

House Bill 6EX (AS PASSED HOUSE AND SENATE)

By: Representative Lumsden of the 12th

A BILL TO BE ENTITLED

AN ACT

1 To create the Chattooga County Public Facilities Authority; to provide for a short title and
2 legislative findings; to provide for the membership and the appointment of members of the
3 Authority and their terms of office, qualifications, duties, powers, and compensation; to
4 provide for vacancies, organization, meetings, and expenses; to provide for definitions; to
5 confer powers and impose duties on the Authority; to provide for the issuance and sale of
6 revenue bonds and other obligations and their negotiability, sale, and use of proceeds from
7 such sales; to provide for conditions for issuance of such obligations; to prohibit the pledge
8 of credit for the payment of bonds; to provide for trust indentures and a sinking fund; to
9 provide for payment of bond proceeds; to provide for bondholder remedies and protection;
10 to provide for refunding bonds; to provide for bond validation; to provide for venue and
11 jurisdiction; to provide for trust funds; to provide for the Authority's purpose; to provide for
12 charges; to provide for rules and regulations; to provide for tort immunity; to provide for
13 exemptions from levy and sale; to provide for supplemental powers; to provide for perpetual
14 existence and dissolution; to provide for liberal construction; to provide for related matters;
15 to repeal conflicting laws; and for other purposes.

H. B. 6EX

- 1 -

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 Short title.

19 This Act shall be known and may be cited as the "Chattooga County Public Facilities
20 Authority Act."

21 **SECTION 2.**

22 Chattooga County Public Facilities Authority.

23 (a) There is created a body corporate and politic to be known as the "Chattooga County
24 Public Facilities Authority," which shall be deemed to be a public corporation. Such
25 corporation shall be separate and distinct from any public corporation or other entity
26 heretofore created by the General Assembly and shall be an instrumentality of the State of
27 Georgia exercising governmental powers. The Authority is created for the purpose of
28 promoting the public good and general welfare of the citizens of Chattooga County and
29 assisting Chattooga County and the municipalities located within Chattooga County in
30 providing facilities, equipment, and services to the citizens of the Chattooga County in the
31 most efficient means possible. In connection with the exercise of any of its powers, the
32 members of the Authority may make findings or determinations that the exercise of its
33 powers as proposed will promote the public good and general welfare and assist Chattooga
34 County and the municipalities located therein in providing facilities, equipment, and
35 services, and such findings or determinations, if made, shall be conclusive and binding.

36 (b) The Authority shall consist of five members. One of the members shall be the person
37 at the time serving as the sole commissioner of the county, who shall be eligible to succeed
38 themselves. This member of the Authority shall hold office for terms coinciding with their

39 term as the sole commissioner of the county, and shall serve until a successor takes office.
40 The sole commissioner, in their capacity to the county, may nominate and appoint four
41 additional members who possess knowledge or experience in such matters within the
42 power of the Authority. The non-sole commissioner members of the Authority shall serve
43 one-year terms and are eligible to be reappointed without limitation. In the event that the
44 number of members of the County Commission is changed, then the number of members
45 of the Authority shall be correspondingly changed. Immediately after their official seating
46 on the County Commission, each member of the Commission shall enter upon their duties
47 of the Authority. A majority of the members of the Authority shall constitute a quorum,
48 and no vacancy on the Authority shall impair the right of the quorum to exercise all the
49 rights and perform all the duties of the Authority and, in every instance, a majority vote of
50 a quorum shall authorize any legal act of the Authority, including all things necessary to
51 authorize and issue revenue bonds. The Authority shall elect one of its members as
52 chairperson and shall elect a secretary and treasurer. The secretary and treasurer need not
53 necessarily be a member of the Authority. The Authority may elect a vice-chairperson or
54 any number of assistant secretaries or treasurers as it may from time to time deem
55 necessary or desirable. The members of the Authority shall not be entitled to compensation
56 for their services but shall be entitled to and shall be reimbursed for their actual expenses
57 necessarily incurred in the performance of their duties. The Authority shall make rules and
58 regulations for its own governance and shall have perpetual existence. Any change in name
59 or composition of the Authority shall in no way affect the vested rights of any person under
60 the provisions of this Act or impair the obligations of any contracts existing under this Act.

