

Senate Bill 612

By: Senator Walker III of the 20th

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

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

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20 provision of this Act; to provide for immunity and exemption from liability for torts and
21 negligence; to provide that the property of the authority shall not be subject to levy and sale;
22 to provide that certain moneys are trust funds; to provide that this Act shall be liberally
23 construed; to define the scope of the authority's operation; to provide for disposition of
24 property upon dissolution of the authority; to provide for severability; to provide for a short
25 title; to provide for related matters; to repeal conflicting laws; and for other purposes.

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

27 **SECTION 1.**

28 Short title.

29 This Act shall be known and may be cited as the "City of Cochran Public Facilities Authority
30 Act."

31 **SECTION 2.**

32 City of Cochran Public Facilities Authority.

33 There is created a public body corporate and politic to be known as the City of Cochran
34 Public Facilities Authority, which shall be an instrumentality and a public corporation of the
35 State of Georgia, the purpose of which shall be to acquire, construct, equip, maintain, and
36 operate certain projects for use by the City of Cochran for its governmental, proprietary,
37 public, and administrative functions. The authority shall not be a state institution or a
38 department or agency of the state, but shall be an instrumentality of the state, a mere creation
39 of the state, being a distinct corporate entity and exempt from the provisions of Article 2 of
40 Chapter 17 of Title 50 of the O.C.G.A., the "Georgia State Financing and Investment

41 Commission Act." The authority shall have its principal office in the City of Cochran, and
42 its legal situs or residence for the purposes of this Act shall be the City of Cochran.

43 **SECTION 3.**

44 **Membership.**

45 The authority shall consist of seven members who shall be eligible to succeed themselves and
46 who shall also serve on the governing authority of the City of Cochran. Each member of the
47 authority shall serve for a term of office concurrent with such person's term of office as a
48 member of said governing authority and until the appointment and qualification of such
49 person's successor. Vacancies on the authority shall be filled by said governing authority for
50 the remainder of the unexpired term and until the appointment and qualification of a
51 successor. Immediately after their appointment, the members of the authority shall enter
52 upon their duties. The authority shall elect one of its members as chairperson and one as vice
53 chairperson. The secretary-treasurer of the authority shall be appointed by the authority and
54 need not be a member of the authority. Four members of the authority shall constitute a
55 quorum and no vacancy on the authority shall impair the right of the quorum to exercise all
56 the rights and perform all the duties of the authority and, in every instance, a majority vote
57 of a quorum shall authorize any legal act of the authority, including all things necessary to
58 authorize and issue revenue bonds. The members of the authority shall receive no
59 compensation for their services but may be reimbursed by the authority for the actual
60 expenses necessarily incurred in the performance of their duties. The authority shall make
61 rules and regulations for its own government and shall have perpetual existence.

SECTION 4.

Definitions.

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

66 (1) "Authority" shall mean the City of Cochran Public Facilities Authority created by this
67 Act.

68 (2) "Cost of project" shall include the cost of lands, buildings, improvements, machinery,
69 equipment, property, easements, rights, franchises, material, labor, services acquired or
70 contracted for, plans and specification, and financing charges; construction costs; interest
71 prior to and during construction; architectural, accounting, engineering, inspection,
72 administrative, fiscal, and legal expenses; expenses incident to determining the feasibility
73 or practicability of the project; and expenses incident to the acquiring, constructing,
74 equipping, and operating of any project or any part thereof and to the placing of the same
75 in operation.

76 (3) "Project" shall mean and include real and personal property acquired or held by the
77 authority, including all land, buildings, structures, sanitary and surface water sewers,
78 storm water management projects, historic preservation projects, utilities, including
79 natural gas distribution, telecommunications, fiber, cable, and broadband services, and
80 other public property determined by the authority to be desirable for the efficient
81 operation of any department, board, office, commission, or agency of the City of
82 Cochran, or of the State of Georgia, in the performance of its governmental, proprietary,
83 and administrative functions.

