

Senate Bill 78

By: Senators Watson of the 1st, Mallow of the 2nd, Hickman of the 4th and Dixon of the 45th

AS PASSED

A BILL TO BE ENTITLED

AN ACT

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

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

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

27 **SECTION 1.**

28 Short title.

29 This Act shall be known and may be cited as the "City of Tybee Island Building and Public
30 Facilities Authority Act."

31 **SECTION 2.**

32 City of Tybee Island Building and Public Facilities Authority.

33 There is created a public body corporate and politic to be known as the City of Tybee Island
34 Building and Public Facilities Authority, which shall be an instrumentality and a public
35 corporation of the State of Georgia, the purpose of which shall be to acquire, construct,
36 equip, maintain, and operate certain projects for use by the City of Tybee Island for its
37 governmental, proprietary, public, and administrative functions. The authority shall not be
38 a state institution or a department or agency of the state, but shall be an instrumentality of the
39 state, a mere creation of the state, being a distinct corporate entity and exempt from the
40 provisions of Article 2 of Chapter 17 of Title 50 of the O.C.G.A., the "Georgia State

41 Financing and Investment Commission Act." The authority shall have its principal office in
42 the City of Tybee Island, and its legal situs or residence for the purposes of this Act shall be
43 the City of Tybee Island.

44 **SECTION 3.**
45 **Membership.**

46 The authority shall consist of five members who shall be eligible to succeed themselves and
47 who shall be appointed by the City Council of the City of Tybee Island. No more than two
48 members of the authority may be members of said city council. Any member of the authority
49 who is a member of said city council shall serve for a term of office concurrent with such
50 person's term of office as a member of said city council. Each member of the authority who
51 is not a member of said city council shall serve for a term of office of three years, except that
52 the initial terms of office of those members first appointed to the authority shall be specified
53 at the time of appointment to be one, two, and, if no such member is a member of the city
54 council, three years. After such initial terms, those members who are not members of said
55 city council shall serve for terms of office of three years each. Members of the authority
56 shall serve for the terms of office so specified and until the appointment and qualification of
57 their respective successors. Vacancies on the authority shall be filled by said city council for
58 the remainder of the unexpired term and until the appointment and qualification of a
59 successor. Immediately after their appointment, the members of the authority shall enter
60 upon their duties. The authority shall elect one of its members as chairperson and one as vice
61 chairperson. The secretary-treasurer of the authority shall be appointed by the authority and
62 need not be a member of the authority. Two members of the authority shall constitute a
63 quorum and no vacancy on the authority shall impair the right of the quorum to exercise all
64 the rights and perform all the duties of the authority and, in every instance, a majority vote
65 of a quorum shall authorize any legal act of the authority, including all things necessary to

66 authorize and issue revenue bonds. The members of the authority shall receive no
67 compensation for their services but may be reimbursed by the authority for the actual
68 expenses necessarily incurred in the performance of their duties. The authority shall make
69 rules and regulations for its own government and shall have perpetual existence.

70 **SECTION 4.**

71 **Definitions.**

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

74 (1) "Authority" shall mean the City of Tybee Island Building and Public Facilities
75 Authority created by this Act.

76 (2) "Project" shall mean and include real and personal property acquired or held by the
77 authority, including all land, buildings, structures, sanitary and surface water sewers, and
78 other public property determined by the authority to be desirable for the efficient
79 operation of any department, board, office, commission, or agency of the City of Tybee
80 Island, or of the State of Georgia, in the performance of its governmental, proprietary,
81 and administrative functions.

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

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

SECTION 5.

Powers.

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

(1) To sue and be sued;

(2) To adopt and alter a corporate seal;

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

(4) To acquire in its own name by purchase on such terms and conditions and in such manner as it may deem proper or by gift, grant, lease, or otherwise, real and personal property necessary or convenient for its corporate purposes, or rights and easements therein, and to use the same so long as its corporate existence shall continue and to lease or make contracts with respect to the use of or disposition of the same in any manner it deems to the best advantage of the authority. Title to any such property shall be held by the authority exclusively for the benefit of the public.

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

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

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

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

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

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

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

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

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

(14) As security for repayment of authority obligations, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property, real or personal, of such authority and to execute any trust agreement, indenture, or security agreement containing any provisions not in conflict with law, which trust agreement, indenture, or security agreement may provide for foreclosure or forced sale of any property of the authority

upon default, on such obligations, either in payment of principal or interest or in the performance of any term or condition, as are contained in such agreement or indenture;

(15) To borrow money for any of its corporate purposes, to issue revenue bonds payable solely from funds pledged for that purpose, and to provide for the payment of the same and for the rights of the holders thereof;

(16) To exercise all powers usually possessed by private corporations performing similar functions which are not in conflict with the Constitution and laws of this state; and

