

House Bill 435 (AS PASSED HOUSE AND SENATE)

By: Representatives Taylor of the 79th and Hanson of the 80th

A BILL TO BE ENTITLED
AN ACT

1 To create the City of Dunwoody Public Facilities Authority; to provide for a short title; to
2 confer powers upon the authority; to authorize the issuance of revenue bonds of the authority
3 payable from the revenues, tolls, fees, charges, and earnings of the authority, contract
4 payments to the authority, and from other moneys pledged therefor and to authorize the
5 collection and pledging of the revenues, tolls, fees, charges, earnings, and contract payments
6 of the authority for the payment of such revenue bonds; to authorize the execution of
7 resolutions and trust indentures to secure the payment of the revenue bonds of the authority
8 and to define the rights of the holders of such obligations; to make the revenue bonds of the
9 authority exempt from taxation; to fix and provide the venue and jurisdiction of actions
10 relating to the authority; to provide for the validation of bonds; to provide for tort immunity;
11 to provide for related matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 SECTION 1.

14 Short title.

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

17 SECTION 2.

18 City of Dunwoody Public Facilities Authority.

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

24 (b) The authority shall consist of seven members who shall be the mayor and council of the
 25 City of Dunwoody. Only the mayor and councilmembers may be appointed as members of
 26 the authority. With respect to the initial appointment of the mayor and council of the City
 27 of Dunwoody, all terms shall coincide with the term of the respective mayor and
 28 councilmember regardless of the remaining time of such term. Thereafter, all appointments
 29 shall be made for terms of four years and until a successor has been elected as mayor or
 30 councilmember of the City of Dunwoody. Immediately after such appointments, the
 31 members of the authority shall enter upon their duties.

32 (c) The mayor and council of the City of Dunwoody shall not provide for additional
 33 compensation for the services of the members of the authority; provided, however, that such
 34 members shall be reimbursed for their actual expenses necessarily incurred in the
 35 performance of their duties.

36 (d) The members of the authority shall elect one of their number as chairperson and another
 37 as a vice chairperson. The members of the authority shall also elect a secretary, who need
 38 not be a member of the authority, and may also elect a treasurer, who need not be a member
 39 of the authority. The secretary may also serve as treasurer. If the secretary and treasurer are
 40 not members of the authority, such officers shall have no voting rights. Each of such officers
 41 shall serve for a period of one year and until their successors are duly elected and qualified.

42 (e) Four members of the authority shall constitute a quorum. No vacancy on the authority
 43 shall impair the right of the quorum to exercise all of the rights and perform all of the duties
 44 of the authority.

45 **SECTION 3.**

46 **Definitions.**

47 As used in this Act, the term:

48 (1) 'Authority' means the City of Dunwoody Public Facilities Authority created by this
 49 Act.

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

59 (3) 'Project' means:

60 (A) All buildings, facilities, and equipment necessary or convenient for the efficient
61 operation of the City of Dunwoody, Georgia, or any department, agency, division, or
62 commission thereof; and

63 (B) Any undertaking permitted by the Revenue Bond Law.

64 (4) 'Revenue Bond Law' means the Revenue Bond Law of the State of Georgia (codified
65 at O.C.G.A. Section 36-82-62, et seq., as amended), or any other similar law hereinafter
66 enacted.

67 (5) 'Revenue bonds' means revenue bonds authorized to be issued pursuant to this Act.

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

75 (7) 'State' means the State of Georgia.

76 **SECTION 4.**

77 Powers.

78 The authority shall have the power:

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

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

83 (3) To acquire in its own name by purchase, on such terms and conditions and in such
84 manner as it may deem proper, or by condemnation in accordance with the provisions of
85 any and all existing laws applicable to the condemnation of property for public use, real
86 property or rights or easements therein, or franchises necessary or convenient for its
87 corporate purposes, and to use the same so long as its corporate existence shall continue,
88 and to lease or make contracts with respect to the use of or dispose of the same in any
89 manner it deems to the best advantage of the authority, the authority being under no
90 obligation to accept and pay for any property condemned under this Act, except from the
91 funds provided under the authority of this Act, and in any proceedings to condemn, such
92 orders may be made by the court having jurisdiction of the suit, action, or proceedings
93 as may be just to the authority and to the owners of the property to be condemned, and

94 no property shall be acquired under the provisions of this Act upon which any lien or
95 encumbrance exists, unless at the time such property is so acquired a sufficient sum of
96 money is to be deposited in trust to pay and redeem the fair value of such lien or
97 encumbrance;

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

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

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

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

115 (8) To accept loans or grants of money or materials or property of any kind from the
116 United States of America or any agency or instrumentality thereof, upon such terms and
117 conditions as the United States of America or such agency or instrumentality may
118 require;

119 (9) To accept loans or grants of money or materials or property of any kind from the state
120 or any agency or instrumentality or political subdivision thereof, upon such terms and
121 conditions as the state or such agency or instrumentality or political subdivision may
122 require;

123 (10) To borrow money for any of its corporate purposes and to issue revenue bonds, and
124 to 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; and

128 (12) To do all things necessary or convenient to carry out the powers expressly given in
129 this Act.

