

House Bill 1774 (AS PASSED HOUSE AND SENATE)

By: Representatives Hill of the 16th, Rogers of the 15th, Franklin of the 17th, Murphy of the 14th, Post 2, Knox of the 14th, Post 1, and others

A BILL TO BE ENTITLED
AN ACT

1 To create the Holly Springs Parks and Recreation Authority; to authorize such authority to
2 acquire, construct, equip, maintain, and operate athletic and recreational centers, facilities,
3 and areas, including, but not limited to, playgrounds, parks, hiking, camping, and picnicking
4 areas and facilities, swimming and wading pools, lakes, tennis courts, athletic fields and
5 courts, clubhouses, gymnasiums, auditoriums, youth centers, senior citizen centers, stadiums,
6 related buildings, golf courses, and the usual and convenient facilities appertaining to such
7 undertakings and extensions and improvements of such facilities; to acquire parking facilities
8 and parking areas in connection therewith; to acquire the necessary property therefor, both
9 real and personal, and to lease or sell any or all of such facilities, including real property; to
10 confer powers and to impose duties on the authority, the determination of which shall be in
11 the sole discretion of the City of Holly Springs; to provide for the membership and for the
12 appointment of members of the authority; to authorize the authority to contract with others
13 pertaining to such recreational facilities, to execute leases of such facilities, to convey title
14 to real property of the authority in fee simple, and to do all things deemed necessary or
15 convenient for the operation of such undertakings; to authorize the authority and other
16 political subdivisions to enter into contracts pertaining to uses of such facilities for the term
17 thereof and to pledge to that purpose revenues derived from taxation; to provide that no debt
18 of Cherokee County or other political subdivisions, within the meaning of Article IX, Section
19 III, Paragraph I of the Constitution of the State of Georgia, shall be incurred by exercise of
20 the powers granted; to authorize the issuance of revenue bonds or obligations of the
21 authority; to authorize the collection and pledging of the revenues and earnings of the
22 authority for the payment of such bonds or obligations and to secure the payment thereof; to
23 define the rights of the holders of such bonds or obligations; to make the property of the
24 authority exempt from taxation and assessment; to grant the authority and its members
25 certain immunities; to authorize the issuance of refunding bonds or obligations; to fix the
26 venue or jurisdiction of actions; to provide that bonds be validated as authorized by Article
27 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law"; to provide for
28 construction; to provide for budgets and procedures in connection therewith; to provide for

audits; to provide for funding; to provide for personnel; to provide for conveyance of property upon dissolution; to provide for bonding limitations; to provide for automatic repeal of this Act; to provide for severability; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Holly Springs Parks and Recreation Authority Act."

SECTION 2.

(a) There is created a body corporate and politic to be known as the Holly Springs Parks and Recreation Authority, which shall be deemed to be a political subdivision of the State of Georgia and a public corporation. By that name, style, and title, said body may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts of law and equity, except that the authority or the trustee acting under the trust indenture shall in no event be liable for any torts committed by any of the officers, agents, and employees. The authority shall not be a state institution nor a department or agency of the state but shall be an instrumentality of the state, a mere creation of the state, having a distinct corporate entity and being exempt from the provisions of Article 2 of Chapter 17 of Title 50 of the O.C.G.A., the "Georgia State Financing and Investment Commission Act." The authority shall have its principal office in the City of Holly Springs and its legal situs for the purposes of this Act shall be Cherokee County. The authority is granted the same exemptions and exclusions from taxes as are now granted to cities and counties for the operation of facilities similar to facilities to be operated by the authority as provided under the provisions of this Act.

(b) The authority shall consist of five members. One member shall be the chairperson of the parks and recreation committee of the City Council of Holly Springs, as appointed each year by the mayor and city council. The other four councilmembers shall each appoint a member each year. The term of each member of the authority shall be one year or until a successor is appointed. To be eligible for membership on the authority, each member must be a resident of Cherokee County for at least one year prior to taking office and have a demonstrable interest in the City of Holly Springs.

(c) The members of the authority shall enter upon their duties immediately upon the next scheduled meeting.

(d) Any vacancy on the authority shall be filled in the same manner as was the original appointment of the member whose termination of membership resulted in such vacancy, and the person so selected and appointed shall serve for the remainder of the unexpired term.

(e) The authority shall elect one of its members as chairperson and one of its members as vice chairperson. The clerk of Holly Springs shall be the secretary and treasurer. Said clerk shall not be a member of the authority.

(f) The city attorney shall be the attorney for the authority and serve as its counsel in all matters.

