

House Bill 780 (AS PASSED HOUSE AND SENATE)

By: Representative LaHood of the 175th

A BILL TO BE ENTITLED

AN ACT

1 To create the Brooks County Public Facilities Authority; to provide that the authority is a
2 body corporate and politic and an instrumentality of the State of Georgia; to authorize the
3 authority to acquire, construct, equip, maintain, and operate certain projects, including
4 buildings and facilities for use by Brooks County, the Brooks County School District, any
5 municipality or other political subdivision located in Brooks County, for its governmental,
6 proprietary, and administrative functions; to provide for members of the authority and their
7 terms, organization, and reimbursement; to provide for vacancies; to provide for definitions;
8 to confer powers and impose duties on the authority; to provide for limitations to the
9 authority; to authorize the authority to enter into contracts and leases pertaining to uses of
10 such facilities, which contracts and leases may obligate the lessees to make payment for the
11 use of the facilities for the term thereof and to pledge for that purpose money derived from
12 taxation; to provide that no debt of Brooks County or the State of Georgia shall be incurred
13 by the exercise of any of the powers granted; to authorize the issuance of revenue bonds of
14 the authority payable from the revenues, rents, and earnings and other functions of the
15 authority; to authorize the collecting and pledging of such revenues, rents, and earnings for
16 the payment of such bonds; to authorize the adoption of resolutions and the execution of trust
17 agreements and indentures to secure the payment of such bonds and to define the rights of
18 the holders of such bonds; to provide for a sinking fund; to make the bonds of the authority

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19 exempt from taxation; to authorize the issuance of refunding bonds; to provide for the
20 validation of such bonds and to fix the venue for jurisdiction of actions relating to any
21 provision of this Act; to provide for immunity and exemption from liability for torts and
22 negligence; to provide that the property of the authority shall not be subject to levy and sale;
23 to provide that certain moneys are trust funds; to provide that this Act shall be liberally
24 construed; to define the scope of the authority's operation; to provide for disposition of
25 property upon dissolution of the authority; to provide for severability; to provide for a short
26 title; to provide for related matters; to repeal conflicting laws; and for other purposes.

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

28 **SECTION 1.**

29 Short title.

30 This Act shall be known and may be cited as the "Brooks County Public Facilities Authority
31 Act."

32 **SECTION 2.**

33 Brooks County Public Facilities Authority.

34 There is created a public body corporate and politic to be known as the Brooks County Public
35 Facilities Authority, which shall be an instrumentality and a public corporation of the State
36 of Georgia, the purpose of which shall be to acquire, construct, equip, maintain, and operate
37 certain projects for use by Brooks County, the Brooks County School District, or any
38 municipality or other political subdivision located within Brooks County, for its
39 governmental, proprietary, public, and administrative functions. The authority shall not be
40 a state institution or a department or agency of the state, but shall be an instrumentality of the

41 state, a mere creation of the state, being a distinct corporate entity and exempt from the
42 provisions of Article 2 of Chapter 17 of Title 50 of the O.C.G.A., the "Georgia State
43 Financing and Investment Commission Act." The authority shall have its principal office in
44 Brooks County, and its legal situs or residence for the purposes of this Act shall be Brooks
45 County.

46 **SECTION 3.**

47 **Membership.**

48 The authority shall consist of five members who shall be eligible to succeed themselves and
49 who shall be appointed by the Board of Commissioners of Brooks County. Each member
50 of the Board of Commissioners of Brooks County shall make an appointment to the authority
51 and each such appointment shall be ratified by a majority of said board of commissioners.
52 No more than three members of the authority may be members of said board of
53 commissioners or employees of Brooks County. Any member of the authority who is a
54 member of said board of commissioners shall serve for a term of office concurrent with such
55 person's term of office as a member of said board of commissioners. Each member of the
56 authority who is not a member of said board of commissioners shall serve for a term of office
57 of three years, except that the initial terms of office of those members first appointed to the
58 authority shall be specified at the time of appointment to be one, two, and, if no such member
59 is a member of the board of commissioners, three years. After such initial terms, those
60 members who are not members of said board of commissioners shall serve for terms of office
61 of three years each. Members of the authority shall serve for the terms of office so specified
62 and until the appointment and qualification of their respective successors. Vacancies on the
63 authority shall be filled by said board of commissioners for the remainder of the unexpired
64 term and until the appointment and qualification of a successor. Immediately after their
65 appointment, the members of the authority shall enter upon their duties. The authority shall

