

House Bill 806 (AS PASSED HOUSE AND SENATE)

By: Representatives Benton of the 31st, England of the 116th, and Barr of the 103rd

A BILL TO BE ENTITLED
AN ACT

1 To create the Town of Braselton Public Facilities Authority; to provide for a short title and
2 purpose; to confer powers and impose duties on the authority; to provide for the membership
3 and the appointment of members of the authority and their terms of office, qualifications,
4 duties, powers, and compensation; to provide for vacancies, organization, meetings, and
5 expenses; to provide for definitions; to provide for the issuance and sale of revenue bonds
6 and their negotiability, sale, and use of proceeds from such sales; to provide for conditions
7 for issuance of such obligations; to prohibit the pledge of credit for the payment of bonds;
8 to provide for trust indentures; to provide for payment of bond proceeds; to provide for
9 bondholder remedies and protection; to provide for refunding bonds; to provide for bond
10 validation; to provide for venue and jurisdiction; to provide for trust funds; to provide for
11 rates, fees, and charges; to provide for rules and regulations; to provide for tort immunity;
12 to provide for supplemental powers; to provide for liberal construction; to provide for
13 severability; to provide for related matters; to provide an effective date; to repeal conflicting
14 laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 SECTION 1.

17 Short title.

18 This Act shall be known and may be cited as the "Town of Braselton Public Facilities
19 Authority Act."

20 SECTION 2.

21 Creation of authority; purpose.

22 There is created a body corporate and politic to be known as the "Town of Braselton Public
23 Facilities Authority," which shall be deemed to be a public corporation. Such corporation
24 shall be separate and distinct from any public corporation or other entity heretofore created

25 by the General Assembly and shall be an instrumentality of the State of Georgia exercising
 26 governmental powers. The authority is created for the purpose of promoting the public good
 27 and general welfare of the citizens of the Town of Braselton and assisting the Town of
 28 Braselton in providing facilities, equipment, and services to the citizens of the Town of
 29 Braselton in the most efficient means possible. In connection with the exercise of any of its
 30 powers, the members of the authority may make findings or determinations that will promote
 31 the public good and general welfare of the citizens of the Town of Braselton and assist the
 32 Town of Braselton in providing facilities, equipment, and services, and such findings or
 33 determinations, if made, shall be conclusive and binding.

34 **SECTION 3.**

35 Definitions.

36 As used in this Act, the following words and terms shall have the meaning specified unless
 37 the context or use clearly indicates a different meaning or intent:

38 (1) "Authority" means the Town of Braselton Public Facilities Authority created by this
 39 Act.

40 (2) "Cost of the project" means and includes:

41 (A) The cost of construction;

42 (B) The cost of all land and interests therein, properties, rights, easements, and
 43 franchises acquired;

44 (C) The cost of acquiring, constructing, or erecting buildings, improvements, materials,
 45 labor, and services;

46 (D) The cost of all machinery and equipment;

47 (E) Financing charges and interest prior to and during construction or acquisition of
 48 any project and for six months after such project is placed into service and operational
 49 at the level intended;

50 (F) The cost of construction, engineering, architectural, fiscal, accounting, inspection,
 51 and legal expenses relating to a project or to the financing or refinancing of any project
 52 and other expenses necessary or incidental to determining the feasibility or
 53 practicability of any project; and

54 (G) Administrative expenses relating to any project or the financing or refinancing
 55 thereof and such other expenses as may be necessary or incidental to the financing of
 56 a project authorized by this Act; the acquisition, construction, renovation,
 57 reconstruction, or remodeling of a project; and the placing of the same in operation.

58 Any obligation or expense incurred for any of the purposes in this paragraph shall be
 59 regarded as part of the cost of the project and may be paid or reimbursed as such out of

60 any funds of the authority, including proceeds of any revenue bonds issued under the
 61 provisions of this Act for any such project or projects and the proceeds of the sale of
 62 any contracts, lease agreements, or installment sales agreements or the amounts payable
 63 thereunder, either directly or by the creation of interests therein.

