

House Bill 546 (AS PASSED HOUSE AND SENATE)

By: Representatives Coleman of the 97th, Clark of the 98th, and Brockway of the 102nd

A BILL TO BE ENTITLED
AN ACT

1 To create the Sugar Hill Building Authority; to provide a short title; to provide for
2 definitions; to provide for general powers; to provide for membership of the authority; to
3 provide for issuance of revenue bonds; to provide that the credit of the authority is not
4 pledged; to provide for trust indentures; to provide for sinking funds; to provide for revenue
5 refunding bonds; to provide for venue, jurisdiction, and service of process; to provide for
6 validation of revenue bonds; to provide for interests of bondholders and holders of interests
7 in the authority; to provide that moneys received are considered trust funds; to provide for
8 rates, charges, and revenue of projects; to provide for exemption from taxation; to provide
9 immunity from tort actions; to provide that property of the authority is not subject to levy and
10 sale; to provide for supplemental powers; to provide that the authority lacks taxing power;
11 to provide conveyance of property upon dissolution; to provide for liberal construction; to
12 provide for related matters; to repeal conflicting laws; and for other purposes.

13 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

14 **SECTION 1.**

15 Short title.

16 This Act shall be known and may be cited as the "Sugar Hill Building Authority Act."

17 **SECTION 2.**

18 Sugar Hill Building Authority created.

19 There is hereby created a body corporate and politic to be known as the "Sugar Hill Building
20 Authority," which shall be deemed to be a political subdivision of the State of Georgia and
21 a public corporation by that name, style, and title to be known. Such corporation shall be
22 separate and distinct from any public corporation heretofore created by the General
23 Assembly and shall be an instrumentality of the State of Georgia exercising governmental

24 powers. All property owned by such corporation shall be public property held and owned
25 for governmental purposes. It shall have perpetual existence. Any change in name or
26 composition of the authority shall in no way affect the vested rights of any person under the
27 provisions of this Act or impair the obligations of any contracts existing under this Act.

28 **SECTION 3.**

29 **Definitions.**

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

32 (1) "Authority" shall mean the Sugar Hill Building Authority created by this Act.

33 (2) "Costs of the project" means and embraces the cost of construction; the cost of all
34 lands, properties, rights, easements, and franchises acquired; the cost of building
35 improvements, materials, labor, and services contracted for the cost of all machinery and
36 equipment; financing charges; interest prior to and during construction and for six months
37 after completion of construction; the cost of engineering, architectural, fiscal agents'
38 expenses, legal expenses, plans and specifications, and other expenses necessary or
39 incidental to determining the feasibility or practicability of the project; administrative
40 expenses and such other expenses as may be necessary or incidental to the financing
41 authorized in this Act; working capital; and all other costs necessary to acquire, construct,
42 add to, extend, improve, equip, operate, and maintain the project.

43 (3) "Project" means:

44 (A) All buildings, facilities, and equipment necessary or convenient for the efficient
45 operation of the City of Sugar Hill, or any department, agency, division, or commission
46 thereof, or in order to benefit the residents of or visitors to the City of Sugar Hill; and

47 (B) Any "undertaking" as defined in and permitted by the revenue bond law.

48 (4) "Revenue bonds" shall mean revenue bonds issued by the authority pursuant to the
49 terms of this Act and Article 3 of Chapter 82 of Title 36 of the Official Code of Georgia
50 Annotated, the "Revenue Bond Law."

51 (5) "Self-liquidating" means any project which the revenues and earnings to be derived
52 by the authority therefrom and all properties used, leased, and sold in connection
53 therewith will be sufficient to pay the costs of operating, maintaining, and repairing the
54 project and to pay the principal of and interest on the revenue bonds which may be issued
55 to finance, in whole or in part, the cost of such project.

SECTION 4.

General powers.

