

The House Committee on Governmental Affairs offers the following substitute to HB 148:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 62 of Title 36 of the Official Code of Georgia Annotated, relating to
2 development authorities, so as to rename authority boards of directors to authority boards;
3 to rename directors as board members; to provide for taxpaying business owners to be
4 appointed to development authority boards; to provide for removal of board members; to
5 provide for term limits; to provide for related matters; to repeal conflicting laws; and for
6 other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 62 of Title 36 of the Official Code of Georgia Annotated, relating to development
10 authorities is amended by revising Code Section 36-62-4 relating to development authorities
11 created, appointment and terms of directors, quorum, and adoption and filing of resolution
12 of need, as follows:

13 "36-62-4.

14 (a) There is created in and for each county and municipal corporation in the state a public
15 body corporate and politic to be known as the 'development authority' of such county or
16 municipal corporation, which shall consist of a board of not less than seven and not more

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17 than nine ~~directors~~ members to be appointed by resolution of the governing body of the
18 county or municipal corporation. At the expiration of the current terms of office of the first
19 four members of the board ~~of directors~~, the governing body of the county or municipal
20 corporation shall elect successors to such members to serve for initial terms of two years
21 and shall elect successors to the remaining members of the board for initial terms of four
22 years. Thereafter, the terms of all ~~directors~~ board members shall be for four years. The
23 terms of any ~~directors~~ board members added to the original seven ~~directors~~ board members
24 shall be four years. If, at the end of any term of office of any ~~director~~ board member, a
25 successor thereto has not been elected, the ~~director~~ board member whose term of office has
26 expired shall continue to hold office until ~~his~~ his or her successor is so elected.

27 (b) A majority of the ~~directors~~ board members shall constitute a quorum, but no action
28 may be taken by the board without the affirmative vote of a majority of the full
29 membership of the board.

30 (c) No authority shall transact any business or exercise any powers under this chapter until
31 the governing body of the county or municipal corporation, by proper resolution, declares
32 that there is a need for an authority to function in the county or municipal corporation. A
33 copy of the resolution shall be filed with the Secretary of State, who shall maintain a record
34 of all authorities activated under this chapter.

35 (d) In each county of this state having a population of not less than 41,700 nor more
36 than 42,300 according to the United States decennial census of 1990 or any future such
37 census, the board of directors of an industrial development authority in such county which
38 is created directly by the Constitution of Georgia shall assume all the powers, duties, and
39 responsibilities of and shall become the board ~~of directors~~ of any development authority
40 created under this chapter which is located in such county or in any municipal corporation
41 in such county.

42 (e) In each county of this state having a population of not less than 24,000 nor more
43 than 26,000 according to the United States decennial census of 1990 or any future such

44 census, the board of directors of an industrial development authority in such county which
 45 is created directly by the Constitution of Georgia may assume all the powers and
 46 responsibilities of and may become the board of directors of any development authority
 47 created under this chapter which is located in such county or in any municipal corporation
 48 in such county. Such joint boards shall have the authority to transfer any and all assets of
 49 the development authority created under this chapter to the industrial development
 50 authority which is created directly by the Constitution of Georgia; provided, however, that
 51 the governing authority of said county or municipal corporation shall approve the
 52 assumption of such powers and responsibilities."

53

SECTION 2.

54 Said chapter is further amended by revising Code Section 36-62-5 relating to directors,
 55 officers, compensation, adoption of bylaws, delegation of powers and duties, conflicts of
 56 interest, and audits, as follows:

57 "36-62-5.

58 (a)(1) The directors board members shall be taxpayers residing in residents or licensed
 59 business owners paying ad valorem taxes on real or personal property within the county
 60 or municipal corporation for which the authority is created. Their, and their successors
 61 shall be appointed as provided by the resolution provided for in as set forth in
 62 subsection (a) of Code Section 36-62-4. The governing authority of a county or
 63 municipality may appoint no more than one member of the governing authority as a
 64 director board member. The governing authority of a county or municipality may appoint
 65 no more than one nonresident business owner as a board member.

66 (2)(A) Any board member may be removed for cause by the governing authority of the
 67 county or municipality for which the authority is created, which shall include, but shall
 68 not be limited to, neglect of duties or failure to meet the residency requirements set

69 forth in paragraph (1) of this subsection, or unethical or dishonorable conduct likely to
70 deceive or defraud the public, county, or municipality.

71 (B) The board member shall be notified by the applicable governing authority of the
72 reasons for his or her removal 30 days prior to a hearing on the matter. Such notice
73 shall be sent by certified mail with return receipt requested or delivered via statutory
74 overnight delivery. Such notice shall inform the board member that he or she may be
75 heard before the governing authority at such time as may be stated in the notice. Such
76 hearing shall occur not less than 30 days from the date of the notice. The board
77 member may be represented by counsel at such hearing.

