

House Bill 1245 (AS PASSED HOUSE AND SENATE)

By: Representative Burchett of the 176th

A BILL TO BE ENTITLED
AN ACT

1 To create the Lanier County Building Authority; to provide for a short title; to provide
2 definitions; to confer powers upon the authority; to authorize intergovernmental contracts
3 and contracts with private persons; to confer the power of eminent domain; to authorize the
4 acceptance of grants and gifts; to authorize fees and charges; to provide for the membership
5 of the authority; to authorize projects; to authorize the issuance of revenue bonds of the
6 authority and procedures thereto; to provide for exemption from taxation in certain
7 circumstances; to provide for the interest of bondholders and contracting parties; to provide
8 for moneys received in trust by the authority; to fix the venue of actions relating to any
9 provision of this Act; to provide for the validation of bonds; to provide for tort immunity; to
10 provide for exemption for levy and sale of authority property; to prohibit the authority from
11 levying any tax; to provide for construction of the Act and severability; to provide for related
12 matters; to repeal conflicting laws; and for other purposes.

13 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

14 **SECTION 1.**

15 Short title.

16 This Act shall be known and may be cited as the "Lanier County Building Authority Act."

17 **SECTION 2.**

18 Lanier County Building Authority; created.

19 There is hereby created a body corporate and politic to be known as the Lanier County
20 Building Authority (herein called the "authority"), which shall be deemed to be a political
21 subdivision of the State of Georgia and a public corporation by that name, style, and title to
22 be known. Such corporation shall be separate and distinct from any public corporation
23 heretofore created by the General Assembly and shall be an instrumentality of the State of

24 Georgia exercising governmental powers. All property owned by such corporation shall be
 25 public property held and owned for governmental purposes and shall be exempt from
 26 taxation.

27 **SECTION 3.**

28 Definitions.

29 As used in this Act, the term:

30 (1) "Authority" means the Lanier County Building Authority created by this Act.

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

40 (3) "Project" means all buildings, facilities, and equipment necessary or convenient for
 41 the efficient operation of Lanier County, the Lanier County School District, any
 42 municipality located within Lanier County, or any department, agency, division, or
 43 commission thereof, permitted by the Revenue Bond Law.

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

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

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

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

SECTION 4.

General powers.

58 The authority shall have the power:

59 (a) To hold, own, and convey real and personal property;

60 (b) To sue and be sued;

61 (c) To have and to use a seal and to alter the same at pleasure;

62 (d) To acquire, construct, purchase, own, equip, operate, extend, improve, lease, sell, and
63 make available for use any project as hereinafter defined;

64 (e) To exercise the powers conferred upon a "public corporation" or a "public authority"
65 by Article IX, Section III, Paragraph I of the Constitution of Georgia, such Authority being
66 hereby expressly declared to be a "public corporation" or a "public authority" within the
67 meaning of such provision of the Constitution of Georgia;

68 (f) To acquire in its own name by purchase on such terms and conditions and in such
69 manner as it may deem proper or by condemnation in accordance with the provisions of
70 any and all existing laws of the State of Georgia applicable to the condemnation of property
71 for public use, including the power to proceed as a condemning body under the provisions
72 of Article 2 of Chapter 2 of Title 22 of the O.C.G.A., relating to proceedings before a
73 special master, or by gift, grant, lease, or otherwise, real property or rights and easements
74 therein and franchises and personal property necessary or convenient for its corporate
75 purposes and to use the same so long as its corporate existence shall continue and to lease
76 or make contracts with respect to the use, sale, or disposition of the same in any manner
77 it deems to the best advantage of the authority. Title to any such property shall be held by
78 the authority exclusively for the benefit of the public. The authority shall be under no
79 obligation to accept and pay for any property condemned as provided herein except from
80 the funds provided therefor and, in any proceedings to condemn, such orders may be made
81 by the court having jurisdiction of the suit, action, or proceedings as may be just to the
82 authority and to the owners of the property to be condemned; and no property shall be
83 acquired as provided herein upon which any lien or other encumbrance exists, unless at the
84 time such property is so acquired a sufficient sum of money shall be deposited in trust to
85 pay and redeem the amount of such lien or encumbrance. If the authority shall deem it
86 expedient to construct any project on lands that are subject to the control of Lanier County,
87 Georgia, the Lanier County School District, or any municipality located within Lanier
88 County such political subdivision as authorized by applicable law may convey such lands
89 to the authority for such consideration as may be agreed upon by the authority and such
90 other political subdivision, taking into consideration the public benefit to be derived from
91 such conveyance;