58 The authority shall have the power to:

- 59 (1) Hold, own, and convey real and personal property;
- 60 (2) Sue and be sued;
- 61 (3) Have and use a seal and to alter the same at its pleasure;
- 62 (4) Acquire, construct, purchase, own, equip, operate, extend, improve, lease, and sell
63 any project;
- 64 (5) Exercise the powers conferred upon a public corporation or a public authority by
65 Article IX, Section III, Paragraph I of the Constitution of Georgia, such authority being
66 hereby expressly declared to be a public corporation or a public authority within the
67 meaning of such provision of the Constitution of Georgia;
- 68 (6) Acquire in its own name by purchase on such terms and conditions and in such
69 manner as it may deem proper or by condemnation in accordance with the provisions of
70 any and all existing laws of the State of Georgia applicable to the condemnation of
71 property for public use, including the power to proceed as a condemning body under the
72 provisions of Article 2 of Chapter 2 of Title 22 of the Official Code of Georgia
73 Annotated, relating to proceedings before a special master, or by gift, grant, lease, or
74 otherwise, real property or rights and easements therein and franchises and personal
75 property necessary or convenient for its corporate purposes and to use the same so long
76 as its corporate existence shall continue and to lease or make contracts with respect to the
77 use, sale, or disposition of the same in any manner it deems to the best advantage of the
78 authority. Title to any such property shall be held by the authority exclusively for the
79 benefit of the public. No property shall be acquired as provided in this Act upon which
80 any lien or other encumbrance exists, unless at the time such property is so acquired a
81 sufficient sum of money shall be deposited in trust to pay and redeem the amount of such
82 lien or encumbrance;
- 83 (7) Appoint, select, and employ officers, agents, and employees, including engineering,
84 architectural, and construction experts, fiscal agents, and attorneys, and to fix their
85 compensation;
- 86 (8) Make and execute with public and private persons and corporations contracts, lease
87 agreements, rental agreements, installment sale agreements, and other instruments
88 relating to its projects and incident to the exercise of the powers of the authority,
89 including contracts for constructing, renting, leasing, and selling its projects for the
90 benefit of the City of Sugar Hill, Georgia; and, without limiting the generality of the
91 foregoing, authority is specifically granted to the City of Sugar Hill, Georgia, to enter into

- 92 contracts, lease agreements, rental agreements, installment sale agreements, and related
93 agreements with the authority for a term not exceeding 50 years;
- 94 (9) Sell or assign its rights under its contracts, lease agreements, or installment sale
95 agreements or its right to receive payments thereunder, either directly or through trust or
96 custodial arrangements whereby interests are created in such contracts, lease agreements,
97 or installment sale agreements or the payments to be received thereunder through the
98 issuance of trust certificates, certificates of participation, custodial receipts, or other
99 similar instruments;
- 100 (10) Accept loans and grants of money or property of any kind from the United States,
101 the State of Georgia, or any political subdivision of the State of Georgia;
- 102 (11) Borrow money for any of its corporate purposes and to issue revenue bonds payable
103 solely from funds or revenues of the authority pledged for that purpose and to pledge and
104 assign any of its revenues, income, rent, charges, and fees to provide for the payment of
105 the same and to provide for the rights of the holders of such revenue bonds;
- 106 (12) Accept gifts and bequests for its corporate purposes; and
- 107 (13) Make such rules and regulations governing its employees and property as it may in
108 its discretion deem proper.

109 **SECTION 5.**

110 **Membership.**

111 The authority shall consist of seven members who shall be residents of the City of Sugar Hill,
112 Georgia, who shall be eligible to succeed themselves, and who shall be appointed by the city
113 council of the City of Sugar Hill, Georgia. The mayor and other city councilmembers shall
114 be eligible to be appointed and serve as members. Of the initial members appointed to the
115 authority, four shall be appointed for terms of one year each and three shall be appointed for
116 terms of three years each. Upon the expiration of each of such initial terms, successors shall
117 be appointed for terms of four years and until their successors shall be appointed. Any
118 vacancy on the authority shall be filled for the unexpired term by the city council.
119 Immediately after their appointment, the members of the authority shall enter upon their
120 duties. Four members of the authority shall constitute a quorum, and no vacancy on the
121 authority shall impair the right of the quorum to exercise all the rights and perform all the
122 duties of the authority and, in every instance, a majority vote of a quorum shall authorize any
123 legal act of the authority, including all things necessary to authorize and issue revenue bonds.
124 The authority shall elect one of its members as chairperson and shall elect a secretary and a
125 treasurer who need not be members of the authority. The members of the authority shall not
126 be entitled to compensation for their services but shall be entitled to and shall be reimbursed