(g) Three members of the authority shall constitute a quorum. No vacancy on the authority shall impair the right of the quorum to exercise all the rights and perform all the duties of the authority.

(h) The authority shall make rules and regulations for its own government. It shall have perpetual existence.

(i) Any member of the authority may be removed from office by the governing authority of Holly Springs for failure to perform his or her duties as a member of the authority. Such failure shall include without limitation absence from three consecutive meetings of the authority, unless excused by reasonable grounds as determined by a majority of the authority.

Any office so vacated shall be filled within 60 days by appointment as provided in subsection (d) of this section. The new appointee shall serve the remainder of the unexpired term to which he or she is appointed.

SECTION 3.

(a) As used in this Act, the term:

(1) "Authority" shall mean the Holly Springs Parks and Recreation Authority created in Section 2 of this Act.

(2) "Cost of the project" shall embrace the cost of acquisition and construction; the cost of all lands, properties, rights, easements, and franchises acquired and the cost of all conveyances in fee simple of the authority's title thereto and leases thereof; the cost of all machinery and equipment and financing charges and interest prior to and during construction and for one year after construction; the cost of engineering, architectural, fiscal, and legal 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 authorized by this Act; and the cost of the acquisition and construction of any project and the placing of the same in operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the costs of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds issued under the provisions of this Act for such projects.

(3) "Project" shall be deemed to mean and include the acquisition, construction, equipping, maintenance, and operation of athletic and recreation centers, facilities, and areas, including, but not limited to, playgrounds, parks, hiking, camping, and picnicking areas and facilities, swimming and wading pools, lakes, tennis courts, athletic fields and courts, clubhouses, gymnasiums, auditoriums, youth centers, senior citizen centers, stadiums, related buildings, golf courses, and the usual and convenient facilities appertaining to such undertakings and extensions and improvements of such facilities; the acquisition of parking facilities or parking areas in connection therewith; the acquisition of the property necessary therefor, both real and personal, and the lease and sale of any part or all of such facilities, including real or personal property, so as to assure the efficient and proper development, maintenance, and operation of such recreational facilities and areas deemed by the authority to be necessary, convenient, or desirable.

(4) "Revenue bonds," "bonds," and "obligations" mean revenue bonds as defined and provided for in Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," and such type of obligations may be issued by the authority as authorized under the "Revenue Bond Law" and any amendments thereto and, in addition, shall mean obligations of the authority, the issuance of which are specifically provided for in this Act.

(b) Any project shall be deemed "self-liquidating" if, in the judgment of the authority, the revenues and earnings to be derived by the authority therefrom, including the anticipated revenues and earnings from the lease of any project, and all properties used, leased, and sold in connection therewith will be sufficient to pay the cost of acquiring, operating, maintaining, repairing, improving, and extending 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.

SECTION 4.

(a) The authority shall have the following powers:

(1) To have a seal and alter the same at its pleasure;

(2) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real and personal property of every kind and character for its corporate purposes;

(3) To acquire in its own name by purchase, on such terms and conditions and in such manner as it may deem proper, real property or rights or easements therein or franchises necessary or convenient for its corporate purposes, to use the same so long as its corporate existence shall continue, to lease or make contracts with respect to the use of the same, or to dispose of the same in any manner it deems to the best advantage of the authority. If the authority shall deem it expedient to construct any project on any lands,

1 the title to which shall then be in the State of Georgia, the Governor is authorized to
2 convey for and in behalf of the state title to such lands to the authority upon payment to
3 the State of Georgia for the credit of the general fund of the state of the reasonable value
4 of such lands upon the receipt of such lawful consideration as may be determined by the
5 parties to such conveyance. If the authority shall deem it expedient to acquire and
6 construct any project on any lands, the title to which shall be in the name of the Board of
7 Commissioners of Cherokee County or any municipality incorporated in said county, the
8 governing authority or body of said county or any of said municipalities is authorized to
9 convey title to such lands to the authority upon the receipt of such lawful consideration
10 as may be determined by the parties to such conveyances or upon payment for the credit
11 of the general funds of such county or municipalities of the reasonable value of such
12 lands, such value to be determined by mutual consent of such county or municipality and
13 the authority or by an appraiser to be agreed upon by the governing authority or body of
14 such county or municipality and the chairperson of the authority;

15 (4) To appoint, select, and employ officers, agents, and employees, including engineers,
16 architectural, and construction experts, fiscal agents, and attorneys and fix their respective
17 compensation;

