

House Bill 694 (AS PASSED HOUSE AND SENATE)

By: Representatives Lewis of the 12th, Smith of the 13th, Post 2, Childers of the 13th, Post 1, and Cummings of the 19th

A BILL TO BE ENTITLED
AN ACT

1 To create the Cartersville Building Authority as a public corporation and an instrumentality
2 of the State of Georgia; to authorize the authority to acquire, construct, own, and convey real
3 property and personal property and to sue and be sued; to authorize the authority to enter into
4 intergovernmental contracts and contracts with private persons; to confer upon the authority
5 the power of eminent domain; to authorize the authority to enter into contracts, lease
6 agreements, and installment sale agreements; to authorize the authority to accept grants and
7 gifts; to authorize the authority to fix and collect fees and charges for the use of or for the
8 rental of its facilities; to provide for the membership of the authority; to authorize the
9 authority to acquire, construct, equip, maintain, and operate projects; to authorize the
10 authority to acquire the necessary property therefor and to lease or sell any or all of such
11 facilities; to authorize the authority to sell its contracts, lease agreements, or installment sale
12 agreements or its right to receive payments thereunder, either directly or by creating interests
13 therein; to authorize the issuance of revenue bonds of the authority, payable from the
14 revenues, tolls, fees, charges, and earnings of the authority including, but not limited to,
15 amounts derived from leasing and selling facilities of the authority; to authorize the
16 collection and pledging of the revenues and earnings of the authority for the payment of such
17 bonds and to authorize the execution of trust indentures to secure the payment thereof and
18 to define the rights of the holders of such bonds or obligations; to provide that no debt of the
19 State of Georgia or of the City of Cartersville shall be incurred in the exercise of any powers
20 granted by this Act; to make the bonds of the authority exempt from taxation; to authorize
21 the issuance of refunding bonds; to fix the venue of actions relating to any provision of this
22 Act and to provide for the validation of bonds issued by the authority and of contracts
23 between the authority and the City of Cartersville; to confine the activities of the authority
24 to the territorial limits of Bartow County; to prohibit the authority from levying any tax; to
25 provide for the separate enactment of each provision of this Act; to provide an effective date;
26 to repeal conflicting laws; and for other purposes.

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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1 and to lease or make contracts with respect to the use, sale, or disposition of the same in
2 any manner it deems to the best advantage of the authority. Title to any such property
3 shall be held by the authority exclusively for the benefit of the public. The Cartersville
4 Building Authority shall be under no obligation to accept and pay for any property
5 condemned as provided herein except from the funds provided therefor and, in any
6 proceedings to condemn, such orders may be made by the court having jurisdiction of the
7 suit, action, or proceedings as may be just to the authority and to the owners of the
8 property to be condemned; and no property shall be acquired as provided herein upon
9 which any lien or other encumbrance exists, unless at the time such property is so
10 acquired a sufficient sum of money shall be deposited in trust to pay and redeem the
11 amount of such lien or encumbrance. If the Cartersville Building Authority shall deem
12 it expedient to construct any project on lands which are subject to the control of the City
13 of Cartersville, the City of Cartersville is authorized to convey such lands to the
14 Cartersville Building Authority for such consideration as may be agreed upon by the
15 Cartersville Building Authority and the City of Cartersville, taking into consideration the
16 public benefit to be derived from such conveyance;

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

18 (8) To appoint, select, and employ officers, agents, and employees, including
19 engineering, architectural, and construction experts, fiscal agents, and attorneys, and to
20 fix their compensation;

21 (9) To make and execute with public and private persons and corporations contracts,
22 lease agreements, rental agreements, installment sale agreements, and other instruments
23 relating to its projects and incident to the exercise of the powers of the authority,
24 including contracts for constructing, renting, leasing, and selling its projects for the
25 benefit of the City of Cartersville; and, without limiting the generality of the foregoing,
26 authority is specifically granted to the City of Cartersville to enter into contracts, lease
27 agreements, rental agreements, installment sale agreements, and related agreements with
28 the Cartersville Building Authority for a term not exceeding 50 years;

