

House Bill 563 (AS PASSED HOUSE AND SENATE)

By: Representatives Drenner of the 85th and Henson of the 86th

A BILL TO BE ENTITLED
AN ACT

1 To create the Clarkston Development Authority; to provide a short title; to provide
2 definitions; to provide for the powers of the authority; to provide for members of the
3 authority; to provide a development area; to provide for revenue bonds and other obligations
4 of the authority; to recite constitutional authority; to provide for effect on other authorities;
5 to provide for related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**
8 Short title of Act.

9 This Act shall be known and may be cited as the "Clarkston Development Authority Act."

10 **SECTION 2.**
11 Definitions.

12 (a) As used in this Act:

13 (1) "Authority" shall mean the Clarkston Development Authority created pursuant to
14 Section 3 of this Act.

15 (2) "Cost of the project" or "cost of any project" shall mean and shall include: all costs
16 of acquisition (by purchase or otherwise), demolition, funds for the creation of a
17 revolving loan fund, construction, assembly, installation, modification, renovation, or
18 rehabilitation incurred in connection with any project or any part of any project; all costs
19 of real property, fixtures, or personal property used in or in connection with or necessary
20 for any project or for any facilities related thereto, including, but not limited to, the cost
21 of all land, estates for years, easements, rights, improvements, water rights, connections
22 for utility services, fees, franchises, permits, approvals, licenses, and certificates; the cost
23 of securing any such franchises, permits, approvals, licenses, or certificates and the cost

24 of preparation of any application therefor; the cost of all fixtures, machinery, equipment,
25 furniture, and other property used in or in connection with or necessary for any project;
26 all financing charges and loan fees and all interest on revenue bonds, notes, or other
27 obligations of an authority which accrues or is paid prior to and during the period of
28 construction of a project and during such additional period as the authority may
29 reasonably determine to be necessary to place such project in operation; all costs of
30 engineering, surveying, architectural, and legal services and all expenses incurred by
31 engineers, surveyors, architects, and attorneys in connection with any project; all
32 expenses for inspection of any project; all fees of fiscal agents, paying agents, and
33 trustees for bondholders under any trust agreement, indenture of trust, or similar
34 instrument or agreement; all expenses incurred by any such fiscal agents, paying agents,
35 and trustees; all other costs and expenses incurred relative to the issuance of any revenue
36 bonds, notes, or other obligations for any project; all fees of any type charged by an
37 authority in connection with any project; all expenses of or incident to determining the
38 feasibility or practicability of any project; all costs of plans and specifications for any
39 project; all costs of title insurance and examinations of title with respect to any project;
40 repayment of any loans made for the advance payment of any part of any of the foregoing
41 costs, including interest thereon and any other expenses of such loans; administrative
42 expenses of the authority and such other expenses as may be necessary or incident to any
43 project or the financing thereof or the placing of any project in operation; and a fund or
44 funds for the creation of a debt service reserve, a renewal and replacement reserve, or
45 such other funds or reserves as the authority may approve with respect to the financing
46 and operation of any project and as may be authorized by any bond resolution, trust
47 agreement, indenture of trust, or similar instrument or agreement pursuant to the
48 provisions of which the issuance of any revenue bonds, notes, or other obligations of the
49 authority may be authorized. Any cost, obligation, or expense incurred for any of the
50 foregoing purposes shall be a part of the cost of the project and may be paid or
51 reimbursed as such out of proceeds of revenue bonds, notes, or other obligations issued
52 by the authority.

53 (3) "Development area" means the geographical area of operations of the authority as
54 described in Section 5 of this Act.

55 (4) "Governing body" shall mean the elected or duly appointed officials constituting the
56 governing body of the City of Clarkston.