130 **SECTION 5.**

131 Revenue bonds.

132 The authority, or any authority or body which has or which may in the future succeed to the
133 powers, duties, and liabilities vested in the authority created hereby, shall have the power and
134 is hereby authorized to provide by resolution for the issuance of revenue bonds of the
135 authority for the purpose of paying all or any part of the costs of the project and for the
136 purpose of refunding revenue bonds or other obligations previously issued. The principal of
137 and interest on such revenue bonds shall be payable solely from the special fund hereby
138 provided for such payment. The revenue bonds of each issue shall be dated, shall bear
139 interest at such rate or rates per annum, shall be payable at such time or times, shall mature
140 at such time or times not exceeding 40 years from their date or dates, shall be payable in such
141 medium of payment as to both principal and interest as may be determined by the authority,
142 and may be redeemable before maturity, at the option of the authority, at such price or prices
143 and under such terms and conditions as may be fixed by the authority in the resolution for
144 the issuance of such revenue bonds.

145 **SECTION 6.**

146 Revenue bonds; form; denomination; registration; place of payment.

147 The authority shall determine the form of the revenue bonds and shall fix the denomination
148 or denominations of the revenue bonds. The revenue bonds may be issued in coupon or
149 registered form, or both, as the authority may determine, and provision may be made for
150 registration and exchangeability privileges. The authority shall fix the place or places of
151 payment of principal and interest thereon.

152 **SECTION 7.**

153 Revenue bonds; signatures; seal.

154 All such revenue bonds shall bear the manual or facsimile signature of the chairperson or
155 vice chairperson of the authority and the attesting manual or facsimile signature of the
156 secretary, assistant secretary, or secretary-treasurer of the authority, and the official seal of
157 the authority shall be impressed or imprinted thereon. Any coupons attached thereto shall
158 bear the manual or facsimile signatures of the chairperson or vice chairperson and the
159 secretary, assistant secretary, or secretary-treasurer of the authority. Any revenue bonds or
160 coupons attached thereto may bear the manual or facsimile signature of such persons as at
161 the actual time of the execution of such revenue bonds or coupons shall be duly authorized

162 or hold the proper office, although at the date of issuance of such revenue bonds such person
163 may not have been so authorized or shall not have held such office. In case any officer
164 whose signature shall appear on any revenue bond or any coupon shall cease to be such
165 officer before the delivery of such revenue bond, such signature shall nevertheless be valid
166 and sufficient for all purposes, the same as if that person had remained in office until such
167 delivery.

168 **SECTION 8.**

169 Revenue bonds; negotiability; exemption from taxation.

170 All revenue bonds shall have and are hereby declared to have all the qualities and incidents
171 of negotiable instruments under the laws of the state. All revenue bonds, their transfer, and
172 the income therefrom shall be exempt from all taxation within the state.

173 **SECTION 9.**

174 Revenue bonds; sale; price; proceeds.

175 The authority may sell revenue bonds in such manner and for such price as it may determine
176 to be in the best interest of the authority. The proceeds derived from the sale of revenue
177 bonds shall be used solely for the purpose or purposes provided in the resolutions and
178 proceedings authorizing the issuance of such revenue bonds.

179 **SECTION 10.**

180 Interim receipts and certificates or temporary revenue bonds.

181 Prior to the preparation of any definitive revenue bonds, the authority may, under like
182 restrictions, issue interim receipts, interim certificates, or temporary revenue bonds, with or
183 without coupons, exchangeable for definitive revenue bonds upon the issuance of the latter.

184 **SECTION 11.**

185 Replacement of lost or mutilated revenue bonds.

186 The authority may provide for the replacement of any revenue bonds or coupons which shall
187 become mutilated or be destroyed or lost.

188

SECTION 12.

189

Conditions precedent to issuance of revenue bonds.