64 (3) "Project" means and includes the acquisition, construction, equipping, maintenance,
 65 and operation of any undertaking as defined in Code Section 36-82-61 of the O.C.G.A.;
 66 any undertaking, project, or service for which any governmental body contracting with
 67 the authority is authorized by law to undertake in the performance of its governmental,
 68 administrative, or proprietary functions; all personal property to be used in connection
 69 therewith; and the lease and sale of any part or all of such facilities, including real and
 70 personal property, so as to ensure the efficient and proper development, maintenance, and
 71 operation of such project deemed by the authority to be necessary, convenient, or
 72 desirable. A project may be composed exclusively of real or personal property,
 73 equipment, fixtures, machinery, or other property of any nature whatsoever used or useful
 74 in connection with the governmental, administrative, and proprietary functions of any
 75 governmental body contracting with the authority for its services or facilities.

76 (4) "Revenue bonds" means revenue bonds issued by the authority pursuant to Article 3
 77 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law."

78 (5) "Town" means the Town of Braselton, Georgia, or its successor."

79 SECTION 4.

80 Powers of the authority.

81 The authority shall have the power:

82 (1) To hold, own, lease, transfer, and convey real and personal property or interests
 83 therein;

84 (2) To sue and be sued;

85 (3) To have and use a seal and to alter the same at its pleasure;

86 (4) To acquire, construct, purchase, own, equip, operate, extend, improve, lease, and sell
 87 any project;

88 (5) To exercise the powers conferred upon a public corporation or a public authority by
 89 Article IX, Section III, Paragraph I of the Constitution of Georgia, and such authority is
 90 expressly declared to be a public corporation or a public authority within the meaning of
 91 such provision of the Constitution of Georgia;

92 (6) To acquire property and projects in its own name by gift or by purchase on such
 93 terms and conditions and in such manner as it may deem proper. If the authority shall
 94 deem it expedient to construct any project on real property or any interest therein or

95 usufruct which is subject to the control of the town, the town is authorized to convey such
96 real property or interest therein to the authority for no consideration or for such
97 consideration as may be agreed upon by the authority and the town, taking into
98 consideration the public benefit to be derived from such conveyance. The town may
99 transfer such property or interest therein without regard to any determination as to
100 whether or not such property or interest therein is surplus;

101 (7) To accept gifts and bequests for its corporate purposes;

102 (8) To appoint, select, and employ, with or without bidding, as the authority may choose,
103 officers, agents, and employees, including engineering, architectural, and construction
104 experts, fiscal agents, underwriters or other advisors, and attorneys, and to fix their
105 compensation;

106 (9) To make and execute with public and private persons and corporations contracts,
107 lease agreements, rental agreements, installment sale agreements, and other instruments
108 relating to its projects and incidental to the exercise of the powers of the authority,
109 including contracts for constructing, renting, leasing, and selling its projects for the
110 benefit of the town; and, without limiting the generality of this paragraph, authority is
111 specifically granted to the authority and to the town to enter into contracts, lease
112 agreements, rental agreements, installment sale agreements, and related agreements for
113 a term not exceeding 50 years as provided in Article IX, Section III of the Constitution
114 of Georgia;

115 (10) To lease, sell, transfer, or otherwise dispose of any property, real or personal, or
116 assets of the authority or to assign its rights under its contracts, lease agreements, or
117 installment sale agreements or its right to receive payments thereunder, either directly or
118 through trust or custodial arrangements whereby interests are created in such contracts,
119 lease agreements, or installment sale agreements or the payments to be received
120 thereunder through the issuance of trust certificates, certificates of participation, custodial
121 receipts, or other similar instruments;

122 (11) To accept loans or grants of money or property of any kind from the United States,
123 the State of Georgia, or any political subdivision of the State of Georgia;

124 (12) To borrow money for any of its corporate purposes and to issue revenue bonds,
125 notes, or other types of indebtedness payable solely from funds or revenues of the
126 authority pledged for that purpose; to pledge and assign any of its revenues, income, rent,
127 charges, and fees to provide for the payment of the same; and to provide for the rights of
128 the holders of such revenue bonds;

129 (13) To enter into interest rate swaps, collars, or other types of interest rate management
130 agreements or credit enhancement or liquidity agreements relating to any obligations of
131 the authority, provided that the obligation of the authority under such agreements shall

132 not be a general obligation of the authority but shall be a limited obligation of the
 133 authority payable from a specific source of funds identified for such purpose;
 134 (14) To make such rules and regulations governing its employees and property as it may
 135 in its discretion deem proper;
 136 (15) To be sued the same as any private corporation on any contractual obligation of the
 137 authority. The authority shall have the same rights to sue any other person or entity as
 138 any private corporation; and
 139 (16) To issue its revenue bonds, notes, or other obligations to finance or refinance any
 140 project which may be financed by the town under Article 3 of Chapter 82 of Title 36 of
 141 the O.C.G.A., the "Revenue Bond Law."

