

House Bill 793

By: Representatives Meeks of the 178th and Werkheiser of the 157th

A BILL TO BE ENTITLED

AN ACT

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

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issuance of refunding bonds; to provide for the validation of such bonds and to fix the venue for jurisdiction of actions relating to any provision of this Act; to provide that property acquired by the authority is for public purposes; to provide for immunity and exemption from liability for torts and negligence; to provide that the property of the authority shall not be subject to levy and sale; to provide that certain moneys are trust funds; to provide for liberal construction of Act; to define the scope of the authority's operation; to provide for disposition of property upon authority dissolution; to provide for severability; to provide for a short title; to provide for related matters; 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 "Wayne County Public Facilities Authority Act."

SECTION 2.

Wayne County Public Facilities Authority.

There is created a public body corporate and politic to be known as the Wayne County Public Facilities Authority which shall be an instrumentality and a public corporation of the State of Georgia, the purpose of which shall be to acquire, construct, equip, maintain, and operate certain projects for use by Wayne County or any municipality or other political subdivision within Wayne County for its governmental, proprietary, public, and administrative functions. The authority shall not be a state institution, nor a department or agency of the state, but shall be an instrumentality of the state, a mere creation of the state, being a distinct corporate

entity and being exempt from the provisions of Article 2 of Chapter 17 of Title 50 of the O.C.G.A., the "Georgia State Financing and Investment Commission Act." The authority shall have its principal office in Wayne County, and its legal situs or residence for the purposes of this chapter shall be Wayne County.

SECTION 3.

Membership.

(a) The authority shall consist of five members appointed by the Board of Commissioners of Wayne County. All members of the authority shall be residents of the county. Each member of the board of commissioners shall appoint one member of the authority who shall be a resident of the district the commissioner represents. Authority members shall serve four-year terms of office and until their successors are 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. The authority shall elect a chairperson from among its membership, and the chairperson shall be authorized to vote on all matters before the authority. The authority shall elect a secretary and treasurer, neither of whom need necessarily be a member 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. The authority shall

promulgate 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.

(b) The board of commissioners shall attempt, but is not required to, appoint authority members with the following qualifications:

(1) One member of the authority with experience serving in a fiduciary capacity;

(2) One member with experience in grant writing;

(3) One member with experience in the field of general contracting;

(4) One member with experience in the real estate industry; and

(5) One member appointed from the local banking community.

Nothing in this subsection shall be interpreted as preventing an authority member from meeting two or more of the qualifications outlined herein.

SECTION 4.

Definitions.

As used herein, the following words and terms shall have the following meanings unless a different meaning clearly appears from the context:

(1) "Authority" shall mean the Wayne County Public Facilities Authority created by this Act.

(2) "Board of commissioners" shall mean the Board of Commissioners of Wayne County.

(3) "Cost of project" shall include the cost of lands, buildings, improvements, machinery, equipment, property, easements, rights, franchises, material, labor, services acquired or contracted for, plans and specification, financing charges, construction costs, interest prior to and during construction; architectural, accounting, engineering, inspection,

administrative, fiscal, and legal expenses; expenses incident to determining the feasibility or practicability of the project; and expenses incident to the acquiring, constructing, equipping, and operating of any project or any part thereof, and to the placing of the same in operation.

(4) "Project" shall mean and include real and personal property acquired or held by the authority, including all land, buildings, structures, sanitary and surface water sewers, and other public property determined by the authority to be desirable for the efficient operation of any department, board, office, commission, or agency of Wayne County, any municipality or other political subdivision within Wayne County, or of the State of Georgia, in the performance of its governmental, proprietary, and administrative functions.

(5) "Revenue bonds" shall mean revenue bonds issued under the provisions of Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," or under the provisions of this Act. The obligations authorized under this Act may be issued by the authority in the manner authorized under the "Revenue Bond Law."

SECTION 5.

Powers.

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

(1) To sue and be sued;

(2) To adopt and alter a corporate seal;

(3) To make and execute with public and private persons and corporations contracts, trusts, leases, rental agreements, and other instruments relating to its projects and in

furtherance of the purposes of the authority, including contracts for constructing, renting, and leasing of its projects for the use of any county or municipality in this state;

(4) To acquire in its own name by purchase on such terms and conditions and in such manner as it may deem proper or by gift, grant, lease, or otherwise, real and personal property necessary or convenient for its corporate purposes, or rights and easements therein, 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 disposition of the same in any manner it deems to the best advantage of the authority. Title to any such property shall be held by the authority exclusively for the benefit of the public;

(5) To improve, extend, add to, reconstruct, renovate, or remodel any project or part thereof already acquired;

(6) To pledge or assign any revenues, income, rent, charges, and fees received by the authority;

