House Bill 623 (AS PASSED HOUSE AND SENATE)

By: Representative Benton of the 31st

A BILL TO BE ENTITLED

AN ACT

To create the City of Commerce Public Facilities Authority; to provide for a short title and legislative findings; to confer powers and impose duties on the authority; to provide for the membership and the appointment of members of the authority and their terms of office, qualifications, duties, powers, and compensation; to provide for vacancies, organization, meetings, and expenses; to provide for definitions; to provide for the issuance and sale of revenue bonds and other obligations and their negotiability, sale, and use of proceeds from such sales; to provide for conditions for issuance of such obligations; to prohibit the pledge of credit for the payment of bonds; to provide for trust indentures; to provide for payment of bond proceeds; to provide for bondholder remedies and protection; to provide for refunding bonds; to provide for bond validation; to provide for venue and jurisdiction; to provide for trust funds; to provide for the authority's purpose; to provide for charges; to provide for rules and regulations; to provide for tort immunity; to provide for tax exemptions and exemptions from levy and sale; to provide for supplemental powers; to provide for effect on other governments; to provide for liberal construction; to provide for severability; to provide an effective date; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Name of Act.

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

SECTION 2.

Creation of authority; purpose.

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

SECTION 3.

Definitions.

As used in this Act, the term:

(1) "Authority" means the City of Commerce Public Facilities Authority created in this Act.

(2) "City" means the City of Commerce, Georgia, or its successor.

(3) "Cost of the project" means and includes:

(A) The cost of construction;

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

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

(D) The cost of all machinery and equipment;

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

(F) The cost of construction, engineering, architectural, fiscal, accounting, inspection, and legal expenses relating to a project or to the financing or refinancing of any project

and other expenses necessary or incident to determining the feasibility or practicability of any project; and

(G) Administrative expenses relating to any project or to the financing or refinancing thereof and such other expenses as may be necessary or incident to the financing of a project authorized by this Act, the acquisition, construction, renovation, reconstruction, or remodeling of a project, and the placing of the same in operation.

Any such obligation or expense shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of any funds of the authority, including proceeds of any revenue bonds issued under the provisions of this Act for any such project or projects and the proceeds of the sale of any contracts, lease agreements, or installment sale agreements or the amounts payable thereunder, either directly or by the creation of interests therein.

(4) "Project" means any capital project located inside or outside the territorial boundaries of the city that is determined by the authority to promote the public good or general welfare of the citizens of the city or to be necessary or convenient for the efficient operation of the city, or any of its enterprises or systems, including, but not limited to, the acquisition, construction, renovation, improvement, extension, addition, or equipping of:

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

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

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

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

(E) Health care facilities and equipment;

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

(G) Transportation facilities and equipment;

(H) Administrative facilities and equipment;

(I) Any undertaking permitted by Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law"; and

(J) Any undertaking, project, or service for which the governmental body contracting with the authority is authorized by law to undertake in the performance of its governmental, proprietary, or administrative functions; all personal property to be used in connection therewith; and the lease and sale of any part or all of such facilities, including real and personal property, so as to ensure the efficient and proper

development, maintenance, and operation of such project deemed by the authority to be necessary, convenient, or desirable.

(5) "Revenue bonds" means revenue bonds issued by the authority pursuant to the terms of this Act or under Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law."

SECTION 4.

Powers of the authority.

The authority shall have the power:

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

(2) To sue and be sued;

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

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

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

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

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

(8) To appoint, select, and employ, with or without bidding, as the authority may choose, officers, agents, and employees, including engineering, architectural, and construction experts, fiscal agents, underwriters, or other advisors, and attorneys, and to fix their compensation;

(9) To make and execute with public and private persons and corporations contracts, lease agreements, rental agreements, installment sale agreements, and other instruments relating to its projects and incident to the exercise of the powers of the authority,

including contracts for constructing, renting, leasing, and selling its projects for the benefit of the city; provided, however, without limiting the generality of this paragraph, that the authority is specifically granted the power to enter into contracts, lease agreements, rental agreements, installment sale agreements, and related agreements for a term not exceeding 50 years as provided in Article IX, Section III of the Constitution of Georgia;

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

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

(12) To borrow money for any of its corporate purposes and to issue revenue bonds, notes, or other types of indebtedness payable solely from funds or revenues of the authority pledged for that purpose and to pledge and assign any of its revenues, income, rent, charges, and fees to provide for the payment of the same and to provide for the rights of the holders of such revenue bonds; provided, however, that the power conferred by this paragraph shall not be exercised after the expiration of four years from the effective date of this Act;

(13) To enter into:

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

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

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

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

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

(16) To issue its revenue bonds, notes, or other obligations to finance or refinance any project which may be financed by the city under Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law."

SECTION 5.

Members of the authority; terms of office.