SECTION 3.

Definitions.

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As used in this Act, the term:

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

(2) "Costs of the project" means and embraces the cost of construction, the cost of all land or interests therein; properties, rights, easements, and franchises acquired; the cost of acquiring, constructing, or erecting buildings; improvements, materials, labor, and services, the cost of all machinery and equipment, financing charges, and interest prior to and during the construction or acquisition of any project and for six months after such project is placed in service and is operational at the level intended; 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; administrative expenses relating to any project or to the financing or refinancing thereof, and such other expenses as may be necessary or incident to the financing of a project herein authorized; and, 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 a part of the costs of the project and may be paid or reimbursed as such out of any funds of the Authority, including proceeds of any revenue bonds issued under the provisions of this Act for any such project or projects and the proceeds of the sale of any contracts, lease agreements, or installment sale agreements or the amounts payable thereunder, either directly or by the creation of interests therein.

(3) "County" means Chattooga County, Georgia.

86 (4) "Project" means any capital project determined by the Authority to promote the
87 public good or general welfare of the citizens of the county or to be necessary or
88 convenient for the efficient operation of the county or the municipalities located in the
89 county or any of their enterprises or systems, including, but not limited to, the acquisition,
90 construction, renovation, improvement, extension, addition, or equipping of utility
91 systems and improvements, including without limitation, water and sewer systems and
92 facilities; sewage and solid waste disposal systems and facilities; electric, gas, and other
93 similar facilities or systems; emergency facilities, including emergency, fire, police,
94 sheriff, and rescue facilities; recreational facilities, including parks, athletic fields,
95 buildings or other similar facilities; public safety facilities, including courthouses, jails,
96 police departments, sheriff offices, state patrol, or other law enforcement facilities and
97 equipment; health care facilities and equipment; educational, cultural, or historical
98 facilities and equipment; transportation facilities and equipment; and administrative
99 facilities and equipment, including city hall buildings, county administrative buildings,
100 and other governmental buildings.

101 (5) "Revenue Bond Law" means Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the
102 "Revenue Bond Law."

103 (6) "Revenue bonds" means revenue bonds authorized to be issued pursuant to the
104 Revenue Bond Law or this Act.

105 **SECTION 4.**

106 **Powers.**

107 The authority shall have the power:

108 (1) To hold, own, lease, transfer, and convey real and personal property or interests
109 therein;

110 (2) To sue and be sued;

- 111 (3) To have and to use a seal and to alter the same at its pleasure;
- 112 (4) To acquire, construct, purchase, own, equip, operate, extend, improve, lease, and sell
113 any project;
- 114 (5) To exercise the powers conferred upon a "public corporation" or a "public Authority"
115 by Article IX, Section III, Paragraph I of the Constitution of Georgia, such Authority
116 being expressly declared to be a "public corporation" or a "public Authority" within the
117 meaning of such provision of the Constitution of Georgia;
- 118 (6) To acquire property and projects in its own name by gift or by purchase on such
119 terms and conditions and in such manner as it may deem proper;
- 120 (7) To accept gifts and bequests for its corporate purposes;
- 121 (8) To appoint, select, and employ, with or without bidding, as the Authority may
122 choose, officers, agents, and employees, including engineering, architectural, and
123 construction experts, fiscal agents, underwriters or other advisors, and attorneys, and to
124 fix their respective compensations;
- 125 (9) To make and execute with public and private persons and corporations contracts,
126 lease agreements, rental agreements, installment sale agreements, and other instruments
127 relating to its projects and incident to the exercise of the powers of the Authority,
128 including contracts for constructing, renting, leasing, and selling its projects for the
129 benefit of the county or the municipalities located within the county; and, without
130 limiting the generality of the foregoing, authority is specifically granted to the Authority
131 and to the county and to the municipalities located within the county, to enter into
132 contracts, lease agreements, rental agreements, installment sale agreements, and related
133 agreements with the Authority for a term not exceeding 50 years as provided in
134 Article IX, Section III of the Constitution of the State of Georgia;
- 135 (10) To lease, sell, transfer or otherwise dispose of any property, real or personal, or
136 assets of the Authority, or to assign its rights under its contracts, lease agreements, or
137 installment sale agreements or its right to receive payments thereunder, either directly or