66 elect one of its members as chairperson and one as vice chairperson. The secretary-treasurer
67 of the authority shall be appointed by the authority and need not be a member of the
68 authority. Three members of the authority shall constitute a quorum and no vacancy on the
69 authority shall impair the right of the quorum to exercise all the rights and perform all the
70 duties of the authority and, in every instance, a majority vote of a quorum shall authorize any
71 legal act of the authority, including all things necessary to authorize and issue revenue bonds.
72 The members of the authority shall receive no compensation for their services but may be
73 reimbursed by the authority for the actual expenses necessarily incurred in the performance
74 of their duties. The authority shall make rules and regulations for its own government and
75 shall have perpetual existence.

76 **SECTION 4.**

77 Definitions.

78 As used in this Act, the following words and terms shall have the following meanings unless
79 a different meaning clearly appears from the context:

80 (1) "Authority" shall mean the Brooks County Public Facilities Authority created by this
81 Act.

82 (2) "Project" shall mean and include real and personal property acquired or held by the
83 authority, including all land; buildings; structures; sanitary and surface water sewers;
84 utilities, including natural gas distribution, telecommunications, fiber, cable, and
85 broadband services; and other public property determined by the authority to be desirable
86 for the efficient operation of any department, board, office, commission, or agency of
87 Brooks County, the Brooks County School District, or any municipality or other political
88 subdivision located in Brooks County, or the State of Georgia in the performance of its
89 governmental, proprietary, and administrative functions.

90 (3) "Cost of project" shall include the cost of lands, buildings, improvements, machinery,
91 equipment, property, easements, rights, franchises, material, labor, services acquired or
92 contracted for, plans and specification, and financing charges; construction costs; interest
93 prior to and during construction; architectural, accounting, engineering, inspection,
94 administrative, fiscal, and legal expenses; expenses incident to determining the feasibility
95 or practicability of the project; and expenses incident to the acquiring, constructing,
96 equipping, and operating of any project or any part thereof and to the placing of the same
97 in operation.

98 (4) "Revenue bonds" shall mean revenue bonds issued under the provisions of Article 3
99 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," or under the
100 provisions of this Act. The obligations authorized under this Act may be issued by the
101 authority in the manner authorized under the Revenue Bond Law.

102 SECTION 5.

103 Powers.

104 The authority shall have all the powers necessary or convenient to carry out and effectuate
105 the purposes and provisions of this Act, including, but without limiting the generality of the
106 foregoing, the power:

107 (1) To sue and be sued;

108 (2) To adopt and alter a corporate seal;

109 (3) To make and execute with public and private persons and corporations contracts,
110 trusts, leases, rental agreements, and other instruments relating to its projects and in
111 furtherance of the purposes of the authority, including contracts for the constructing,
112 renting, and leasing of its projects for the use of any county or municipality in this state;

113 (4) To acquire in its own name by purchase on such terms and conditions and in such
114 manner as it may deem proper or by gift, grant, lease, or otherwise, real and personal

115 property necessary or convenient for its corporate purposes, or rights and easements
116 therein, and to use the same so long as its corporate existence shall continue and to lease
117 or make contracts with respect to the use of or disposition of the same in any manner it
118 deems to the best advantage of the authority. Title to any such property shall be held by
119 the authority exclusively for the benefit of the public.