18 (5) To make contracts and leases and to execute all instruments necessary or convenient,
19 including contracts for the acquisition and construction of projects and leases of projects
20 or contracts with respect to the use of projects which the authority causes to be erected
21 or acquired, including contracts for acquiring, constructing, renting, and leasing of its
22 projects for the use of Cherokee County or any municipality in Cherokee County, and to
23 dispose by conveyance of its title in fee simple of real and personal property of every
24 kind and character; any and all persons, firms, and corporations and the state and any and
25 all political subdivisions, departments, institutions, or agencies of the state are authorized
26 to enter into contracts, leases, or agreements with the authority upon such terms and for
27 such purposes as they deem advisable; and, without limiting the generality of the above,
28 authorization is specifically granted to municipal corporations and counties and to the
29 authority to enter into contracts and lease and sublease agreements with the State of
30 Georgia or any agencies or departments thereof relative to parks and recreation centers,
31 areas, and facilities and relative to any property which such department or agency of the
32 State of Georgia has now or may hereafter obtain by lease from the United States
33 government or any agency or department thereof, and the authority is specifically
34 authorized to convey title in fee simple to any and all of its lands and any improvements
35 thereon to any persons, firms, corporations, municipalities, or the State of Georgia or the
36 United States government, or any agencies or departments thereof, subject to the rights
37 and interest of the holders of any of the bonds or obligations authorized to be issued

1 pursuant to this Act and by the resolution or trust indenture of the authority authorizing
2 the issuance of any of its bonds or obligations as provided in this Act;

3 (6) To construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve,
4 equip, operate, and manage projects as defined in this Act, the cost of any such project
5 to be paid in whole or in part from the proceeds of revenue bonds or other funds of the
6 authority or from such proceeds or other funds and any grant from the United States of
7 America and any agency or instrumentality thereof;

8 (7) To accept loans and grants of money, materials, or property of any kind from the
9 United States of America or any agency or instrumentality thereof, upon such terms and
10 conditions as the United States of America or such agency or instrumentality thereof may
11 impose;

12 (8) To accept loans and grants of money, materials, or property of any kind from the
13 State of Georgia or any agency, instrumentality, or political subdivision thereof, upon
14 such terms and conditions as the State of Georgia or such agency, instrumentality, or
15 political subdivision thereof may impose;

16 (9) To borrow money for any of its corporate purposes, to execute evidence of such
17 indebtedness, to secure the same, to issue negotiable revenue bonds payable solely from
18 the funds pledged for that purpose, and to provide for the payment of the same and for
19 the rights of the holders thereof;

20 (10) To exercise any power usually possessed by private corporations performing similar
21 functions which is not in conflict with the Constitution and laws of this state;

22 (11) To borrow money for any of its corporate purposes from any banks or other lending
23 institutions and to execute evidence of such indebtedness and to secure the same by
24 assigning all rights to and pledging all funds to be received by the authority from a lease
25 or leases entered into by the authority as the lessor;

26 (12) To do all things necessary or convenient to carry out the powers expressly given in
27 this Act; and

28 (13) To make recommendations to the City Council of Holly Springs on land
29 acquisitions, facilities, development, and other matters relating to the provisions of
30 recreation and recreational opportunities to the citizens of Holly Springs.

31 (b) The authority and the trustee acting under a trust indenture are specifically authorized
32 from time to time to sell, lease, grant, exchange, or otherwise dispose of any surplus
33 property, both real and personal, or interest therein not required in the normal operation of
34 the authority and usable in the furtherance of the purpose for which the authority was created.

SECTION 5.

The authority, or any authority or body which has or which may in the future succeed to the powers, duties, and liabilities vested in the authority created by this Act, shall have power and is authorized at one time or from time to time to provide by resolution for the issuance of negotiable revenue bonds for the purpose of paying all or any part of the cost as defined in this Act of any one or more projects. The principal of and interest on such revenue bonds shall be payable solely from the special fund provided for in this Act for such payment. The bonds of each issue shall be dated and shall bear interest at such rate or rates as determined by the authority, payable on such dates as determined by the authority. The bonds shall be payable in such medium of payment as to both principal and interest as may be determined by the authority and may be made redeemable before maturity at the option of the authority at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution providing for the issuance of the bonds. Such revenue bonds or obligations shall be issued pursuant to and in conformity with Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," and all procedures pertaining to such issuance and the conditions thereof shall be the same as those contained in the "Revenue Bond Law" and any amendments thereto.

SECTION 6.