(17) Pursuant to proper resolution of the authority, to issue revenue bonds payable from the rents and revenues of the authority and its projects, which bonds may be issued in either fully negotiable coupon form, in which event they shall have all the qualities and incidents of negotiable instruments under the laws of the State of Georgia, or which bonds may be issued in whole or in part in nonnegotiable fully registered form without coupons, payable to a designated payee or to the registered assigns of the payee with such conversion privileges as the authority may provide, for the purpose of paying all or any part of the cost associated with the projects authorized by the authority, including the cost of constructing, reconstructing, equipping, extending, adding to, or improving such projects or for the purpose of refunding, as provided in this Act, any such bonds of the authority theretofore issued. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such bonds were issued, the surplus shall be paid into the fund provided for the payment of principal and interest on such bonds. All such revenue bonds shall be issued and validated under and in accordance with the procedures of Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the Revenue Bond Law, and in accordance with all terms and provisions thereof not in conflict with this Act, and in accordance with Code Section 50-17-1 of the O.C.G.A., relating to use of facsimile signatures on public securities, and, as security for the payment of any revenue bonds so authorized, any rents and revenue of the authority may be pledged and assigned. Such bonds shall be declared to be issued for an essential public and governmental

168 purpose, and such bonds and all income therefrom shall be exempt from all taxation
169 within the State of Georgia. For the purpose of the exemption from taxation of such
170 bonds and the income therefrom, the authority shall be deemed to be a political
171 subdivision of the State of Georgia.

172 **SECTION 6.**

173 Credit not pledged and debt not created by bonds.

174 Revenue bonds issued under the provisions of this Act shall not constitute a debt or a pledge
175 of the faith and credit of the State of Georgia or the City of Tybee Island, but such bonds
176 shall be payable from the rentals, revenue, earnings, and funds of the authority as provided
177 in the resolution or trust agreement or indenture authorizing the issuance and securing the
178 payment of such bonds. The issuance of such bonds shall not directly, indirectly, or
179 contingently obligate the state or said city to levy or pledge any form of taxation for the
180 payment thereof. No holder of any bond or receiver or trustee in connection therewith shall
181 have the right to enforce the payment thereof against any property of the state or of said city,
182 nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon
183 any such property. All such bonds shall contain on their face a recital setting forth
184 substantially the foregoing provisions of this section.

185 **SECTION 7.**

186 Trust agreement.

187 In the discretion of the authority, any issue of revenue bonds may be secured by an
188 agreement or indenture made by the authority with a corporate trustee, which may be any
189 trust company or bank having the powers of a trust company within or without the State of
190 Georgia. Such trust agreement or indenture may pledge and assign rents, fees, charges,

191 revenues, and earnings to be received by the authority. The resolution providing for the
192 issuance of revenue bonds and such trust agreement or indenture may contain provisions for
193 protecting and enforcing the rights and remedies of the bondholders, including the right of
194 appointment of a receiver upon default of the payment of any principal or interest obligation
195 and the right of any receiver or trustee to enforce collection of any rents, fees, charges, or
196 revenues for use of the project or projects necessary to pay all costs of operation and all
197 reserves provided for, all principal and interest on all bonds of the issue, all costs of
198 collection, and all other costs reasonably necessary to accomplish the collection of such sums
199 in the event of any default of the authority. Such resolution and such trust agreement or
200 indenture may include covenants setting forth the duties of the authority in relation to the
201 acquisition of property for and the construction of the project and to the custody,
202 safeguarding, and application of all funds and covenants providing for the operation,
203 maintenance, repair, and insurance of the project or projects and may contain provisions
204 concerning the conditions, if any, upon which additional revenue bonds may be issued. Such
205 trust agreement or indenture may set forth the rights and remedies of the bondholders and of
206 the trustee and may restrict the individual right of action of bondholders as is customary in
207 securing bonds and debentures of corporations and may contain such other provisions as the
208 authority may deem reasonable and proper for the security of the bondholders. All expenses
209 incurred in carrying out such trust may be treated as a part of the cost of maintenance,
210 operation, and repair of the project affected by such trust.

211 **SECTION 8.**

212 Refunding bonds.

213 The authority is authorized to provide by resolution for the issuance of revenue bonds of the
214 authority for the purpose of calling, refunding, or refinancing any revenue bonds issued
215 under the provisions of this Act and then outstanding and to include in the amount of such

216 refunding bonds all interest and any call premiums that may be required for the redemption
217 and refunding of such outstanding bonds.

218 **SECTION 9.**

219 Venue of actions, jurisdiction.

220 Any action to protect or enforce any rights under the provisions of this Act or any action
221 against the authority brought in the courts of the State of Georgia shall be brought in the
222 Superior Court of Chatham County, Georgia, and any action pertaining to validation of any
223 bonds issued under the provisions of this Act shall be brought in said court, which shall have
224 exclusive, original jurisdiction of such actions.