138 through trust or custodial arrangements whereby interests are created in such contracts,
139 lease agreements, or installment sale agreements or the payments to be received
140 thereunder through the issuance of trust certificates, certificates of participation, custodial
141 receipts, or other similar instruments;

142 (11) To accept loans and grants of money or property of any kind from the United States,
143 the State of Georgia, or any political subdivision of the State of Georgia;

144 (12) To borrow money for any of its corporate purposes and to issue revenue bonds,
145 notes, or other types of indebtedness payable solely from funds or revenues of the
146 Authority pledged for that purpose and to pledge and assign any of its revenues, income,
147 rent, charges, and fees to provide for the payment of the same and to provide for the
148 rights of the holders of such revenue bonds;

149 (13) To enter into interest rate swaps, collars, or other types of interest rate management
150 agreements, or credit enhancement or liquidity agreements relating to any obligations of
151 the Authority, provided that the obligation of the Authority under any such agreements
152 shall not be a general obligation of the Authority but shall be a limited obligation of the
153 Authority payable from a specific source of funds identified for such purpose. The
154 Authority shall be exempt from any requirement of Georgia law requiring a swap
155 management plan or other similar plan relating to interest rate swap agreements;

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

158 (15) To be sued the same as any private corporation on any contractual obligation of the
159 Authority. The Authority shall have the same rights to sue any other person or entity as
160 any private corporation; and

161 (16) To issue its revenue bonds, notes, or other obligations to finance or refinance any
162 project which may be financed by the county or the municipalities located within the
163 county under the Revenue Bond Law.

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SECTION 5.

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Members of the Authority; terms of office.

166 (a) The Authority shall consist of five members. One of the members shall be the person
167 at the time serving as the sole commissioner of the county, who shall be eligible to succeed
168 himself or herself. This member of the Authority shall hold office for terms coinciding with
169 his or her term as the sole commissioner of the county, and shall serve until a successor takes
170 office. The sole commissioner, in his or her capacity to the county, may nominate and
171 appoint four additional members who possess knowledge or experience in matters within the
172 power of the Authority. The non sole commissioner members of the Authority shall serve
173 one-year terms and are eligible to be reappointed without limitation.

174 (b) Immediately after his or her official seating as the sole commission, he or she shall
175 enter upon his or her duties of the Authority. A majority of the members of the Authority
176 shall constitute a quorum, and no vacancy on the Authority shall impair the right of the
177 quorum to exercise all the rights and perform all the duties of the Authority and, in every
178 instance, a majority vote of a quorum shall authorize any legal act of the Authority,
179 including all things necessary to authorize and issue revenue bonds. The Authority shall
180 elect one of its members as chairperson and shall elect a secretary and treasurer. The
181 secretary and treasurer need not necessarily be a member of the Authority. The Authority
182 may elect a vice-chairperson or any number of assistant secretaries or treasurers as it may
183 from time to time deem necessary or desirable.

184 (c) The members of the Authority shall not be entitled to compensation for their services
185 but shall be entitled to and shall be reimbursed for their actual expenses necessarily
186 incurred in the performance of their duties. The Authority shall make rules and regulations
187 for its own governance and it shall have perpetual existence. Any change in name or
188 composition of the Authority shall in no way affect the vested rights of any person under
189 the provisions of this Act or impair the obligations of any contracts existing under this Act.

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SECTION 6.

Issuance and sale of revenue bonds.

