

Senate Bill 621

By: Senators Dixon of the 45th, Cowser of the 46th and Ginn of the 47th

AS PASSED SENATE

A BILL TO BE ENTITLED
AN ACT

1 To create the Barrow County Public Facilities Authority; to provide for the appointment of
2 members of the Authority; to provide for a short title; to confer powers upon the Authority;
3 to provide for purpose and scope of operations of the Authority; to provide for definitions;
4 to authorize the issuance of revenue bonds of the Authority; to fix and provide the venue and
5 jurisdiction of actions; to provide for moneys received and trust funds; to provide for tort
6 immunity; to provide for tax exemption, rates, charges, and revenues; to provide for effect
7 on other governments; to provide for construction and severability; to provide for related
8 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Short title.

12 This Act shall be known and may be cited as the "Barrow County Public Facilities Authority
13 Act."

S. B. 621

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14

SECTION 2.

15

Barrow County Public Facilities Authority.

16 (a) There is hereby created a public body corporate and politic to be known as the "Barrow
17 County Public Facilities Authority," which shall be deemed to be a political subdivision of
18 the state and a public corporation, and by that name, style, and title such body may contract
19 and be contracted with, sue and be sued, implead and be impleaded, and complain and defend
20 in all courts of law and equity. The Authority shall have perpetual existence.

21 (b) The Authority shall consist of five members. One member shall be the chairperson of
22 the Board of Commissioners of Barrow County, two members shall be members of the Board
23 of Commissioners of Barrow County, and two members shall be residents of Barrow County
24 appointed by the Board of Commissioners of Barrow County. The terms of office of the
25 members who are also the chairperson and members of the Board of Commissioners of
26 Barrow County shall be concurrent with their terms of office as the chairperson and members
27 of the Board of Commissioners of Barrow County. The remaining appointments shall be
28 made for terms of four years and until successors are appointed and qualified. Immediately
29 after such appointments, the members of the Authority shall enter upon their duties. To be
30 eligible for appointment as a member of the Authority, a person shall be at least 21 years of
31 age, a resident of Barrow County, and shall not have been convicted of a felony. Any
32 member of the Authority may be selected and appointed to succeed himself or herself. A
33 member may be removed from office by the Board of Commissioners of Barrow County for
34 failure to perform the appropriate duties of membership.

35 (c) The members shall not be compensated for their services; provided, however, that such
36 members shall be reimbursed for their actual expenses necessarily incurred in the
37 performance of their duties.

38 (d) The Board of Commissioners shall appoint a member of the Authority who is also a
39 member of the Board of Commissioners as the chairperson of the Authority. The members

40 of the Authority may elect one of its members as vice chairperson. The members of the
41 Authority shall also elect a secretary, who need not be a member of the Authority, and may
42 also elect a treasurer, who need not be a member of the Authority. The secretary may also
43 serve as treasurer. If the secretary and treasurer are not members of the Authority, such
44 officers shall have no voting rights, and each shall serve for a period of one year and until
45 their successors are duly elected and qualified.

46 (e) A majority of members of the Authority shall constitute a quorum. No vacancy on the
47 Authority shall impair the right of the quorum to exercise all of the rights and perform all of
48 the duties of the Authority.

49 **SECTION 3.**

50 **Definitions.**

51 As used in this Act, the term:

52 (1) "Authority" means the Barrow County Public Facilities Authority created by this Act.

53 (2) "Costs of the project" means and embraces the cost of construction; the cost of all
54 lands, properties, rights, easements, and franchises acquired; the cost of all machinery and
55 equipment; financing charges; interest prior to and during construction and for six months
56 after completion of construction; the cost of engineering, architectural, fiscal agents'
57 expenses, legal expenses, plans and specifications, and other expenses necessary or
58 incidental to determining the feasibility or practicability of the project; administrative
59 expenses and such other expenses as may be necessary or incidental to the financing
60 authorized in this Act; working capital; and all other costs necessary to acquire, construct,
61 add to, extend, improve, equip, operate, and maintain the project.

62 (3) "Project" means all buildings, facilities, and equipment necessary or convenient for
63 the efficient operation of the county or any department, agency, division, or commission
64 thereof permitted by the Revenue Bond Law.

65 (4) "Revenue Bond Law" means Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the
66 "Revenue Bond Law."

67 (5) "Revenue bonds" means revenue bonds authorized to be issued pursuant to the
68 Revenue Bond Law.

69 (6) "Self-liquidating" means any project from which the revenues and earnings to be
70 derived by the Authority therefrom, including, but not limited to, any contractual
71 payments with governmental or private entities, and all properties used, leased, and sold
72 in connection herewith, together with any grants, will be sufficient to pay the costs of
73 operating, maintaining, and repairing the project and to pay the principal and interest on
74 the revenue bonds or other obligations which may be issued for the purpose of paying the
75 costs of the project.