120 (5) To improve, extend, add to, reconstruct, renovate, or remodel any project or part
121 thereof already acquired;

122 (6) To pledge or assign any revenues, income, rent, charges, and fees received by the
123 authority;

124 (7) To appoint and select agents, engineers, architects, attorneys, fiscal agents,
125 accountants, and employees and to provide for their compensation and duties;

126 (8) To construct, reconstruct, acquire, own, alter, repair, remodel, maintain, extend,
127 improve, operate, manage, and equip projects located on land owned or leased by the
128 authority;

129 (9) To receive, accept, and use any contributions, loans, or grants by persons, firms, or
130 corporations, including the State of Georgia and the United States of America, and any
131 other contributions;

132 (10) To pay all or part of the costs of any project from the proceeds of revenue bonds of
133 the authority or from other lawful sources available to it;

134 (11) To prescribe rules and regulations for the operation of and to exercise police powers
135 over the projects managed or operated by the authority;

136 (12) To accept, receive, and administer gifts, grants, loans and devises of money,
137 material, and property of any kind, including loans and grants from the State of Georgia
138 or the United States of America or any agency or instrumentality thereof, upon such
139 terms and conditions as the State of Georgia or the United States of America or such
140 agency or instrumentality may impose;

- 141 (13) To sell, lease, exchange, transfer, assign, pledge, mortgage, dispose of, grant in
142 trust, or grant options for any real or personal property or interest therein in furtherance
143 of the purposes of the authority;
- 144 (14) As security for repayment of authority obligations, to pledge, mortgage, convey,
145 assign, hypothecate, or otherwise encumber any property, real or personal, of such
146 authority and to execute any trust agreement, indenture, or security agreement containing
147 any provisions not in conflict with law, which trust agreement, indenture, or security
148 agreement may provide for foreclosure or forced sale of any property of the authority
149 upon default, on such obligations, either in payment of principal or interest or in the
150 performance of any term or condition, as are contained in such agreement or indenture;
- 151 (15) To borrow money for any of its corporate purposes, to issue revenue bonds payable
152 solely from funds pledged for that purpose, and to provide for the payment of the same
153 and for the rights of the holders thereof;
- 154 (16) To exercise all powers usually possessed by private corporations performing similar
155 functions which are not in conflict with the Constitution and laws of this state; and
- 156 (17) Pursuant to proper resolution of the authority, to issue revenue bonds payable from
157 the rents and revenues of the authority and its projects, which bonds may be issued in
158 either fully negotiable coupon form, in which event they shall have all the qualities and
159 incidents of negotiable instruments under the laws of the State of Georgia, or which
160 bonds may be issued in whole or in part in nonnegotiable fully registered form without
161 coupons, payable to a designated payee or to the registered assigns of the payee with such
162 conversion privileges as the authority may provide, for the purpose of paying all or any
163 part of the cost associated with the projects authorized by the authority, including the cost
164 of constructing, reconstructing, equipping, extending, adding to, or improving such
165 projects or for the purpose of refunding, as provided in this Act, any such bonds of the
166 authority theretofore issued. If the proceeds of the bonds of any issue shall exceed the
167 amount required for the purpose for which such bonds were issued, the surplus shall be

168 paid into the fund provided for the payment of principal and interest on such bonds. All
169 such revenue bonds shall be issued and validated under and in accordance with the
170 procedures of Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the Revenue Bond
171 Law, and in accordance with all terms and provisions thereof not in conflict with this Act,
172 and in accordance with Code Section 50-17-1 of the O.C.G.A., relating to use of
173 facsimile signatures on public securities, and, as security for the payment of any revenue
174 bonds so authorized, any rents and revenue of the authority may be pledged and assigned.
175 Such bonds shall be declared to be issued for an essential public and governmental
176 purpose, and such bonds and all income therefrom shall be exempt from all taxation
177 within the State of Georgia. For the purpose of the exemption from taxation of such
178 bonds and the income therefrom, the authority shall be deemed to be a political
179 subdivision of the State of Georgia.