29 (10) To sell or assign its rights under its contracts, lease agreements, or installment sale
30 agreements or its right to receive payments thereunder, either directly or through trust or
31 custodial arrangements whereby interests are created in such contracts, lease agreements,
32 or installment sale agreements or the payments to be received thereunder through the
33 issuance of trust certificates, certificates of participation, custodial receipts, or other
34 similar instruments;

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

1 (12) To borrow money for any of its corporate purposes and to issue revenue bonds
2 payable solely from funds or revenues of the authority pledged for that purpose and to
3 pledge and assign any of its revenues, income, rent, charges, and fees to provide for the
4 payment of the same and to provide for the rights of the holders of such revenue bonds;
5 and

6 (13) To make such rules and regulations governing its employees and property as it may
7 in its discretion deem proper.

8 **SECTION 4.**

9 **Membership.**

10 The Cartersville Building Authority shall consist of five members who shall be residents of
11 the City of Cartersville, who shall be eligible to succeed themselves, and who shall be
12 appointed by the mayor and council of the City of Cartersville. The mayor and members of
13 the council shall be eligible to be appointed to and to serve on the Cartersville Building
14 Authority. The members of the authority shall hold office for terms of four years and until
15 their successors shall be appointed and qualified; provided, however, that of the original
16 members appointed to the authority, three shall be appointed for terms of one year each and
17 two shall be appointed for terms of three years. Upon the expiration of each of such initial
18 terms, the successors shall be appointed for terms of four years. Any vacancy on the
19 authority shall be filled for the unexpired term by the mayor and council. Immediately after
20 their appointment, the members of the authority shall enter upon their duties. Three members
21 of the authority shall constitute a quorum, and no vacancy on the authority shall impair the
22 right of the quorum to exercise all the rights and perform all the duties of the authority and,
23 in every instance, a majority vote of a quorum shall authorize any legal act of the authority,
24 including all things necessary to authorize and issue revenue bonds. The Cartersville
25 Building Authority shall elect one of its members as chairperson and shall elect a secretary
26 and treasurer who need not necessarily be a member of the authority. The members of the
27 authority shall not be entitled to compensation for their services but shall be entitled to and
28 shall be reimbursed for their actual expenses necessarily incurred in the performance of their
29 duties. The authority shall make rules and regulations for its own government. It shall have
30 perpetual existence. Any change in name or composition of the authority shall in no way
31 affect the vested rights of any person under the provisions of this Act or impair the
32 obligations of any contracts existing under this Act.

SECTION 5.

Definitions.

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

(1) "Authority" shall mean the Cartersville Building Authority created in Section 2 of this Act.

(2) "Cost of the project" shall include the cost of construction, the cost of all lands, properties, rights, easements, and franchises acquired, the cost of buildings, improvements, materials, labor, and services contracted for, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after the completion of construction, engineering, architectural, fiscal, accounting, inspection, and legal expenses, cost of plans and specifications, and other expenses necessary or incident to determining the feasibility or practicability of the project, administrative expenses, and such other expenses as may be necessary or incident to the financing herein authorized, the acquisition, construction, renovation, reconstruction, or remodeling of any project, the placing of the same in operation, and the condemnation of property necessary for such construction and operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of any funds of the authority, including proceeds of any revenue bonds issued under the provisions of this Act for any such project or projects and the proceeds of the sale of any contracts, lease agreements, or installment sale agreements or the amounts payable thereunder, either directly or by the creation of interests therein.

(3) "Project" shall mean and include real and personal property, including buildings and related facilities and equipment, which are necessary or convenient for the efficient operation of the City of Cartersville.

(4) "Revenue bonds" shall mean revenue bonds issued by the authority pursuant to the terms of this Act and Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known as the "Revenue Bond Law."