(a) The authority shall consist of eight members as follows:

(1) Seven members shall be the mayor and members of the city council; and

(2) One member shall be a resident of the city and shall be appointed by the mayor and city council.

The terms of office of the members who are the mayor and members of the city council shall be concurrent with their terms of office as mayor and members of the city council. The term of office of the remaining member of the authority shall be four years and until his or her successor is appointed and qualified. Successors to such members shall be appointed as the original members were appointed, as provided herein, and any vacancies shall be filled by the appointing authority, as provided herein, for the unexpired term. A majority of the members of the authority shall constitute a quorum, and no vacancy on the authority shall impair the right of the quorum to exercise all the rights and perform all the duties of the authority, and in every instance, a majority vote of a quorum shall authorize any legal act of the authority, including all things necessary to authorize and issue revenue bonds. One of the members of the authority who is also the mayor or a member of the city council shall be the chairperson of the authority and shall be elected by the mayor and city council. The authority shall elect a secretary and treasurer who need not necessarily be members of the authority. The authority may elect a vice chairperson or any number of assistant secretaries or treasurers as it may from time to time deem necessary or desirable. The members of the authority shall not be entitled to compensation for their services but shall be entitled to and shall be reimbursed for the actual expenses necessarily incurred in the performance of their duties.

(b) The authority shall make rules and regulations for its own governance, and it shall have perpetual existence. Any change in name or composition of the authority shall in no way

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

SECTION 6.

Issuance and sale of revenue bonds.

The authority shall have power and is authorized from time to time to provide for the issuance and sale of negotiable revenue bonds in the manner provided by Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," for the purpose of paying all or any part of the cost of any one or more projects, including the cost of constructing, reconstructing, equipping, extending, adding to, or improving any such project, or for the purpose of refunding, as provided in this Act, any such bonds of the authority or any other authority or public body previously issued to finance or refinance the cost of a project. The principal of and interest on such revenue bonds shall be a limited obligation of the authority payable solely from the source or sources of funds specified in the indenture or resolution of the authority authorizing the issuance of such revenue bonds. The revenue bonds of each issue shall be issued and validated under and in accordance with the provisions of Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law." Such revenue bonds shall mature on such dates, bear interest at such rate or rates, whether fixed or variable, be subject to redemption, and have such other terms as the authority may provide in the indenture or resolution relating thereto. Such revenue bonds shall not be subject to any provision of Georgia law limiting the rate of interest payable thereon and may be sold in a negotiated sale or in a public sale as the authority may determine.

SECTION 7.

Power to incur loans or issue notes.

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

SECTION 8.

Negotiable instruments; bonds and other obligations exempt from taxation.

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

SECTION 9.

Revenue bonds or notes not a debt or general obligation.

Revenue bonds or notes issued under the provisions of this Act or any loan incurred as authorized herein shall not constitute a debt or a pledge of the faith and credit of the State of Georgia or of any political subdivision or municipal corporation thereof, including the city, but shall be payable solely from the sources as may be designated in the resolution or indenture of the authority authorizing the issuance of the same. The issuance of such obligations shall not directly, indirectly, or contingently obligate the State of Georgia or any political subdivision or municipal corporation thereof, including the city, to levy or pledge any form of taxation for the payment thereof. No holder of any bond or receiver or trustee in connection therewith shall have the right to enforce the payment thereof against any property of the State of Georgia or any political subdivision or municipal corporation thereof, including the city, nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon any such property. All such obligations shall contain on their face a recital setting forth substantially the provisions of this section. Nothing in this section shall be construed to prohibit the State of Georgia or any political subdivision, municipal corporation or agency thereof, including the city, from obligating itself to pay the amounts required under any contract entered into with the authority pursuant to Article IX of the Constitution of Georgia, or any successor provision, including from funds received from taxes to be levied and collected for that purpose to the extent necessary to pay the obligations contractually incurred with the authority and from any other source.

SECTION 10.

Issuance of bonds or obligations under trust indentures or resolutions.

In the discretion of the authority, any issue of such revenue bonds, notes, or other obligations may be secured by a trust indenture by and between the authority and a trustee, which may

be any trust company or bank having the powers of a trust company within or outside of the State of Georgia. Such trust indenture may pledge or assign fees, tolls, rents, revenues, and earnings to be received by the authority, including the proceeds derived from the financing, sale, or lease, from time to time, of any project. Either the resolution providing for the issuance of revenue bonds or other obligations or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the owners of such bonds or obligations as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority or any lessee or purchaser in relation to the acquisition and construction of any project, the maintenance, operation, repair, and issuance of any project, and the custody, safeguarding, and application of all moneys, including the proceeds derived from the sale or lease of any project or from the sale of any such bonds, notes, or other obligations, and may also contain provisions concerning the conditions, if any, upon which additional bonds, notes, or other obligations may be issued, whether on a parity with or subordinate to any other obligations issued by the authority. Such trust indenture or resolution may set forth the rights and remedies of the owners of such obligations and of the trustee. Such trust indenture or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the owners of such bonds or other obligations or otherwise necessary or convenient in connection with the issuance of such obligations. All expenses incurred in carrying out such trust indenture or resolution may be treated as a part of the cost of maintenance, operation, and repair of the project affected by such trust indenture or resolution.

