and select agents, engineers, architects, attorneys, fiscal agents,
124 accountants, and employees and to provide for their compensation and duties;
- 125 (8) To construct, reconstruct, acquire, own, alter, repair, remodel, maintain, extend,
126 improve, operate, manage, and equip projects located on land owned or leased by the
127 authority;
- 128 (9) To receive, accept, and use any contributions, loans, or grants by persons, firms, or
129 corporations, including the State of Georgia and the United States of America, and any
130 other contributions;
- 131 (10) To pay all or part of the costs of any project from the proceeds of revenue bonds of
132 the authority or from other lawful sources available to it;
- 133 (11) To prescribe rules and regulations for the operation of and to exercise police powers
134 over the projects managed or operated by the authority;
- 135 (12) To accept, receive, and administer gifts, grants, loans and devises of money,
136 material, and property of any kind, including loans and grants from the State of Georgia
137 or the United States of America or any agency or instrumentality thereof, upon such
138 terms and conditions as the State of Georgia or the United States of America or such
139 agency or instrumentality may impose;
- 140 (13) To sell, lease, exchange, transfer, assign, pledge, mortgage, dispose of, grant in
141 trust, or grant options for any real or personal property or interest therein in furtherance
142 of the purposes of the authority;

143 (14) As security for repayment of authority obligations, to pledge, mortgage, convey,
144 assign, hypothecate, or otherwise encumber any property, real or personal, of such
145 authority and to execute any trust agreement, indenture, or security agreement containing
146 any provisions not in conflict with law, which trust agreement, indenture, or security
147 agreement may provide for foreclosure or forced sale of any property of the authority
148 upon default, on such obligations, either in payment of principal or interest or in the
149 performance of any term or condition, as are contained in such agreement or indenture;

150 (15) To borrow money for any of its corporate purposes, to issue revenue bonds payable
151 solely from funds pledged for that purpose, and to provide for the payment of the same
152 and for the rights of the holders thereof;

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

155 (17) Pursuant to proper resolution of the authority, to issue revenue bonds payable from
156 the rents and revenues of the authority and its projects, which bonds may be issued in
157 either fully negotiable coupon form, in which event they shall have all the qualities and
158 incidents of negotiable instruments under the laws of the State of Georgia, or which
159 bonds may be issued in whole or in part in nonnegotiable fully registered form without
160 coupons, payable to a designated payee or to the registered assigns of the payee with such
161 conversion privileges as the authority may provide, for the purpose of paying all or any
162 part of the cost associated with the projects authorized by the authority, including the cost
163 of constructing, reconstructing, equipping, extending, adding to, or improving such
164 projects or for the purpose of refunding, as provided in this Act, any such bonds of the
165 authority theretofore issued. If the proceeds of the bonds of any issue shall exceed the
166 amount required for the purpose for which such bonds were issued, the surplus shall be
167 paid into the fund provided for the payment of principal and interest on such bonds. All
168 such revenue bonds shall be issued and validated under and in accordance with the
169 procedures of Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond

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

179 **SECTION 6.**

180 Credit not pledged and debt not created by bonds.

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

192 **SECTION 7.**
193 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 Henry 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 Henry County in which court such validation
243 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 a Georgia 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 a Georgia 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 the City of McDonough 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 the City of McDonough, or title to any such property may be conveyed
364 prior 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.