180 **SECTION 6.**

181 Credit not pledged and debt not created by bonds.

182 Revenue bonds issued under the provisions of this Act shall not constitute a debt or a pledge
183 of the faith and credit of the State of Georgia, Brooks County, the Brooks County School
184 District, or any municipality or other political subdivision located in Brooks County, but such
185 bonds shall be payable from the rentals, revenue, earnings, and funds of the authority as
186 provided in the resolution or trust agreement or indenture authorizing the issuance and
187 securing the payment of such bonds. The issuance of such bonds shall not directly,
188 indirectly, or contingently obligate the state or said county to levy or pledge any form of
189 taxation for the payment thereof. No holder of any bond or receiver or trustee in connection
190 therewith shall have the right to enforce the payment thereof against any property of the state
191 or of said county, nor shall any such bond constitute a charge, lien, or encumbrance, legal or

192 equitable, upon any such property. All such bonds shall contain on their face a recital setting
193 forth substantially the foregoing provisions of this section.

194 **SECTION 7.**

195 Trust agreement.

196 In the discretion of the authority, any issue of revenue bonds may be secured by an
197 agreement or indenture made by the authority with a corporate trustee, which may be any
198 trust company or bank having the powers of a trust company within or without the State of
199 Georgia. Such trust agreement or indenture may pledge and assign rents, fees, charges,
200 revenues, and earnings to be received by the authority. The resolution providing for the
201 issuance of revenue bonds and such trust agreement or indenture may contain provisions for
202 protecting and enforcing the rights and remedies of the bondholders, including the right of
203 appointment of a receiver upon default of the payment of any principal or interest obligation
204 and the right of any receiver or trustee to enforce collection of any rents, fees, charges, or
205 revenues for use of the project or projects necessary to pay all costs of operation and all
206 reserves provided for, all principal and interest on all bonds of the issue, all costs of
207 collection, and all other costs reasonably necessary to accomplish the collection of such sums
208 in the event of any default of the authority. Such resolution and such trust agreement or
209 indenture may include covenants setting forth the duties of the authority in relation to the
210 acquisition of property for and the construction of the project and to the custody,
211 safeguarding, and application of all funds and covenants providing for the operation,
212 maintenance, repair, and insurance of the project or projects and may contain provisions
213 concerning the conditions, if any, upon which additional revenue bonds may be issued. Such
214 trust agreement or indenture may set forth the rights and remedies of the bondholders and of
215 the trustee and may restrict the individual right of action of bondholders as is customary in
216 securing bonds and debentures of corporations and may contain such other provisions as the

217 authority may deem reasonable and proper for the security of the bondholders. All expenses
218 incurred in carrying out such trust may be treated as a part of the cost of maintenance,
219 operation, and repair of the project affected by such trust.

220 **SECTION 8.**
221 Refunding bonds.

222 The authority is authorized to provide by resolution for the issuance of revenue bonds of the
223 authority for the purpose of calling, refunding, or refinancing any revenue bonds issued
224 under the provisions of this Act and then outstanding and to include in the amount of such
225 refunding bonds all interest and any call premiums that may be required for the redemption
226 and refunding of such outstanding bonds.

227 **SECTION 9.**
228 Venue of actions, jurisdiction.

229 Any action to protect or enforce any rights under the provisions of this Act or any action
230 against the authority brought in the courts of the State of Georgia shall be brought in the
231 Superior Court of Brooks County, Georgia, and any action pertaining to validation of any
232 bonds issued under the provisions of this Act shall be brought in said court, which shall have
233 exclusive, original jurisdiction of such actions.

234 **SECTION 10.**
235 Revenue bond validation.

236 The petition for validation of all revenue bonds of the authority shall be brought against the
237 authority, and any contracting party whose obligation is pledged as security for the payment

238 of the bonds sought to be validated, as defendants, and the defendants shall be required to
239 show cause, if any exists, why such contract or contracts and the terms and conditions thereof
240 shall not be adjudicated to be in all respects valid and binding upon such contracting parties.
241 It shall be incumbent upon such defendants to defend against adjudication of the validity and
242 binding effect of such contract or contracts or be forever bound thereby. Notice of such
243 proceedings shall be included in the notice of the validation hearing required to be issued and
244 published by the clerk of the Superior Court of Brooks County in which court such validation
245 proceedings shall be initiated.