All revenue bonds issued under the provisions of this Act are declared to be issued for an essential public and governmental purpose, and such bonds and the income thereof shall be exempt from all taxation by the state.

SECTION 7.

The authority may sell such revenue bonds in such manner and for such prices as it may determine to be for the best interest of the authority, and the proceeds derived from the sale of such bonds shall be used solely for the purpose provided in the proceedings authorizing the issuance of such bonds.

SECTION 8.

Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by this Act and Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law." Any resolution providing for the issuance of revenue bonds under the provisions of this Act shall become effective immediately upon its passage and need not be published or posted, and any such resolution may be passed at any regular, special, or

1 adjourned meeting of the authority by a majority of its members, subject to the provisions
2 of Chapter 14 of Title 50 of the O.C.G.A., governing open and public meetings.

3 **SECTION 9.**

4 Revenue bonds issued under the provisions of this Act shall not be deemed to constitute a
5 debt of the State of Georgia or of the City of Holly Springs or a pledge of the faith and credit
6 thereof; but such bonds shall be payable solely from the rentals, revenues, earnings, and
7 funds of the authority as provided in the resolution or trust indenture authorizing the issuance
8 and securing the payment of such bonds. The issuance of such revenue bonds shall not
9 directly, indirectly, or contingently obligate the state or any political subdivision thereof,
10 specifically such city, to levy or to pledge any form of taxation whatever therefor or to make
11 any appropriation for their payment, and all such bonds shall contain recitals on their face
12 covering substantially the foregoing provisions of this section. However, the City of Holly
13 Springs or any political subdivision of the state contracting with the authority may obligate
14 itself to pay the amounts required under any contract entered into with the authority from
15 funds received from taxes to be levied and collected for that purpose to the extent necessary
16 to pay the obligations contractually incurred under this section and from any other source;
17 and the obligation to make such payments shall constitute a general obligation and a pledge
18 of the full faith and credit of the obligor but shall not constitute a debt of the obligor within
19 the meaning of Article IX, Section V, Paragraph I of the Constitution of the State of Georgia.
20 When such obligation is made to make such payments from taxes to be levied for that
21 purpose, then the obligation shall be mandatory to levy and collect such taxes from year to
22 year in an amount sufficient to fulfill and fully comply with the terms of such obligation.
23 Without limiting the obligations of any political subdivision of the state contracting with the
24 authority in accordance with this Act, it shall be required that prior to entering into any such
25 contract, the authority or the political subdivision with which such contract will be executed
26 shall prepare or cause to be prepared a feasibility study including a projection of revenues
27 for the project which is the subject of such contract. The political subdivision entering into
28 a contract with the authority shall, prior to entering into the contract, properly advertise its
29 intention and call at least one public hearing on the subject not less than three weeks prior
30 to the date on which the political subdivision plans to vote to approve the signing of the
31 contract.

32 **SECTION 10.**

33 The revenues, rents, and earnings derived from any particular project or projects and any and
34 all revenues, rents, and earnings received by the authority, regardless of whether such
35 revenues, rents, and earnings were produced by a particular project for which bonds have

1 been issued, unless otherwise pledged, may be pledged by the authority to the payment of
2 the principal of and interest on revenue bonds of the authority as may be provided in any
3 resolution authorizing the issuance of such bonds or in any trust indenture pertaining to such
4 bonds. Such funds so pledged from whatever source received, which may include funds
5 received from one or more or all sources, may be set aside at regular intervals into sinking
6 funds for which provision may be made in any such resolution or trust indenture and which
7 may be pledged to and charged with the payment of (1) the interest upon such revenue bonds
8 as such interest shall become due, (2) the principal of the bonds as the same shall mature, (3)
9 the necessary charges of any trustee or agent of paying such principal and interest, and (4)
10 any premium upon bonds retired by call or purchase. The use and disposition of any sinking
11 fund may be subject to such regulation as may be provided for in the resolution authorizing
12 the issuance of the bonds or in the trust indenture securing the payment of the same.

13 **SECTION 11.**

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

22 **SECTION 12.**

23 The authority shall have the same immunity and exemptions from liability for torts and
24 negligence as the State of Georgia and the officers, agents, and employees of the authority,
25 when in performance of work of the authority, shall have the same immunity from liability
26 for torts and negligence as officers, agents, and employees of the State of Georgia. The
27 authority may be sued the same as private corporations on any contractual obligation of the
28 authority.