- 92 (g) To accept gifts and bequests for its corporate purposes;
- 93 (h) To appoint, select, and employ officers, agents, and employees, including engineering,
94 architectural, and construction experts, fiscal agents, and attorneys, and to fix their
95 compensation;
- 96 (i) To make and execute with public and private persons and corporations contracts, lease
97 agreements, rental agreements, installment sale agreements, availability agreements,
98 service agreements, and other instruments and agreements relating to its projects and the
99 use thereof and incident to the exercise of the powers of the authority, including contracts
100 for constructing, renting, leasing, selling, and making available its projects for the benefit
101 of Lanier County, Lanier County School District, or any municipality located within Lanier
102 County, or residents of Lanier County; and, without limiting the generality of the
103 foregoing, authority is specifically granted to such political subdivisions, at the discretion
104 of each such political subdivision, to enter into contracts, lease agreements, rental
105 agreements, installment sale agreements, availability agreements, service agreements, and
106 related agreements with the authority for a term not exceeding 50 years;
- 107 (j) To sell or assign its rights under its contracts, lease agreements, installment sale
108 agreements, availability agreements, or service agreements or its right to receive payments
109 thereunder, either directly or through trust or custodial arrangements whereby interests are
110 created in such contracts, lease agreements, installment sale agreements, availability
111 agreements, or service agreements or the payments to be received thereunder through the
112 issuance of trust certificates, certificates of participation, custodial receipts, or other similar
113 instruments;
- 114 (k) To accept loans and grants of money or property of any kind from the United States,
115 the State of Georgia, or any political subdivision of the State of Georgia;
- 116 (l) To borrow money for any of its corporate purposes and to issue revenue bonds payable
117 solely from funds or revenues of the authority pledged for that purpose and to pledge and
118 assign any of its revenues, income, rent, charges, and fees to provide for the payment of the
119 same and to provide for the rights of the holders of such revenue bonds;
- 120 (m) To make such rules and regulations governing its employees and property as it may
121 in its discretion deem proper;
- 122 (n) At its discretion, deem a project as self-liquidating if, in the judgment of the members,
123 the revenues and earnings to be derived by the authority therefrom and all properties used,
124 leased, and sold in connection therewith will be sufficient to pay the cost of operating,
125 maintaining, and repairing the project and to pay the principal of and interest on the
126 revenue bonds that may be issued to finance, in whole or in part, the cost of such project
127 or projects.

128 **SECTION 5.**

129 Membership.

130 The authority shall consist of five members who shall be residents of Lanier County and who
 131 shall be eligible to succeed themselves. The initial appointed members shall be appointed
 132 in the following manner and for the following terms and until their successors are appointed:

133 (1) Two members shall be appointed by the Board of Commissioners of Lanier County,
 134 such board shall designated one such appointee to serve for a term of two years, and one
 135 such appointee to serve for a term of four years;

136 (2) Two members shall be appointed by the Board of Education of Lanier County such
 137 board shall designated one such appointee to serve for a term of two years, and one such
 138 appointee to serve for a term of four years;

139 (3) One member shall be appointed jointly by the Board of Commissioners of Lanier
 140 County and the Board of Education of Lanier County for a term of three years.

141 Thereafter, all members shall be appointed for terms of four years each and until their
 142 successors are appointed. Any vacancy on the authority shall be filled for the unexpired term
 143 by the appointing public body. Immediately after their appointment, the members of the
 144 authority shall enter upon their duties. Three members of the authority shall constitute a
 145 quorum, and no vacancy on the authority shall impair the right of the quorum to exercise all
 146 the rights and perform all the duties of the authority and, in every instance, a majority vote
 147 of a quorum shall authorize any legal act of the authority, including all things necessary to
 148 authorize and issue revenue bonds. The authority shall elect one of its members as chairman
 149 and shall elect a secretary and treasurer who need not necessarily be a member of the
 150 authority. The members of the authority shall not be entitled to compensation for their
 151 services but shall be entitled to and shall be reimbursed for their actual expenses necessarily
 152 incurred in the performance of their duties. The authority shall make rules and regulations
 153 for its own government. It shall have perpetual existence. Any change in name or
 154 composition of the authority shall in no way affect the vested rights of any person under the
 155 provisions of this Act or impair the obligations of any contracts existing under this Act.

