

House Bill 1242 (AS PASSED HOUSE AND SENATE)

By: Representatives Neal of the 79th, Douglas of the 78th, Bell of the 75th, Holly of the 116th,
Burnough of the 77th, and others

A BILL TO BE ENTITLED
AN ACT

1 To create the Clayton County Public Facilities Authority; to provide for definitions; to
2 provide for members, terms, and appointment; to provide for powers; to provide for revenue
3 bonds; to provide that credit is not pledged; to provide for trust indentures; to provide for
4 bondholder remedies; to provide for validation of bonds; to provide for payment of bond
5 proceeds; to provide for a sinking fund; to provide for venue and jurisdiction; to provide for
6 protection of bondholders' interests; to provide that money received shall be deemed to be
7 trust funds; to provide for reversion upon dissolution; to provide for rates, charges, and
8 revenues; to provide for tort immunity; to provide for tax exemption; to provide for effect
9 on other governments; to provide for liberal construction; to provide for severability; to
10 provide for a short title; to provide for an effective date; to provide for related matters; to
11 repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Short title.

H. B. 1242

15 This Act shall be known and may be cited as the "Clayton County Public Facilities Authority
16 Act."

17 **SECTION 2.**

18 Clayton County Public Facilities Authority.

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

24 (b) The authority is created for the purpose of promoting the public good and general
25 welfare of the citizens of the county, financing and providing facilities, equipment, and
26 services within the county, for sale to, lease or sublease to, ownership, or operation by the
27 county as otherwise authorized by law. In connection with the exercise of any of its
28 powers, the members of the authority may make findings or determinations that the
29 exercise of its powers as proposed will promote the public good and general welfare and
30 will assist public bodies in providing facilities, equipment, and services within the county.

31 **SECTION 3.**

32 Definitions.

33 As used in this Act, the term:

34 (1) "Authority" means the Clayton County Public Facilities Authority created by this
35 Act.

36 (2) "Costs of the project" means and embraces the cost of construction; the cost of all
37 lands, properties, rights, easements, and franchises acquired; the cost of all machinery and

38 equipment; financing charges; interest prior to and during construction and for six months
39 after completion of construction; the cost of engineering, architectural, fiscal agents'
40 expenses, legal expenses, plans and specifications, and other expenses necessary or
41 incidental to determining the feasibility or practicability of the project; administrative
42 expenses and such other expenses as may be necessary or incidental to the financing
43 authorized in this Act; working capital; and all other costs necessary to acquire, construct,
44 add to, extend, improve, equip, operate, and maintain the project.

45 (3) "County" means Clayton County, Georgia, or its successor.

46 (4) "Project" means:

47 (A) All land, buildings, facilities, and equipment necessary or convenient for the
48 efficient operation of:

49 (i) The county or any department, agency, division, or commission thereof;

50 (ii) The Clayton County School System; or

51 (iii) Any municipal corporation within the county; and

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

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

55 (6) "Revenue Bond Law" means Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the
56 "Revenue Bond Law."

57 (7) "Self-liquidating" means any project from which the revenues and earnings to be
58 derived by the authority therefrom, including, but not limited to, any contractual
59 payments with governmental or private entities, and all properties used, leased, and sold
60 in connection therewith, together with any grants, will be sufficient to pay the costs of
61 operating, maintaining, and repairing the project and to pay the principal and interest on
62 the revenue bonds or other obligations which may be issued for the purpose of paying the
63 costs of the project.

64 (8) "State" means the State of Georgia.

SECTION 4.

Members of the authority; terms of office.

(a) The authority shall consist of five members who shall be appointed by the Board of Commissioners of Clayton County. Members of the Board of Commissioners of Clayton County may be appointed to the authority. With respect to the initial appointments, two members shall be appointed for a term of three years, two members shall be appointed for a term of two years, and one member shall be appointed for a term of one year. Thereafter, all appointments shall be made for terms of three years and until successors are appointed and qualified. Immediately after such appointments, the members of the authority shall enter upon their duties. To be eligible for appointment as a member of the authority, a person shall be at least 21 years of age and shall have been a resident of Clayton County, Georgia, for at least two years prior to the date of his or her appointment and shall not have been convicted of a felony. Any member of the authority may be selected and appointed to succeed himself or herself.