84 (4) "Revenue bonds" shall mean revenue bonds issued under the provisions of Article 3
85 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," or under the
86 provisions of this Act. The obligations authorized under this Act may be issued by the
87 authority in the manner authorized under the Revenue Bond Law.

88

SECTION 5.

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Powers.

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

93 (1) To sue and be sued;

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

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

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

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

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

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

- 112 (8) To construct, reconstruct, acquire, own, alter, repair, remodel, maintain, extend,
113 improve, operate, manage, and equip projects located on land owned or leased by the
114 authority;
- 115 (9) To receive, accept, and use any contributions, loans, or grants by persons, firms, or
116 corporations, including the State of Georgia and the United States of America, and any
117 other contributions;
- 118 (10) To pay all or part of the costs of any project from the proceeds of revenue bonds of
119 the authority or from other lawful sources available to it;
- 120 (11) To prescribe rules and regulations for the operation of and to exercise police powers
121 over the projects managed or operated by the authority;
- 122 (12) To accept, receive, and administer gifts, grants, loans and devises of money,
123 material, and property of any kind, including loans and grants from the State of Georgia
124 or the United States of America or any agency or instrumentality thereof, upon such
125 terms and conditions as the State of Georgia or the United States of America or such
126 agency or instrumentality may impose;
- 127 (13) To sell, lease, exchange, transfer, assign, pledge, mortgage, dispose of, grant in
128 trust, or grant options for any real or personal property or interest therein in furtherance
129 of the purposes of the authority;
- 130 (14) As security for repayment of authority obligations, to pledge, mortgage, convey,
131 assign, hypothecate, or otherwise encumber any property, real or personal, of such
132 authority and to execute any trust agreement, indenture, or security agreement containing
133 any provisions not in conflict with law, which trust agreement, indenture, or security
134 agreement may provide for foreclosure or forced sale of any property of the authority
135 upon default, on such obligations, either in payment of principal or interest or in the
136 performance of any term or condition, as are contained in such agreement or indenture;

137 (15) To borrow money for any of its corporate purposes, to issue revenue bonds payable
138 solely from funds pledged for that purpose, and to provide for the payment of the same
139 and for the rights of the holders thereof;

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

142 (17) Pursuant to proper resolution of the authority, to issue revenue bonds payable from
143 the rents and revenues of the authority and its projects, which bonds may be issued in
144 either fully negotiable coupon form, in which event they shall have all the qualities and
145 incidents of negotiable instruments under the laws of the State of Georgia, or which
146 bonds may be issued in whole or in part in nonnegotiable fully registered form without
147 coupons, payable to a designated payee or to the registered assigns of the payee with such
148 conversion privileges as the authority may provide, for the purpose of paying all or any
149 part of the cost associated with the projects authorized by the authority, including the cost
150 of constructing, reconstructing, equipping, extending, adding to, or improving such
151 projects or for the purpose of refunding, as provided in this Act, any such bonds of the
152 authority theretofore issued. If the proceeds of the bonds of any issue shall exceed the
153 amount required for the purpose for which such bonds were issued, the surplus shall be
154 paid into the fund provided for the payment of principal and interest on such bonds. All
155 such revenue bonds shall be issued and validated under and in accordance with the
156 procedures of Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond
157 Law," and in accordance with all terms and provisions thereof not in conflict with this
158 Act, and in accordance with Code Section 50-17-1 of the O.C.G.A., relating to use of
159 facsimile signatures on public securities, and, as security for the payment of any revenue
160 bonds so authorized, any rents and revenue of the authority may be pledged and assigned.
161 Such bonds shall be declared to be issued for an essential public and governmental
162 purpose, and such bonds and all income therefrom shall be exempt from all taxation
163 within the State of Georgia. For the purpose of the exemption from taxation of such

164 bonds and the income therefrom, the authority shall be deemed to be a political
165 subdivision of the State of Georgia.