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

1 shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon any
2 such property. All such bonds shall contain on their face a recital setting forth substantially
3 the foregoing provisions of this section. The City of Cartersville, however, may obligate
4 itself to pay the amounts required under any contract entered into with the Cartersville
5 Building Authority from funds received from taxes to be levied and collected for that purpose
6 to the extent necessary to pay the obligations contractually incurred with the authority, and
7 from any other source; and the obligation to make such payments shall constitute a general
8 obligation and a pledge of the full faith and credit of the City of Cartersville but shall not
9 constitute a debt of the City of Cartersville within the meaning of the Constitution of the
10 State of Georgia, Article IX, Section V, Paragraph I; and, when the City of Cartersville
11 contracts with the Cartersville Building Authority to make such payments from taxes to be
12 levied for that purpose, then the obligation shall be mandatory to levy and collect such taxes
13 from year to year in an amount sufficient to fulfill and fully comply with the terms of such
14 contract.

15 **SECTION 9.**

16 Revenue bonds; trust indenture as security.

17 In the discretion of the Cartersville Building Authority, any issue of such revenue bonds may
18 be secured by a trust indenture by and between the authority and a corporate trustee, which
19 may be any trust company or bank having the powers of a trust company within or outside
20 of the State of Georgia. Such trust indenture may pledge or assign fees, tolls, rents, revenues,
21 and earnings to be received by the authority, including the proceeds derived from the sale or
22 lease, from time to time, of any project. Either the resolution providing for the issuance of
23 revenue bonds or such trust indenture may contain such provisions for protecting and
24 enforcing the rights and remedies of the bondholders as may be reasonable and proper and
25 not in violation of law, including covenants setting forth the duties of the Cartersville
26 Building Authority in relation to the acquisition and construction of any project, the
27 maintenance, operation, repair, and insurance of any project, and the custody, safeguarding,
28 and application of all moneys, including the proceeds derived from the sale or lease of any
29 project, may also provide that any project shall be acquired and constructed under the
30 supervision and approval of consulting engineers or architects employed or designated by the
31 Cartersville Building Authority and satisfactory to the original purchasers of the bonds issued
32 therefor, may also require that the security given by contractors and by any depository of the
33 proceeds of the bonds or revenues or other moneys be satisfactory to such purchasers, and
34 may also contain provisions concerning the conditions, if any, upon which additional revenue
35 bonds pledging all or any part of the revenues and earnings of such project or projects may

1 be issued. Such indenture may set forth the rights and remedies of the bondholders and of
2 the trustee. In addition to the foregoing, such trust indenture may contain such other
3 provisions as the authority may deem reasonable and proper for the security of the
4 bondholders. All expenses incurred in carrying out such trust indenture may be treated as
5 a part of the cost of maintenance, operation, and repair of the project affected by such
6 indenture.

7 **SECTION 10.**

8 Revenue bonds; sinking fund.

9 The revenues, fees, tolls, and earnings derived from any particular project or projects,
10 regardless of whether or not such fees, earnings, and revenues were produced by a particular
11 project for which bonds have been issued and any moneys derived from the sale of any
12 properties, both real and personal, of the Cartersville Building Authority, unless otherwise
13 pledged and allocated, may be pledged and allocated by the authority to the payment of the
14 principal and interest on revenue bonds of the authority as the resolution authorizing the
15 issuance of the bonds or the trust indenture may provide, and such funds so pledged, from
16 whatever source received, which such pledge may include funds received from one or more
17 or all sources not previously pledged and allocated, shall be set aside at regular intervals, as
18 may be provided in the resolution or trust indenture, into a sinking fund, which such sinking
19 fund shall be pledged to and charged with the payments of the interest upon such revenue
20 bonds as such interest shall fall due, the principal of the bonds as the same shall fall due, the
21 necessary charges of any paying agent or agents for paying principal and interest, and any
22 premium upon bonds retired by call or purchase. The use and disposition of such sinking
23 fund shall be subject to such regulations as may be provided in the resolution authorizing the
24 issuance of the revenue bonds or in the trust indenture, but, except as may otherwise be
25 provided in such resolution or trust indenture, such sinking fund shall be a fund for the
26 benefit of all revenue bonds issued pursuant to such resolution or trust indenture without
27 distinction or priority of one over another.