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

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

(d) Three members of the authority shall constitute a quorum. No vacancy on the authority shall impair the right of the quorum to exercise all of the rights and perform all of the duties of the authority.

92 (e) A majority vote by the authority shall be defined as affirmation of at least three
93 members.

94 **SECTION 5.**

95 Powers.

96 The authority shall have the power:

- 97 (1) To have a seal and alter the same at its pleasure;
- 98 (2) To acquire by purchase, lease, gift, condemnation, or otherwise and to hold, operate,
99 maintain, lease, and dispose of real and personal property of every kind and character for
100 its corporate purposes;
- 101 (3) To appoint, select, and employ officers, agents, and employees, including
102 engineering, architectural, and construction experts, fiscal agents, and attorneys, and to
103 fix their respective compensations;
- 104 (4) To execute contracts, leases, installment sale agreements, and other agreements and
105 instruments necessary or convenient in connection with the acquisition, construction,
106 addition, extension, improvement, equipping, operation, or maintenance of a project; and
107 any and all persons, firms, corporations, and the county, the Clayton County School
108 System, and any municipality within the county are hereby authorized to enter into
109 contracts, leases, installment sale agreements, and other agreements or instruments with
110 the authority upon such terms and for such purposes as they deem advisable and as they
111 are authorized by law;
- 112 (5) To acquire, construct, add to, extend, improve, equip, hold, operate, maintain, lease,
113 and dispose of projects;
- 114 (6) To pay the costs of the project with the proceeds of revenue bonds or other
115 obligations issued by the authority or from any grant or contribution from the United
116 States or any agency or instrumentality thereof or from this state or any agency or

- 117 instrumentality or political subdivision or municipal corporation thereof or from any
118 other source whatsoever;
- 119 (7) To accept loans or grants of money, materials, or property of any kind from the
120 United States or any agency or instrumentality thereof, upon such terms and conditions
121 as the United States or such agency or instrumentality may require;
- 122 (8) To accept loans or grants of money, materials, or property of any kind from this state
123 or any agency or instrumentality or political subdivision or municipal corporation thereof,
124 upon such terms and conditions as this state or such agency or instrumentality or political
125 subdivision or municipal corporation may require;
- 126 (9) To borrow money for any of its corporate purposes, to issue revenue bonds, and to
127 provide for the payment of the same and for the rights of the holders thereof;
- 128 (10) To pledge the payment of revenue bonds, notes, and other forms of obligations
129 issued by the authority and any and all revenue and properties of the authority, both real
130 and personal;
- 131 (11) To exercise any power usually possessed by private corporations performing similar
132 functions, including the power to incur short-term debt and to approve, execute, and
133 deliver appropriate evidence of any such indebtedness;
- 134 (12) To prescribe rules, regulations, service policies, and procedures for the operation
135 of any project;
- 136 (13) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the
137 manner in which its business is transacted; and
- 138 (14) To do all things necessary or convenient to carry out the powers expressly given in
139 this Act.

140 **SECTION 6.**
141 Revenue bonds.

142 The authority, or any authority or body which has or which may in the future succeed to the
143 powers, duties, and liabilities vested in the authority created by this Act, shall have the power
144 and is authorized, pursuant to the Revenue Bond Law, to provide by resolution for the
145 issuance of revenue bonds of the authority for the purpose of paying all or any part of the
146 costs of a project and for the purpose of refunding revenue bonds or other obligations
147 previously issued; provided, however, that no such revenue bonds shall be issued to finance
148 a project for the Clayton County School System or any municipal corporation located within
149 the county without the approval of the Board of Commissioners of Clayton County.
150 Revenue bonds shall be undertaken, issued, priced, validated, sold, paid, redeemed, refunded,
151 secured, and replaced in accordance with the provisions of the Revenue Bond Law.