57 (5) "Project" shall mean the acquisition, demolition, construction, installation,
58 modification, renovation, or rehabilitation of land, interests in land, buildings, structures,
59 facilities, or other improvements located or to be located within the development area and
60 the acquisition, installation, modification, renovation, rehabilitation, or furnishing of

61 fixtures, machinery, equipment, furniture, or other property of any nature whatsoever
 62 used on, in, or in connection with any such land, interest in land, building, structure,
 63 facility, or other improvement, all for the essential public purpose of the development of
 64 trade, commerce, industry, and employment opportunities in the development area. A
 65 project may be for any industrial, commercial, residential, business, office, parking,
 66 public, or other use, including the administration and operation of a revolving loan fund,
 67 provided that a majority of the members of the authority determine, by a resolution duly
 68 adopted, that the project and such use thereof would further the public purpose of this
 69 Act.

70 (6) "Revenue bonds" or "bonds" shall mean any bonds issued by the authority that are
 71 authorized to be issued under the Constitution and laws of the State of Georgia, including
 72 refunding bonds and revenue bonds issued pursuant to Article 3 of Chapter 82 of Title
 73 36 of the O.C.G.A., the "Revenue Bond Law," but not including notes or other
 74 obligations of an authority.

75 SECTION 3.

76 Creation and power of authority.

77 (a) There is created a public body corporate and politic known as the Clarkston
 78 Development Authority.

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

82 (1) Sue and be sued;

83 (2) Adopt and amend a corporate seal;

84 (3) Make and execute contracts, agreements, and other instruments necessary or
 85 convenient to exercise the powers of the authority or to further the public purpose for
 86 which the authority is created, including, but not limited to, contracts for construction of
 87 projects, leases of projects, contracts for sale of projects, agreements for loans to finance
 88 projects, and contracts with respect to the use of projects;

89 (4) Acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real and
 90 personal property of every kind and character or any interest therein in furtherance of the
 91 public purpose of the authority;

92 (5) Finance, by loan, grant, lease, or otherwise, construct, demolish, erect, assemble,
 93 purchase, acquire, own, repair, remodel, renovate, rehabilitate, modify, maintain, extend,
 94 improve, install, sell, equip, expand, add to, operate, or manage projects and to pay the
 95 cost of any project from the proceeds of revenue bonds, notes, or other obligations of the

96 authority or any other funds of the authority, or from any contributions or loans by
97 persons, corporations, partnerships (limited or general), or other entities, all of which the
98 authority is authorized to receive and accept and use;

99 (6) Borrow money to further or carry out its public purpose and to execute revenue
100 bonds; notes; other obligations; leases; trust indentures; trust agreements; agreements for
101 the sale of its revenue bonds, notes, or other obligations; loan agreements; mortgages;
102 deeds to secure debt; trust deeds; security agreements; assignments; and such other
103 agreements or instruments as may be necessary or desirable, in the judgment of the
104 authority, to evidence and to provide security for such borrowing;

105 (7) Issue revenue bonds, notes, or other obligations of the authority and use the proceeds
106 thereof to pay all or any part of the cost of any project and otherwise to further or carry
107 out the public purpose of the authority and to pay all costs of the authority incident to, or
108 necessary and appropriate to, furthering or carrying out such purpose;

109 (8) Make application directly or indirectly to any federal, state, county, or municipal
110 government or agency or to any other source, public or private, for loans, grants,
111 guarantees, or other financial assistance in furtherance of the authority's public purpose
112 and to accept and use the same upon such terms and conditions as are prescribed by such
113 federal, state, county, or municipal government or agency or other source;

114 (9) Enter into agreements with the federal government or any agency thereof to use the
115 facilities or the services of the federal government or any agency thereof in order to
116 further or carry out the public purpose of the authority;

117 (10) Contract for any period not exceeding 50 years with the State of Georgia, state
118 institutions, or any city, town, municipality, or county of the state for the use by the
119 authority of any facilities or services of the state or any such state institution, city, town,
120 municipality, or county or for the use by any state institution or any city, town,
121 municipality, or county of any facilities or services of the authority, provided that such
122 contracts shall deal with such activities and transactions as the authority and any such
123 political subdivision with which the authority contracts are by law authorized to
124 undertake;