246 **SECTION 11.**

247 Interest of bondholders protected.

248 While any of the bonds issued by the authority remain outstanding, the powers, duties, or
249 existence of the authority or of its officers, employees, or agents shall not be diminished,
250 impaired, or affected in any manner that will affect adversely the interest and rights of the
251 holders of such bonds. The provisions of this Act shall be for the benefit of the authority and
252 the holders of any such bonds and, upon the issuance of bonds under the provisions of this
253 Act, shall constitute a contract with the holders of such bonds.

254 **SECTION 12.**

255 Revenues, earnings, rents, and charges; use.

256 (a) For the purpose of earning sufficient revenue to make possible the financing of the
257 construction of the project or projects of the authority with revenue bonds, the authority is
258 authorized and empowered to fix, revise, and collect rents, fees, and charges on each project
259 which it shall cause to be acquired or constructed. Such rents, fees, or charges to be paid for

260 the use of such project or projects shall be so fixed and adjusted so as to provide a fund
261 sufficient with other revenue, if any, of such project or projects or of the authority:

262 (1) To pay the cost of operating, maintaining, and repairing the project or projects,
263 including reserves for insurance and extraordinary repairs and other reserves required by
264 the resolution or trust agreement or indenture pertaining to such bonds and the issuance
265 thereof, unless such cost shall be otherwise provided for;

266 (2) To pay the principal of and interest on such revenue bonds as the same shall become
267 due, including call premiums, if any, the proceeds of which shall have been or shall be
268 used to pay the cost of such project or projects;

269 (3) To comply with any sinking fund requirements contained in the resolution or trust
270 agreement or indenture pertaining to the issuance of and security for such bonds;

271 (4) To perform fully all provisions of such resolution or trust agreement or indenture
272 relating to the issuance of or security for such bonds to the payment of which such rent
273 is pledged;

274 (5) To accumulate any excess income which may be required by the purchasers of such
275 bonds or may be dictated by the requirements of such resolution or trust agreement or
276 indenture, or which may be required for achieving ready marketability of and low interest
277 rates on such bonds; and

278 (6) To pay any expenses in connection with such bond issue or of such project,
279 including, but not limited to, trustees', attorney's, and fiscal agents' fees.

280 (b) Such rent shall be payable at such intervals as may be agreed upon and set forth in the
281 rental contract or lease providing therefor, and any such contract or lease may provide for the
282 commencement of rent payments to the authority prior to the completion of the project by
283 the authority and may provide for the payment of rent during such times as such project may
284 be partially or wholly untenable.

285 (c) Such rental contract or lease may obligate the tenants or lessees to operate, maintain, and
286 keep in good repair, including complete reconstruction, if necessary, the rented or leased

287 premises and projects, regardless of the cause of the necessity of such maintenance, repair,
288 or reconstruction.

289 (d) Such rental contract or lease may obligate the tenants or lessees to indemnify and save
290 harmless the authority from any and all damage to persons and property occurring on or by
291 reason of the leased property or improvements thereon and to undertake, at the expense of
292 the tenants or lessees, the defense of any action brought against the authority by reason of
293 injury or damages to persons or property occurring on or by reason of the leased premises.

294 (e) In the event of any failure or refusal on the part of the tenants or lessees to perform
295 punctually any covenant or obligation contained in any such rental contract or lease, the
296 authority may enforce performance by any legal or equitable process against the tenants or
297 lessees.

298 (f) The authority shall be permitted to assign any rent payable to it, pursuant to such rental
299 contract or lease, to a trustee or paying agent as may be required by the terms of the
300 resolution or trust agreement or indenture relating to the issuance of and security for such
301 bonds.

302 (g) The use and disposition of the authority's revenue shall be subject to the provisions of
303 the resolution authorizing the issuance of such bonds or of the trust agreement or indenture,
304 if any, securing the same.

