

House Bill 730 (AS PASSED HOUSE AND SENATE)

By: Representatives Carpenter of the 4th, Tarvin of the 2nd, and Ridley of the 6th

A BILL TO BE ENTITLED

AN ACT

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

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

32 **SECTION 2.**

33 Whitfield County Public Facilities Authority.

34 There is created a public body corporate and politic to be known as the Whitfield County
35 Public Facilities Authority which shall be an instrumentality and a public corporation of the
36 State of Georgia, the purpose of which shall be to acquire, construct, equip, maintain, and
37 operate certain projects for use by Whitfield County or any municipality or other political
38 subdivision within Whitfield 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 Whitfield County, and its legal situs or
44 residence for the purposes of this chapter shall be Whitfield County.

45 **SECTION 3.**

46 **Membership.**

47 The authority shall consist of seven members as follows: five shall be the members of the
48 Board of Commissioners of Whitfield County and two shall be residents of the county, to be
49 appointed by the board of commissioners. The terms of office of the members who serve on
50 the board of commissioners shall be concurrent with their terms of office on the board of
51 commissioners. The terms of office of the remaining members of the authority shall be four
52 years and until their successors are appointed and qualified. Successors to such members
53 shall be appointed as the original members were appointed, as provided herein, and any
54 vacancies shall be filled by the appointing authority, as provided herein, for the unexpired
55 term. A majority of the members of the authority shall constitute a quorum, and no vacancy
56 on the authority shall impair the right of the quorum to exercise all the rights and perform all
57 the duties of the authority and, in every instance, a majority vote of a quorum shall authorize
58 any legal act of the authority, including all things necessary to authorize and issue revenue
59 bonds. One of the members of the authority who is also a member of the board of
60 commissioners shall be the chairperson of the authority, such chairperson to be elected by
61 the board of commissioners. The authority shall elect a secretary and treasurer neither of
62 whom need necessarily be a member of the authority. The authority may elect a vice
63 chairperson or any number of assistant secretaries or treasurers as it may from time to time
64 deem necessary or desirable. The members of the authority shall not be entitled to
65 compensation for their services but shall be entitled to and shall be reimbursed for the actual

66 expenses necessarily incurred in the performance of their duties. The authority shall
67 promulgate rules and regulations for its own governance and it shall have perpetual
68 existence. Any change in name or composition of the authority shall in no way affect the
69 vested rights of any person under the provisions of this Act or impair the obligations of any
70 contracts existing under this Act.

71 **SECTION 4.**

72 **Definitions.**

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

75 (1) "Authority" shall mean the Whitfield County Public Facilities Authority created by
76 this Act.

77 (2) "Board of commissioners" shall mean the Board of Commissioners of Whitfield
78 County.

79 (3) "Cost of project" shall include the cost of lands, buildings, improvements, machinery,
80 equipment, property, easements, rights, franchises, material, labor, services acquired or
81 contracted for, plans and specification, financing charges, construction costs, interest
82 prior to and during construction; architectural, accounting, engineering, inspection,
83 administrative, fiscal, and legal expenses; expenses incident to determining the feasibility
84 or practicability of the project; and expenses incident to the acquiring, constructing,
85 equipping, and operating of any project or any part thereof, and to the placing of the same
86 in operation.

87 (4) "Project" shall mean and include real and personal property acquired or held by the
88 authority, including all land, buildings, structures, sanitary and surface water sewers, and
89 other public property determined by the authority to be desirable for the efficient
90 operation of any department, board, office, commission, or agency of Whitfield County,

91 any municipality or other political subdivision within Whitfield County, or of the State
92 of Georgia, in the performance of its governmental, proprietary, and administrative
93 functions.

94 (5) "Revenue bonds" shall mean revenue bonds issued under the provisions of Article
95 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," or under the
96 provisions of this Act. The obligations authorized under this Act may be issued by the
97 authority in the manner authorized under the "Revenue Bond Law."

98 SECTION 5.

99 Powers.

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

103 (1) To sue and be sued;

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

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

109 (4) To acquire in its own name by purchase on such terms and conditions and in such
110 manner as it may deem proper or by gift, grant, lease, or otherwise, real and personal
111 property necessary or convenient for its corporate purposes, or rights and easements
112 therein, and to use the same so long as its corporate existence shall continue and to lease
113 or make contracts with respect to the use of or disposition of the same in any manner it
114 deems to the best advantage of the authority. Title to any such property shall be held by
115 the authority exclusively for the benefit of the public.