(7) To appoint and select agents, engineers, architects, attorneys, fiscal agents, accountants, and employees and to provide for their compensation and duties;

(8) To construct, reconstruct, acquire, own, alter, repair, remodel, maintain, extend, improve, operate, manage, and equip projects located on land owned or leased by the authority;

(9) To receive, accept, and use any contributions, loans, or grants by persons, firms, or corporations, including the State of Georgia and the United States of America or any agency or instrumentality thereof, and any other contributions;

(10) To pay all or part of the costs of any project from the proceeds of revenue bonds of the authority or from other lawful sources available to it;

(11) To prescribe rules and regulations for the operation of and to exercise police powers over the projects managed or operated by the authority;

(12) To accept, receive, and administer gifts, grants, loans and devises of money, material, and property of any kind, including loans and grants from the State of Georgia

or the United States of America or any agency or instrumentality thereof, upon such terms and conditions as the State of Georgia or the United States of America or such agency or instrumentality may impose;

(13) To sell, lease, exchange, transfer, assign, pledge, mortgage, dispose of, grant in trust, or grant options for any real or personal property or interest therein in furtherance of the purposes of the authority;

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

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

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

(17) Pursuant to proper resolution of the authority, to issue revenue bonds payable from the rents and revenues of the authority and its projects, which bonds may be issued in either fully negotiable coupon form, in which event they shall have all the qualities and incidents of negotiable instruments under the laws of this state, or they may be issued in whole or in part in nonnegotiable fully registered form without coupons, payable to a designated payee or to the registered assigns of the payee with such conversion privileges as the authority may provide, for the purpose of paying all or any part of the cost associated with the projects authorized by the authority, including the cost of constructing, reconstructing, equipping, extending, adding to, or improving such projects,

or for the purpose of refunding, as herein provided, any such bonds of the authority theretofore issued. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such bonds were issued, the surplus shall be paid into the fund provided for the payment of principal and interest on such bonds. All such revenue bonds shall be issued and validated under and in accordance with the procedure of Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," and in accordance with all terms and provisions thereof not in conflict herewith and in accordance with Code Section 50-17-1 of the O.C.G.A., relating to use of facsimile signatures on public securities authorized, and, as security for the payment of any revenue bonds so authorized, any rents and revenue of the authority may be pledged and assigned. Such bonds are declared to be issued for an essential public and governmental purpose, and such bonds and all income therefrom shall be exempt from all taxation within the State of Georgia. For the purpose of the exemption from taxation of such bonds and the income therefrom, the authority shall be deemed to be a political subdivision of the State of Georgia.

(b) Notwithstanding anything in this Act to the contrary:

(1) The authority shall not spend any revenues on any new facility until:

(A) The general obligation bonds for the Wayne Memorial Hospital outstanding on the effective date of this Act are paid in full and a new special purpose local option sales tax is approved by the voters of the county following the effective date of this act; or

(B) Such spending is deemed necessary by a vote of at least four members of the board of commissioners; and

(2) The authority may not spend any revenues on remodeling or restoring any existing facilities until:

(A) The general obligation bonds for the Wayne Memorial Hospital outstanding on the effective date of this Act are paid in full; or

195 (B) Such spending is deemed necessary by a majority vote of the board of
196 commissioners.

197 **SECTION 6.**

198 Credit not pledged and debt not created by bonds.

199 Revenue bonds issued under the provisions of this Act shall not constitute a debt or a pledge
200 of the faith and credit of the State of Georgia or Wayne County; but such bonds shall be
201 payable from the rentals, revenue, earnings, and funds of the authority as provided in the
202 resolution, trust agreement, or indenture authorizing the issuance and securing the payment
203 of such bonds. The issuance of such bonds shall not directly, indirectly, or contingently
204 obligate the state or said county to levy or pledge any form of taxation whatever for the
205 payment thereof. No holder of any bond or receiver or trustee in connection therewith shall
206 have the right to enforce the payment thereof against any property of the state or of said
207 county, nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable,
208 upon any such property. All such bonds shall contain on their face a recital setting forth
209 substantially the foregoing provisions of this section.