190 The authority shall adopt a resolution authorizing the issuance of revenue bonds. In the
191 resolution, the authority shall determine that the project financed with the proceeds of the
192 revenue bonds is self-liquidating. Revenue bonds may be issued without any other
193 proceedings or the happening of any other conditions or things other than those proceedings,
194 conditions, and things which are specified or required by this Act. Any resolution providing
195 for the issuance of revenue bonds under the provisions of this Act shall become effective
196 immediately upon its passage and need not be published or posted, and any such resolution
197 may be passed at any regular or special or adjourned meeting of the authority by a majority
198 of its members.

199

SECTION 13.

200

Credit not pledged.

201 Revenue bonds shall not be deemed to constitute a debt of the City of Dunwoody, Georgia,
202 nor a pledge of the faith and credit of the city, but such revenue bonds shall be payable solely
203 from the fund provided for in this Act. The issuance of such revenue bonds shall not
204 directly, indirectly, or contingently obligate the city to levy or to pledge any form of taxation
205 whatsoever for payment of such revenue bonds or to make any appropriation for their
206 payment, and all such revenue bonds shall contain recitals on their face covering
207 substantially the foregoing provisions of this section. Notwithstanding the foregoing
208 provisions, this Act shall not affect the ability of the authority and any political subdivision
209 or municipality to enter into an intergovernmental contract pursuant to which the political
210 subdivision or municipality agrees to pay amounts sufficient to pay operating charges and
211 other costs of the authority or any project including, without limitation, the principal of and
212 interest on revenue bonds in consideration for services or facilities of the authority.

213

SECTION 14.

214

Trust indenture as security.

215 In the discretion of the authority, any issuance of revenue bonds may be secured by a trust
216 indenture by and between the authority and a corporate trustee, which may be any trust
217 company or bank having the powers of a trust company inside or outside the state. Either the
218 resolution providing for the issuance of the revenue bonds or such trust indenture may
219 contain such provisions for protecting and enforcing the rights and remedies of the

220 bondholders as may be reasonable and proper and not in violation of law, including
 221 covenants setting forth the duties of the authority in relation to the acquisition and
 222 construction of the project, the maintenance, operation, repair, and insuring of the project,
 223 and the custody, safeguarding, and application of all moneys.

224 **SECTION 15.**

225 To whom proceeds of bonds shall be paid.

226 In the resolution providing for the issuance of revenue bonds or in the trust indenture, the
 227 authority shall provide for the payment of the proceeds of the sale of the revenue bonds to
 228 any officer or person who, or any agency, bank, or trust company which, shall act as trustee
 229 of such funds and shall hold and apply the same to the purposes thereof, subject to such
 230 regulations as this Act and such resolution or trust indenture may provide.

231 **SECTION 16.**

232 Sinking fund.

233 The moneys received pursuant to an intergovernmental contract and the revenues, fees, tolls,
 234 charges, and earnings derived from any particular project or projects, regardless of whether
 235 or not such revenues, fees, tolls, fines, charges, and earnings were produced by a particular
 236 project for which revenue bonds have been issued, unless otherwise pledged and allocated,
 237 may be pledged and allocated by the authority to the payment of the principal and interest
 238 on revenue bonds of the authority as the resolution authorizing the issuance of the revenue
 239 bonds or in the trust indenture may provide, and such funds so pledged from whatever source
 240 received shall be set aside at regular intervals as may be provided in the resolution or trust
 241 indenture into a sinking fund, which sinking fund shall be pledged to and charged with the
 242 payment of:

- 243 (1) The interest upon such revenue bonds as such interest shall fall due;
 244 (2) The principal or purchase price of such revenue bonds as the same shall fall due;
 245 (3) Any premium upon such revenue bonds as the same shall fall due;
 246 (4) The purchase of such revenue bonds in the open market; and
 247 (5) The necessary charges of the paying agent for paying principal and interest.

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

253

SECTION 17.

254

Remedies of bondholders.

255 Any holder of revenue bonds or any of the coupons appertaining thereto, and the trustee
256 under the trust indenture, if any, except to the extent the rights herein given may be restricted
257 by resolution passed before the issuance of the revenue bonds or by the trust indenture, may,
258 either at law or in equity, by suit, action, mandamus, or other proceedings, protect and
259 enforce any and all rights under the laws of the state, including specifically but without
260 limitation the Revenue Bond Law, or granted hereunder or under such resolution or trust
261 indenture, and may enforce and compel performance of all duties required by this Act or by
262 such resolution or trust indenture to be performed by the authority or any officer thereof,
263 including the fixing, charging, and collecting of revenues, fees, tolls, fines, and other charges
264 for the use of the facilities and services furnished.