152 **SECTION 7.**
153 Revenue bonds; conditions precedent to issuance.

154 The authority shall adopt a resolution authorizing issuance of revenue bonds. In the
155 resolution, the authority shall determine that the project financed with the proceeds of such
156 revenue bonds is self-liquidating. Revenue bonds may be issued without any other
157 proceedings or the happening of any other conditions or things other than those proceedings,
158 conditions, and things which are specified or required by this Act. Any resolution providing
159 for the issuance of revenue bonds under the provisions of this Act shall become effective
160 immediately upon its passage and need not be published or posted, and any such resolution
161 may be passed at any regular or special meeting of the authority by a majority vote as defined
162 in Section 4 of this Act.

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SECTION 8.

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Credit not pledged.

165 Revenue bonds of the authority shall not be deemed to constitute a debt of the county, the
166 Clayton County School System, any municipality located within the county, or the State of
167 Georgia, nor a pledge of the faith and credit of this state or such county, school system, or
168 municipality, but such revenue bonds shall be payable solely from the fund hereinafter
169 provided for. The issuance of such revenue bonds shall not directly, indirectly, or
170 contingently obligate the State of Georgia or Clayton County to levy or pledge any form of
171 taxation whatsoever for payment of such revenue bonds or to make any appropriation for
172 their payment, and all such revenue bonds shall contain recitals on their face covering
173 substantially the foregoing provisions of this section. Notwithstanding the foregoing
174 provisions, this Act shall not affect the ability of the authority and the county, the Clayton
175 County School System, or any municipality within the county to enter into an
176 intergovernmental contract pursuant to which the political subdivision agrees to pay amounts
177 sufficient to pay operating charges and other costs of the authority or any project including,
178 without limitation, the principal of and interest on revenue bonds in consideration for
179 services or facilities of the authority.

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SECTION 9.

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Trust indenture as security.

182 In the discretion of the authority, any issuance of revenue bonds may be secured by a trust
183 indenture by and between the authority and a corporate trustee, which may be any trust
184 company or bank having the powers of a trust company within or without the State of
185 Georgia. Either the resolution providing for the issuance of revenue bonds or such trust
186 indenture may contain such provisions for protecting and enforcing the rights and remedies

187 of the bondholders as may be reasonable and proper and not in violation of law, including
188 covenants setting forth the duties of the authority in relation to the acquisition and
189 construction of the project; the maintenance, operation, repair, and insuring of the project;
190 and the custody, safeguarding, and application of all money.

191 **SECTION 10.**

192 Remedies of bondholders.

193 Any holder of revenue bonds and the trustee under the trust indenture, if any, except to the
194 extent that the rights provided in this Act may be restricted by resolution passed before the
195 issuance of the revenue bonds or by the trust indenture, may, either at law or in equity, by
196 suit, action, mandamus, or other proceedings, protect and enforce any and all rights it may
197 have under the laws of the state, including specifically, but without limitation, the Revenue
198 Bond Law, or granted hereunder or under such resolution or trust indenture and may enforce
199 and compel performance of all duties required by this Act or by such resolution or trust
200 indenture to be performed by the authority or any officer thereof, including the fixing,
201 charging, and collecting of revenues, fees, tolls, fines, and other charges for the use of the
202 facilities and services furnished.

203 **SECTION 11.**

204 Validation.

205 Revenue bonds and the security therefor shall be issued, confirmed, and validated in
206 accordance with the provisions of the Revenue Bond Law. The petition for validation shall
207 also make Clayton County, the Clayton County School System, or any municipality within
208 the county a party defendant to such action if such government has contracted with the
209 authority for services or facilities relating to the project for which revenue bonds are to be

210 issued and sought to be validated, and such defendant shall be required to show cause, if any
211 exists, as to why such contract or contracts shall not be adjudicated as a part of the basis for
212 the security for the payment of any such revenue bonds. The revenue bonds, when validated,
213 and the judgment of validation shall be final and conclusive with respect to such revenue
214 bonds and the security for the payment thereof and interest thereon and against the authority
215 and all other defendants.