225 **SECTION 10.**

226 Revenue bond validation.

227 The petition for validation of all revenue bonds of the authority shall be brought against the
228 authority, and any contracting party whose obligation is pledged as security for the payment
229 of the bonds sought to be validated, as defendants, and the defendants shall be required to
230 show cause, if any exists, why such contract or contracts and the terms and conditions thereof
231 shall not be adjudicated to be in all respects valid and binding upon such contracting parties.
232 It shall be incumbent upon such defendants to defend against adjudication of the validity and
233 binding effect of such contract or contracts or be forever bound thereby. Notice of such
234 proceedings shall be included in the notice of the validation hearing required to be issued and
235 published by the clerk of the Superior Court of Chatham County in which court such
236 validation proceedings shall be initiated.

SECTION 11.

Interest of bondholders protected.

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

SECTION 12.

Revenues, earnings, rents, and charges; use.

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

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

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

260 (3) To comply with any sinking fund requirements contained in the resolution or trust
261 agreement or indenture pertaining to the issuance of and security for such bonds;
262 (4) To perform fully all provisions of such resolution or trust agreement or indenture
263 relating to the issuance of or security for such bonds to the payment of which such rent
264 is pledged;
265 (5) To accumulate any excess income which may be required by the purchasers of such
266 bonds or may be dictated by the requirements of such resolution or trust agreement or
267 indenture, or which may be required for achieving ready marketability of and low interest
268 rates on such bonds; and
269 (6) To pay any expenses in connection with such bond issue or of such project,
270 including, but not limited to, trustees', attorney's, and fiscal agents' fees.
271 (b) Such rent shall be payable at such intervals as may be agreed upon and set forth in the
272 rental contract or lease providing therefor, and any such contract or lease may provide for the
273 commencement of rent payments to the authority prior to the completion of the project by
274 the authority and may provide for the payment of rent during such times as such project may
275 be partially or wholly untenable.
276 (c) Such rental contract or lease may obligate the tenants or lessees to operate, maintain, and
277 keep in good repair, including complete reconstruction, if necessary, the rented or leased
278 premises and projects, regardless of the cause of the necessity of such maintenance, repair,
279 or reconstruction.
280 (d) Such rental contract or lease may obligate the tenants or lessees to indemnify and save
281 harmless the authority from any and all damage to persons and property occurring on or by
282 reason of the leased property or improvements thereon and to undertake, at the expense of
283 the tenants or lessees, the defense of any action brought against the authority by reason of
284 injury or damages to persons or property occurring on or by reason of the leased premises.
285 (e) In the event of any failure or refusal on the part of the tenants or lessees to perform
286 punctually any covenant or obligation contained in any such rental contract or lease, the

287 authority may enforce performance by any legal or equitable process against the tenants or
288 lessees.

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

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

296 **SECTION 13.**

297 Sinking fund.

298 The revenue, rents, and earnings derived from any particular project or projects and any and
299 all revenue, rents, and earnings received by the authority, regardless of whether such
300 revenue, rents, and earnings were produced by a particular project for which bonds have been
301 issued, unless otherwise pledged, may be pledged by the authority to payment of the
302 principal of and interest on revenue bonds of the authority as may be provided in any
303 resolution authorizing the issuance of such bonds or in any trust instrument pertaining to such
304 bonds, and such funds so pledged, from whatever source received, may include funds
305 received from one or more or all sources and may be set aside at regular intervals into
306 sinking funds for which provision may be made in any such resolution or trust instrument
307 and which may be pledged to and charged with the payment of the interest upon such
308 revenue bonds as such interest shall become due, the principal of the bonds as the same shall
309 mature, the necessary charges of any trustee or paying agent for paying such principal and
310 interest, and any premium upon bonds retired by call or purchase, and the use and disposition
311 of any sinking fund may be subject to such regulation as may be provided for in the

312 resolution authorizing the issuance of the bonds or in the trust instrument securing the
313 payment of the same.

314 **SECTION 14.**

315 Taxation status.

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

324 **SECTION 15.**

325 Immunity from tort actions.

326 The authority shall have the same immunity and exemption from liability for torts and
327 negligence as the City of Tybee Island, and the officers, agents, and employees of the
328 authority, when in performance of work of the authority, shall have the same immunity and
329 exemption from liability for torts and negligence as officers, agents, and employees of the
330 City of Tybee Island. The authority may be sued the same as private corporations on any
331 contractual obligation of the authority.

SECTION 16.

Property not subject to levy and sale.

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

SECTION 17.

Trust funds.

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

SECTION 18.

Construction.

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

SECTION 19.

Scope of operations.

The projects of the authority's operation shall be located in the territory embraced within the jurisdictional limits of the City of Tybee Island as the same now or may hereafter exist.

SECTION 20.

Conveyance of property upon dissolution.

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

SECTION 21.

Severability; effect of partial invalidity of Act.

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

SECTION 22.

General repealer.

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