156 **SECTION 6.**

157 Revenue bonds.

158 The authority shall have power and is hereby authorized from time to time to provide by
 159 resolution for the issuance of negotiable revenue bonds in the manner provided by the
 160 Revenue Bond Law, for the purpose of paying all or any part of the cost of any one or more
 161 projects, including the cost of constructing, reconstructing, equipping, extending, adding to,

162 or improving any such project, or for the purpose of refunding, as herein provided, any such
163 bonds of the authority previously issued. The principal of and interest on such revenue bonds
164 shall be payable solely from such part of the revenues and earnings of such project or
165 projects as may be designated in the resolution of the authority authorizing the issuance of
166 such revenue bonds. The revenue bonds of each issue shall be issued and validated under
167 and in accordance with the provisions of the Revenue Bond Law.

168 **SECTION 7.**

169 Revenue bonds; negotiability and exemption from taxation.

170 All revenue bonds issued under the provisions of this Act shall have and are hereby declared
171 to have all the qualities and incidents of negotiable instruments under the negotiable
172 instruments law of this State. Such bonds are declared to be issued for an essential public
173 and governmental purpose, and to the extent permitted by general law, such bonds and the
174 income thereof shall be exempt from all taxation within this State.

175 **SECTION 8.**

176 Credit not pledged.

177 Revenue bonds issued under the provisions of this Act shall not constitute a debt or a pledge
178 of the faith and credit of the State of Georgia, Lanier County, Georgia, the City of Lakeland,
179 the Lanier County School District, or any other municipality located within Lanier County
180 but such bonds shall be payable solely from such part of the revenues and earnings of such
181 project or projects as may be designated in the resolution of the authority authorizing the
182 issuance of such bonds. The issuance of such revenue bonds shall not directly, indirectly,
183 or contingently obligate the State of Georgia, Lanier County, Georgia, the City of Lakeland,
184 the Lanier County School District, or any other municipality located within Lanier County
185 to levy or to pledge any form of taxation whatever for the payment thereof. No holder of any
186 bond or receiver or trustee in connection therewith shall have the right to enforce the
187 payment thereof against any property of the State of Georgia, Lanier County, Georgia, the
188 City of Lakeland, the Lanier County School District, or any other municipality located within
189 Lanier County nor shall any such bond constitute a charge, lien, or encumbrance, legal or
190 equitable, upon any such property. All such bonds shall contain on their face a recital setting
191 forth substantially the foregoing provisions of this section. Lanier County, Georgia, the
192 Lanier County School District, or any municipality located within Lanier County however,
193 may each obligate itself to pay the amounts required under any contract entered into with the
194 authority from funds received from taxes to be levied and collected for that purpose to the

195 extent necessary to pay the obligations contractually incurred with the authority, and from
196 any other source, and the obligation to make such payments shall constitute a general
197 obligation and a pledge of the full faith and credit of Lanier County, Georgia, the City of
198 Lakeland, the Lanier County School District, or any other municipality located within Lanier
199 County but shall not constitute a debt of Lanier County, Georgia, the City of Lakeland, the
200 Lanier County School District, or any other municipality located within Lanier County
201 within the meaning of Article IX, Section V, Paragraph I of the Constitution of Georgia; and,
202 when Lanier County, Georgia, the Lanier County School District or any municipality located
203 within Lanier County contracts with the authority to make such payments from taxes to be
204 levied for that purpose, then the obligation shall be mandatory to levy and collect such taxes
205 from year to year in an amount sufficient to fulfill and fully comply with the terms of such
206 contract, within any applicable millage limitations imposed by law.

