House Bill 523 (AS PASSED HOUSE AND SENATE)

By: Representatives Burkhalter of the 50th, Willard of the 49th, Jones of the 46th, Rice of the 51st, and Martin of the 47th

A BILL TO BE ENTITLED

AN ACT

To create the City of Johns Creek Public Buildings and Facilities Authority and to provide for the appointment of members of the authority; to confer powers upon the authority; to authorize the issuance of revenue bonds of the authority payable from the revenues, tolls, fees, charges, and earnings of the authority, to contract payments to the authority from other moneys pledged therefor, and to authorize the collection and pledging of the revenues, tolls, fees, charges, earnings, and contract payments of the authority for the payment of such revenue bonds; to authorize the execution of resolutions and trust indentures to secure the payment of the revenue bonds of the authority and to define the rights of the holders of such obligations; to make the revenue bonds of the authority exempt from taxation; to fix and provide the venue and jurisdiction of actions relating to any provisions of this Act; to provide for the validation of bonds; to provide for the separate enactment of each provision of this Act; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Short title.

This Act shall be known and may be cited as the "City of Johns Creek Public Buildings and Facilities Authority Act."

SECTION 2.

City of Johns Creek Public Buildings and Facilities Authority.

(a) There is hereby created a public body corporate and politic to be known as the "City of Johns Creek Public Buildings and Facilities Authority," which shall be deemed to be a political subdivision of this state and a public corporation, and by that name, style, and title,

said body may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts of law and equity. The authority shall have perpetual existence.

(b) The authority shall consist of five members who shall be appointed by the mayor of Johns Creek. The mayor´s appointment shall be confirmed by a majority vote of the city councilmembers and mayor, or the appointment shall not be effective. With respect to the initial appointment by the mayor, two members shall be appointed for a term of three years, two members shall be appointed for a term of two years, and one member shall be appointed for a term of one year. Thereafter, all appointments shall be made for terms of three years and until successors are appointed and qualified. Immediately after such appointments, the members of the authority shall enter upon their duties. To be eligible for appointment as a member of the authority, a person shall be at least 21 years of age, shall be a resident of the City of Johns Creek, Georgia, for at least one year prior to the date of his or her appointment, and shall not have been convicted of a felony. Any member of the authority may be selected and appointed to succeed himself or herself.

(c) The mayor of the City of Johns Creek may provide by resolution for compensation for the services of the members of the authority in such amounts as they may deem appropriate; provided, however, that such members shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties.

(d) The members of the authority shall elect one of their number as chairperson and another as vice chairperson. The members of the authority shall also elect a secretary, who need not be a member of the authority, and may also elect a treasurer, who need not be a member of the authority. The secretary may also serve as treasurer. If the secretary and treasurer are not members of the authority, such officers shall have no voting rights. Each of such officers shall serve for a period of one year and until their successors are duly elected and qualified.

(e) Three members of the authority shall constitute a quorum. No vacancy on the authority shall impair the right of the quorum to exercise all of the rights and perform all of the duties of the authority.

SECTION 3.

Definitions.

As used in this Act, the term:

(1) "Authority" means the City of Johns Creek Public Buildings and Facilities Authority created by this Act.

(2) "City" means the City of Johns Creek.

(3) "Costs of the project" means and embraces the cost of construction; the cost of all lands, properties, rights, easements, and franchises acquired; the cost of all machinery and equipment; financing charges; interest prior to and during construction and for six months after completion of construction; the cost of engineering, architectural, fiscal agents´ and legal expenses, plans and specifications, and other expenses necessary or incidental to determining the feasibility or practicability of the project; administrative expenses and such other expenses as may be necessary or incident to the financing herein authorized; working capital; and all other costs necessary to acquire, construct, add to, extend, improve, equip, operate, and maintain the project.

(4) "Project" means:

(A) All buildings, facilities, and equipment necessary or convenient for the efficient operation of the City of Johns Creek, Georgia, or any department, agency, division, or commission thereof; and

(B) Any undertaking permitted by the Revenue Bond Law.

(5) "Revenue Bond Law" means the Revenue Bond Law of the State of Georgia (codified at Section 36-82-62 et seq. of the Official Code of Georgia Annotated, as amended), or any other similar law hereinafter enacted.

(6) "Revenue bonds" means revenue bonds authorized to be issued pursuant to this Act.

(7) "Self-liquidating" means any project which the revenues and earnings are to be derived by the authority therefrom, including, but not limited to, any contractual payments with governmental or private entities, and all properties used, leased, and sold in connection therewith, together with any grants, will be sufficient to pay the costs of operating, maintaining, and repairing the project and to pay the principal and interest on the revenue bonds or other obligations which may be issued for the purpose of paying the costs of the project.