78 (C) Upon such hearing, if the governing authority finds by a preponderance of the
79 evidence that good cause for the removal of the board member exists, the governing
80 authority shall be authorized and empowered to remove such board member.

81 (D) Any vacancy resulting from removal under this paragraph shall be filled by
82 resolution as set forth in subsection (a) of Code Section 36-62-4.

83 (3) After July 1, 2021, board members shall be limited to serving as board members for
84 a period of no more than four consecutive years. After serving for four consecutive
85 years, such board members will not be eligible for reappointment for two years.

86 (b) The ~~directors~~ board members shall elect one of their members as ~~chairman~~ chairperson
87 and another as ~~vice-chairman~~ vice-chairperson and shall also elect a secretary and a
88 treasurer or a secretary-treasurer, either of whom may, but need not, be a ~~director~~ board
89 member.

90 (c) The ~~directors~~ board members shall receive no compensation for their services but shall
91 be reimbursed for their actual expenses incurred in the performance of their duties;
92 provided, however, the ~~directors~~ board members of the development authority activated by
93 counties having a population of 550,000 or more according to the United States decennial
94 census of 1980 or any future such census shall be paid a per diem allowance to be

95 determined by the governing authority of such counties for each day, or part thereof, spent
96 in the performance of their duties.

97 (d) The authority may make bylaws and regulations for its governance and may delegate
98 to one or more of its officers, agents, and employees such powers and duties as may be
99 deemed necessary and proper.

100 (e)(1)(A) The provisions of Code Section 45-10-3 shall apply to all ~~directors~~ board
101 members of the authority, and a ~~director~~ board member of the authority shall not engage
102 in any transaction with the authority.

103 (B) The provisions of paragraph (9) of Code Section 45-10-3 and subparagraph (A) of
104 this paragraph shall be deemed to have been complied with and the authority may
105 purchase from, sell to, borrow from, loan to, contract with, or otherwise deal with any
106 ~~director~~ board member or any organization or person with which any ~~director~~ board
107 member of the authority is in any way interested or involved, provided (1) that any
108 interest or involvement by such ~~director~~ board member is disclosed in advance to the
109 ~~directors~~ board members of the authority and is recorded in the minutes of the
110 authority, (2) that any interest or involvement by such ~~director~~ board member with a
111 value in excess of \$200.00 per calendar quarter is published by the authority one time
112 in the legal organ in which notices of sheriffs' sales are published in each county
113 affected by such interest, at least 30 days in advance of consummating such
114 transaction, (3) that no ~~director~~ board member having a substantial interest or
115 involvement may be present at that portion of an authority meeting during which
116 discussion of any matter is conducted involving any such organization or person,
117 and (4) that no ~~director~~ board member having a substantial interest or involvement may
118 participate in any decision of the authority relating to any matter involving such
119 organization or person. As used in this subsection, a 'substantial interest or
120 involvement' means any interest or involvement which reasonably may be expected to

121 result in a direct financial benefit to such ~~director~~ board member as determined by the
122 authority, which determination shall be final and not subject to review.

123 (2) Nothing contained in paragraph (1) of this subsection or in Code Section 45-10-3
124 shall be deemed to prohibit any ~~director~~ board member who is present at any meeting or
125 who participates in any decision of the authority from providing legal services in
126 connection with any of the undertakings of the authority or from being paid for such
127 services.

128 (f) Each development authority shall provide to its respective county or municipal fiscal
129 officer, as the case may be, an audited financial statement if such audit has been required
130 by the respective county or municipality within six months of the end of the previous fiscal
131 year."

132 **SECTION 3.**

133 Said chapter is further amended in Code Section 36-62-5.1 relating to joint authorities by
134 revising paragraph (1) of subsection (e), as follows:

135 "(1) A joint authority created by two or more contiguous counties pursuant to this Code
136 section must be an active, bona fide joint authority; must have a board ~~of directors~~; must
137 meet at least quarterly; and must develop an operational business plan. A county may
138 belong to more than one such joint authority."