- 116 (5) To improve, extend, add to, reconstruct, renovate, or remodel any project or part
117 thereof already acquired;
- 118 (6) To pledge or assign any revenues, income, rent, charges, and fees received by the
119 authority;
- 120 (7) To appoint and select agents, engineers, architects, attorneys, fiscal agents,
121 accountants, and employees and to provide for their compensation and duties;
- 122 (8) To construct, reconstruct, acquire, own, alter, repair, remodel, maintain, extend,
123 improve, operate, manage, and equip projects located on land owned or leased by the
124 authority;
- 125 (9) To receive, accept, and use any contributions, loans, or grants by persons, firms, or
126 corporations, including the State of Georgia and the United States of America or any
127 agency or instrumentality thereof, and any other contributions;
- 128 (10) To pay all or part of the costs of any project from the proceeds of revenue bonds of
129 the authority or from other lawful sources available to it;
- 130 (11) To prescribe rules and regulations for the operation of and to exercise police powers
131 over the projects managed or operated by the authority;
- 132 (12) To accept, receive, and administer gifts, grants, loans and devises of money,
133 material, and property of any kind, including loans and grants from the State of Georgia
134 or the United States of America or any agency or instrumentality thereof, upon such
135 terms and conditions as the State of Georgia or the United States of America or such
136 agency or instrumentality may impose;
- 137 (13) To sell, lease, exchange, transfer, assign, pledge, mortgage, dispose of, grant in
138 trust, or grant options for any real or personal property or interest therein in furtherance
139 of the purposes of the authority;
- 140 (14) As security for repayment of authority obligations, to pledge, mortgage, convey,
141 assign, hypothecate, or otherwise encumber any property, real or personal, of such
142 authority and to execute any trust agreement, indenture, or security agreement containing

143 any provisions not in conflict with law, which trust agreement, indenture, or security
144 agreement may provide for foreclosure or forced sale of any property of the authority
145 upon default, on such obligations, either in payment of principal or interest or in the
146 performance of any term or condition, as are contained in such agreement or indenture;
147 (15) To borrow money for any of its corporate purposes, to issue revenue bonds payable
148 solely from funds pledged for that purpose, and to provide for the payment of the same
149 and for the rights of the holders thereof;

150 (16) To exercise all powers usually possessed by private corporations performing similar
151 functions which are not in conflict with the Constitution and laws of this state; and

152 (17) Pursuant to proper resolution of the authority, to issue revenue bonds payable from
153 the rents and revenues of the authority and its projects, which bonds may be issued in
154 either fully negotiable coupon form, in which event they shall have all the qualities and
155 incidents of negotiable instruments under the laws of this state, or they may be issued in
156 whole or in part in nonnegotiable fully registered form without coupons, payable to a
157 designated payee or to the registered assigns of the payee with such conversion privileges
158 as the authority may provide, for the purpose of paying all or any part of the cost
159 associated with the projects authorized by the authority, including the cost of
160 constructing, reconstructing, equipping, extending, adding to, or improving such projects,
161 or for the purpose of refunding, as herein provided, any such bonds of the authority
162 theretofore issued. If the proceeds of the bonds of any issue shall exceed the amount
163 required for the purpose for which such bonds were issued, the surplus shall be paid into
164 the fund provided for the payment of principal and interest on such bonds. All such
165 revenue bonds shall be issued and validated under and in accordance with the procedure
166 of Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," and in
167 accordance with all terms and provisions thereof not in conflict herewith and in
168 accordance with Code Section 50-17-1 of the O.C.G.A., relating to use of facsimile
169 signatures on public securities authorized, and, as security for the payment of any revenue

170 bonds so authorized, any rents and revenue of the authority may be pledged and assigned.
171 Such bonds are declared to be issued for an essential public and governmental purpose,
172 and such bonds and all income therefrom shall be exempt from all taxation within the
173 State of Georgia. For the purpose of the exemption from taxation of such bonds and the
174 income therefrom, the authority shall be deemed to be a political subdivision of the State
175 of Georgia.

176 **SECTION 6.**

177 Credit not pledged and debt not created by bonds.

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

189 **SECTION 7.**

190 Trust agreement.

191 In the discretion of the authority, any issue of revenue bonds may be secured by an
192 agreement or indenture made by the authority with a corporate trustee, which may be any

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

215 **SECTION 8.**

216 Refunding bonds.

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

222 **SECTION 9.**

223 Venue of actions, jurisdiction.

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

229 **SECTION 10.**

230 Revenue bond validation.

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

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

241 **SECTION 11.**

242 Interest of bondholders protected.

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

249 **SECTION 12.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

302 **SECTION 13.**

303 **Sinking fund.**

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

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

320 **SECTION 14.**

321 Property acquired for public purpose.

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

331 **SECTION 15.**

332 Immunity from tort actions.

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

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

339 **SECTION 16.**

340 Property not subject to levy and sale.

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

342 **SECTION 17.**

343 Trust funds.

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

350 **SECTION 18.**

351 Construction.

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

354 **SECTION 19.**

355 Scope of operations.

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

358 **SECTION 20.**

359 Conveyance of property upon dissolution.

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

368 **SECTION 21.**

369 Effect of partial invalidity of Act.

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

375

SECTION 22.

376

Repealer.

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