House Bill 536

By: Representatives Jackson of the 68th and Glaize of the 67th

A BILL TO BE ENTITLED

AN ACT

To create the Public Facilities Authority of the City of Fairburn; to provide for a short title and definitions; to confer powers and impose duties on the authority; to provide for the membership of the authority and their terms of office, qualifications, duties, powers, and compensation; to provide for a quorum; to provide for the issuance and sale of revenue bonds and other obligations 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 revenue bonds and other obligations; to provide for trust indentures; to provide for payment of proceeds of revenue bonds and other obligations; to provide for remedies and protection of holders of revenue bonds and other obligations; to provide for refunding revenue bonds and other obligations; to provide for validation; to provide for venue and jurisdiction; to provide for trust funds; to provide for charges; to provide for tort immunity; to provide for tax exemptions and exemptions from levy and sale; to provide for area of operation; to provide for supplemental powers; to provide for effect on other governments; to provide for conveyance of property upon dissolution; to provide for liberal construction; to provide for severability; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Short title.

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

SECTION 2.

Definitions.

As used in this Act, the following words and terms shall have the meaning specified unless the context or use clearly indicates a different meaning or intent:

(1) "Authority" means the Public Facilities Authority of the City of Fairburn created by this Act.

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

(3) "Cost of the project" shall include:

(A) The cost of construction;

(B) The cost of all land and 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 fixtures, furnishings, machinery, and equipment;

(E) Issuance costs, including, but not limited to fees or discounts of underwriters or placement agents, the funding of reserve accounts, financing charges including interest prior to and during the construction or acquisition of any project and for up to one year after such project is placed into 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 the financing or refinancing thereof, and such other expenses as may be necessary or incident to the financing or refinancing of a project herein authorized; the acquisition, construction, renovation, reconstruction, or remodeling of a project; and the placing of the same in operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as 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 or other obligations issued under the provisions hereof for any such project or projects and the proceeds of the sale of any contracts, lease agreements, or installment sales agreements or the amounts payable thereunder, either directly or by the creation of interests therein.

(4) "County" means Fulton County, Georgia.

(5) "Obligations" means and includes revenue bonds, bond anticipation notes, other promissory notes, certificates of participation, custodial receipts, or other similar instruments creating interests in any contracts, lease agreements, or installment sales agreements or in the amounts payable to the authority, directly or indirectly, thereunder.

(6) "Private person" means any individual or any legal entity, other than a public body, whether operated for profit or not for profit.

(7) "Project" means any capital project located or to be located in the city that is determined by the authority to promote the public good or general welfare of the citizens of the city, of the county, or of the state, or any of its enterprises or systems, including, but not limited to, the acquisition, construction, renovation, improvement, extension, addition, or equipping within the city 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 and systems;

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

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

(D) Public safety facilities, including prisons, jails, police stations, facilities, or equipment, and state patrol or other law enforcement facilities or equipment;

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

(F) Administrative facilities or equipment, including city hall buildings and other governmental buildings; and

(G) Courthouses, public libraries, and other facilities to be leased or subleased, operated, or otherwise used by the authority or any other public body or any private person.

(8) "Public bodies" means and includes any county, political subdivision, or municipality of the state, and any state or local government agency, department, authority, agency, board, or instrumentality, each being a "public body."

(9) "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., known as the "Revenue Bond Law."

(10) "State" means the State of Georgia.

SECTION 3.

Creation of authority; purpose.

There is created a body corporate and politic to be known as the "Public Facilities Authority of the City of Fairburn," 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 and proprietary powers. The authority is created for the purpose of promoting the public good and general welfare of the citizens of the city, and financing and providing facilities, equipment, and services within the city, for sale to, lease or sublease to, or operation by any public body or any private person. In connection with the exercise of any of its powers, the members of the authority may make findings or determinations that the exercise of its powers as proposed will promote the public good and general welfare, and assist public bodies in providing facilities, equipment, and services in the city, and such findings or determinations, if made, shall be conclusive and binding and shall not be subject to review.

SECTION 4.

Powers of the authority.