166 **SECTION 6.**

167 Credit not pledged and debt not created by bonds.

168 Revenue bonds issued under the provisions of this Act shall not constitute a debt or a pledge
169 of the faith and credit of the State of Georgia or City of Cochran, but such bonds shall be
170 payable from the rentals, revenue, earnings, and funds of the authority as provided in the
171 resolution or trust agreement or indenture authorizing the issuance and securing the payment
172 of such bonds. The issuance of such bonds shall not directly, indirectly, or contingently
173 obligate the state or said municipality to levy or pledge any form of taxation for the payment
174 thereof. No holder of any bond or receiver or trustee in connection therewith shall have the
175 right to enforce the payment thereof against any property of the state or of said municipality,
176 nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon
177 any such property. All such bonds shall contain on their face a recital setting forth
178 substantially the foregoing provisions of this section.

179 **SECTION 7.**

180 Trust agreement.

181 In the discretion of the authority, any issue of revenue bonds may be secured by an
182 agreement or indenture made by the authority with a corporate trustee, which may be any
183 trust company or bank having the powers of a trust company within or without the State of
184 Georgia. Such trust agreement or indenture may pledge and assign rents, fees, charges,
185 revenues, and earnings to be received by the authority. The resolution providing for the
186 issuance of revenue bonds and such trust agreement or indenture may contain provisions for

187 protecting and enforcing the rights and remedies of the bondholders, including the right of
188 appointment of a receiver upon default of the payment of any principal or interest obligation
189 and the right of any receiver or trustee to enforce collection of any rents, fees, charges, or
190 revenues for use of the project or projects necessary to pay all costs of operation and all
191 reserves provided for, all principal and interest on all bonds of the issue, all costs of
192 collection, and all other costs reasonably necessary to accomplish the collection of such sums
193 in the event of any default of the authority. Such resolution and such trust agreement or
194 indenture may include covenants setting forth the duties of the authority in relation to the
195 acquisition of property for and the construction of the project and to the custody,
196 safeguarding, and application of all funds and covenants providing for the operation,
197 maintenance, repair, and insurance of the project or projects and may contain provisions
198 concerning the conditions, if any, upon which additional revenue bonds may be issued. Such
199 trust agreement or indenture may set forth the rights and remedies of the bondholders and of
200 the trustee and may restrict the individual right of action of bondholders as is customary in
201 securing bonds and debentures of corporations and may contain such other provisions as the
202 authority may deem reasonable and proper for the security of the bondholders. All expenses
203 incurred in carrying out such trust may be treated as a part of the cost of maintenance,
204 operation, and repair of the project affected by such trust.

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SECTION 8.

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Refunding bonds.

207 The authority is authorized to provide by resolution for the issuance of revenue bonds of the
208 authority for the purpose of calling, refunding, or refinancing any revenue bonds issued
209 under the provisions of this Act and then outstanding and to include in the amount of such
210 refunding bonds all interest and any call premiums that may be required for the redemption
211 and refunding of such outstanding bonds.

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SECTION 9.

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Venue of actions, jurisdiction.

214 Any action to protect or enforce any rights under the provisions of this Act or any action
215 against the authority brought in the courts of the State of Georgia shall be brought in the
216 Superior Court of Bleckley County, Georgia, and any action pertaining to validation of any
217 bonds issued under the provisions of this Act shall be brought in said court, which shall have
218 exclusive, original jurisdiction of such actions.

219

SECTION 10.

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Revenue bond validation.

221 The petition for validation of all revenue bonds of the authority shall be brought against the
222 authority, and any contracting party whose obligation is pledged as security for the payment
223 of the bonds sought to be validated, as defendants, and the defendants shall be required to
224 show cause, if any exists, why such contract or contracts and the terms and conditions thereof
225 shall not be adjudicated to be in all respects valid and binding upon such contracting parties.
226 It shall be incumbent upon such defendants to defend against adjudication of the validity and
227 binding effect of such contract or contracts or be forever bound thereby. Notice of such
228 proceedings shall be included in the notice of the validation hearing required to be issued and
229 published by the clerk of the Superior Court of Bleckley County in which court such
230 validation proceedings shall be initiated.