142 **SECTION 5.**

143 Members of the authority; terms of office.

144 The authority shall consist of five members who shall be appointed by the mayor and council
 145 of the Town of Braselton. The mayor and councilmembers of the Town of Braselton shall
 146 not be appointed as members of the authority. All appointments of members to the authority
 147 shall be made for terms of three years and until successors are appointed and qualified.
 148 Immediately after such appointments, the members of the authority shall enter upon their
 149 duties. To be eligible for appointment as a member of the authority, a person shall be at
 150 least 21 years of age, shall be a resident of the Town of Braselton, Georgia, for at least two
 151 years prior to the date of his or her appointment, and shall not have been convicted of a
 152 felony. Any member of the authority may be selected and appointed to succeed himself or
 153 herself. A majority of the members of the authority shall constitute a quorum, and no
 154 vacancy on the authority shall impair the right of the quorum to exercise all the rights and
 155 perform all the duties of the authority, and in every instance, a majority vote of a quorum
 156 shall authorize any legal act of the authority, including all things necessary to authorize and
 157 issue revenue bonds. The authority shall elect one of its members as chairperson and shall
 158 elect a secretary and a treasurer. The secretary and treasurer need not necessarily be
 159 members of the authority. The chairperson shall be a nonvoting member of the authority;
 160 however, the chairperson shall be allowed to vote to break a tie. The authority may elect a
 161 vice chairperson or any number of assistant secretaries or treasurers as it may from time to
 162 time deem necessary or desirable. The members of the authority shall not be entitled to
 163 compensation for their services but shall be reimbursed for their actual expenses necessarily
 164 incurred in the performance of their duties. The authority shall make rules and regulations
 165 for its own governance, and it shall have perpetual existence. Any change in name or

166 composition of the authority shall in no way affect the vested rights of any person under the
167 provisions of this Act or impair the obligations of any contracts existing under this Act.

168 **SECTION 6.**

169 Issuance and sale of revenue bonds.

170 The authority shall have the power and is authorized from time to time to provide for the
171 issuance and sale of negotiable revenue bonds in the manner provided by Article 3 of
172 Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," for the purpose of paying
173 all or any part of the cost of any one or more projects, including the cost of constructing,
174 reconstructing, equipping, extending, adding to, or improving any such project, or for the
175 purpose of refunding, as provided in this Act, any such bonds of the authority or any other
176 authority or public body previously issued to finance or refinance the cost of a project. The
177 principal of and interest on such revenue bonds shall be a limited obligation of the authority
178 payable solely from the source or sources of funds specified in the indenture or resolution
179 of the authority authorizing the issuance of such revenue bonds. The revenue bonds of each
180 issue shall be issued and validated under and in accordance with the provisions of the
181 "Revenue Bond Law." In accordance with the "Revenue Bond Law," such revenue bonds
182 shall mature on such dates, bear interest at such rate or rates, whether fixed or variable, be
183 subject to redemption, and have such other terms as the authority may provide in the
184 indenture or resolution relating thereto.

185 **SECTION 7.**

186 Power to incur loans or issue notes.

187 The authority shall also have the power to incur indebtedness from time to time for the
188 purpose of financing or refinancing any project or refunding any obligations previously
189 issued for such purpose, or for any other purpose, whether in the form of a loan or through
190 the issuance of notes, and the principal of and interest on such notes or loans shall be a
191 limited obligation of the authority payable solely from the source or sources of funds
192 specified in the resolution or indenture of the authority authorizing such loan or the issuance
193 of such notes. Any such loan or notes shall not be required to be validated as a condition to
194 the issuance thereof and shall have such terms as may be specified by the authority in the
195 resolution or indenture authorizing the same.

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SECTION 8.

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Negotiable instruments.

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All revenue bonds issued under the provisions of this Act shall have all the qualities and incidents of negotiable instruments under the negotiable instruments law of this state.

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SECTION 9.

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Revenue bonds or notes not a debt or general obligation.