76 (7) "State" means the State of Georgia.

77 **SECTION 4.**

78 Powers.

79 The Authority shall have the power:

80 (1) To have a seal and alter the same at its pleasure;

81 (2) To acquire by purchase, lease, gift, condemnation, or otherwise and to hold, operate,
82 maintain, lease, and dispose of real and personal property of every kind and character for
83 its corporate purposes;

84 (3) To acquire in its own name by purchase on such terms and conditions and in such
85 manner as it may deem proper or by condemnation in accordance with the provisions of
86 any and all existing laws applicable to the condemnation of property for public use, real
87 property, or rights or easements therein, or franchises necessary or convenient for its
88 corporate purposes, to use the same so long as its corporate existence shall continue, and
89 to lease or make contracts with respect to the use of or disposal of the same in any

90 manner it deems to be the best advantage of the Authority. The Authority shall be under
91 no obligation to accept and pay for any property condemned under this Act except from
92 the funds provided under the authority of this Act. In any proceedings to condemn, such
93 orders may be made by the court having jurisdiction of the suit, action, or proceedings
94 as may be just to the Authority and to the owners of the property to be condemned. No
95 property shall be acquired under the provisions of this Act upon which any lien or
96 encumbrance exists, unless, at the time such property is so acquired, a sufficient sum of
97 money is to be deposited in trust to pay and redeem the fair value of such lien or
98 encumbrance;

99 (4) To appoint, select, and employ officers, agents, and employees, including
100 engineering, architectural, and construction experts, fiscal agents, and attorneys, and to
101 fix their respective compensations;

102 (5) To execute contracts, leases, installment sale agreements, and other agreements and
103 instruments necessary or convenient in connection with the acquisition, construction,
104 addition, extension, improvement, equipment, operation, or maintenance of a project; and
105 any and all persons, firms, corporations, and Barrow County are hereby authorized to
106 enter into contracts, leases, installment sale agreements, and other agreements or
107 instruments with the Authority upon such terms and for such purposes as they deem
108 advisable and as they are authorized by law;

109 (6) To acquire, construct, add to, extend, improve, equip, hold, operate, maintain, lease,
110 and dispose of projects;

111 (7) To pay the costs of the project with the proceeds of revenue bonds or other
112 obligations issued by the Authority or from any grant or contribution from the United
113 States or any agency or instrumentality thereof or from this state or any agency or any
114 instrumentality or other political subdivision thereof or from any other source
115 whatsoever;

- 116 (8) To accept loans or grants of money, materials, or property of any kind from the
117 United States or any agency or instrumentality thereof, upon such terms and conditions
118 as the United States or such agency or instrumentality may require;
- 119 (9) To accept loans or grants of money, materials, or property of any kind from this state
120 or any agency, instrumentality, political subdivision, or municipal corporation thereof,
121 upon such terms and conditions as this state or such agency, instrumentality, political
122 subdivision, or municipal corporation may require;
- 123 (10) To borrow money for any of its corporate purposes, to issue revenue bonds, and to
124 provide for the payment of the same and for the rights of the holders thereof;
- 125 (11) To exercise any power usually possessed by private corporations performing similar
126 functions, including the power to incur short-term debt and to approve, execute, and
127 deliver appropriate evidence of any such indebtedness;
- 128 (12) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the
129 manner in which its business is transacted; and
- 130 (13) To do all things necessary or convenient to carry out the powers expressly given in
131 this Act.

132 **SECTION 5.**

133 Revenue bonds.

134 The Authority, or any authority or body which has or which may in the future succeed to the
135 powers, duties, and liabilities vested in the Authority created by this Act, shall have power
136 and is authorized, pursuant to the Revenue Bond Law, to provide by resolution for the
137 issuance of revenue bonds of the Authority for the purpose of paying all or any part of the
138 costs of a project and for the purpose of refunding revenue bonds or other obligations
139 previously issued; provided, however, that no such revenue bonds shall be issued to finance
140 a project for the Barrow County School District or any other political subdivision or

141 municipal corporation of the state located within Barrow County other than Barrow County.
142 Revenue bonds shall be undertaken, issued, priced, validated, sold, paid, redeemed, refunded,
143 secured, and replaced in accordance with the provisions of the Revenue Bond Law.

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SECTION 6.

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Revenue bonds; conditions precedent to issuance.

146 The Authority shall adopt a resolution authorizing the issuance of revenue bonds. In the
147 resolution, the Authority shall determine that the project financed with the proceeds of such
148 revenue bonds is self-liquidating. Revenue bonds may be issued without any other
149 proceedings or the happening of any other conditions or obligations other than those
150 proceedings, conditions, and obligations which are specified or required by this Act. Any
151 resolution providing for the issuance of revenue bonds under the provisions of this Act shall
152 become effective immediately upon its passage and need not be published or posted, and any
153 such resolution may be passed at any regular, special, or adjourned meeting of the Authority
154 by a majority of its members present and voting.

