House Bill 792 (AS PASSED HOUSE AND SENATE)

By: Representatives Hill of the 21st, Jerguson of the 22nd, Hamilton of the 23rd, and Byrd of the 20th

A BILL TO BE ENTITLED

AN ACT

To provide for the creation of one or more community improvement districts in the City of Canton; to provide for a short title; to provide for the purposes of said district or districts; to provide for definitions; to provide for a board to administer said district or districts; to provide for the appointment and election of members of said board or boards; to provide for taxes, fees, and assessments; to provide for establishment of the boundaries of said district or districts; to provide for a tax cap; to specify conditions whereby the continued existence of the district or districts or the continued existence of any one or more of the powers granted to the district or districts may be terminated; to provide procedures for termination of the district or districts; to provide for the alteration of district boundaries and the practices, procedures, and requirements related thereto; to provide for debt of said district or districts; to provide for cooperation with local governments; to provide for powers of said boards; to provide for notes and other obligations of said district or districts; to provide for authorized contents of agreements and instruments of the board generally, use of proceeds of notes or other obligations, and subsequent issues of notes or other obligations; to provide for construction; to provide that no notice, proceeding, publication, or referendum shall be required; to provide for dissolution; to provide the procedures connected with all of the foregoing; 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 referred to as the "City of Canton Community Improvement District Act."

SECTION 2.

Purpose.

The purpose of this Act shall be to provide enabling legislation for the creation of one or more community improvement districts within the City of Canton, and such district or districts may be created for the provision of some or all of the following governmental services and facilities as provided and authorized by Article IX, Section VII of the Constitution of the State of Georgia and the resolution activating each district as it now exists or hereafter amended or supplemented as provided for by law, including, but not limited to:

(1) Street and road construction and maintenance, including curbs, sidewalks, street lights, and devices and services to control the flow of traffic on streets and roads or services in connection therewith;

(2) Parks and recreational areas and facilities and services;

(3) Public transportation, including, but not limited to, services intended to reduce the volume of automobile traffic, to transport two or more persons in conveyances, to improve air quality, and to provide bicycle and pedestrian facilities and the operation of a traffic management association or similar entity and services;

(4) Terminal and dock facilities and parking facilities and services; and

(5) Such other services and facilities as may be provided for by general law or as the Georgia Constitution may authorize or provide now or hereafter.

SECTION 3.

Definitions.

As used in this Act, the term:

(1) "Agricultural" means the growing of crops for sale or the raising of animals for sale or use, including the growing of field crops, fruit or nut trees, the raising of livestock or poultry, and the operation of dairies, horse boarding facilities, and riding stables.

(2) "Board" means the governing body created for the governance of a community improvement district herein authorized.

(3) "Caucus of electors" means the meeting of electors hereinafter provided for at which the elected board members of the district are elected. A quorum at such caucus shall consist of those electors present, and a majority of those present and voting is necessary to elect board members. No proxy votes may be cast.

(4) "City council" means the city council of the City of Canton.

(5) "City governing authority or body" means the city council and the mayor.

(6) "District" means the geographical area designated as such by the resolution of the governing body of the City of Canton consenting to the creation of the community improvement district or districts or as thereafter modified by any subsequent resolution of the governing body or bodies within which the district is or is to be located, or a body corporate and politic being a community improvement district created and activated pursuant hereto, as the context requires or permits.

(7) "Electors" means the owners of real property within the given district which is subject to taxes, fees, and assessments levied by the board, as they appear on the most recent ad valorem real property tax return records of Cherokee County, or one officer or director of a corporate elector, one trustee of a trust which is an elector, one partner of a partnership elector, or one designated representative of an elector whose designation is made in writing to the Cherokee County tax commissioner and the city clerk of the City of Canton at least ten days prior to an election. An owner of property that is subject to taxes, fees, or assessments levied by the board shall have one vote for an election based on numerical majority. An owner of multiple parcels has one vote, not one vote per parcel, for an election based on numerical majority. Multiple owners of one parcel have one vote for an election based on numerical majority which must be cast by one of their number who is designated in writing.

(8) "Equity electors" means electors who cast votes equal to each $1,000.00 value of all owned real property within the given district which is then subject to taxes, fees, and assessments levied by the board. Value of real property shall be the assessed value.

(9) "Forestry" means the planting and growing of trees for sale in a program which includes reforestation of harvested trees, regular underbrush and undesirable growth clearing, fertilizing, pruning, thinning, cruising, and marking which indicate an active tree farming operation. The term does not include the casual growing of trees on land otherwise idle or held for investment, even though some harvesting of trees may occur thereon.