The authority shall have the power:

(1) To sue and be sued;

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

(3) To acquire, construct, purchase, hold, own, lease as lessee, expand, improve, renovate, repair, maintain, and operate real and personal property or interests therein;

(4) To enter into contacts for operation, management, maintenance, and repair of any of its property;

(5) To sell, lease as lessor, or otherwise transfer, pledge, or dispose of any real and personal property or interests therein. In connection with any such lease, sale, transfer, assignment, or other disposition, the authority need not comply with any other provision of law requiring public bidding or any notice to the public of such lease, sale, transfer, assignment, or other disposition;

(6) 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, such authority

being expressly declared to be a "public corporation" or a "public authority" within the meaning of such provision of the Constitution of Georgia;

(7) To acquire projects and other property 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 therein which is subject to the control of any other public body, then such other public body is hereby authorized to convey or lease 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 such other public body, taking into consideration the public benefit to be derived from such conveyance, lease, or usufruct. Any public body may transfer such real property or interest therein without regard to any determination as to whether or not such property or interest therein is surplus;

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

(9) 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;

(10) To make and execute with one or more public bodies and private persons contracts, lease agreements, rental agreements, installment sale agreements, and other instruments relating to the property of the authority 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 other public bodies and, without limiting the generality of the foregoing, authority is specifically granted to the authority and to other public bodies to enter into contracts, lease agreements, rental agreements, installment sale agreements, and related agreements with each other relating to the provision of any project or services for a term not exceeding 50 years, as provided in Article IX, Section III, Paragraph I(a) of the Constitution of Georgia;

(11) To be a co-owner, along with other public bodies or, to the extent allowed by the Constitution of the state, private persons of any property, if the authority finds and determines that such co-ownership is in the best interests of the authority and will serve the public purposes of the authority;

(12) To purchase policies of insurance as may be deemed appropriate for its corporate purposes;

(13) To operate, 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 trust 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 lease, sale, transfer, assignment, or other disposition, the authority need not comply with any other provision of law requiring public bidding or any notice to the public of such lease, sale, transfer, assignment, or other disposition;

(14) To accept loans and grants of money or property of any kind from the United States or any public body or private person, and all public bodies are authorized to make grants to the authority, subject to any limitations in the Constitution of Georgia;

(15) To borrow money for any of its corporate purposes and to issue revenue bonds and other obligations payable from funds or revenues of the authority pledged for that purpose and to pledge and assign any of its revenues, income, rents, charges, and fees to provide for the payment of the same and to provide for the rights of the holders of such obligations;

(16) 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 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;

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

(18) 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;

(19) To issue revenue bonds or other obligations to finance or refinance any project which may be financed by the city; and

(20) To have and exercise the usual powers of private corporations, except such as are inconsistent with this Act, and to do any and all things necessary and convenient to accomplish the purpose and powers of the authority as herein stated.

SECTION 5.

Members of the authority; terms of office.

Each person who is serving on the board of directors of the Development Authority of the City of Fairburn shall be by virtue of such office also a member of the authority and shall serve on the governing board of the authority so long as such person serves on the board of directors of the Development Authority of the City of Fairburn. The members of the authority shall hold office for terms coinciding with their terms on the board of directors of the Development Authority of the City of Fairburn. In the event that the number of members of the board of directors of the Development Authority of the City of Fairburn is changed, then the number of members of the authority shall be correspondingly changed. Immediately after their official seating on the board of directors of the Development Authority of the City of Fairburn, each member of the authority shall enter upon their duties. A majority of the members of the authority holding office at any time 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 and other obligations. The authority shall elect one of its members as chairperson, and from its membership shall elect a secretary and a treasurer. The authority may elect one of its members as a vice chairperson and may elect any number of assistant secretaries or treasurers, who need not be members of the authority, 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 may be reimbursed for their actual expenses necessarily incurred in the performance of their duties. The authority may 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 and other obligations.

The authority shall have the 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., known as the "Revenue Bond Law," and may issue other obligations 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 herein provided, any such bonds or other obligations of the authority or to refund bonds or other obligations of 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 or other obligations 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 or other obligations. Such revenue bonds or other obligations 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 or other obligations shall not be subject to any provision of state 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. Such revenue bonds or other obligations may be issued for cash, property, or other consideration and may be sold in a negotiated sale or in a public sale at such price on such terms as the authority may determine. The offer, sale, or issuance of the authority's revenue bonds or other obligations (including any separate securities securing the same) shall not be subject to regulation under Chapter 5 of Title 10 of the O.C.G.A., the "Georgia Uniform Securities Act of 2008," as the same may be amended from time to time.

SECTION 7.

Revenue bonds or other obligations not a debt or general obligation.

Revenue bonds or other obligations 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 any other public body, 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 any public body to levy or to pledge any form of taxation whatsoever for the payment thereof, unless otherwise provided by an intergovernmental contract executed by such public body. No holder of any bond or other obligation or receiver or trustee in connection therewith shall have the right to enforce the payment thereof against any property of any other public body nor shall any such bond or other obligation constitute a charge, lien, or encumbrance, legal or equitable, upon any such property unless otherwise provided by an intergovernmental contract executed by such other public body and the authority. All such obligations shall contain on their face a recital setting forth substantially the foregoing provisions of this section. Nothing in this section shall be construed to prohibit any other public body from obligating itself to pay the amounts required under any intergovernmental contract entered into with the authority pursuant to Article IX of the Constitution of Georgia or any successor provision, including (if such other public body has taxing power) from funds received from taxes to be levied and collected by such other public body for that purpose and from any other source.