265

SECTION 18.

266

Validation.

267 Revenue bonds and the security therefor shall be confirmed and validated in accordance with
268 the procedure of the Revenue Bond Law. The petition for validation shall also make party
269 defendant to such action the state; any institution, department, or other agency thereof; and
270 any county, municipality, school district, or other political subdivision or authority of the
271 state which has contracted with the authority for services or facilities relating to the project
272 for which revenue bonds are to be issued and sought to be validated, and such defendant shall
273 be required to show cause, if any exists, why such contract or contracts shall not be
274 adjudicated as a part of the basis for the security for the payment of any such revenue bonds.
275 The revenue bonds, when validated, and the judgment of validation shall be final and
276 conclusive with respect to such revenue bonds and the security for the payment thereof and
277 interest thereon and against the authority and all other defendants.

278

SECTION 19.

279

Venue and jurisdiction.

280 Any action to protect or enforce any rights under the provisions of this Act or any suit or
281 action against such authority shall be brought in the Superior Court of Fulton County,
282 Georgia, and any action pertaining to validation of any revenue bonds issued under the
283 provisions of this Act shall likewise be brought in said court which shall have exclusive,
284 original jurisdiction of such actions.

285 **SECTION 20.**

286 Interest of bondholders protected.

287 While any of the revenue bonds issued by the authority remain outstanding, the powers,
288 duties, or existence of the authority or its officers, employees, or agents shall not be
289 diminished or impaired in any manner that will affect adversely the interests and rights of the
290 holders of such revenue bonds, and no other entity, department, agency, or authority will be
291 created which will compete with the authority to such an extent as to affect adversely the
292 interests and rights of the holders of such revenue bonds, nor will the state itself so compete
293 with the authority. The provisions of this Act shall be for the benefit of the authority and the
294 holders of any such revenue bonds and, upon the issuance of such revenue bonds under the
295 provisions hereof, shall constitute a contract with the holders of such revenue bonds.

296 **SECTION 21.**

297 Moneys received considered trust funds.

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

301 **SECTION 22.**

302 Purpose of the authority.

303 Without limiting the generality of any provision of this Act, the general purpose of the
304 authority is declared to be that of providing buildings, facilities, equipment, and services for
305 the citizens in the City of Dunwoody, Georgia.

306 **SECTION 23.**

307 Rates, charges, and revenues; use.

308 The authority is hereby authorized to prescribe and fix rates and to revise same from time to
309 time and to collect revenues, tolls, fees, and charges for the services, facilities, and
310 commodities furnished and, in anticipation of the collection of the revenues, to issue revenue
311 bonds or other types of obligations as herein provided to finance, in whole or in part, the
312 costs of the project, and to pledge to the punctual payment of said revenue bonds or other
313 obligations all or any part of the revenues.

314 **SECTION 24.**

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

317 It shall be the duty of the authority to prescribe or cause to be prescribed rules, regulations,
318 service policies, and procedures for the operation of any project or projects constructed or
319 acquired under the provisions of this Act. The authority may adopt bylaws.

320 **SECTION 25.**

321 Tort immunity.

322 To the extent permitted by law, the authority shall have the same immunity and exemption
323 from liability for torts and negligence as the City of Dunwoody, Georgia; and the officers,
324 agents, and employees of the authority when in the performance of the work of the authority
325 shall have the same immunity and exemption from liability for torts and negligence as the
326 officers, agents, and employees of the City of Dunwoody, Georgia, when in the performance
327 of their public duties or the work of the city.

328 **SECTION 26.**

329 Tax-exempt status of the authority.

330 The properties of the authority, both real and personal, are declared to be public properties
331 used for the benefit and welfare of the people of the state and not for purposes of private or
332 corporate benefit and income, and such properties and the authority shall be exempt from all
333 taxes and special assessments of any municipality, county, or the state and any political
334 subdivision thereof.

335 **SECTION 27.**

336 Effect on other governments.

337 This Act shall not and does not in any way take from the City of Dunwoody, Georgia, or any
338 political subdivision or municipality the authority to own, operate, and maintain public
339 facilities or to issue revenue bonds as provided by the Revenue Bond Law.

340 **SECTION 28.**

341 Liberal construction of Act.

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

344 **SECTION 29.**

345 Severability; effect of partial invalidity of Act.

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

349 **SECTION 30.**

350 Effective date.

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

353 **SECTION 31.**

354 Repeal.

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