(10) "Hereby," "herein," "hereunder," and "herewith" mean under this Act.

(11) "Mayor" means the mayor of the City of Canton.

(12) "Project" means the acquisition, construction, installation, modification, renovation, or rehabilitation of land, interests in land, buildings, structures, facilities, or other improvements, including operation of facilities or other improvements, located or to be located within or otherwise providing service to the district and the acquisition, installation, modification, renovation, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvements for the purposes set forth in Section 2 of this Act.

(13) "Property owner" or "owner of real property" means any entity or person shown as a taxpayer for one or more parcels of real estate on the most recent ad valorem tax records of Cherokee County within the district as certified by the Cherokee County tax commissioner.

(14) "Property used nonresidentially" means property or any portion thereof used for neighborhood shopping, planned shopping centers, general commercial, transient lodging facilities, tourist services, office or institutional, office services, light industry, heavy industry, central business district, parking, or other commercial or business use or vacant land zoned or approved for any of the aforementioned uses which do not include residential.

(15) "Residential" means a specific structure, work, or improvement undertaken primarily to provide either single family or multifamily dwelling accommodations for persons and families of four units or less, and for which an application for homestead exemption has been filed and accepted.

(16) "Taxpayer" means an entity or person paying ad valorem taxes on real property, whether on one or more parcels of property within the district. Multiple owners of one parcel shall constitute one taxpayer and shall designate in writing one of their number to represent the whole.

(17) "Value" or "assessed value" of property means the values established in the most recent ad valorem tax reassessment of such properties certified by the chairperson of the Cherokee County Board of Tax Assessors.

SECTION 4.

Creation.

Pursuant to Article IX, Section VII of the Constitution of the State of Georgia, there is created one or more community improvement districts to be located in the City of Canton, Georgia, wholly within the incorporated area thereof, which shall be activated upon compliance with the conditions set forth in this section. Each district, if more than one are implemented, shall be governed as directed by this Act. The conditions for such activation shall be:

(1) The adoption of a resolution consenting to the creation of the community improvement district or districts by the governing authority for the City of Canton and imposing such conditions on the projects and activities which may be undertaken as will ensure their compatibility with adopted city policies and planning for the area; and

(2) The written consent to the creation of the community improvement district by:

(A) A majority of the owners of real property within the given district which will be subject to taxes, fees, and assessments levied by the board of the given district; and

(B) The owners of real property within the given district which constitutes at least 75 percent by value of all real property within the district which will be subject to taxes, fees, and assessments levied by the board. For this purpose, value shall be determined by the most recent approved county ad valorem tax digest.

The written consent provided for in this paragraph shall be submitted to the Cherokee County tax commissioner, who shall certify whether subparagraphs (A) and (B) of this paragraph have been satisfied with respect to such proposed district. The district or districts or respective board or boards created under this Act shall not transact any business or exercise any powers under this Act until the foregoing conditions are met. A copy of such resolutions shall be filed with the Secretary of State and with the city clerk of the City of Canton, who shall each maintain a record of the district activated under this Act. Nothing contained herein shall limit the ability of the governing authority of the City of Canton to implement more than one community improvement district so long as the requirements hereof and of the Georgia Constitution are satisfied. The provisions of this Act shall be construed so as to provide for the independent application and exercise of all powers for each district contained herein including the ability to levy taxes as outlined herein as separately and independently authorizing and empowering such separate community improvement districts created hereby. Nothing contained herein shall require the governing authority of the City of Canton to create more than one community improvement district, or to require the creation of a new district if the district boundaries of an existing district are changed, added to, supplemented, or modified.

SECTION 5.

Administration, appointment, and election of board members.

Each district created pursuant hereto shall be administered either by the governing authority or by a board as prescribed under this Act. In the event that a district is to be governed by such a board, the board shall be composed of a minimum of seven board members to be appointed and elected as hereinafter provided:

(1) Two board members shall be appointed by the mayor of the City of Canton, and confirmed by a majority of the city council, one of whom shall be a member of the city council, to serve in posts 6 and 7. Three board members shall be elected by the vote of electors, and two members shall be elected by the vote of equity electors. The members representing the electors and equity electors shall be elected to serve in post positions 1 through 5, respectively. Each elected board member must receive a majority of the votes

cast for the post for which he or she is a candidate. Votes for posts 1 and 2 shall be cast by electors, and votes for posts 3, 4, and 5 shall be cast by the equity electors. The initial term of office for the members representing posts 1 and 3 shall be one year. The initial term of office for the members representing posts 2 and 5 shall be two years, and the initial term of office of the members representing post 3 shall be three years. Thereafter, all terms of office shall be for four years, except the appointed board members who shall serve at the pleasure of the appointing body which appointed him or her. Elected board members shall be subject to recall in the same manner as elected.