192 The Authority shall have power and is authorized from time to time to provide for the
193 issuance and sale of negotiable revenue bonds in the manner provided by Article 3 of
194 Chapter 82 of Title 36 of the O.C.G.A., known as the "Revenue Bond Law," for the purpose
195 of paying all or any part of the costs of any one or more projects, including the cost of
196 constructing, reconstructing, equipping, extending, adding to, or improving any such project,
197 or for the purpose of refunding, as herein provided, any such bonds of the Authority or any
198 other Authority or public body previously issued to finance or refinance the costs of a
199 project. The principal of and interest on such revenue bonds shall be a limited obligation of
200 the Authority payable solely from the source or sources of funds specified in the indenture
201 or resolution of the Authority authorizing the issuance of such revenue bonds. The revenue
202 bonds of each issue shall be issued and validated under and in accordance with the provisions
203 of the Revenue Bond Law. Such revenue bonds shall mature on such dates, bear interest at
204 such rate or rates (whether fixed or variable), be subject to redemption, and have such other
205 terms as the Authority may provide in the indenture or resolution relating thereto.

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SECTION 7.

Power to incur loans or issue notes.

208 The Authority shall also have the power to incur indebtedness from time to time for the
209 purpose of financing or refinancing any project or refunding any obligations previously
210 issued for such purpose, or for any other purpose, whether in the form of a loan or through
211 the issuance of notes, and the principal of and interest on such loans or notes shall be a
212 limited obligation of the Authority payable solely from the source or sources of funds
213 specified in the resolution or indenture of the Authority authorizing such loans or the

214 issuance of such notes. Any such loans or notes shall not be required to be validated as a
215 condition to the issuance thereof and shall have such terms as may be specified by the
216 Authority in the resolution or indenture authorizing the same.

217 **SECTION 8.**

218 Negotiable instruments; bonds and other obligations exempt from taxation.

219 All revenue bonds issued under the provisions of this Act shall have all the qualities and
220 incidents of negotiable instruments under the negotiable instruments law of this state. All
221 such bonds, and any loan incurred or note issued as provided in this Act, are declared to be
222 issued or incurred for an essential public and governmental purpose and such obligations and
223 the interest thereon shall be exempt from all taxation within this state.

224 **SECTION 9.**

225 Revenue bonds or notes not a debt or general obligation.

226 Revenue bonds or notes issued under the provisions of this Act or any loan incurred as
227 authorized herein shall not constitute a debt or a pledge of the faith and credit of the State of
228 Georgia or of any political subdivision thereof, including the county and the municipalities
229 located within the county, but shall be payable solely from the sources as may be designated
230 in the resolution or indenture of the Authority authorizing the issuance of the same. The
231 issuance of such obligations shall not directly, indirectly, or contingently obligate the State
232 of Georgia or any political subdivision thereof, including the county and the municipalities
233 located within the county, to levy or to pledge any form of taxation whatever for the payment
234 thereof. No holder of any bond or receiver or trustee in connection therewith shall have the
235 right to enforce the payment thereof against any property of the State of Georgia or any
236 political subdivision thereof, including the county and the municipalities located within the

237 county, nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable,
238 upon any such property. All such obligations shall contain on their face a recital setting forth
239 substantially the foregoing provisions of this section. Nothing in this section shall be
240 construed to prohibit the State of Georgia or any political subdivision or agency thereof,
241 including the county and the municipalities located within the county, from obligating
242 themselves to pay the amounts required under any contract entered into with the Authority
243 pursuant to Article IX of the Constitution of the State of Georgia (or any successor
244 provision), including from funds received from taxes to be levied and collected for that
245 purpose to the extent necessary to pay the obligations contractually incurred with the
246 Authority, and from any other source.

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SECTION 10.

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Issuance of bonds or obligations under indentures or resolutions.