139 **SECTION 4.**

140 Said chapter is further amended in Code Section 36-6-26 relating to powers of authority
141 generally by revising paragraphs (7) and (7.1) of subsection (a), as follows:

142 "(7) Except as otherwise provided in paragraph (7.1) of this Code section, to dispose of
143 any real property for fair market value, regardless of prior development of such property
144 as a project, whenever the board ~~of directors~~ of the authority may deem such disposition
145 to be in the best interests of the authority if the board ~~of directors~~ of the authority prior

146 to such disposition shall determine that such real property no longer can be used
147 advantageously as a project for the development of trade, commerce, industry, and
148 employment opportunities;

149 (7.1) Notwithstanding any other provision of this chapter to the contrary, to dispose of
150 any real property for fair market value or any amount below fair market value as
151 determined by the board ~~of directors~~ of the authority, regardless of prior development of
152 such property as a project, whenever the board ~~of directors~~ of the authority may deem
153 such disposition to be in the best interests of the authority if the board ~~of directors~~ of the
154 authority prior to such disposition shall determine that such real property no longer can
155 be used advantageously as a project for the development of trade, commerce, industry,
156 and employment opportunities and if title to such real property is to be transferred to the
157 state;"

158

SECTION 5.

159 Said chapter is further amended in Code Section 36-62-8 relating to obligations of authority,
160 use of proceeds, status as revenue obligations, subsequent series of bonds or notes, bond
161 anticipation notes, interest rates, and issuance and validation by revising subsections (a)
162 and (f), as follows:

163 "(a) Subject to the limitations and procedures provided by this Code section, the
164 obligations of any authority evidenced by bonds, bond anticipation notes, trust indentures,
165 deeds to secure obligations, security agreements, or mortgages executed in connection
166 therewith may contain such provisions not inconsistent with law as shall be determined by
167 the board ~~of directors~~ of the authority. The authority, in such instruments, may provide for
168 the pledging of all or any part of its revenues, income, or charges and for the mortgaging,
169 encumbering, or conveying of all or any part of its real or personal property; may covenant
170 against pledging any or all of its revenues, income, or charges; and may further provide for
171 the disposition of proceeds realized from the sale of any bonds and bond anticipation notes,

172 for the replacement of lost, destroyed, stolen, or mutilated bonds and notes, and for the
173 payment and redemption of such bonds and notes. Similarly, subject to the limitations and
174 procedures of this Code section, undertakings of an authority may prescribe the procedure
175 by which bondholders and noteholders may enforce rights against the authority and may
176 provide for rights upon breach of any covenant, condition, or obligation of the authority;
177 and bonds, resolutions, trust indentures, mortgages, or deeds to secure obligations executed
178 by an authority and bond anticipation notes executed by an authority may contain such
179 provisions not otherwise contrary to law as the authority shall deem necessary or desirable.”
180 “(f) The interest rate on or rates to be borne by any bonds, notes, or other obligations
181 issued by the authority shall be fixed by the board ~~of directors~~ of the authority. Any
182 limitations with respect to interest rates found in Article 3 of Chapter 82 of this title or the
183 usury laws of this state shall not apply to obligations issued under this chapter.”

184 **SECTION 6.**

185 Said chapter is further amended by revising Code Section 36-62-9 relating to purposes of
186 chapter, issuance of bonds or bond anticipation notes, and exceptions, as follows:

187 “36-62-9.

188 The purposes of this chapter are to develop and promote trade, commerce, industry, and
189 employment opportunities for the public good and the general welfare and to promote the
190 general welfare of the state. No bonds or bond anticipation notes, except refunding bonds,
191 shall be issued by an authority under this chapter unless its board ~~of directors~~ adopts a
192 resolution finding that the project for which such bonds or notes are to be issued will
193 promote the foregoing objectives and will increase or maintain employment in the
194 territorial area of such authority. Notwithstanding the foregoing requirement:

195 (1) Bonds or bond anticipation notes may be issued to finance projects for air and water
196 pollution control facilities and for sewage and solid waste disposal facilities, as provided
197 in this chapter, without a finding that the project will increase or maintain employment,

198 so long as the appropriate certification described in this chapter has been secured from
199 the federal, state, or local agency having jurisdiction in the premises; and

200 (2) Bonds or bond anticipation notes may also be issued by an authority to finance the
201 acquisition or development of land as the site for an industrial park as provided in this
202 chapter without a finding that the project will increase or maintain employment if its
203 board of ~~directors~~ shall adopt a resolution finding that the tract of land to be included in
204 the project is not intended for use by a single enterprise; will be suitable primarily for use
205 as building sites for a group of enterprises engaged in industrial, distribution, or
206 wholesale businesses; and that either:

207 (A) The control and administration of the tract is to be vested in the authority or in
208 another county or joint county and municipal development authority (or in a
209 corporation organized under Chapter 3 of Title 14, the 'Georgia Nonprofit Corporation
210 Code') having as one of its purposes the development of trade, commerce, industry, and
211 employment opportunities; or

212 (B) The uses of such tract of land are to be regulated by protective restrictions to be
213 approved by the authority and determined by the authority to be appropriate to
214 encourage and facilitate use thereof by business enterprises engaged in industrial,
215 distribution, or wholesale businesses."

216 **SECTION 7.**

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