127 for their actual expenses necessarily incurred in the performance of their duties. The
128 authority shall make rules and regulations for its own government.

129 **SECTION 6.**

130 Revenue bonds.

131 The authority shall have the power and is hereby authorized from time to time to provide by
132 resolution for the issuance of negotiable revenue bonds in the manner provided by Article 3
133 of Chapter 82 of Title 36 of the Official Code of Georgia Annotated, the "Revenue Bond
134 Law," for the purpose of paying all or any part of the cost of any one or more projects,
135 including the cost of constructing, reconstructing, equipping, extending, adding to, or
136 improving any such project or for the purpose of refunding, as provided in this Act, any such
137 bonds of the authority previously issued. The principal of and interest on such revenue bonds
138 shall be payable solely from such part of the revenues and earnings of such project or
139 projects as may be designated in the resolution of the authority authorizing the issuance of
140 such revenue bonds. The revenue bonds of each issue shall be issued and validated under
141 and in accordance with the provisions of Article 3 of Chapter 82 of Title 36 of the Official
142 Code of Georgia Annotated, the "Revenue Bond Law."

143 **SECTION 7.**

144 Revenue bonds; negotiability.

145 All revenue bonds issued under the provisions of this Act shall have and are hereby declared
146 to have all the qualities and incidents of negotiable instruments under the negotiable
147 instruments law of this state. Such bonds are declared to be issued for an essential public and
148 governmental purpose.

149 **SECTION 8.**

150 Credit not pledged.

151 Revenue bonds issued under the provisions of this Act shall not constitute a debt or a pledge
152 of the faith and credit of the State of Georgia or of the City of Sugar Hill, Georgia, but such
153 bonds shall be payable solely from such part of the revenues and earnings of such project or
154 projects as may be designated in the resolution of the authority authorizing the issuance of
155 such bonds. The issuance of such revenue bonds shall not directly, indirectly, or
156 contingently obligate the State of Georgia or the City of Sugar Hill, Georgia, to levy or to
157 pledge any form of taxation whatever for the payment thereof. No holder of any bond or

158 receiver or trustee in connection therewith shall have the right to enforce the payment thereof
159 against any property of the State of Georgia or the City of Sugar Hill, Georgia, nor shall any
160 such bond constitute a charge, lien, or encumbrance, legal or equitable, upon any such
161 property. All such bonds shall contain on their face a recital setting forth substantially the
162 foregoing provisions of this section. The City of Sugar Hill, Georgia, however, may obligate
163 itself to pay the amounts required under any contract entered into with the authority from
164 funds received from taxes to be levied and collected for that purpose to the extent necessary
165 to pay the obligations contractually incurred with the authority, and from any other source;
166 and the obligation to make such payments shall constitute a general obligation and a pledge
167 of the full faith and credit of the City of Sugar Hill, Georgia, but shall not constitute a debt
168 of the City of Sugar Hill, Georgia, within the meaning of the Constitution of the State of
169 Georgia, Article IX, Section V, Paragraph I; and, when the City of Sugar Hill, Georgia,
170 contracts with the authority to make such payments from taxes to be levied for that purpose,
171 then the obligation shall be mandatory to levy and collect such taxes from year to year in an
172 amount sufficient to fulfill and fully comply with the terms of such contract.

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SECTION 9.

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Revenue bonds; trust indenture as security.