125 (11) Extend credit or make loans to any person, corporation, partnership (limited or
126 general), or other entity for the costs of any project or any part of the costs of any project,
127 which credit or loans may be evidenced or secured by loan agreements, notes, mortgages,
128 deeds to secure debt, trust deeds, security agreements, assignments, or other instruments
129 or by rentals, revenues, fees, or charges, upon such terms and conditions as the authority
130 shall determine to be reasonable in connection with such extension of credit or loans,
131 including provision for the establishment and maintenance of reserve funds, and, in the
132 exercise of powers granted in connection with any project, the authority shall have the

133 right and power to require the inclusion in any such loan agreement, note, mortgage, deed
134 to secure debt, trust deed, security agreement, assignment, or other instrument of such
135 provisions or requirements for guarantee of any obligations, insurance, construction, use,
136 operation, maintenance, and financing of a project and such other terms and conditions
137 as the authority may deem necessary or desirable;

138 (12) As security for repayment of any revenue bonds, notes, or other obligations of the
139 authority, pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any
140 property of the authority (including but not limited to real property, fixtures, personal
141 property, and revenues or other funds) and to execute any lease; trust indenture; trust
142 agreement; agreement for the sale of the authority's revenue bonds, notes, or other
143 obligations; loan agreement; mortgage; deed to secure debt; trust deed; security
144 agreement; assignment; or other agreement or instrument as may be necessary or
145 desirable in the judgment of the authority to secure any such revenue bonds, notes, or
146 other obligations, which instruments or agreements may provide for foreclosure or forced
147 sale of any property of the authority upon default in any obligation of the authority, either
148 in payment of principal, premium, if any, or interest or in the performance of any term
149 or condition contained in any such agreement or instrument. The State of Georgia on
150 behalf of itself and each county, municipal corporation, political subdivision, or taxing
151 district therein waives any right it or such county, municipal corporation, political
152 subdivision, or taxing district may have to prevent the forced sale or foreclosure of any
153 property of the authority upon such default and agrees that any agreement or instrument
154 encumbering such property may be foreclosed in accordance with law and the terms
155 thereof;

156 (13) Receive and use the proceeds of any tax levied by a county or municipal corporation
157 to pay the costs of any project or for any other purpose for which the authority may use
158 its own funds pursuant to this Act;

159 (14) Receive and administer gifts, grants, and devises of money and property of any kind
160 and to administer trusts;

161 (15) Use any real property, personal property, or fixtures or any interest therein, to rent
162 or lease such property to or from others or make contracts with respect to the use thereof,
163 or to sell, lease, exchange, transfer, assign, pledge, or otherwise dispose of or grant
164 options for any such property in any manner as it deems to the best advantage of the
165 authority and the public purpose thereof;

166 (16) Acquire, accept, or retain equitable interests, security interests, or other interests in
167 any real property, personal property, or fixtures by loan agreement, note, mortgage, deed
168 to secure debt, trust deed, security agreement, assignment, pledge, conveyance, contract,

- 169 lien, loan agreement, or other consensual transfer in order to secure the repayment of any
 170 monies loaned or credit extended by the authority;
- 171 (17) Appoint, select, and employ engineers, surveyors, architects, urban or city planners,
 172 developers, fiscal agents, attorneys, and others and to fix their compensation and pay their
 173 expenses;
- 174 (18) Encourage and promote the improvement and revitalization of the development area
 175 and to make, contract for, or otherwise cause to be made long-range plans or proposals
 176 for the development area in cooperation with the county within which the development
 177 area is located;
- 178 (19) Adopt bylaws governing the conduct of business by the authority, the election and
 179 duties of officers of the authority, and other matters which the authority determines to
 180 deal within its bylaws;
- 181 (20) Exercise any power granted by the laws of the State of Georgia to public or private
 182 corporations which is not in conflict with the public purpose of the authority; and
- 183 (21) Do all things necessary or convenient to carry out the powers conferred by this Act.
- 184 (c) The powers enumerated in subsection (b) of this section are cumulative with and in
 185 addition to those enumerated elsewhere in this Act, and no such power limits or restricts any
 186 other power of the authority.