216 **SECTION 12.**

217 To whom proceeds of bonds shall be paid.

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

223 **SECTION 13.**

224 Sinking fund.

225 The money received pursuant to an intergovernmental contract and the revenues, fees, tolls,
226 fines, charges, and earnings derived from any particular project or projects, regardless of
227 whether or not such revenues, fees, tolls, fines, charges, and earnings were produced by a
228 particular project for which revenue bonds have been issued, unless otherwise pledged and
229 allocated, may be pledged and allocated by the authority to the payment of the principal of
230 and interest on revenue bonds of the authority as the resolution authorizing the issuance of
231 such revenue bonds or the trust indenture may provide. Such funds so pledged from
232 whatever source received may be set aside at regular intervals as may be provided in the

233 resolution or trust indenture into a sinking fund, which sinking fund shall be pledged to and
234 charged with the payment of:

- 235 (1) The interest upon such revenue bonds as the same shall fall due;
- 236 (2) The principal or purchase price of such revenue bonds as the same shall fall due;
- 237 (3) Any premium upon such revenue bonds as the same shall fall due;
- 238 (4) The purchase of such revenue bonds in the open market; and
- 239 (5) The necessary charges of the paying agent for paying principal and interest.

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

245 **SECTION 14.**

246 Venue and jurisdiction.

247 Any action to protect or enforce any rights under the provisions of this Act or any suit or
248 action against such authority shall be brought in the Superior Court of Clayton County, and
249 any action pertaining to validation of any revenue bonds issued under the provisions of this
250 Act shall likewise be brought in said court which shall have exclusive, original jurisdiction
251 of such actions.

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SECTION 15.

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Interest of bondholders protected.

254 While any of the revenue bonds issued by the authority remain outstanding, the powers,
255 duties, or existence of such authority or its officers, employees, or agents shall not be
256 diminished or impaired in any manner that will affect adversely the interests and rights of the
257 holders of such revenue bonds; and no other entity, department, agency, or authority shall
258 be created which would compete with the authority to such an extent as to affect adversely
259 the interests and rights of the holders of such revenue bonds, nor shall the state itself so
260 compete with the authority. The provisions of this Act shall be for the benefit of the
261 authority and the holders of any such revenue bonds and, upon the issuance of such revenue
262 bonds under the provisions of this Act, shall constitute a contract with the holders of such
263 revenue bonds.

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SECTION 16.

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Money received considered trust funds.

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

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SECTION 17.

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Reversion upon dissolution.

271 Upon the dissolution of the authority, all assets owned by the authority shall become the
272 property of the county unless the agreement executed in connection with a project requires
273 otherwise.

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SECTION 18.

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Rates, charges, and revenues; use.

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

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SECTION 19.

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Tort immunity.

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To the extent permitted by law, the authority shall have the same immunity and exemption from liability for torts and negligence as Clayton County; and the officers, agents, and employees of the authority, when in the performance of the duties or work of the authority, shall have the same immunity and exemption from liability for torts and negligence as the officers, agents, and employees of Clayton County when in the performance of their public duties or work of the county.

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SECTION 20.

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Tax exemption.

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

296 **SECTION 21.**

297 Effect on other governments.

298 This Act shall not and does not in any way take from Clayton County, the Clayton County
299 School System, or any municipality within the county the authority to own, operate, and
300 maintain public facilities or to issue revenue bonds as provided by the Revenue Bond Law.

301 **SECTION 22.**

302 Liberal construction of Act.

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

305 **SECTION 23.**

306 Severability; effect of partial invalidity of Act.

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

310 **SECTION 24.**

311 Effective date.

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

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SECTION 25.

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General repealer.

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