210 **SECTION 7.**

211 Trust agreement.

212 In the discretion of the authority, any issue of revenue bonds may be secured by an
213 agreement or indenture made by the authority with a corporate trustee, which may be any
214 trust company or bank having the powers of a trust company within or without this state.
215 Such trust agreement or indenture may pledge and assign rents, fees, charges, revenues, and
216 earnings to be received by the authority. The resolution providing for the issuance of
217 revenue bonds and such trust agreements or indenture may contain provisions for protecting

and enforcing the rights and remedies of the bondholders, including the right of appointment of a receiver upon default of the payment of any principal or interest obligation and the right of any receiver or trustee to enforce collection of any rents, fees, charges, or revenues for use of the project or projects necessary to pay all costs of operation and all reserves provided for, all principal and interest on all bonds of the issue, all costs of collection, and all other costs reasonably necessary to accomplish the collection of such sums in the event of any default of the authority. Such resolution and such trust agreement or indenture may include covenants setting forth the duties of the authority in relation to the acquisition of property for and construction of the project and to the custody, safeguarding, and application of all funds and covenants providing for the operation, maintenance, repair, and insurance of the project or projects and may contain provisions concerning the conditions, if any, upon which additional revenue bonds may be issued. Such trust agreement or indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in securing bonds and debentures of corporations and may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out such trust may be treated as a part of the cost of maintenance, operation, and repair of the project affected by such trust.

SECTION 8.

Refunding bonds.

The authority is authorized to provide by resolution for the issuance of revenue bonds of the authority for the purpose of calling, refunding, or refinancing any revenue bonds issued under the provisions hereof and then outstanding and to include in the amount of such refunding bonds all interest and any call premiums that may be required for the redemption and refunding of such outstanding bonds.

SECTION 9.

Venue of actions, jurisdiction.

Any action to protect or enforce any rights under the provisions hereof or any action against the authority brought in the courts of the State of Georgia shall be brought in the Superior Court of Wayne County; and any action pertaining to validation of any bonds issued under the provisions hereof shall be brought in said court, which shall have exclusive, original jurisdiction of such actions.

SECTION 10.

Revenue bond validation.

The petition for validation of all revenue bonds of the authority shall be brought against the authority, and any contracting party whose obligation is pledged as security for the payment of the bonds sought to be validated, as defendants, and the defendants shall be required to show cause, if any exists, as to why such contract or contracts and the terms and conditions thereof shall not be adjudicated to be in all respects valid and binding upon such contracting parties. It shall be incumbent upon such defendants to defend against adjudication of the validity and binding effect of such contract or contracts or be forever bound thereby. Notice of such proceedings shall be included in the notice of the validation hearing required to be issued and published by the clerk of the Superior Court of Wayne County in which court such validation proceedings shall be initiated.

SECTION 11.

Interest of bondholders protected.

While any of the bonds issued by the authority remain outstanding, the powers, duties, or existence of the authority or of its officers, employees, or agents shall not be diminished, impaired, or affected in any manner that will affect adversely the interest and rights of the holders of such bonds. The provisions hereof shall be for the benefit of the authority and the holders of any such bonds and, upon the issuance of bonds under the provisions hereof, shall constitute a contract with the holders of such bonds.

SECTION 12.

Revenues, earnings, rents, and charges; use.

(a) For the purpose of earning sufficient revenue to make possible the financing of the construction of the project or projects of the authority with revenue bonds, the authority is authorized and empowered to fix, revise, and collect rents, fees, and charges on each project which it shall cause to be acquired or constructed. Such rents, fees, or charges to be paid for the use of such project or projects shall be so fixed and adjusted as to provide a fund sufficient with other revenue, if any, of such project or projects or of the authority to:

(1) Pay the cost of operating, maintaining, and repairing the project or projects, including reserves for insurance and extraordinary repairs and other reserves required by the resolution or trust agreement or indenture pertaining to such bonds and the issuance thereof, unless such cost shall be otherwise provided for;

(2) Pay the principal of and interest on such revenue bonds as the same shall become due, including call premium, if any, the proceeds of which shall have been or will be used to pay the cost of such project or projects;

(3) Comply with any sinking fund requirements contained in the resolution or trust agreement or indenture pertaining to the issuance of and security for such bonds;

(4) Perform fully all provisions of such resolution and trust agreement or indenture relating to the issuance of or security for such bonds to the payment of which such rent is pledged;

(5) Accumulate any excess income which may be required by the purchasers of such bonds or may be dictated by the requirements of such resolution, trust agreement, or indenture, or of achieving ready marketability of and low interest rates on such bonds; and

(6) Pay any expenses in connection with such bond issue or of such project or projects, including but not limited to trustees', attorneys', and fiscal agents' fees.

(b) Such rent shall be payable at such intervals as may be agreed upon and set forth in the rental contract or lease providing therefor, and any such contract or lease may provide for the commencement of rent payments to the authority prior to the completion of the undertaking by the authority of any such project and may provide for the payment of rent during such times as such project or projects may be partially or wholly untenable.

(c) Such rental contract or lease may obligate the tenants or lessees to operate, maintain, and keep in good repair, including complete reconstruction, if necessary, the rented or leased premises and projects, regardless of the cause of the necessity of such maintenance, repair, or reconstruction.