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SECTION 7.

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Credit not pledged.

157 Revenue bonds of the Authority shall not be deemed to constitute a debt of Barrow County
158 or the State of Georgia, nor a pledge of the faith and credit of this state or such county, but
159 such revenue bonds shall be payable solely from the fund provided for in this Act. The
160 issuance of such revenue bonds shall not directly, indirectly, or contingently obligate this
161 state or such county to levy or pledge any form of taxation whatsoever for payment of such
162 revenue bonds or to make any appropriation for their payment, and all such revenue bonds
163 shall contain recitals on their face covering substantially the foregoing provisions of this

164 section. Notwithstanding the foregoing provisions, this Act shall not affect the ability of the
165 Authority and any political subdivision to enter into an intergovernmental contract pursuant
166 to which the political subdivision agrees to pay amounts sufficient to pay operating charges
167 and other costs of the Authority or any project including, without limitation, the principal of
168 and interest on revenue bonds in consideration for services or facilities of the Authority.

169 **SECTION 8.**

170 Trust indenture as security.

171 In the discretion of the Authority, any issuance of revenue bonds may be secured by a trust
172 indenture by and between the Authority and a corporate trustee, which may be any trust
173 company or bank having the powers of a trust company within or without this state. Either
174 the resolution providing for the issuance of the revenue bonds or such trust indenture may
175 contain such provisions for protecting and enforcing the rights and remedies of the
176 bondholders as may be reasonable and proper and not in violation of law, including
177 covenants setting forth the duties of the Authority in relation to the acquisition and
178 construction of the project; the maintenance, operation, repair, and insuring of the project;
179 and the custody, safeguarding, and application of all money.

180 **SECTION 9.**

181 Trust indenture as security; remedies of bondholders.

182 Any holder of revenue bonds and the trustee under the trust indenture, if any, except to the
183 extent that the rights given herein may be restricted by resolution passed before the issuance
184 of the revenue bonds or by the trust indenture, may, either at law or in equity, by suit, action,
185 mandamus, or other proceedings, protect and enforce any and all rights it may have under
186 the laws of the state, including specifically, but without limitation, the Revenue Bond Law,

187 or granted hereunder or under such resolution or trust indenture and may enforce and compel
188 performance of all duties required by this Act or by such resolution or trust indenture to be
189 performed by the Authority or any officer thereof, including the fixing, charging, and
190 collecting of revenues, fees, tolls, fines, and other charges for the use of the facilities and
191 services furnished.

192 **SECTION 10.**

193 Trust indenture as security; validation.

194 Revenue bonds and the security therefor shall be issued, confirmed, and validated in
195 accordance with the provisions of the Revenue Bond Law. The petition for validation shall
196 also make Barrow County party defendant to such action if the county has contracted with
197 the Authority for services or facilities relating to the project for which revenue bonds are to
198 be issued and sought to be validated, and such defendant shall be required to show cause, if
199 any exists, as to why such contract or contracts shall not be adjudicated as a part of the basis
200 for the security for the payment of any such revenue bonds. The revenue bonds, when
201 validated, and the judgment of validation shall be final and conclusive with respect to such
202 revenue bonds and the security for the payment thereof and interest thereon and against the
203 Authority and all other defendants.

204 **SECTION 11.**

205 To whom proceeds of bonds shall be paid.

206 In the resolution providing for the issuance of revenue bonds or in the trust indenture, the
207 Authority shall provide for the payment of the proceeds of the sale of the revenue bonds to
208 any officer or person who, or any agency, bank, or trust company which, shall act as trustee

209 of such funds and shall hold and apply the same to the purposes thereof, subject to such
210 regulations as this Act and such resolution or trust indenture may provide.

211 **SECTION 12.**

212 Sinking fund.

213 The money received pursuant to an intergovernmental contract and the revenues, fees, tolls,
214 fines, charges, and earnings derived from any particular project or projects, regardless of
215 whether or not such revenues, fees, tolls, fines, charges, and earnings were produced by a
216 particular project for which revenue bonds have been issued, unless otherwise pledged and
217 allocated, may be pledged and allocated by the Authority to the payment of the principal and
218 interest on revenue bonds of the Authority as the resolution authorizing the issuance of the
219 revenue bonds or the trust indenture may provide. Such funds so pledged from whatever
220 source received may be set aside at regular intervals as may be provided in the resolution or
221 trust indenture into a sinking fund, which sinking fund shall be pledged to and charged with
222 the payment of:

- 223 (1) The interest upon such revenue bonds as the same shall fall due;
224 (2) The principal or purchase price of such revenue bonds as the same shall fall due;
225 (3) Any premium upon such revenue bonds as the same shall fall due;
226 (4) The purchase of such revenue bonds in the open market; and
227 (5) The necessary charges of the paying agent for paying principal and interest.