SECTION 8.

Issuance of bonds or obligations under indentures or resolutions.

In the discretion of the authority, any issuance of such revenue bonds 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 the state. 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, or operation 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 financing 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 revenue bonds or other obligations; and may contain provisions concerning the conditions, if any, upon which additional bonds or other obligations may be issued, whether on a parity with or subordinate to any other obligations issued by the authority. Such indenture or resolution may set forth the rights and remedies of the owners of such obligations and of the trustee. In addition to the foregoing, such trust indenture 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 may be treated as a part of the cost of maintenance, operation, and repair of the project affected by such indenture.

SECTION 9.

Security for the payment of bonds or other obligations.

The authority may assign or pledge any property, or revenues and its interest in any contracts, lease agreements, or installment sales agreements, or the amounts payable thereunder, to the payment of the principal and interest on revenue bonds and other obligations of the authority as the resolution authorizing the issuance of the bonds or other obligations 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 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 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 10.

Refunding bonds or obligations.

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

SECTION 11.

Principal office; venue.

The principal office of the authority shall be in the City of Fairburn, and the venue of any action against it shall be in Fulton County. 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 12.

Validation of revenue bonds; elective validation of other obligations.

Revenue bonds of the authority shall be confirmed and validated in accordance with the procedure now or hereafter set forth in Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known as the "Revenue Bond Law," as the same now exists or may hereafter be amended. At the election of the authority, other obligations of the authority may be validated as if they were revenue bonds. The petition for validation shall name the authority as a defendant and may also make a party defendant to such action any other private person or public body that has or will contract with the authority with respect to the project for which revenue bonds or other obligations are to be issued and are sought to be validated. The bonds or other obligations, when validated, and the judgment of validation shall be final and conclusive with respect to the validity of such bonds or other obligations and the security therefor against the authority and other parties to the validation and against all other private persons and public bodies, regardless of whether such private persons or public bodies were parties to such validation proceedings. Any action pertaining to the validation of any revenue bonds or other obligations issued under the provisions of this Act and for the validation of any instruments entered or to be entered into by the authority or other private persons or public bodies securing the same shall be brought in the Superior Court of Fulton County, and such court shall have exclusive original jurisdiction of such actions.

SECTION 13.

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 of 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 of this Act shall be for the benefit of the authority and of 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 14.

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 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 for investments of a development authority created under Code Section 36-62-1, et seq. of the O.C.G.A.

SECTION 15.

Power to set rates, fees, and charges.

The authority is authorized to operate, sell, or lease any project and to prescribe and fix 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, and subleases of its projects, and to determine the price and terms at and under which its projects may be sold, leased, or otherwise disposed of. The authority may establish in its discretion procedures for contracting for any work done for the authority or for the acquisition, sale, transfer, lease, management, or operation of any property, real or personal, of the authority. The authority may contract with others, including private persons, for services relating to the management, operation, sale, or leasing of any project.

SECTION 16.

Revenue bonds or other obligations exempt from taxation.

All revenue bonds or other obligation 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 17.

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 such property and all interests therein shall be exempt from ad valorem taxation. The exercise of the powers conferred upon the authority hereunder 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 acquired or erected 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 herein provided shall include an exemption from any tax on rents from the leasing or subleasing of any project or other property of the authority, but shall not include an exemption from sales and use tax on property purchased by or for the use of the authority.

SECTION 18.

Immunity of authority and members.

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

SECTION 19.

Authority property not subject to levy and sale.

The property of the authority shall not be subject to levy and sale under legal process, except this provision shall not preclude a sale or foreclosure of any property under the terms of any deed to secure debt, mortgage, assignment, or security agreement that the authority has executed.

SECTION 20.

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, as the same now or may hereafter exist; provided, however, that nothing in this section shall prevent the authority from contracting with any entity or body, public or private, outside of the city with respect to any project located in the city or located outside of the city in furtherance of its public purposes.

SECTION 21.

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 22.

No power to impose taxes or exercise power of eminent domain.

The authority shall not have the right to impose any tax on any person or property and shall not have the right to exercise the power of eminent domain.

SECTION 23.

Conveyance of property upon dissolution.

Should the authority for any reason be dissolved after full payment of all revenue bonds and other obligations of the authority and the termination of any leases, contracts, or options to which the authority is a party, the interest and any redemption premiums thereon, title to the items of property, and funds of the authority held at the time of dissolution shall, prior to such dissolution, be conveyed and transferred to such one or more public bodies, as the authority shall elect.

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.