(d) Such rental contract or lease may obligate the tenants or lessees to indemnify and save harmless the authority from any and all damage to persons and property occurring on or by reason of the leased property or improvements thereon and to undertake, at the expense of the tenants or lessees, the defense of any action brought against the authority by reason of injury or damages to persons or property occurring on or by reason of the leased premises.

(e) In the event of any failure or refusal on the part of the tenants or lessees to perform punctually any covenant or obligation contained in any such rental contract or lease, the authority may enforce performance by any legal or equitable process against the tenants or lessees.

(f) The authority shall be permitted to assign any rent payable to it, pursuant to such rental contract or lease, to a trustee or paying agent as may be required by the terms of the resolution or trust agreement or indenture relating to the issuance of and security for such bonds.

(g) The use and disposition of the authority's revenue shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of the trust agreement or indenture, if any, securing the same.

SECTION 13.

Sinking fund.

The revenue, rents, and earnings derived from any particular project or projects and any and all revenue, rents, and earnings received by the authority, regardless of whether such revenue, rents, and earnings were produced by a particular project for which bonds have been issued, unless otherwise pledged, may be pledged by the authority to payment of the principal of and interest on revenue bonds of the authority as may be provided in any resolution authorizing the issuance of such bonds or in any trust instrument pertaining to such bonds, and such funds so pledged, from whatever source received, may include funds received from one or more or all sources and may be set aside at regular intervals into sinking funds for which provision may be made in any such resolution or trust instrument and which may be pledged to and charged with the payment of the interest upon such revenue bonds as such interest shall become due, the principal of the bonds as the same shall mature, the necessary charges of any trustee or paying agent for paying such principal and

337 interest, and any premium upon bonds retired by call or purchase. The use and disposition
338 of any sinking fund may be subject to such regulation as may be provided for in the
339 resolution authorizing the issuance of the bonds or in the trust instrument securing the
340 payment of the same.

341 **SECTION 14.**

342 Property acquired for public purpose.

343 The exercise of the powers conferred upon the authority hereunder shall constitute an
344 essential governmental function for a public purpose, and to the extent permitted by the
345 general laws of this state, the authority shall be required to pay no taxes or assessments upon
346 any of the property acquired by it or under its jurisdiction, control, possession, or supervision
347 or upon its activities in the operation and maintenance of property acquired by it or of
348 buildings or other improvements erected or acquired by it or any fees, rents, or other charges
349 for the use of such property or buildings or improvements or other income received by the
350 authority. Nothing herein provided shall include an exemption from sales and use tax on
351 property purchased by or for the use of the authority.

352 **SECTION 15.**

353 Immunity from tort actions.

354 The authority shall have the same immunity and exemption from liability for torts and
355 negligence as the State of Georgia; and the officers, agents, and employees of the authority,
356 when in performance of work of the authority, shall have the same immunity and exemption
357 from liability for torts and negligence as officers, agents, and employees of the State of
358 Georgia. The authority may be sued the same as private corporations on any contractual
359 obligation of the authority.

360 **SECTION 16.**

361 Property not subject to levy and sale.

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

363 **SECTION 17.**

364 Trust funds.

365 All funds received pursuant to authority of Section 12, whether as proceeds from the sale of
366 revenue bonds or as revenue, rents, fees, charges, or other earnings or as grants, gifts, or
367 other contributions, shall be deemed to be trust funds to be held and applied by the authority,
368 solely as provided herein. The bondholders entitled to receive the benefits of such funds
369 shall have a lien on all such funds until the same are applied as provided for in any such
370 resolution or trust instrument of the authority.

371 **SECTION 18.**

372 Construction.

373 This Act and any other law enacted with reference to the authority shall be liberally
374 construed for the accomplishment of its purposes.

375 **SECTION 19.**

376 Scope of operations.

377 The projects of the authority's operation shall be located in the territory embraced within the
378 jurisdictional limits of Wayne County as the same now or may hereafter exist.

379 **SECTION 20.**

380 Conveyance of property upon dissolution.

381 Should the authority for any reason be dissolved after full payment of all bonded
382 indebtedness incurred hereunder, both as to principal and interest, title to all property of any
383 kind and nature, real and personal, held by the authority at the time of such dissolution shall
384 be conveyed to Wayne County. The title to any such property may be conveyed prior to such
385 dissolution in accordance with provisions which may be made therefor in any resolution or
386 trust instrument relating to such property, subject to any liens, leases, or other encumbrances
387 outstanding against or in respect to said property at the time of such conveyance.

388 **SECTION 21.**

389 Effect of partial invalidity of Act.

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

395 **SECTION 22.**

396 Repealer.

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