(2) The initial board members to be elected as provided in paragraph (1) of this section shall be elected in a caucus of electors which shall be held within 120 days after the adoption of the resolution by the City of Canton consenting to the creation of the district, and the obtaining of the written consents herein provided at such time and place within the district as the City of Canton shall designate after notice thereof shall have been given to said electors by publishing same in the legal organ of Cherokee County as hereinafter provided. Thereafter, there shall be conducted annually, not later than 120 days following the last day for filing ad valorem real property tax returns in Cherokee County, a caucus of said electors at such time and place within the district as the board shall designate in such notice for the purpose of electing board members to those board member positions whose terms expire or are vacant. If a vacancy occurs in an elected position on the board, the board shall, within 60 days thereof, call a special election to fill the same to be held within 60 days of the call unless such vacancy occurs within 180 days of the next regularly scheduled election, in which case a special election may, but need not, be called. For any election held hereunder, notice thereof shall be given to said electors by publishing notice thereof in the legal organ of Cherokee County at least once each week for four weeks prior to such election.

(3) Board members shall receive no compensation for their services, but shall be reimbursed for actual expenses reasonably incurred in the performance of their duties. They shall elect one of their number as chairperson and another as vice chairperson. They shall also elect a secretary and a treasurer, or a secretary/treasurer, either of whom may, but need not, be a member of the board or an elector.

(4) If the boundaries of a district are subsequently changed after creation of the district to include land within a municipality which was not a party to the creation of the district, or if a municipality´s boundaries are changed to include land within an existing district, the governing authority of the municipality shall acquire the right to appoint a member to the board of the district upon entering into the cooperation agreement provided for in Section 9 of this Act. If, by municipal annexation or by deannexation of land from a district, the district no longer includes land within the incorporated area of the City of

Canton or within a municipality, respectively, then the board member of the district appointed by such governing authority in which the district is no longer located shall cease to be a board member.

(5) Chapter 2 of Title 21 of the O.C.G.A., the "Georgia Election Code," shall not apply to the election of district board members. Should a vacancy in office of a district board member occur, and the regular caucus of electors is more than six months in the future, a special election shall be called to fill such vacancy, unless it is filled by appointment as hereinabove required. The district board may adopt such bylaws not inconsistent herewith to provide for any matter concerning such elections.

SECTION 6.

Taxes, fees, and assessments.

(a) The board may levy taxes, fees, and assessments within the district only on real property used nonresidentially, specifically excluding all property exempt from ad valorem taxation under the Constitution or laws of the State of Georgia; all property used for residential, agricultural, or forestry purposes; and all tangible personal property and intangible property. Any tax, fee, or assessment so levied shall not exceed 2.5 percent of the aggregate assessed value of all such real property, subject to such limitations as the governing authority for the City of Canton may implement with the adoption of the resolution creating to the consent of the creation of said district. The taxes, fees, and assessments levied by the board shall be equitably apportioned among the properties subject to such taxes, fees, and assessments according to the need for governmental services and facilities created by the degree of density of development of each such property. The proceeds of taxes, fees, and assessments levied by the board shall be used only for the purpose of providing those governmental services and facilities set forth in Section 2 of this Act which are specially required by the degree of density of development within the district and not for the purpose of providing those governmental services and facilities provided to the municipality as a whole. Any tax, fee, or assessment so levied shall be collected by the City of Canton in the same manner as taxes, fees, and assessments are levied by the City of Canton. Delinquent taxes shall bear the same interest and penalties as City of Canton ad valorem taxes and may be enforced and collected in the same manner. The proceeds of taxes, fees, and assessments so levied, less a fee to cover the costs of collection of 0.25 percent thereof, but not more than $10,000.00 in any one calendar year, shall be transmitted as soon as they are acquired by the City of Canton to the board, and shall be expended by the board only for the purposes authorized hereby.

(b) The board shall levy the taxes provided for in subsection (a) of this section subsequent to the report of the assessed taxable values for the current calendar year and notify in writing the collecting governing bodies so they may include the levy on their regular ad valorem tax bills, if possible.

(c) There shall be a segregation of all funds from the levy of taxes, fees, and assessments as described hereunder for the district, and neither the City of Canton, nor the Cherokee County tax commissioner shall expend for any purpose not authorized by the board of this district, any such taxes, fees, or charges assessed and collected hereunder except for such costs as may be attributed to the billing and collection of such fees, levies, and assessments.