228 The use and disposition of such sinking fund shall be subject to such regulations as may be
229 provided in the resolution authorizing the issuance of the revenue bonds or in the trust
230 indenture but, except as may otherwise be provided in such resolution or trust indenture, such
231 sinking fund shall be maintained as a trust account for the benefit of all revenue bonds and
232 trust indenture without distinction or priority of one over another.

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SECTION 13.

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Venue and jurisdiction.

235 Any action to protect or enforce any rights under the provisions of this Act or any suit or
236 action against such Authority shall be brought in the Superior Court of Barrow County, and
237 any action pertaining to validation of any revenue bonds issued under the provisions of this
238 Act shall likewise be brought in such court which shall have exclusive original jurisdiction
239 of such actions.

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SECTION 14.

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Interest of bondholders protected.

242 While any of the revenue bonds issued by the Authority remain outstanding, the powers,
243 duties, or existence of such Authority or its officers, employees, or agents shall not be
244 diminished or impaired in any manner that will affect adversely the interests and rights of the
245 holders of such revenue bonds and no other entity, department, agency, or authority shall be
246 created which will compete with the Authority to such an extent as to affect adversely the
247 interests and rights of the holders of such revenue bonds, nor shall the state itself so compete
248 with the Authority. The provisions of this Act shall be for the benefit of the Authority and
249 the holders of any such revenue bonds, and upon the issuance of such revenue bonds under
250 the provisions of this Act, shall constitute a contract with the holders of such revenue bonds.

251 **SECTION 15.**

252 Money received considered trust funds.

253 All money received pursuant to the authority of this Act, whether as proceeds from the sale
254 of revenue bonds, as grants or other contributions, or as revenue, income, fees, and earnings,
255 shall be deemed to be trust funds to be held and applied solely as provided in this Act.

256 **SECTION 16.**

257 Purpose of the Authority; reversion upon dissolution.

258 (a) The Authority is created for the purpose of promoting the public good and general
259 welfare of the citizens of Barrow County, and financing and providing facilities, equipment,
260 and services within the county, for sale to, lease or sublease to, ownership, or operation by
261 the county as otherwise authorized by law.

262 (b) Upon the dissolution of the Authority, all assets owned by the Authority shall become
263 the property of the county.

264 **SECTION 17.**

265 Rates, charges, and revenues; use.

266 The Authority is hereby authorized to prescribe and fix rates and to revise same from time
267 to time and to collect revenues, tolls, fees, and charges for the services, facilities, and
268 commodities furnished and, in anticipation of the collection of the revenues, to issue revenue
269 bonds or other types of obligations as provided in this Act to finance, in whole or in part, the
270 costs of the project and to pledge to the punctual payment of such revenue bonds or other
271 obligations all or any part of the revenues.

272 **SECTION 18.**

273 Rules, regulations, service policies, and procedures for operation of projects.

274 It shall be the duty of the Authority to prescribe rules, regulations, service policies, and
275 procedures for the operation of any project or projects constructed or acquired under the
276 provisions of this Act. The Authority may adopt bylaws.

277 **SECTION 19.**

278 Tort immunity.

279 To the extent permitted by law, the Authority shall have the same immunity and exemption
280 from liability for torts and negligence as Barrow County and the officers, agents, and
281 employees of the Authority when in the performance of the work of the Authority shall have
282 the same immunity and exemption from liability for torts and negligence as the officers,
283 agents, and employees of Barrow County when in the performance of their public duties or
284 work of the county.

285 **SECTION 20.**

286 Tax exemption.

287 The income of the Authority, the properties of the Authority, both real and personal, and all
288 revenue bonds, certificates of participation, notes, and other forms of obligations issued by
289 the Authority shall be exempt from all state and local taxes and special assessments of any
290 kind to the extent permitted by and in accordance with the general laws of the state.

291 **SECTION 21.**

292 Effect on other governments.

293 This Act shall not and does not in any way take from Barrow County or any county or
294 municipal corporation the authority to own, operate, and maintain public facilities or to issue
295 revenue bonds as provided by the Revenue Bond Law.

296 **SECTION 22.**

297 Liberal construction of Act.

298 This Act, being for the welfare of various political subdivisions of this state and its
299 inhabitants, shall be liberally construed to effect the purposes hereof.

300 **SECTION 23.**

301 Severability; effect of partial invalidity of Act.

302 The provisions of this Act are severable, and if any of its provisions shall be held
303 unconstitutional by any court of competent jurisdiction, the decision of such court shall not
304 affect or impair any of the remaining provisions.

305 **SECTION 24.**

306 Effective date.

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

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SECTION 25.

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General repealer.

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