187 SECTION 4.

188 Members of authority; disqualifications.

- 189 (a) The authority shall be composed of seven members as follows:
- 190 (1) Two members shall be either a taxpayer residing in the City of Clarkston or a
 191 taxpayer residing in DeKalb County who owns or operates a business located within the
 192 city's downtown development area;
- 193 (2) Two members shall be taxpayers residing in DeKalb County who possess specific
 194 experience, knowledge, or professional expertise in the field of banking, finance, real
 195 estate development, community development, or another area of expertise related to
 196 economic development; and
- 197 (3) Three members shall be members of the governing authority of the City of Clarkston.
- 198 (b) The members provided for in subsection (a) of this section shall be appointed as follows:
- 199 (1) The mayor of the City of Clarkston shall appoint two nonelected members, one of
 200 whom shall be a taxpayer residing in the City of Clarkston or a taxpayer residing in
 201 DeKalb County who owns or operates a business located within the city's downtown
 202 development area;

203 (2) The governing authority of the City of Clarkston shall, by a majority of a quorum,
 204 appoint two nonelected members, one of whom shall be a taxpayer residing in the City
 205 of Clarkston or a taxpayer residing in DeKalb County who owns or operates a business
 206 located within the city's downtown development area; and

207 (3) The governing authority of the City of Clarkston shall, by a majority of a quorum,
 208 appoint three members of such governing authority who shall serve as members of the
 209 board of the authority.

210 (c) Terms of office of members of the authority shall be for four years and until their
 211 successors are appointed and qualified, except that one of the initial members appointed by
 212 the mayor of the City of Clarkston and one of the initial members appointed by the governing
 213 authority of the City of Clarkston shall serve initial terms of office of two years and until
 214 their successors are appointed and qualified. Thereafter, terms of office of all members of
 215 the authority shall be for four years and until their successors are appointed and qualified.
 216 Any vacancy of office shall be filled in like manner as the original appointment, and the
 217 person appointed to fill such vacancy shall serve for the remainder of the unexpired term and
 218 until a successor is appointed and qualified.

219 (d) No member of the authority shall be disqualified from serving on the authority because
 220 of any pecuniary interest in a project as defined in Section 2 of this Act, but the fact of such
 221 interest shall be disclosed by such member and recorded on the minutes of the authority. The
 222 member shall abstain from voting on any project in which he or she has such pecuniary
 223 interest.

224 (e) The members of the authority shall elect from their membership officers to serve terms
 225 to be determined by a subsequent organizing resolution adopted by the board, and such
 226 officers shall include a chairperson, vice chairperson, and secretary-treasurer.

227 **SECTION 5.**

228 Development area; change of boundaries.

229 The development area defined in this Act shall be all of that tract or parcel of land located
 230 in the City of Clarkston Georgia.

231 **SECTION 6.**

232 Revenue bonds.

233 Revenue bonds, notes, or other obligations issued by an authority shall be paid solely from
 234 the property (including but not limited to real property, fixtures, personal property, revenues,
 235 or other funds) pledged, mortgaged, conveyed, assigned, hypothecated, or otherwise