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Revenue bonds or notes issued under the provisions of this Act or any loan incurred as authorized herein shall not constitute a debt or a pledge of the faith and credit of the State of Georgia or of any political subdivision thereof, including the town, but shall be payable solely from the sources as may be designated in the resolution or indenture of the authority authorizing the issuance of the same. The issuance of such obligations shall not directly, indirectly, or contingently obligate the State of Georgia or any political subdivision thereof, including the town, to levy or pledge any form of taxation for the payment thereof. No holder of any bond or receiver or trustee in connection therewith shall have the right to enforce the payment thereof against any property of the State of Georgia or any political subdivision thereof, including the town, nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon any such property. All such obligations shall contain on their face a recital setting forth substantially the provisions of this section. Nothing in this section shall be construed to prohibit the State of Georgia or any political subdivision or agency thereof, including the town, from obligating itself to pay the amounts required under any contract entered into with the authority pursuant to Article IX of the Constitution of Georgia or any successor provision, including from funds received from taxes to be levied and collected for that purpose to the extent necessary to pay the obligations contractually incurred by the authority and from any other source.

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SECTION 10.

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Issuance of bonds or obligations under indentures or resolutions.

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In the discretion of the authority, any issuance of such revenue bonds, notes, or other obligations may be secured by a trust indenture by and between the authority and a trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State of Georgia. Such trust indenture may pledge or assign fees, tolls, rents, revenues, and earnings to be received by the authority, including the proceeds derived from the financing, sale, or lease, from time to time, of any project. Either the resolution

228 providing for the issuance of revenue bonds or other obligations or such trust indenture may
229 contain such provisions for protecting and enforcing the rights and remedies of the owners
230 of such bonds or obligations as may be reasonable and proper and not in violation of law,
231 including covenants setting forth the duties of the authority or any lessee or purchaser in
232 relation to the acquisition and construction of any project, the maintenance, operation, repair,
233 and issuance of any project, and the custody, safeguarding, and application of all moneys,
234 including the proceeds derived from the sale or lease of any project or from the sale of any
235 such bonds, notes, or other obligations, and may contain provisions concerning the
236 conditions, if any, upon which additional bonds, notes, or other obligations may be issued,
237 whether on a parity with or subordinate to any other obligations issued by the authority.
238 Such indenture or resolution may set forth the rights and remedies of the owners of such
239 obligations and of the trustee. Such trust indenture may contain such other provisions as the
240 authority may deem reasonable and proper for the security of the owners of such bonds or
241 other obligations or otherwise necessary or convenient in connection with the issuance of
242 such obligations. All expenses incurred in carrying out such trust indenture may be treated
243 as a part of the cost of maintenance, operation, and repair of the project affected by such
244 indenture.

245 **SECTION 11.**

246 Security of the payment of bonds or other obligations.

247 The authority may assign or pledge any property or revenues to the payment of the principal
248 of and interest on revenue bonds of the authority as the resolution authorizing the issuance
249 of the bonds or the trust indenture may provide. The use and disposition of such property or
250 revenues assigned to the payment of bonds or other obligations shall be subject to the
251 indenture or resolution authorizing the issuance of such revenue bonds or obligations. Any
252 lien created by the authority for the payment of such bonds or obligations may be a first lien
253 or a subordinate lien as the authority may provide, and any such indenture or resolution may
254 provide, at the option of the authority, for the issuance of additional bonds or other
255 obligations sharing any lien on a parity or subordinate lien basis.

256 **SECTION 12.**

257 Refunding bonds or obligations.

258 The authority is authorized to provide by resolution for the issuance of obligations, whether
259 revenue bonds, notes, or other obligations, for the purpose of refunding any revenue bonds
260 or other obligations issued under the provisions of this Act or under any other provision of

261 Georgia law so long as such bonds or other obligations were issued for a purpose or project
262 for which the authority could issue bonds. The issuance of such refunding bonds or other
263 obligations and all the details thereof, the rights of holders thereof, and the duties of the
264 authority with respect to the same shall be governed by the provisions of this Act insofar as
265 the same may be applicable.

266 **SECTION 13.**

267 Principal office; venue.

268 The principal office of the authority shall be in the town, and the venue of any action against
269 it shall be in Gwinnett County. Any action pertaining to the validation of any bonds issued
270 under the provisions of this Act and for the validation of any contract entered into by the
271 authority shall be brought in the Superior Court of Gwinnett County, and such court shall
272 have exclusive original jurisdiction of such actions. Service upon the authority of any
273 process, subpoena, or summons shall be effected by serving the same personally upon any
274 member of the authority.