28 **SECTION 11.**

29 Revenue bonds; refunding bonds.

30 The Cartersville Building Authority is hereby authorized to provide by resolution for the
31 issuance of revenue refunding bonds of the authority for the purpose of refunding any
32 revenue bonds issued under the provisions of this Act and then outstanding, together with
33 accrued interest thereon and any premium required for the payment of such bonds prior to

1 maturity. The issuance of such revenue bonds and all the details thereof, the rights of the
2 holders thereof, and the duties of the authority with respect to the same shall be governed by
3 the foregoing provisions of this Act insofar as the same may be applicable.

4 **SECTION 12.**

5 Venue; jurisdiction; service.

6 The principal office of the Cartersville Building Authority shall be in the City of Cartersville,
7 Georgia, and the venue of any action against it shall be in Bartow County. Any action
8 pertaining to the validation of any bonds issued under the provisions of this Act and for the
9 validation of any contract entered into by the Cartersville Building Authority shall be brought
10 in the Superior Court of Bartow County, and such court shall have exclusive original
11 jurisdiction of such actions. Service upon the authority of any process, subpoena, or
12 summons shall be effected by serving the same personally upon any member of the authority.

13 **SECTION 13.**

14 Revenue bonds; validation.

15 Revenue bonds of the Cartersville Building Authority shall be confirmed and validated in
16 accordance with the procedure now or hereafter set forth in Article 3 of Chapter 82 of Title
17 36 of the O.C.G.A., known as the "Revenue Bond Law," as the same now exists or may
18 hereafter be amended. The petition for validation shall also make a party defendant to such
19 action the City of Cartersville, if such city has or will contract with the Cartersville Building
20 Authority with respect to the project for which bonds are to be issued and are sought to be
21 validated, and the City of Cartersville shall be required to show cause, if any exists, why such
22 contract and the terms and conditions thereof should not be inquired into by the court and the
23 validity of the terms thereof be determined and the contract adjudicated as security for the
24 payment of any such bonds of the Cartersville Building Authority. The bonds, when
25 validated, and the judgment of validation shall be final and conclusive with respect to the
26 validity of such bonds against the authority, and the validity of the contract and of the terms
27 and conditions thereof, when validated, and the judgment of validation shall be final and
28 conclusive against the City of Cartersville if it be a party to the validation proceeding as
29 herein provided for.

SECTION 14.

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

While any of the bonds issued by the Cartersville Building Authority or any interests in contracts of the authority remain outstanding, the powers, duties, or existence of the Cartersville Building 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 of this Act shall be for the benefit of the Cartersville Building 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.

SECTION 15.

Moneys received considered trust funds.

All moneys received by the Cartersville Building 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.

SECTION 16.

Rates, charges, and revenues of projects.

The Cartersville Building Authority is hereby authorized to prescribe and 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.

SECTION 17.

Exemption from taxation.

The exercise of the powers conferred upon the Cartersville Building Authority hereunder shall constitute an essential governmental function for a public purpose and the authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation and maintenance of property acquired by it or of buildings erected or acquired by it or any fees, rentals, or other charges for the use of such property or buildings or other income received by the authority. The tax exemption herein provided shall not include an exemption from sales and use tax on property purchased by or for the use of the authority.

SECTION 18.

Immunity from tort actions.

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

SECTION 19.

Property not subject to levy and sale.

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

SECTION 20.

Scope of operations.

The scope of the Cartersville Building Authority's operation shall be limited to the territory embraced within the territorial limits of Bartow County, as the same now or may hereafter exist.

SECTION 21.

Powers declared supplemental and additional.

This Act does not in any way take away from the Cartersville Building Authority any power which may be conferred upon it by law but is supplemental thereto.

SECTION 22.

Authority without taxing power.

The Cartersville Building Authority shall not have the right to impose any tax on any person or property.

SECTION 23.

Liberal construction of Act.

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

SECTION 24.

Effect of partial invalidity of Act.

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

SECTION 25.

Effective date.

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

SECTION 26.

Repeal.

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