305 **SECTION 13.**

306 **Sinking fund.**

307 The revenue, rents, and earnings derived from any particular project or projects and any and
308 all revenue, rents, and earnings received by the authority, regardless of whether such
309 revenue, rents, and earnings were produced by a particular project for which bonds have been
310 issued, unless otherwise pledged, may be pledged by the authority to payment of the
311 principal of and interest on revenue bonds of the authority as may be provided in any

312 resolution authorizing the issuance of such bonds or in any trust instrument pertaining to such
313 bonds, and such funds so pledged, from whatever source received, may include funds
314 received from one or more or all sources and may be set aside at regular intervals into
315 sinking funds for which provision may be made in any such resolution or trust instrument
316 and which may be pledged to and charged with the payment of the interest upon such
317 revenue bonds as such interest shall become due, the principal of the bonds as the same shall
318 mature, the necessary charges of any trustee or paying agent for paying such principal and
319 interest, and any premium upon bonds retired by call or purchase, and the use and disposition
320 of any sinking fund may be subject to such regulation as may be provided for in the
321 resolution authorizing the issuance of the bonds or in the trust instrument securing the
322 payment of the same.

323 **SECTION 14.**

324 Taxation status.

325 The exercise of the powers conferred upon the authority under this Act shall constitute an
326 essential governmental function for a public purpose, and to the maximum extent permitted
327 by general law, the authority shall be required to pay no taxes or assessments upon any of the
328 property acquired by it or under its jurisdiction, control, possession, or supervision or upon
329 its activities in the operation and maintenance of property acquired by it or of buildings
330 erected or acquired by it or any fees, rents, or other charges for the use of such property or
331 buildings or other income received by the authority. This section shall not include an
332 exemption from sales and use tax on property purchased by or for the use of the authority.

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SECTION 15.

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Immunity from tort actions.

335 The authority shall have the same immunity and exemption from liability for torts and
336 negligence as Brooks County, and the officers, agents, and employees of the authority, when
337 in performance of work of the authority, shall have the same immunity and exemption from
338 liability for torts and negligence as officers, agents, and employees of Brooks County. The
339 authority may be sued the same as private corporations on any contractual obligation of the
340 authority.

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SECTION 16.

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Property not subject to levy and sale.

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

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SECTION 17.

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Trust funds.

346 All funds received pursuant to the authority of Section 12 of this Act, whether as proceeds
347 from the sale of revenue bonds or as revenue, rents, fees, charges, or other earnings or as
348 grants, gifts, or other contributions, shall be deemed to be trust funds to be held and applied
349 by the authority, solely as provided in this Act. The bondholders entitled to receive the
350 benefits of such funds shall have a lien on all such funds until the same are applied as
351 provided for in any such resolution or trust instrument of the authority.

352 **SECTION 18.**

353 Construction.

354 This Act and any other law enacted with reference to the authority shall be liberally
355 construed for the accomplishment of the purposes of the authority.

356 **SECTION 19.**

357 Scope of operations.

358 The projects of the authority's operation shall be located in the territory embraced within the
359 jurisdictional limits of Brooks County as the same now or may hereafter exist.

360 **SECTION 20.**

361 Conveyance of property upon dissolution.

362 Should the authority for any reason be dissolved after full payment of all bonded
363 indebtedness incurred under this Act, both as to principal and interest, title to all property of
364 any kind and nature, real and personal, held by the authority at the time of such dissolution
365 shall be conveyed to Brooks County, or title to any such property may be conveyed prior to
366 such dissolution in accordance with provisions which may be made therefor in any resolution
367 or trust instrument relating to such property, subject to any liens, leases, or other
368 encumbrances outstanding against or in respect to said property at the time of such
369 conveyance.

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SECTION 21.

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Severability; effect of partial invalidity of Act.

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

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

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

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

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provision of this Act independently of any other provision hereof.

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SECTION 22.

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General repealer.

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