275 **SECTION 14.**

276 Validation of revenue bonds.

277 Revenue bonds of the authority shall be confirmed and validated in accordance with the
278 procedure set forth in Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond
279 Law," as the same now exists or may hereafter be amended. The petition for validation shall
280 also make a party defendant to such action the town, if the town has or will contract with the
281 authority with respect to the project for which bonds are to be issued and are sought to be
282 validated. The bonds, when validated, and the judgment of validation shall be final and
283 conclusive with respect to the validity of such bonds against the authority and against all
284 other persons or entities, regardless of whether such persons or entities were parties to such
285 validation proceedings.

286 **SECTION 15.**

287 No impairment of rights.

288 While any of the bonds or other obligations issued by the authority or any interests in
289 contracts of the authority remain outstanding, the powers, duties, or existence of the authority
290 or its officers, employees, or agents shall not be diminished or impaired in any manner that
291 will affect adversely the interests and rights of the holders of such bonds or obligations or

292 such interests in contracts of the authority. The provisions of this section shall be for the
293 benefit of the authority and the holders of any such bonds or obligations and interests in
294 contracts of the authority and, upon the issuance of bonds or obligations or the creation of
295 interests in contracts of the authority under the provisions of this Act, shall constitute a
296 contract with the holders of such bonds or obligations or such interests in contracts of the
297 authority.

298 **SECTION 16.**

299 Trust funds; permitted investments.

300 All moneys received by the authority pursuant to this Act, whether as proceeds from the sale
301 of revenue bonds or obligations of the authority, as grants or other contributions, or as
302 revenues, income, fees, and earnings, shall be deemed to be trust funds to be held and applied
303 solely as provided in this Act and in such resolutions and trust indentures as may be adopted
304 and entered into by the authority pursuant to this Act. Any such moneys or funds may be
305 invested from time to time in such investments as may be permitted under the indenture,
306 agreement, or resolution establishing the fund or account in which such funds are held, or if
307 not held in such a fund or account, in such investments as would be permitted for
308 investments of a development authority created under Code Section 36-62-1, et seq., of the
309 O.C.G.A.

310 **SECTION 17.**

311 Power to set rates, fees, and charges.

312 The authority is authorized to prescribe and fix rates, fees, tolls, rents, and charges and to
313 revise from time to time and collect such revised rates, fees, tolls, rents, and charges for the
314 services, facilities, or commodities furnished, including leases, concessions, and subleases
315 of its projects, and to determine the prices and terms at and under which its projects may be
316 sold, leased, or otherwise disposed. The authority may establish in its discretion procedures
317 for contracting for any work done for the authority or for the acquisition, sale, transfer, or
318 lease of any property, real or personal, of the authority.

319 **SECTION 18.**

320 Essential governmental function.

321 All property or interests in property owned by the authority shall be public property held and
322 owned for governmental purposes. The exercise of the powers conferred upon the authority
323 hereunder shall constitute an essential governmental function for a public purpose.

324 **SECTION 19.**

325 Immunity of authority and members.

326 The authority shall have the same immunity and exemption from liability for torts and
327 negligence as the Town of Braselton; and the officers, agents, and employees of the
328 authority, when in the performance of the work of the authority, shall have the same
329 immunity and exemption from liability for torts and negligence as the officers, agents, and
330 employees of the town.

331 **SECTION 20.**

332 Authority property not subject to levy and sale.

333 Except as otherwise provided by general law, the property of the authority shall not be
334 subject to levy and sale under legal process.

335 **SECTION 21.**

336 Authority area of operation.

337 The scope of the authority's operations shall be limited to the territory embraced within the
338 territorial limits of the town, as the same now or may hereafter exist; provided, however, that
339 nothing in this section shall prevent the authority from contracting with any entity, public or
340 private, outside of the town with respect to any project located in or outside of the town if
341 the authority shall determine that entering into such contract is in the best interest of the
342 authority and in furtherance of its public purposes.

343 **SECTION 22.**

344 Supplemental powers.

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

347 **SECTION 23.**

348 No power to impose taxes.

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

350 **SECTION 24.**

351 Act to be liberally construed.

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

353 **SECTION 25.**

354 Severability of provisions.

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

360 **SECTION 26.**

361 Effective date.

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

364 **SECTION 27.**

365 General repealer.

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