249 In the discretion of the Authority, any issue of such revenue bonds, notes, or other
250 obligations may be secured by a trust indenture by and between the Authority and a trustee,
251 which may be any trust company or bank having the powers of a trust company within or
252 outside of the State of Georgia. Such trust indenture may pledge or assign fees, tolls, rents,
253 revenues, and earnings to be received by the Authority, including the proceeds derived from
254 the financing, sale, or lease, from time to time, of any project. Either the resolution
255 providing for the issuance of revenue bonds or other obligations or such trust indenture may
256 contain such provisions for protecting and enforcing the rights and remedies of the owners
257 of such bonds or obligations as may be reasonable and proper and not in violation of law,
258 including covenants setting forth the duties of the Authority or any lessee or purchaser in
259 relation to the acquisition and construction of any project, the maintenance, operation, repair,
260 and issuance of any project, and the custody, safeguarding, and application of all moneys,
261 including the proceeds derived from the sale or lease of any project or from the sale of any

262 such bonds, notes, or other obligations, and may also contain provisions concerning the
263 conditions, if any, upon which additional bonds, notes, or other obligations may be issued,
264 whether on a parity with, or subordinate to any other obligations issued by the Authority.
265 Such indenture or resolution may set forth the rights and remedies of the owners of such
266 obligations and of the trustee. In addition to the foregoing, such trust indenture may contain
267 such other provisions as the Authority may deem reasonable and proper for the security of
268 the owners of such bonds or other obligations or otherwise necessary or convenient in
269 connection with the issuance of such obligations. All expenses incurred in carrying out such
270 trust indenture may be treated as a part of the cost of maintenance, operation, and repair of
271 the project affected by such indenture.

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SECTION 11.

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Security for the payment of bonds or other obligations.

274 The Authority may assign or pledge any property or revenues to the payment of the principal
275 and interest on revenue bonds of the Authority as the resolution authorizing the issuance of
276 the bonds or the trust indenture may provide. The use and disposition of such property or
277 revenues assigned to the payment of bonds or other obligations shall be subject to the
278 indenture or resolution authorizing the issuance of such revenue bonds or obligations. Any
279 lien created by the Authority for the payment of such bonds or obligations may be a first lien
280 or a subordinate lien as the Authority may provide, and any such indenture or resolution may
281 provide, at the option of the Authority, for the issuance of additional bonds or other
282 obligations sharing any lien on a parity or subordinate lien basis.

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SECTION 12.

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Refunding bonds or obligations.

285 The Authority is authorized to provide by resolution for the issuance of obligations (whether
286 revenue bonds, notes, or other obligations) for the purpose of refunding any revenue bonds
287 or other obligations issued under the provisions of this Act or under any other provision of
288 Georgia law, so long as such bonds or other obligations were issued for a purpose or project
289 for which the Authority could issue bonds. The issuance of such refunding bonds or other
290 obligations and all the details thereof, the rights of the holders thereof, and the duties of the
291 Authority with respect to the same shall be governed by the foregoing provisions of this Act
292 insofar as the same may be applicable.

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SECTION 13.

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Principal office; venue.

295 The principal office of the Authority shall be in Summerville, Georgia, and the venue of any
296 action against it shall be in Chattooga County. Any action pertaining to the validation of any
297 bonds issued under the provisions of this Act and for the validation of any contract entered
298 into by the Authority shall be brought in the Superior Court of Chattooga County, and such
299 court shall have exclusive original jurisdiction of such actions. Service upon the Authority
300 of any process, subpoena, or summons shall be effected by serving the same personally upon
301 any member of the Authority.

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SECTION 14.

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Validation of revenue bonds.

304 Revenue bonds of the Authority shall be confirmed and validated in accordance with the
305 procedure now or hereafter set forth in Article 3 of Chapter 82 of Title 36 of the O.C.G.A.,
306 known as the "Revenue Bond Law," as the same now exists or may hereafter be amended.
307 The petition for validation shall also make a party defendant to such action the county or the
308 municipalities located within the county, if the county, or the municipalities located within
309 the county (as applicable) has or will contract with the Authority with respect to the project
310 for which bonds are to be issued and are sought to be validated. The bonds, when validated,
311 and the judgment of validation shall be final and conclusive with respect to the validity of
312 such bonds against the Authority and against all other persons or entities, regardless of
313 whether such persons or entities were parties to such validation proceedings.

