

House Bill 1419 (AS PASSED HOUSE AND SENATE)

By: Representative Camp of the 135th

A BILL TO BE ENTITLED

AN ACT

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

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

32 **SECTION 2.**

33 Pike County Public Facilities Authority.

34 There is created a public body corporate and politic to be known as the Pike 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 Pike County, the Pike County School District, or any municipality
38 or other political subdivision located within Pike County, for its governmental, proprietary,
39 public, and administrative functions. The authority shall not be a state institution or a
40 department or agency of the state, but shall be an instrumentality of the state, a mere creation

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

45 **SECTION 3.**

46 **Membership.**

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

66 shall impair the right of the quorum to exercise all the rights and perform all the duties of the
67 authority and, in every instance, a majority vote of a quorum shall authorize any legal act of
68 the authority, including all things necessary to authorize and issue revenue bonds. The
69 members of the authority shall receive no compensation for their services but may be
70 reimbursed by the authority for the actual expenses necessarily incurred in the performance
71 of their duties. The authority shall make rules and regulations for its own government and
72 shall have perpetual existence.

73 SECTION 4.

74 Definitions.

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

77 (1) "Authority" shall mean the Pike County Public Facilities Authority created by this
78 Act.

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

87 (3) "Cost of project" shall include the cost of lands, buildings, improvements, machinery,
88 equipment, property, easements, rights, franchises, material, labor, services acquired or
89 contracted for, plans and specification, and financing charges; construction costs; interest
90 prior to and during construction; architectural, accounting, engineering, inspection,

91 administrative, fiscal, and legal expenses; expenses incident to determining the feasibility
92 or practicability of the project; and expenses incident to the acquiring, constructing,
93 equipping, and operating of any project or any part thereof and to the placing of the same
94 in operation.

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

99 SECTION 5.

100 Powers.

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

104 (1) To sue and be sued;

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

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

110 (4) To acquire in its own name by purchase on such terms and conditions and in such
111 manner as it may deem proper or by gift, grant, lease, or otherwise, real and personal
112 property necessary or convenient for its corporate purposes, or rights and easements
113 therein, and to use the same so long as its corporate existence shall continue and to lease
114 or make contracts with respect to the use of or disposition of the same in any manner it

115 deems to the best advantage of the authority. Title to any such property shall be held by
116 the authority exclusively for the benefit of the public.

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

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

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

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

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

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

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

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

138 (13) To sell, lease, exchange, transfer, assign, pledge, mortgage, dispose of, grant in
139 trust, or grant options for any real or personal property or interest therein in furtherance
140 of the purposes of the authority;

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

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

179 **SECTION 6.**

180 Credit not pledged and debt not created by bonds.

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

193

SECTION 7.

194

Trust agreement.

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

219 **SECTION 8.**

220 Refunding bonds.

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

226 **SECTION 9.**

227 Venue of actions, jurisdiction.

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

233 **SECTION 10.**

234 Revenue bond validation.

235 The petition for validation of all revenue bonds of the authority shall be brought against the
236 authority, and any contracting party whose obligation is pledged as security for the payment
237 of the bonds sought to be validated, as defendants, and the defendants shall be required to
238 show cause, if any exists, why such contract or contracts and the terms and conditions thereof
239 shall not be adjudicated to be in all respects valid and binding upon such contracting parties.
240 It shall be incumbent upon such defendants to defend against adjudication of the validity and

241 binding effect of such contract or contracts or be forever bound thereby. Notice of such
242 proceedings shall be included in the notice of the validation hearing required to be issued and
243 published by the clerk of the Superior Court of Pike County in which court such validation
244 proceedings shall be initiated.

245 **SECTION 11.**

246 Interest of bondholders protected.

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

253 **SECTION 12.**

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

255 (a) For the purpose of earning sufficient revenue to make possible the financing of the
256 construction of the project or projects of the authority with revenue bonds, the authority is
257 authorized and empowered to fix, revise, and collect rents, fees, and charges on each project
258 which it shall cause to be acquired or constructed. Such rents, fees, or charges to be paid for
259 the use of such project or projects shall be so fixed and adjusted so as to provide a fund
260 sufficient with other revenue, if any, of such project or projects or of the authority:

261 (1) To pay the cost of operating, maintaining, and repairing the project or projects,
262 including reserves for insurance and extraordinary repairs and other reserves required by

263 the resolution or trust agreement or indenture pertaining to such bonds and the issuance
264 thereof, unless such cost shall be otherwise provided for;

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

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

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

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

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

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

284 (c) Such rental contract or lease may obligate the tenants or lessees to operate, maintain, and
285 keep in good repair, including complete reconstruction, if necessary, the rented or leased
286 premises and projects, regardless of the cause of the necessity of such maintenance, repair,
287 or reconstruction.

288 (d) Such rental contract or lease may obligate the tenants or lessees to indemnify and save
289 harmless the authority from any and all damage to persons and property occurring on or by

290 reason of the leased property or improvements thereon and to undertake, at the expense of
291 the tenants or lessees, the defense of any action brought against the authority by reason of
292 injury or damages to persons or property occurring on or by reason of the leased premises.

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

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

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

304 **SECTION 13.**

305 **Sinking fund.**

306 The revenue, rents, and earnings derived from any particular project or projects and any and
307 all revenue, rents, and earnings received by the authority, regardless of whether such
308 revenue, rents, and earnings were produced by a particular project for which bonds have been
309 issued, unless otherwise pledged, may be pledged by the authority to payment of the
310 principal of and interest on revenue bonds of the authority as may be provided in any
311 resolution authorizing the issuance of such bonds or in any trust instrument pertaining to such
312 bonds, and such funds so pledged, from whatever source received, may include funds
313 received from one or more or all sources and may be set aside at regular intervals into
314 sinking funds for which provision may be made in any such resolution or trust instrument

315 and which may be pledged to and charged with the payment of the interest upon such
316 revenue bonds as such interest shall become due, the principal of the bonds as the same shall
317 mature, the necessary charges of any trustee or paying agent for paying such principal and
318 interest, and any premium upon bonds retired by call or purchase, and the use and disposition
319 of any sinking fund may be subject to such regulation as may be provided for in the
320 resolution authorizing the issuance of the bonds or in the trust instrument securing the
321 payment of the same.

322 **SECTION 14.**

323 Taxation status.

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

332 **SECTION 15.**

333 Immunity from tort actions.

334 The authority shall have the same immunity and exemption from liability for torts and
335 negligence as Pike County, and the officers, agents, and employees of the authority, when
336 in performance of work of the authority, shall have the same immunity and exemption from
337 liability for torts and negligence as officers, agents, and employees of Pike County. The

338 authority may be sued the same as private corporations on any contractual obligation of the
339 authority.

340 **SECTION 16.**

341 Property not subject to levy and sale.

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

343 **SECTION 17.**

344 Trust funds.

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

351 **SECTION 18.**

352 Construction.

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

355 **SECTION 19.**

356 Scope of operations.

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

359 **SECTION 20.**

360 Conveyance of property upon dissolution.

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

369 **SECTION 21.**

370 Severability; effect of partial invalidity of Act.

371 Should any sentence, clause, phrase, or part of this Act be declared for any reason to be
372 unconstitutional or invalid, the same shall not affect such remainder of this Act or any part
373 hereof, other than the part so held to be invalid, but the remaining provisions of this Act shall
374 remain in full force and effect, and it is the express intention of this Act to enact each
375 provision of this Act independently of any other provision hereof.

376

SECTION 22.

377

General repealer.

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