

House Bill 749 (AS PASSED HOUSE AND SENATE)

By: Representatives Gilliard of the 162nd, Stephens of the 164th, Hitchens of the 161st, and Mallow of the 163rd

A BILL TO BE ENTITLED
AN ACT

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

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

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

28 **SECTION 1.**

29 Short title.

30 This Act shall be known and may be cited as the "Chatham County Building and Facilities
31 Authority Act."

32 **SECTION 2.**

33 Chatham County Building and Facilities Authority.

34 There is created a public body corporate and politic to be known as the Chatham County
35 Building and Facilities Authority which shall be an instrumentality and a public corporation
36 of the State of Georgia, the purpose of which shall be to acquire, construct, equip, maintain,
37 and operate certain projects for use by Chatham County or any municipality or other political
38 subdivision within Chatham County for its governmental, proprietary, public, and
39 administrative functions. The authority shall not be a state institution, nor a department or
40 agency of the state, but shall be an instrumentality of the state, a mere creation of the state,

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

45 **SECTION 3.**

46 **Membership.**

47 The authority shall consist of five members who shall be eligible to succeed themselves and
48 who shall be elected by the Board of Commissioners of Chatham County. No more than two
49 members of the authority may be members of said board of commissioners. Any member
50 of the authority who is a member of said board of commissioners shall serve for a term of
51 office concurrent with such person's term of office as a member of the board of
52 commissioners. Each member of the authority who is not a member of said board of
53 commissioners shall serve for a term of office of three years, except for the initial terms of
54 office of those members first appointed to the authority pursuant to this Act, whose initial
55 terms shall be specified at the time of appointment so as one member serves one year, one
56 member serves two years, and one member serves three years. Members of the authority
57 shall serve until their successors are appointed and qualified. Successors to such members
58 shall be appointed as the original members were appointed, as provided herein, and any
59 vacancies shall be filled by the appointing authority, as provided herein, for the unexpired
60 term. Immediately after their appointment, the members of the authority shall enter upon
61 their duties. A majority of the members of the authority shall constitute a quorum, and no
62 vacancy on the authority shall impair the right of the quorum to exercise all the rights and
63 perform all the duties of the authority and, in every instance, a majority vote of a quorum
64 shall authorize any legal act of the authority, including all things necessary to authorize and
65 issue revenue bonds. The authority shall elect one of its number as chairperson and another

66 of its number as vice chairperson. The secretary-treasurer of the authority shall be appointed
67 by the authority and need not be a member of the authority. The members of the authority
68 shall not be entitled to compensation for their services but shall be entitled to and shall be
69 reimbursed for the actual expenses necessarily incurred in the performance of their duties.
70 The authority shall promulgate rules and regulations for its own governance and it shall have
71 perpetual existence. Any change in name or composition of the authority shall in no way
72 affect the vested rights of any person under the provisions of this Act or impair the
73 obligations of any contracts existing under this Act.

74 **SECTION 4.**

75 **Definitions.**

76 As used herein, the following words and terms shall have the following meanings unless a
77 different meaning clearly appears from the context:

78 (1) "Authority" shall mean the Chatham County Building and Facilities Authority
79 created by this Act.

80 (2) "Board of commissioners" shall mean the Board of Commissioners of Chatham
81 County.

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, 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.

90 (4) "Project" shall mean and include real and personal property acquired or held by the
91 authority, including all land, buildings, structures, sanitary and surface water sewers,
92 storm water management projects, historic preservation projects, and other public
93 property determined by the authority to be desirable for the efficient operation of any
94 department, board, office, commission, or agency of Chatham County, any municipality
95 or other political subdivision within Chatham County, or of the State of Georgia, in the
96 performance of its governmental, proprietary, and administrative functions.

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

101 **SECTION 5.**

102 Powers.

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

106 (1) To sue and be sued;

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

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

112 (4) To acquire in its own name by purchase on such terms and conditions and in such
113 manner as it may deem proper or by gift, grant, lease, or otherwise, real and personal
114 property necessary or convenient for its corporate purposes, or rights and easements

115 therein, and to use the same so long as its corporate existence shall continue and to lease
116 or make contracts with respect to the use of or disposition of the same in any manner it
117 deems to the best advantage of the authority. Title to any such property shall be held by
118 the authority exclusively for the benefit of the public.

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

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

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

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

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

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

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

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

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

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

179 **SECTION 6.**

180 Credit not pledged and debt not created by bonds.

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

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SECTION 7.

Trust agreement.

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

218 **SECTION 8.**

219 Refunding bonds.

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

225 **SECTION 9.**

226 Venue of actions, jurisdiction.

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

232 **SECTION 10.**

233 Revenue bond validation.

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

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

244 **SECTION 11.**

245 Interest of bondholders protected.

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

252 **SECTION 12.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

305 **SECTION 13.**

306 **Sinking fund.**

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

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

323 **SECTION 14.**

324 Property acquired for public purpose.

325 The exercise of the powers conferred upon the authority hereunder shall constitute an
326 essential governmental function for a public purpose, and to the extent permitted by the
327 general laws of this state, the authority shall be required to pay no taxes or assessments upon
328 any of the property acquired by it or under its jurisdiction, control, possession, or supervision
329 or upon its activities in the operation and maintenance of property acquired by it or of
330 buildings or other improvements erected or acquired by it or any fees, rents, or other charges
331 for the use of such property or buildings or improvements or other income received by the
332 authority. Nothing herein provided shall include an exemption from sales and use tax on
333 property purchased by or for the use of the authority.

334 **SECTION 15.**

335 Immunity from tort actions.

336 The authority shall have the same immunity and exemption from liability for torts and
337 negligence as the State of Georgia; and the officers, agents, and employees of the authority,

338 when in performance of work of the authority, shall have the same immunity and exemption
339 from liability for torts and negligence as officers, agents, and employees of the State of
340 Georgia. The authority may be sued the same as private corporations on any contractual
341 obligation of the authority.

342 **SECTION 16.**

343 Property not subject to levy and sale.

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

345 **SECTION 17.**

346 Trust funds.

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

353 **SECTION 18.**

354 Construction.

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

357 **SECTION 19.**

358 Scope of operations.

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

361 **SECTION 20.**

362 Conveyance of property upon dissolution.

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

371 **SECTION 21.**

372 Effect of partial invalidity of Act.

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

378

SECTION 22.

379

Repealer.

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