(d) If, but for this provision, a parcel of real property is removed from a district or otherwise would become nontaxable, it shall continue to bear the tax millage levied by the district then extant upon such parcel for indebtedness of the district then outstanding until said indebtedness is paid or refunded.

SECTION 7.

Boundaries of the district.

(a) The boundaries of the district or districts shall be as designated as such by the City of Canton as set forth in the resolution required in Section 4 of this Act, or as may thereafter be added as hereinafter provided.

(b) The boundaries of the district or districts may be increased after the initial creation of a district if:

(1) Written consent of the owners of any real property sought to be annexed is first obtained;

(2) The board of the district adopts a resolution consenting to the annexation; and

(3) A resolution is adopted which grants consent to the annexation by the governing authority of such municipalities as may have area within the district before or after the annexation.

SECTION 8.

Debt.

Except as otherwise provided in this section, the district may incur debt without regard to the requirements of Article IX, Section V of the Constitution of the State of Georgia, which debt shall be backed by the full faith and credit and taxing power of the district but shall not be an obligation of the State of Georgia or any other unit of government of the State of Georgia other than the district; provided, however, that the Board and the district may not issue bonds

validated under or in accordance with Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known as the "Revenue Bond Law," or in accordance with such other successor provisions governing bond validation generally or as may be provided by law.

SECTION 9.

Cooperation with local governments.

The services and facilities provided pursuant hereto may be provided for in a cooperation agreement executed jointly by the board, the governing body of the City of Canton, and any municipalities and other governmental authorities or agencies within which the district is partially located. The provisions of this section shall in no way limit the authority of the City of Canton or any such municipality or any such authority to provide services or facilities within the district; and the City of Canton or such municipalities shall retain full and complete authority and control over any of its facilities located within its respective areas of any district. Said control shall include but not be limited to the modification of, access to, and degree and type of services provided through or by facilities of the municipality or county. Nothing contained in this section shall be construed to limit or preempt the application of any governmental laws, ordinances, resolutions, or regulations to the district or the services or facilities provided therein.

SECTION 10.

Powers.

(a) The district and the board created pursuant hereto shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions hereof, including, without limiting the generality of the foregoing, the power to:

(1) Bring and defend actions;

(2) Adopt and amend a corporate seal;

(3) Make and execute contracts, agreements, and other instruments necessary or convenient to exercise the powers of the board or to further the public purposes for which the district is created, including, but not limited to, contracts for construction of projects, leases of projects, contracts for sale of projects, agreements for loans to finance projects, contracts with respect to the use of projects, and agreements with other jurisdictions or community improvement districts regarding multijurisdictional projects or services or for other cooperative endeavors to further the public purposes of the district;

(4) Acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real and personal property of every kind and character, or any interest therein, in furtherance of the public purposes of the district;

(5) Finance (by loan, private grant, lease, or otherwise), construct, erect, assemble, purchase, acquire, own, repair, remodel, renovate, rehabilitate, modify, maintain, extend, improve, install, sell, equip, expand, add to, operate, or manage projects and to pay the cost of any project from the proceeds of the district or any other funds of the district, or from any contributions or loans by persons, corporations, partnerships (whether limited or general), or other entities, all of which the board is authorized to receive, accept, and use;

(6) Borrow money to further or carry out its public purposes and to execute bonds, notes, other obligations, leases, trust indentures, trust agreements, agreements for the sale of its notes, or other obligations, loan agreements, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable, in the judgment of the board, to evidence and to provide security for such borrowing;

(7) Issue notes, or other obligations of the district and use the proceeds thereof for the purpose of paying all or any part of the cost of any project and otherwise to further or carry out the public purposes of the district and to pay all reasonably incurred costs of the board incidental to, or necessary and appropriate to, furthering or carrying out such purposes; provided, however, that the Board and the district may not issue bonds validated under or in accordance with Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known as the "Revenue Bond Law," or in accordance with such other successor provisions governing bond validation generally or as may be provided by law;

(8) Make application directly or indirectly to any private source for loans, grants, guarantees, or other financial assistance in furtherance of the district´s public purposes and to accept and use the same upon such terms and conditions as are prescribed by such private source; provided, however, that the district and the board shall not have the power to apply for, receive, administer, or utilize grants from federal, state, county, or municipal governments or agencies or any other public sources;

(9) Enter into agreements with the federal government or any agency thereof to use the facilities or services of the federal government or any agency thereof in order to further or carry out the public purposes of the district;