29 **SECTION 13.**

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

31 **SECTION 14.**

32 Any action to protect or enforce any rights under the provisions of this Act or any suit or
33 action against such authority shall be brought in the Superior Court of Cherokee County and

1 any action pertaining to the validation of any bonds issued under the provisions of this Act
2 shall likewise be brought in that court which shall have exclusive original jurisdiction of such
3 actions.

4 **SECTION 15.**

5 Bonds issued by the authority shall be confirmed and validated in accordance with the
6 procedures of Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law."
7 The petition for validation shall also make party defendant to such action the State of
8 Georgia or any municipality, county, authority, political subdivision, or instrumentality of
9 the State of Georgia or the United States government or any department or agency of the
10 United States government, if subject to being sued and if consenting to same, which has
11 contracted with the authority for the services and facilities of the project for which bonds are
12 to be issued and sought to be validated, and the state or such municipality, county, authority,
13 political subdivision, or instrumentality shall be required to show cause, if any, why such
14 contract or contracts and the terms and conditions thereof should not be inquired into by the
15 court and the validity of the terms thereof be determined and the contract or contracts be
16 adjudicated as part of the basis of the security for the payment of any such bonds of the
17 authority. The bonds, when validated, and the judgment of validation shall be final and
18 conclusive with respect to such bonds and the security for the payment thereof and interest
19 thereon and against the authority issuing the same, the state and any municipality, county,
20 authority, political subdivision, or instrumentality, if a party to the validation proceedings,
21 contracting with the authority.

22 **SECTION 16.**

23 While any of the bonds issued by the authority remain outstanding, the powers, duties, or
24 existence of the authority or of its officers, employees, or agents shall not be diminished or
25 impaired in any manner that will affect adversely the interest and rights of the holders of such
26 bonds, and no other entity, department, agency, or authority will be created which will
27 compete with the authority to such an extent as to affect adversely the interest and rights of
28 the holders of such bonds, nor will the state itself so compete with the authority. The
29 provisions of this Act shall be for the benefit of the authority and the holders of any such
30 bonds and, upon the issuance of bonds under the provisions of this Act, shall constitute a
31 contract with the holders of such bonds.

32 **SECTION 17.**

33 All funds received pursuant to the authority of this Act, whether as proceeds from the sale
34 of revenue bonds or as revenue, rents, fees, charges, or other earnings or as grants, gifts, or

1 other contributions, shall be deemed to be trust funds to be held and applied by the authority
2 solely as provided in this Act, and the bondholders entitled to receive the benefits of such
3 funds shall have a lien on all such funds until the same are applied as provided for in any
4 such resolution or trust indenture of the authority.

5 **SECTION 18.**

6 The Holly Springs Parks and Recreation Authority shall develop a financial and program
7 work plan for both capital and operational requirements for the authority's activities for each
8 fiscal year. Such plans shall be known as the "Annual Operating and Capital Budget of the
9 Holly Springs Parks and Recreation Authority." The plan shall be adopted on or before
10 December 30 of any given year, with an effective date of January 1. All projected revenues
11 and estimated expenditures shall be clearly outlined as to source and expenditure
12 classifications and purpose. In adopting the plan, the authority shall follow all laws
13 governing the budget process for the City of Holly Springs.

14 **SECTION 19.**

15 Each year the Holly Springs Parks and Recreation Authority shall have made an independent
16 audit and examination of the authority's financial records and transactions. Such audit shall
17 be made in accordance with established national audit and accounting standards. Copies of
18 such audit shall be available for public review to each participating jurisdiction.

19 **SECTION 20.**

20 The Holly Springs Parks and Recreation Authority is authorized to appoint, select, and
21 employ officers, agents, and employees and adopt rules and regulations governing their
22 services and fix their respective compensations and terms of employment.

23 **SECTION 21.**

24 This Act and any other law enacted with reference to the Holly Springs Parks and Recreation
25 Authority shall be liberally construed for the accomplishment of the purposes of the
26 authority.

27 **SECTION 22.**

28 The scope of the authority's operation shall be limited to the territory embraced within the
29 City of Holly Springs.

SECTION 23.

When the authority for any reason is dissolved after full payment of all bonded indebtedness incurred under the provisions of this Act, both as to principal and interest, title to all property of any kind and nature, real and personal, held by the authority at the time of such dissolution shall be conveyed to the City of Holly Springs; or title to any such property may be conveyed prior to such dissolution in accordance with provisions which may be made therefor in any resolution or trust indenture relating to such property, subject to any liens, leases, or other encumbrances outstanding against or in respect to said property at the time of such conveyance.

SECTION 24.

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 of this Act 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 of this Act.

SECTION 25.

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

SECTION 26.

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