236 encumbered to secure or to pay such bonds, notes, or other obligations. All revenue bonds,
237 notes, and other obligations shall be authorized by resolution of the authority and adopted
238 by a majority vote of the directors of the authority at a regular or special meeting. Such
239 revenue bonds, notes, or other obligations shall bear such date or dates; shall mature at such
240 time or times not more than 40 years from their respective dates; shall bear interest at such
241 rate or rates (which may be fixed or may fluctuate or otherwise change from time to time);
242 shall be subject to redemption on such terms; and shall contain such other terms, provisions,
243 covenants, assignments, and conditions as the resolution authorizing the issuance of such
244 bonds, notes, or other obligations may permit or provide. The terms, provisions, covenants,
245 assignments, and conditions contained in or provided or permitted by any resolution of the
246 authority authorizing the issuance of such revenue bonds, notes, or other obligations shall
247 bind the directors of the authority then in office and their successors. The authority shall
248 have power from time to time and whenever it deems expedient to refund any bonds by the
249 issuance of new bonds, whether the bonds to be refunded have or have not matured, and may
250 issue bonds partly to refund bonds then outstanding and partly for any other purpose
251 permitted under this Act. The refunding bonds may be exchanged for the bonds to be
252 refunded with such cash adjustments as may be agreed upon or may be sold and the proceeds
253 applied to the purchase or redemption of the bonds to be refunded. There shall be no
254 limitation upon the amount of revenue bonds, notes, or other obligations which the authority
255 may issue. Any limitations with respect to interest rates or any maximum interest rate or
256 rates found in the Revenue Bond Law (Ga. L. 1937, p. 761), as now or hereafter amended,
257 the usury laws of the State of Georgia, or any other laws of the State of Georgia shall not
258 apply to revenue bonds, notes, or other obligations of an authority.

259

SECTION 7.

260

Provisions and obligations; limitations and procedures.

261 (a) Subject to the limitations and procedures provided by this section, the agreements or
262 instruments executed by the authority may contain such provisions not inconsistent with law
263 as shall be determined by the board of directors of the authority.

264 (b) The proceeds derived from the sale of all bonds, notes, and other obligations issued by
265 the authority shall be held and used for the ultimate purpose of paying, directly or indirectly
266 as permitted in this Act, all or part of the cost of any project or for the purpose of refunding
267 any bonds, notes, or other obligations issued in accordance with the provisions of this Act.

268 (c) Issuance by an authority of one or more series of bonds, notes, or other obligations for
269 one or more purposes shall not preclude it from issuing other bonds, notes, or other
270 obligations in connection with the same project or with any other projects, but the proceeding

271 wherein any subsequent bonds, notes, or other obligations shall be issued shall recognize and
272 protect any prior loan agreement, mortgage, deed to secure debt, trust deed, security
273 agreement, or other agreement or instrument made for any prior issue of bonds, notes, or
274 other obligations unless in the resolution authorizing such prior issue the right is expressly
275 reserved to the authority to issue subsequent bonds, notes, or other obligations on a parity
276 with such prior issue.

277 (d) The authority shall have the power and is authorized, whenever bonds of the authority
278 shall have been validated as provided in this Act, to issue from time to time its notes in
279 anticipation of such bonds as validated and to renew from time to time any such notes by the
280 issuance of new notes, whether the notes to be renewed have or have not matured. The
281 authority may issue such bond anticipation notes only to provide funds which would
282 otherwise be provided by the issuance of the bonds as validated. Such notes may be
283 authorized, sold, executed, and delivered in the same manner as bonds. As with its bonds,
284 the authority may sell such notes at public or private sale. Any resolution or resolutions
285 authorizing notes of the authority or any issue thereof may contain any provisions which the
286 authority is authorized to include in any resolution or resolutions authorizing bonds of the
287 authority or any issue thereof, and the authority may include in any notes any terms,
288 covenants, or conditions which the authority is authorized to include in any bonds.
289 Validation of such bonds shall be a condition precedent to the issuance of such notes, but it
290 shall not be required that such notes be judicially validated. Bond anticipation notes shall
291 not be issued in an amount exceeding the par value of the bonds in anticipation of which they
292 are to be issued.

293 (e) All bonds issued by the authority under this Act shall be issued and validated under and
294 in accordance with the Revenue Bond Law, as heretofore and hereafter amended, except as
295 provided in this Act, provided that notes and other obligations of the authority may, but shall
296 not be required to, be so validated.

297 (f) Bonds issued by an authority may be in such form, either coupon or fully registered or
298 both, and may be subject to exchangeability and transferability provisions as the bond
299 resolution authorizing the issuance of such bonds or any indenture or trust agreement may
300 provide.