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SECTION 15.

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No impairment of rights.

316 While any of the bonds or other obligations issued by the Authority or any interests in
317 contracts of the Authority remain outstanding, the powers, duties, or existence of the
318 Authority or of its officers, employees, or agents shall not be diminished or impaired in any
319 manner that will affect adversely the interest and rights of the holders of such bonds or
320 obligations or such interests in contracts of the Authority. The provisions of this section of
321 this Act shall be for the benefit of the Authority and of the holders of any such bonds or
322 obligations and interests in contracts of the Authority and, upon the issuance of bonds or
323 obligations or the creation of interests in contracts of the Authority under the provisions of
324 this Act, shall constitute a contract with the holders of such bonds or obligations or such
325 interests in contracts of the Authority.

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SECTION 16.

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Trust funds; permitted investments.

328 All moneys received by the Authority pursuant to this Act, whether as proceeds from the sale
329 of revenue bonds or obligations of the Authority, as grants or other contributions, or as
330 revenues, income, fees, and earnings, shall be deemed to be the trust funds to be held and
331 applied solely as provided in this Act and in such resolutions and trust indentures as may be
332 adopted and entered into by the Authority pursuant to this Act. Any such moneys or funds
333 may be invested from time to time in such investments as may be permitted under the
334 indenture, agreement, or resolution establishing the fund or account in which such funds are
335 held, or if not held in such a fund or account, in such investments as would be permitted
336 investments for a development authority created under O.C.G.A. Section 36-62-1, et seq.,
337 as amended.

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SECTION 17.

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Power to set rates, fees, and charges.

340 The Authority is authorized to prescribe and fix and collect rates, fees, tolls, rents, and
341 charges and to revise, from time to time, and collect such revised rates, fees, tolls, rents, and
342 charges for the services, facilities, or commodities furnished, including leases, concessions,
343 or subleases of its projects, and to determine the price and terms at and under which its
344 projects may be sold, leased, or otherwise disposed of. The Authority may establish in its
345 discretion procedures for contracting for any work done for the Authority or for the
346 acquisition, sale, transfer, or lease of any property (real or personal) of the Authority.

347 **SECTION 18.**

348 Essential government function; no taxes or assessments.

349 All property or interests in property owned by the Authority shall be public property held and
350 owned for governmental purposes and shall be subject to or exempt from ad valorem taxation
351 as provided by law.

352 **SECTION 19.**

353 Immunity of Authority and members.

354 To the extent permitted by law, the Authority shall have the same immunity and exemption
355 from liability for torts and negligence as Chattooga County, and the officers, agents, and
356 employees of the Authority, when in performance of work of the Authority, shall have the
357 same immunity and exemption from liability for torts and negligence as officers, agents, and
358 employees of Chattooga County.

359 **SECTION 20.**

360 Authority property not subject to levy and sale.

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

362 **SECTION 21.**

363 Authority area of operation.

364 The scope of the Authority's operations shall be limited to the territory embraced within the
365 territorial limits of the county, as the same now or may hereafter exist; provided, however,
366 that nothing in this section shall prevent the Authority from contracting with any entity,

367 public or private, outside of the county with respect to any project located in the county, or
368 located outside of the county, if the Authority shall determine that entering into such contract
369 is in the best interest of the Authority and in furtherance of its public purposes.

370 **SECTION 22.**

371 Supplemental powers.

372 This Act does not in any way take away from the Authority any power which may be
373 conferred upon it by law but is supplemental thereto.

374 **SECTION 23.**

375 No power to impose taxes.

376 The Authority shall not have the right to impose any tax on any person or property.

377 **SECTION 24.**

378 Perpetual existence of Authority; dissolution.

379 Except as otherwise provided in this Act, the Authority shall have perpetual existence. Upon
380 dissolution of the Authority all assets, rights, and obligations of the Authority shall devolve
381 to the county.

382 **SECTION 25.**

383 Liberal construction of Act.

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

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SECTION 26.

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General repealer.

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