SECTION 11.

Security for the payment of bonds or other obligations.

The authority may assign or pledge any property or revenues to the payment of the principal of and interest on revenue bonds of the authority as the resolution authorizing the issuance of the bonds or the trust indenture may provide. The use and disposition of such property or revenues assigned to the payment of bonds or other obligations shall be subject to the trust indenture or resolution authorizing the issuance of such revenue bonds or obligations. Any lien created by the authority for the payment of such bonds or obligations may be a first lien or a subordinate lien as the authority may provide, and any such trust indenture or resolution may provide, at the option of the authority, for the issuance of additional bonds or other obligations sharing any lien on a parity or subordinate lien basis.

SECTION 12.

Refunding bonds or obligations.

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

SECTION 13.

Principal office; venue.

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

SECTION 14.

Validation of revenue bonds.

Revenue bonds of the authority shall be confirmed and validated in accordance with the procedure set forth in Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," as the same now exists or may hereafter be amended. The petition for validation shall also make a party defendant to such action the city, if the city has or will contract with the authority with respect to the project for which bonds are to be issued and are sought to be validated. The bonds, when validated, and the judgment of validation shall be final and conclusive with respect to the validity of such bonds against the authority and against all other persons or entities, regardless of whether such persons or entities were parties to such validation proceedings.

SECTION 15.

No impairment of rights.

While any of the bonds or other obligations issued by the authority or any interests in contracts of 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 interest and rights of the holders of such bonds or obligations or such interests in contracts of the authority. The provisions of this section shall be for the benefit of the authority and the holders of any such bonds or obligations and interests in contracts of the authority and, upon the issuance of bonds or obligations or the creation of interests in contracts of the authority under the provisions of this Act, shall constitute a contract with the holders of such bonds or obligations or such interests in contracts of the authority.

SECTION 16.

Trust funds; permitted investments.

All moneys received by the authority pursuant to this Act, whether as proceeds from the sale of revenue bonds or obligations of the authority, as grants or other contributions, or as revenues, income, fees, and earnings, shall be deemed to be the trust funds to be held and applied solely as provided in this Act and in such resolutions and trust indentures as may be adopted and entered into by the authority pursuant to this Act. Any such moneys or funds may be invested from time to time in such investments as may be permitted under the indenture, agreement, or resolution establishing the fund or account in which such funds are held, or if not held in such a fund or account, in such investments as would be permitted investments for a development authority created under Code Section 36-62-1, et seq., of the O.C.G.A., as amended.

SECTION 17.

Power to set rates, fees, and charges.

The authority is authorized to prescribe and fix and collect rates, fees, tolls, rents, and charges and to revise, from time to time, and collect such revised rates, fees, tolls, rents, and charges for the services, facilities, or commodities furnished, including leases, concessions, or subleases of its projects, and to determine the price and terms at and under which its projects may be sold, leased, or otherwise disposed.

SECTION 18.

Essential governmental function; no taxes or assessments.

All property or interests in property owned by the authority shall be public property held and owned for governmental purposes and shall be exempt from ad valorem taxation. The exercise of the powers conferred upon the authority in this Act shall constitute an essential governmental function for a public purpose, and the authority shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation and maintenance of property acquired by it or of buildings erected or acquired by it or any fees, rentals, or other charges for the use of such property or buildings or other income received by the authority. The tax exemption provided in this section shall not include an exemption from sales and use tax on property purchased by or for the use of the authority.

SECTION 19.

Immunity of authority and members.

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

SECTION 20.

Authority property not subject to levy and sale.

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

SECTION 21.

Authority area of operation.

The scope of the authority's operations shall be limited to the territory embraced within the territorial limits of the city and within the territorial limits of any project owned or operated by the city, as the same now or may hereafter exist; provided, however, that nothing in this section shall prevent the authority from contracting with any entity, public or private, outside of the city with respect to any project located in or outside of the city if the authority shall

determine that entering into such contract is in the best interest of the authority and in furtherance of its public purposes.

SECTION 22.

Supplemental powers.

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

SECTION 23.

No power to impose taxes.

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

SECTION 24.

Act to be liberally construed.

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

SECTION 25.

Severability of provisions.

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

SECTION 26.

Effective date.

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

SECTION 27.

Conflicting laws.

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