SECTION 4.

Powers.

The authority shall have the power:

(1) To have a seal and alter the same at its pleasure;

(2) To acquire by purchase, lease, gift, condemnation, or otherwise and to hold, operate, maintain, lease, and dispose of real and personal property of every kind and character for its corporate purposes; providing, however, that prior to acquiring property by gift, any such gift shall be approved by the mayor;

(3) To acquire in its own name by purchase, on such terms and conditions and in such manner as it may deem proper, or by condemnation in accordance with the provisions of

any and all existing laws applicable to the condemnation of property for public use, real property or rights or easements therein, or franchises necessary or convenient for its corporate purposes, and to use the same so long as its corporate existence shall continue, and to lease or make contracts with respect to the use of or dispose of the same in any manner it deems to the best advantage of the authority, the authority being under no obligation to accept and pay for any property condemned under this Act, except from the funds provided under the authority of this Act, and in any proceedings to condemn, such orders may be made by the court having jurisdiction of the suit, action, or proceedings as may be just to the authority and to the owners of the property to be condemned, and no property shall be acquired under the provisions of this Act upon which any lien or encumbrance exists, unless at the time such property is so acquired a sufficient sum of money is to be deposited in trust to pay and redeem the fair value of such lien or encumbrance;

(4) To appoint, select, and employ officers, agents, and employees, including engineering, architectural, and construction experts, fiscal agents, and attorneys, and fix their respective compensations;

(5) To execute contracts, leases, installment sale agreements, and other agreements and instruments necessary or convenient in connection with the acquisition, construction, addition, extension, improvement, equipping, operation, or maintenance of a project; and any and all persons, firms and corporations, and the City of Johns Creek, Georgia, are hereby authorized to enter into contracts, leases, installment sale agreements, and other agreements or instruments with the authority upon such terms and for such purposes as they deem advisable and as they are authorized by law;

(6) To acquire, construct, add to, extend, improve, equip, hold, operate, maintain, lease, and dispose of projects;

(7) To pay the costs of the project with the proceeds of revenue bonds or other obligations issued by the authority or from any grant or contribution from the United States of America or any agency or instrumentality thereof or from the state or any agency or instrumentality or other political subdivision thereof or from any other source whatsoever;

(8) To accept loans, gifts, donations, or grants of money or materials or property of any kind from the United States of America or any agency or instrumentality thereof, upon such terms and conditions as the United States of America or such agency or instrumentality may require;

(9) To accept loans, gifts, donations, or grants of money or materials or property of any kind from the state or any agency or instrumentality or political subdivision thereof, upon

such terms and conditions as the state or such agency or instrumentality or political subdivision may require;

(10) To borrow money for any of its corporate purposes and to issue revenue bonds, and to provide for the payment of the same and for the rights of the holders thereof;

(11) To exercise any power usually possessed by private corporations performing similar functions, including the power to incur short-term debt and to approve, execute, and deliver appropriate evidence of any such indebtedness; and

(12) To do all things necessary or convenient to carry out the powers expressly given in this Act.

SECTION 5.

Revenue bonds.

The authority, or any authority or body which has or which may in the future succeed to the powers, duties, and liabilities vested in the authority created hereby, shall have power and is hereby authorized to provide by resolution for the issuance of revenue bonds of the authority for the purpose of paying all or any part of the costs of the project and for the purpose of refunding revenue bonds or other obligations previously issued. The principal of and interest on such revenue bonds shall be payable solely from the special fund hereby provided for such payment. The revenue bonds of each issue shall be dated, shall bear interest at such rate or rates per annum, payable at such time or times, shall mature at such time or times, not exceeding 40 years from their date or dates, shall be payable in such medium of payment as to both principal and interest as may be determined by the authority, and may be redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution for the issuance of such revenue bonds.

SECTION 6.

Same; form; denomination; registration; place of payment.

The authority shall determine the form of the revenue bonds and shall fix the denomination or denominations of the revenue bonds. The revenue bonds may be issued in coupon or registered form, or both, as the authority may determine, and provision may be made for registration and exchangeability privileges. The authority shall fix the place or places of payment of principal and interest thereon.

SECTION 7.

Same; signatures; seal.