175 In the discretion of the authority, any issue of revenue bonds may be secured by a trust
176 indenture by and between the authority and a corporate trustee, which may be any trust
177 company or bank having the powers of a trust company within or outside of the State of
178 Georgia. Such trust indenture may pledge or assign fees, tolls, rents, revenues, and earnings
179 to be received by the authority, including the proceeds derived from the sale or lease, from
180 time to time, of any project. Either the resolution providing for the issuance of revenue
181 bonds or such trust indenture may contain such provisions for protecting and enforcing the
182 rights and remedies of the bondholders as may be reasonable and proper and not in violation
183 of law, including covenants setting forth the duties of the authority in relation to the
184 acquisition and construction of any project, the maintenance, operation, repair, and insurance
185 of any project, and the custody, safeguarding and application of all moneys, including the
186 proceeds derived from the sale or lease of any project; may provide that any project shall be
187 acquired and constructed under the supervision and approval of consulting engineers or
188 architects employed or designated by the authority and satisfactory to the original purchasers
189 of the bonds issued therefor; may require that the security given by contractors and by any
190 depository of the proceeds of the bonds or revenues or other moneys be satisfactory to such
191 purchasers; and may also contain provisions concerning the conditions, if any, upon which
192 additional revenue bonds pledging all or any part of the revenues and earnings of such

193 project or projects may be issued. Such indenture may set forth the rights and remedies of
 194 the bondholders and of the trustee. In addition to the foregoing, such trust indenture may
 195 contain such other provisions as the authority may deem reasonable and proper for the
 196 security of the bondholders. All expenses incurred in carrying out such trust indenture may
 197 be treated as a part of the cost of maintenance, operation, and repair of the project affected
 198 by such indenture.

199 **SECTION 10.**

200 Revenue bonds; sinking fund.

201 The revenues, fees, tolls, rents, and earnings derived from any particular project or projects,
 202 regardless of whether or not such fees, earnings, and revenues were produced by a particular
 203 project for which bonds have been issued and any moneys derived from the sale of any
 204 properties, both real and personal, of the authority, unless otherwise pledged and allocated,
 205 may be pledged and allocated by the authority to the payment of the principal of and interest
 206 on revenue bonds of the authority as the resolution authorizing the issuance of the bonds or
 207 the trust indenture may provide, and such funds so pledged from whatever source received,
 208 which pledge may include funds received from one or more or all sources not previously
 209 pledged and allocated, shall be set aside at regular intervals, as may be provided in the
 210 resolution or trust indenture, into a sinking fund, which sinking fund shall be pledged to and
 211 charged with the payment of:

- 212 (1) The interest upon such revenue bonds as such interest shall fall due;
 213 (2) The principal of the bonds as the same shall fall due;
 214 (3) The necessary charges of any paying agent or agents for paying principal and interest,
 215 and
 216 (4) Any premium upon bonds retired by call or purchase.

217 The use and disposition of such sinking fund shall be subject to such regulations as may be
 218 provided in the resolution authorizing the issuance of the revenue bonds or in the trust
 219 indenture, but, except as may otherwise be provided in such resolution or trust indenture,
 220 such sinking fund shall be a fund for the benefit of all revenue bonds issued pursuant to such
 221 resolution or trust indenture without distinction or priority of one over another.

222 **SECTION 11.**

223 Revenue bonds; refunding bonds.

224 The authority is hereby authorized to provide by resolution for the issuance of revenue
 225 refunding bonds of the authority for the purpose of refunding any revenue bonds issued under

226 the provisions of this Act and then outstanding, together with accrued interest thereon and
227 any premium required for the payment of such bonds prior to maturity. The issuance of such
228 revenue bonds and all the details thereof, the rights of the holders thereof, and the duties of
229 the authority with respect to the same shall be governed by the foregoing provisions of this
230 Act insofar as the same may be applicable.