207 **SECTION 9.**

208 Revenue bonds; trust indenture or other contract as security.

209 In the discretion of the authority, any issue of such revenue bonds may be secured by a trust
210 indenture by and between the authority and a corporate trustee, which may be any trust
211 company or bank having the powers of a trust company within or outside of the State of
212 Georgia, or by a contract between the authority and one or more of its bondholders. Such
213 trust indenture or other contract may pledge or assign fees, tolls, rents, revenues, and
214 earnings to be received by the authority, including the proceeds derived from the sale or
215 lease, or from making available for use, from time to time, of any project. Either the
216 resolution providing for the issuance of revenue bonds or such trust indenture or other
217 contract may contain such provisions for protecting and enforcing the rights and remedies
218 of the bondholders as may be reasonable and proper and not in violation of law, including
219 covenants setting forth the duties of the authority in relation to the acquisition, construction,
220 or renovation of any project; the maintenance, operation, repair, and insurance of any project;
221 and the custody, safeguarding, and application of all moneys, including the proceeds derived
222 from the sale or lease or making available for use of any project; and may also provide that
223 any project shall be acquired, constructed, or renovated under the supervision and approval
224 of consulting engineers or architects employed or designated by the authority and satisfactory
225 to the original purchasers of the bonds issued therefor; and may also require that the security
226 given by contractors and by any depository of the proceeds of the bonds or revenues or other
227 moneys be satisfactory to such purchasers; and may also contain provisions concerning the
228 conditions, if any, upon which additional revenue bonds pledging all or any part of the
229 revenues and earnings of such project or projects may be issued. Such indenture or other

230 contract may set forth the rights and remedies of the bondholders and of the trustee. In
231 addition to the foregoing, such trust indenture or other contract may contain such other
232 provisions as the authority may deem reasonable and proper for the security of the
233 bondholders. All expenses incurred in carrying out such trust indenture or other contract
234 may be treated as a part of the cost of maintenance, operation, and repair of the project
235 affected by such indenture or other contract.

236 **SECTION 10.**

237 Revenue bonds; sinking fund.

238 The revenues, fees, tolls, and earnings derived from any particular project or projects,
239 regardless of whether or not such fees, earnings, and revenues were produced by a particular
240 project for which bonds have been issued and any moneys derived from the sale of any
241 properties, both real and personal, of the authority, unless otherwise pledged and allocated,
242 may be pledged and allocated by the authority to the payment of the principal and interest
243 on revenue bonds of the authority as the resolution authorizing the issuance of the bonds or
244 the trust indenture or other contract may provide, and such funds so pledged, from whatever
245 source received, which such pledge may include funds received from one or more or all
246 sources not previously pledged and allocated, shall be set aside at regular intervals, as may
247 be provided in the resolution, trust indenture, or other contract, into a sinking fund, which
248 such sinking fund shall be pledged to and charged with the payments of the interest upon
249 such revenue bonds as such interest shall fall due, the principal of the bonds as the same shall
250 fall due, the necessary charges of any paying agent or agents for paying principal and
251 interest, and any premium upon bonds retired by call or purchase. The use and disposition
252 of such sinking fund shall be subject to such regulations as may be provided in the resolution
253 authorizing the issuance of the revenue bonds or in the trust indenture or other contract, but,
254 except as may otherwise be provided in such resolution or trust indenture or other contract,
255 such sinking fund shall be a fund for the benefit of all revenue bonds issued pursuant to such
256 resolution or trust indenture or other contract without distinction or priority of one over
257 another.

258 **SECTION 11.**

259 Revenue bonds; refunding bonds.

260 The authority is hereby authorized to provide by resolution for the issuance of refunding
261 revenue bonds of the authority for the purpose of refunding any revenue bonds issued under
262 the provisions of this Act and then outstanding, together with accrued interest thereon and

263 any premium required for the payment of such bonds prior to maturity. The issuance of such
264 revenue bonds and all the details thereof, the rights of the holders thereof, and the duties of
265 the authority with respect to the same, shall be governed by the foregoing provisions of this
266 Act insofar as the same may be applicable.

267 **SECTION 12.**

268 Venue; jurisdiction; service.

269 The principal office of the authority shall be in Lakeland, Georgia, and the venue of any
270 action against it shall be in Lanier County. Any action pertaining to the validation of any
271 bonds issued under the provisions of this Act and for the validation of any contract entered
272 into by the authority shall be brought in the Superior Court of Lanier County, and such court
273 shall have exclusive original jurisdiction of such actions. Service upon the authority of any
274 process, subpoena, or summons shall be effected by serving the same personally upon the
275 chairman of the authority or upon any other person or persons designated and approved by
276 resolution of the authority as registered agent for service of process.