All such revenue bonds shall bear the manual or facsimile signature of the chairperson or vice chairperson of the authority and the attesting manual or facsimile signature of the secretary, assistant secretary, or secretary-treasurer of the authority, and the official seal of the authority shall be impressed or imprinted thereon. Any coupons attached thereto shall bear the manual or facsimile signatures of the chairperson or vice chairperson and the secretary, assistant secretary, or secretary-treasurer of the authority. Any revenue bonds or coupons attached thereto may bear the manual or facsimile signature of such persons who, at the actual time of the execution of such revenue bonds or coupons, shall be duly authorized or hold the proper office, although at the date of issuance of such revenue bonds, such person may not have been so authorized or shall not have held such office. In case any officer whose signature shall appear on any revenue bond or any coupon shall cease to be such officer before the delivery of such revenue bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if that person had remained in office until such delivery.

SECTION 8.

Same; negotiability; exemption from taxation.

All revenue bonds shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the laws of this state. All revenue bonds, their transfer, and the income therefrom shall be exempt from all taxation within this state.

SECTION 9.

Same; sale; price; proceeds.

The authority may sell revenue bonds in such manner and for such price as it may determine to be in the best interest of the authority. The proceeds derived from the sale of revenue bonds shall be used solely for the purpose or purposes provided in the resolutions and proceedings authorizing the issuance of such revenue bonds.

SECTION 10.

Same; interim receipts and certificates or temporary bonds.

Prior to the preparation of any definitive revenue bonds, the authority may, under like restrictions, issue interim receipts, interim certificates, or temporary revenue bonds, with or without coupons, exchangeable for definitive revenue bonds upon the issuance of the latter.

SECTION 11.

Same; replacement of lost or mutilated bonds.

The authority may provide for the replacement of any revenue bonds or coupons which shall become mutilated or be destroyed or lost.

SECTION 12.

Same; conditions precedent to issuance.

The authority shall adopt a resolution authorizing the issuance of the revenue bonds. In the resolution, the authority shall determine that the project financed with the proceeds of the revenue bonds is self-liquidating. Revenue bonds may be issued without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions, and things which are specified or required by this Act. Any resolution providing for the issuance of revenue bonds under the provisions of this Act shall become effective immediately upon its passage and need not be published or posted, and any such resolution may be passed at any regular or special or adjourned meeting of the authority by a majority of its members.

SECTION 13.

Credit not pledged.

Revenue bonds shall not be deemed to constitute a debt of the City of Johns Creek, Georgia, nor a pledge of the faith and credit of the city, but such revenue bonds shall be payable solely from the fund provided for in this Act. The issuance of such revenue bonds shall not directly, indirectly, or contingently obligate the city to levy or to pledge any form of taxation whatsoever for payment of such revenue bonds or to make any appropriation for their payment, and all such revenue bonds shall contain recitals on their face covering substantially the foregoing provisions of this section. Notwithstanding the foregoing provisions, this Act shall not affect the ability of the authority and any political subdivision

or municipality to enter into an intergovernmental contract pursuant to which the political subdivision or municipality agrees to pay amounts sufficient to pay operating charges and other costs of the authority or any project including, without limitation, the principal of and interest on revenue bonds in consideration for services or facilities of the authority.

SECTION 14.

Trust indenture as security.

In the discretion of the authority, any issuance of revenue bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company inside or outside this state. Either the resolution providing for the issuance of the revenue bonds or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition and construction of the project, the maintenance, operation, repair, and insuring of the project, and the custody, safeguarding, and application of all moneys.

SECTION 15.

To whom proceeds of bonds shall be paid.

In the resolution providing for the issuance of revenue bonds or in the trust indenture, the authority shall provide for the payment of the proceeds of the sale of the revenue bonds to any officer or person who, or any agency, bank, or trust company which, shall act as trustee of such funds and shall hold and apply the same to the purposes thereof, subject to such regulations as this Act and such resolution or trust indenture may provide.

SECTION 16.

Sinking fund.

The moneys received pursuant to an intergovernmental contract and the revenues, fees, tolls, charges, and earnings derived from any particular project or projects, regardless of whether or not such revenues, fees, tolls, fines, charges, and earnings were produced by a particular project for which revenue bonds have been issued, unless otherwise pledged and allocated, may be pledged and allocated by the authority to the payment of the principal and interest on revenue bonds of the authority as the resolution authorizing the issuance of the revenue bonds or in the trust indenture may provide, and such funds so pledged from whatever source

received shall be set aside at regular intervals as may be provided in the resolution or trust indenture into a sinking fund, which sinking fund shall be pledged to and charged with the payment of:

(1) The interest upon such revenue bonds as such interest shall fall due;

(2) The principal or purchase price of such revenue bonds as the same shall fall due;

(3) Any premium upon such revenue bonds as the same shall fall due;

(4) The purchase of such revenue bonds in the open market; and

(5) The necessary charges of the paying agent for paying principal and interest.

The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the revenue bonds or in the trust indenture, but, except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be maintained as a trust account for the benefit of all revenue bonds without distinction or priority of one over another.