(10) Contract for any period, not exceeding 50 years, with the State of Georgia, state institutions, or any municipal corporation, county, or political subdivision of this state for the use by the district of any facilities or services of the state or any such state institution, municipal corporation, county, or political subdivision of this state, or for the use by any state institution or any municipal corporation, county, or political subdivision of the state

of any facilities or services of the district, provided that such contracts shall deal with such activities and transactions as the district and any such political subdivision with which the district contracts are authorized by law to undertake;

(11) Grant, mortgage, convey, assign, or pledge its property, revenues or taxes, or fees or assessments to be received as security for its notes, or other indebtedness and obligations;

(12) Receive and use the proceeds of any tax levied by any county or any municipal corporation to pay the costs of any project or for any other purpose for which the board may use its own funds pursuant hereto;

(13) Receive and administer gifts, private grants, and devises of money and property of any kind and to administer trusts;

(14) Use any real property, personal property, or fixtures or any interest therein or to rent or lease such property to or from others or make contracts with respect to the use thereof or to sell, lease, exchange, transfer, assign, pledge, or otherwise dispose of or grant options for any such property in any manner as it deems to be the best advantage of the district and the public purposes thereof;

(15) Appoint, select, and employ engineers, surveyors, architects, urban or city planners, fiscal agents, attorneys, and others and to fix their compensation and pay their expenses;

(16) Encourage and promote the improvement and development of the district and to make, contract for, or otherwise cause to be made long range plans or proposals for the district in cooperation with the City of Canton and any municipal corporations in which the district is wholly or partially located;

(17) Invest its funds, whether derived from the issuance of its bonds or otherwise, in such manner as it may deem prudent and appropriate, without further restriction;

(18) Adopt bylaws governing the conduct of business by the board, the election and duties of officers of the board, and other matters which the board determines to deal with in its bylaws;

(19) Exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purposes of the district; and

(20) Do all things necessary or convenient to carry out the powers conferred hereby.

(b) The powers enumerated in subsection (a) of this section are cumulative of and in addition to those powers enumerated herein and elsewhere in this Act, and no such power limits or restricts any other power of the board except where expressly noted.

SECTION 11.

Construction; notice, proceeding, publication, referendum.

This Act shall be liberally construed to effect the purposes hereof. No notice, proceeding, or publication except those required hereby shall be necessary to the performance of any act authorized hereby, nor shall any such act be subject to referendum.

SECTION 12.

Applicability of Chapter 5 of Title 10 of the O.C.G.A., the "Georgia Securities Act of 1973."

The offer, sale, or issuance of notes, or other obligations by the district shall not be subject to regulation under Chapter 5 of Title 10 of the O.C.G.A., the "Georgia Securities Act of 1973."

SECTION 13.

Dissolution.

(a) A district activated under the provisions of this Act may be dissolved upon the occurrence of any of the following:

(1) The adoption of a resolution approving of the dissolution of the community improvement district by the City of Canton and such municipalities if partially within one or more municipalities; or

(2) The written consent to the dissolution of the community improvement district by:

(A) A majority of the owners of real property within the district subject to taxes, fees, and assessments levied by the board of the district; or

(B) The owners of real property constituting at least 75 percent by value of all real property within the district subject to taxes, fees, and assessments levied by the board. For this purpose, value shall be determined by the most recent approved county ad valorem tax digest.

The written consent provided for in this paragraph shall be submitted to the Cherokee County tax commissioner, who shall certify whether subparagraphs (A) and (B) of this paragraph have been satisfied with respect to the proposed district dissolution.

(b) In the event that successful action is taken pursuant to this section to dissolve the district, the dissolution shall become effective at such time as all debt obligations of the district have been satisfied. Following a successful dissolution action and until the dissolution becomes

effective, no new projects may be undertaken, obligations or debts incurred, or property acquired.

(c) Upon a successful dissolution action, all noncash assets of the district other than public facilities or land or easements to be used for such public facilities, as described in Section 2 of this Act, shall be reduced to cash and, along with all other cash on hand, shall be applied to the repayment of any debt obligation of the district. Any cash remaining after all outstanding obligations are satisfied shall be refunded to each property owner in direct proportion to the total amount in taxes, fees, or assessments paid by the property owner relative to the total revenues paid by all properties in the district.

(d) When a dissolution becomes effective, the municipal governing authority, or the governing authority of a county if wholly within the incorporated area thereof, shall take title to all property previously in the ownership of the district and all taxes, fees, and assessments of the district shall cease to be levied and collected.

(e) A district may be reactivated in the same manner as an original activation.

SECTION 14.

Repealer.

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