301 (g) Bonds shall bear a certificate of validation. The signature of the clerk of the superior
302 court of the judicial circuit in which the issuing authority is located may be made on the
303 certificate of validation of such bonds by facsimile or by manual execution stating the date
304 on which such bonds were validated, and such entry shall be original evidence of the fact of
305 judgment and shall be received as original evidence in any court in this state.

306 (h) In lieu of specifying the rate or rates of interest which bonds to be issued by an authority
307 are to bear, the notice to the district attorney or Attorney General; the notice to the public of

308 the time, place, and date of the validation hearing; and the petition and complaint for
 309 validation may state that the bonds when issued will bear interest at a rate not exceeding a
 310 maximum per annum rate of interest (which may be fixed or may fluctuate or otherwise
 311 change from time to time) specified in such notices and petition and complaint or that, in the
 312 event the bonds are to bear different rates of interest for different maturity dates, that none
 313 of such rates will exceed the maximum rate (which may be fixed or may fluctuate or
 314 otherwise change from time to time) so specified; provided, however, that nothing contained
 315 herein shall be construed as prohibiting or restricting the right of the authority to sell such
 316 bonds at a discount, even if in doing so the effective interest cost resulting therefrom would
 317 exceed the maximum per annum interest rate specified in such notices and in the petition and
 318 complaint.

319 **SECTION 8.**

320 Purpose and declaration of need.

321 The revitalization and redevelopment of the development area as defined in this Act develop
 322 and promote trade, commerce, industry, and employment opportunities for the public good
 323 and general welfare and promote the general welfare of the state by creating a climate
 324 favorable to the location of new industry, trade, and commerce and the development of
 325 existing industry, trade, and commerce within the City of Clarkston and the State of Georgia.
 326 Revitalization and redevelopment of the development area by financing projects under the
 327 Act will develop and promote, for the public good and general welfare, trade, commerce,
 328 industry, and employment opportunities and will promote the general welfare of the state.
 329 It is therefore in the public interest and is vital to the public welfare of the people of Georgia,
 330 and it is declared to be the public purpose of this Act to so revitalize and redevelop the
 331 development area. No bonds, notes, or other obligations (except refunding bonds) shall be
 332 issued by the authority hereunder unless its board of directors adopts a resolution finding that
 333 the project for which such bonds, notes, or other obligations are to be issued will promote the
 334 foregoing objectives.

335 **SECTION 9.**

336 Construction of Act.

337 The provisions of this Act shall be liberally construed to effect the purpose hereof. The offer,
 338 sale, or issuance of bonds, notes, or other obligations by any authority shall not be subject
 339 to regulation under Georgia laws regulating the sale of securities, as heretofore and hereafter
 340 amended. No notice, proceeding, or publication except those required by this Act shall be

341 necessary to the performance of any act authorized by this Act nor shall any such act be
342 subject to referendum.

343 **SECTION 10.**

344 Bonds, notes, and other obligations not to constitute public debt.

345 No bonds, notes, or other obligations of and no indebtedness incurred by the authority shall
346 constitute an indebtedness or obligation of the State of Georgia or any county, municipal
347 corporation, or political subdivision thereof nor shall any act of the authority in any manner
348 constitute or result in the creation of an indebtedness of the state or any such county,
349 municipal corporation, or political subdivision. No holder or holders of any such bonds,
350 notes, or other obligations shall ever have the right to compel any exercise of the taxing
351 power of the state or any county, municipal corporation, or political subdivision thereof or
352 to enforce the payment thereof against the state or any such county, municipal corporation,
353 or political subdivision.

354 **SECTION 11.**

355 Constitutional authority for Act; tax exemption of authorities.

356 (a) This Act is enacted pursuant to Article IX, Section VI, Paragraph III of the Constitution
357 of Georgia.

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

360 **SECTION 12.**

361 Effect on other authorities.

362 This Act shall not affect any other authority now or hereafter existing under general or local
363 constitutional amendment or general or local law.

364 **SECTION 13.**

365 Repealer.

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