SECTION 17.

Remedies of bondholders.

Any holder of revenue bonds or any of the coupons appertaining thereto, and the trustee under the trust indenture, if any, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the revenue bonds or by the trust indenture, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of this state, including specifically, but without limitation, the Revenue Bond Law, or granted hereunder or under such resolution or trust indenture, and may enforce and compel performance of all duties required by this Act or by such resolution or trust indenture to be performed by the authority or any officer thereof, including the fixing, charging, and collecting of revenues, fees, tolls, fines, and other charges for the use of the facilities and services furnished.

SECTION 18.

Validation.

Revenue bonds and the security therefor shall be confirmed and validated in accordance with the procedure of the Revenue Bond Law. The petition for validation shall also make party defendant to such action the state; any institution, department, or other agency thereof; and any county, municipality, school district, or other political subdivision or authority of this state which has contracted with the authority for services or facilities relating to the project for which revenue bonds are to be issued and sought to be validated, and such defendant shall

be required to show cause, if any exists, why such contract or contracts shall not be adjudicated as a part of the basis for the security for the payment of any such revenue bonds. The revenue bonds, when validated, and the judgment of validation shall be final and conclusive with respect to such revenue bonds and the security for the payment thereof and interest thereon and against the authority and all other defendants.

SECTION 19.

Venue and jurisdiction.

Any action to protect or enforce any rights under the provisions of this Act or any suit or action against such authority shall be brought in the Superior Court of Fulton County, Georgia, and any action pertaining to validation of any revenue bonds issued under the provisions of this Act shall likewise be brought in said court which shall have exclusive, original jurisdiction of such actions.

SECTION 20.

Interest of bondholders protected.

While any of the revenue bonds issued by the authority remain outstanding, the powers, duties, or existence of the authority or its officers, employees, or agents shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such revenue bonds, and no other entity, department, agency, or authority will be created which will compete with the authority to such an extent as to affect adversely the interest and rights of the holders of such revenue bonds, nor will the state itself so compete with the authority. The provisions of this Act shall be for the benefit of the authority and the holders of any such revenue bonds and, upon the issuance of such revenue bonds under the provisions hereof, shall constitute a contract with the holders of such revenue bonds.

SECTION 21.

Moneys received considered trust funds.

All moneys received pursuant to the authority of this Act, whether as proceeds from the sale of revenue bonds, as grants or other contributions, or as revenue, income, fees, and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this Act.

SECTION 22.

Purpose of the authority.

Without limiting the generality of any provision of this Act, the general purpose of the authority is declared to be that of providing buildings, facilities, equipment, and services for the citizens in the City of Johns Creek, Georgia.

SECTION 23.

Rates, charges, and revenues; use.

The authority is hereby authorized to prescribe and fix rates and to revise same from time to time and to collect revenues, tolls, fees, and charges for the services, facilities, and commodities furnished and, in anticipation of the collection of the revenues, to issue revenue bonds or other types of obligations as herein provided to finance, in whole or in part, the costs of the project, and to pledge to the punctual payment of said revenue bonds or other obligations all or any part of the revenues.

SECTION 24.

Rules, regulations, service policies, and procedures for operation of projects.

It shall be the duty of the authority to prescribe or cause to be prescribed rules, regulations, service policies, and procedures for the operation of any project or projects constructed or acquired under the provisions of this Act. The authority may adopt bylaws.

SECTION 25.

Tort immunity.

To the extent permitted by law, the authority shall have the same immunity and exemption from liability for torts and negligence as the City of Johns Creek, Georgia; and the officers, agents, and employees of the authority when in the performance of the work of the authority shall have the same immunity and exemption from liability for torts and negligence as the officers, agents, and employees of the City of Johns Creek, Georgia, when in the performance of their public duties or the work of the city.

SECTION 26.

Tax-exempt status of the authority.

The properties of the authority, both real and personal, are declared to be public properties used for the benefit and welfare of the people of this state and not for purposes of private or corporate benefit and income, and such properties and the authority shall be exempt from all taxes and special assessments of any municipality, county, or the state and any political subdivision thereof.

SECTION 27.

Effect on other governments.

This Act shall not and does not in any way take from the City of Johns Creek, Georgia, or any political subdivision or municipality the authority to own, operate, and maintain public facilities or to issue revenue bonds as provided by the Revenue Bond Law.

SECTION 28.

Liberal construction of Act.

This Act, being for the welfare of various political subdivisions and municipalities of this state and its inhabitants, shall be liberally construed to effect the purposes hereof.

SECTION 29.

Effective date.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 30.

Repeal.

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