231 **SECTION 12.**

232 Venue; jurisdiction; service.

233 The principal office of the authority shall be in the City of Sugar Hill, Georgia, and the venue
234 of any action against it shall be in Gwinnett County. Any action pertaining to the validation
235 of any bonds issued under the provisions of this Act and for the validation of any contract
236 entered into by the authority shall be brought in the Superior Court of Gwinnett County, and
237 such court shall have exclusive original jurisdiction of such actions. Service upon the
238 authority of any process, subpoena, or summons shall be effected by serving the same
239 personally upon the chairperson of the authority or upon any other person or persons
240 designated and approved by resolution of the authority as a registered agent for service of
241 process.

242 **SECTION 13.**

243 Revenue bonds; validation.

244 Revenue bonds of the authority shall be confirmed and validated in accordance with the
245 procedure now or hereafter set forth in Article 3 of Chapter 82 of Title 36 of the Official
246 Code of Georgia Annotated, as the same now exists or may hereafter be amended. The
247 petition for validation shall also make a party defendant to such action the City of Sugar Hill,
248 Georgia, if such city has or will contract with the authority with respect to the project for
249 which bonds are to be issued and are sought to be validated, and the City of Sugar Hill,
250 Georgia, shall be required to show cause, if any exists, why such contract and the terms and
251 conditions thereof should not be inquired into by the court and the validity of the terms
252 thereof be determined and the contract adjudicated as security for the payment of any such
253 bonds of the authority. The bonds, when validated, and the judgment of validation shall be
254 final and conclusive with respect to the validity of such bonds against the authority, and the
255 validity of the contract and of the terms and conditions thereof, when validated, and the
256 judgment of validation shall be final and conclusive against the City of Sugar Hill, Georgia,
257 if it be a party to the validation proceeding as provided for in this Act.

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SECTION 14.

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Interest of bondholders and holders of interests in authority contracts protected.

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

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SECTION 15.

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Moneys received considered trust funds.

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All moneys received by the authority pursuant to this Act, whether as proceeds from the sale of revenue bonds or contracts of the authority, as grants or other contributions, or as revenues, income, fees, and earnings, shall be deemed to be the trust funds to be held and applied solely as provided in this Act and in such resolutions and trust indentures as may be adopted and entered into by the authority pursuant to this Act.

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SECTION 16.

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Rates, charges, and revenues of projects.

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The authority is hereby authorized to prescribe, fix, and collect rates, fees, tolls, rents, and charges and to revise, from time to time, and collect such revised rates, fees, tolls, rents, and charges for the services, facilities, or commodities furnished, including leases, concessions, or subleases of its projects, and to determine the price and terms at and under which its projects may be sold.

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SECTION 17.

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Exemption from taxation.

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The obligations, properties, activities, and income of the authority shall be subject to such tax exemptions as may be provided by general law.

287 **SECTION 18.**

288 Immunity from tort actions.

289 The authority shall have the same immunity and exemption from liability for torts and
290 negligence as the City of Sugar Hill, Georgia, and the officers, agents, and employees of the
291 authority, when in performance of the work of the authority, shall have the same immunity
292 and exemption from liability for torts and negligence as officers, agents, and employees of
293 the City of Sugar Hill, Georgia. The authority may be sued the same as may private
294 corporations on any contractual obligation of the Authority.

295 **SECTION 19.**

296 Property not subject to levy and sale.

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

298 **SECTION 20.**

299 Powers declared supplemental and additional.

300 This Act shall not in any way take away from the authority any power which may be
301 conferred upon it by law but is supplemental thereto.

302 **SECTION 21.**

303 Authority without taxing power.

304 The authority shall not have the right to impose any tax on any person or property.

305 **SECTION 22.**

306 Conveyance of property upon dissolution.

307 Should the authority for any reason be dissolved after full payment of all revenue bonds and
308 other obligations of the authority and the termination of any leases, contracts, or options to
309 which the authority is a party, the interest and any redemption premiums thereon, title to the
310 items of property, and funds of the authority held at the time of dissolution shall, prior to
311 such dissolution, be conveyed and transferred to the City of Sugar Hill.

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SECTION 23.

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Act to be liberally construed.

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

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SECTION 24.

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Repealer.

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