277 **SECTION 13.**

278 Revenue bonds; validation.

279 Revenue bonds of the authority shall be confirmed and validated in accordance with the
280 procedure now or hereafter set forth in Article 3 of Chapter 82 of Title 36 of the O.C.G.A.,
281 as the same now exists or may hereafter be amended. The petition for validation shall also
282 make a party defendant to such action Lanier County, Georgia, the Lanier County School
283 District, or any municipality located within Lanier County if any such public body has or will
284 contract with the authority with respect to the project for which bonds are to be issued and
285 are sought to be validated, and any such public body shall be required to show cause, if any
286 exists, why such contract and the terms and conditions thereof should not be inquired into
287 by the court and the validity of the terms thereof be determined and the contract adjudicated
288 as security for the payment of any such bonds of the authority. The bonds, when validated,
289 and the judgment of validation shall be final and conclusive with respect to the validity of
290 such bonds against the authority, and the validity of the contract and of the terms and
291 conditions thereof, when validated, and the judgment of validation shall be final and
292 conclusive against Lanier County, Georgia, the Lanier County School District, or any
293 municipality located within Lanier County if any such public body be a party to the
294 validation proceeding as herein provided for.

295 **SECTION 14.**

296 Interest of bondholders and holders of interests in authority contracts protected.

297 While any of the bonds issued by the authority or any interests in contracts of the authority
298 remain outstanding or unperformed, the powers, duties, or existence of the authority or of its
299 officers, employees, or agents shall not be diminished or impaired in any manner that will
300 affect adversely the interest and rights of the holders of such bonds or such interests in
301 contracts of the authority. The provisions of this section of this Act shall be for the benefit
302 of the authority and of the holders of any such bonds and interests in contracts of the
303 authority and, upon the issuance of bonds or the creation of interests in contracts of the
304 authority under the provisions of this Act, shall constitute a contract with the holders of such
305 bonds or such interests in contracts of the authority.

306 **SECTION 15.**

307 Moneys received considered trust funds.

308 All moneys received by the authority pursuant to this Act, whether as proceeds from the sale
309 of revenue bonds or contracts of the authority, as grants or other contributions, or as
310 revenues, income, fees, and earnings, shall be deemed to be trust funds to be held and applied
311 solely as provided in this Act and in such resolutions, trust indentures, or other contracts as
312 may be adopted and entered into by the authority pursuant to this Act.

313 **SECTION 16.**

314 Rates, charges, and revenues of projects.

315 The authority is hereby authorized to prescribe and fix and collect rates, fees, tolls, rents, and
316 charges and to revise, from time to time, and collect such revised rates, fees, tolls, rents, and
317 charges for the services, facilities, or commodities furnished, including leases, concessions,
318 or subleases of its projects, and to determine the price and terms at and under which its
319 projects may be sold.

320 **SECTION 17.**

321 Exemption from taxation.

322 The exercise of the powers conferred upon the authority hereunder shall constitute an
323 essential governmental function for a public purpose, and to the extent permitted by general
324 law, the authority shall be required to pay no taxes or assessments upon any of the property

325 acquired by it or under its jurisdiction, control, possession, or supervision or upon its
326 activities in the operation and maintenance of property acquired by it or of buildings erected
327 or acquired by it or any fees, rentals, or other charges for the use of such property or
328 buildings or other income received by the authority. This section shall not include an
329 exemption from sales and use tax on property purchased by or for the use of the authority.

330 **SECTION 18.**

331 Immunity from tort actions.

332 The authority shall have the same immunity and exemption from liability for torts and
333 negligence as Lanier County, Georgia, and the officers, agents, and employees of the
334 authority, when in performance of work of the authority, shall have the same immunity and
335 exemption from liability for torts and negligence as officers, agents, and employees of Lanier
336 County, Georgia. The authority may be sued the same as may Lanier County, Georgia, on
337 any contractual obligation of the authority.

338 **SECTION 19.**

339 Property not subject to levy and sale.

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

341 **SECTION 20.**

342 Powers declared supplemental and additional.

343 This Act does not in any way take away from the authority any power that may be conferred
344 upon it by law but is supplemental thereto.

345 **SECTION 21.**

346 Authority without taxing power.

347 The authority shall not have the right to impose any tax on any person or property.

348 **SECTION 22.**

349 Liberal construction of Act.

350 This Act shall be liberally construed to effect the purposes hereof.

351

SECTION 23.

352

Effect of partial invalidity of Act.

353 Should any sentence, clause, phrase, or part of this Act be declared for any reason to be

354 unconstitutional or invalid, the same shall not affect the remainder of this Act or any part

355 hereof, other than the part so held to be invalid, but the remaining provisions of this Act shall

356 remain in full force and effect, and it is the express intention of this Act to enact each

357 provision of this Act independently of any other provision hereof.

358

SECTION 24.

359

General repealer.

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