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SECTION 11.

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Interest of bondholders protected.

233 While any of the bonds issued by the authority remain outstanding, the powers, duties, or
234 existence of the authority or of its officers, employees, or agents shall not be diminished,
235 impaired, or affected in any manner that will affect adversely the interest and rights of the
236 holders of such bonds. The provisions of this Act shall be for the benefit of the authority and
237 the holders of any such bonds and, upon the issuance of bonds under the provisions of this
238 Act, shall constitute a contract with the holders of such bonds.

239

SECTION 12.

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Revenues, earnings, rents, and charges; use.

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

247 (1) To pay the cost of operating, maintaining, and repairing the project or projects,
248 including reserves for insurance and extraordinary repairs and other reserves required by
249 the resolution or trust agreement or indenture pertaining to such bonds and the issuance
250 thereof, unless such cost shall be otherwise provided for;

251 (2) To pay the principal of and interest on such revenue bonds as the same shall become
252 due, including call premiums, if any, the proceeds of which shall have been or shall be
253 used to pay the cost of such project or projects;

- 254 (3) To comply with any sinking fund requirements contained in the resolution or trust
255 agreement or indenture pertaining to the issuance of and security for such bonds;
- 256 (4) To perform fully all provisions of such resolution or trust agreement or indenture
257 relating to the issuance of or security for such bonds to the payment of which such rent
258 is pledged;
- 259 (5) To accumulate any excess income which may be required by the purchasers of such
260 bonds or may be dictated by the requirements of such resolution or trust agreement or
261 indenture, or which may be required for achieving ready marketability of and low interest
262 rates on such bonds; and
- 263 (6) To pay any expenses in connection with such bond issue or of such project,
264 including, but not limited to, trustees', attorney's, and fiscal agents' fees.
- 265 (b) Such rent shall be payable at such intervals as may be agreed upon and set forth in the
266 rental contract or lease providing therefor, and any such contract or lease may provide for the
267 commencement of rent payments to the authority prior to the completion of the project by
268 the authority and may provide for the payment of rent during such times as such project may
269 be partially or wholly untenable.
- 270 (c) Such rental contract or lease may obligate the tenants or lessees to operate, maintain, and
271 keep in good repair, including complete reconstruction, if necessary, the rented or leased
272 premises and projects, regardless of the cause of the necessity of such maintenance, repair,
273 or reconstruction.
- 274 (d) Such rental contract or lease may obligate the tenants or lessees to indemnify and save
275 harmless the authority from any and all damage to persons and property occurring on or by
276 reason of the leased property or improvements thereon and to undertake, at the expense of
277 the tenants or lessees, the defense of any action brought against the authority by reason of
278 injury or damages to persons or property occurring on or by reason of the leased premises.
- 279 (e) In the event of any failure or refusal on the part of the tenants or lessees to perform
280 punctually any covenant or obligation contained in any such rental contract or lease, the

281 authority may enforce performance by any legal or equitable process against the tenants or
282 lessees.

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

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

290

SECTION 13.

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Sinking fund.

292 The revenue, rents, and earnings derived from any particular project or projects and any and
293 all revenue, rents, and earnings received by the authority, regardless of whether such
294 revenue, rents, and earnings were produced by a particular project for which bonds have been
295 issued, unless otherwise pledged, may be pledged by the authority to payment of the
296 principal of and interest on revenue bonds of the authority as may be provided in any
297 resolution authorizing the issuance of such bonds or in any trust instrument pertaining to such
298 bonds, and such funds so pledged, from whatever source received, may include funds
299 received from one or more or all sources and may be set aside at regular intervals into
300 sinking funds for which provision may be made in any such resolution or trust instrument
301 and which may be pledged to and charged with the payment of the interest upon such
302 revenue bonds as such interest shall become due, the principal of the bonds as the same shall
303 mature, the necessary charges of any trustee or paying agent for paying such principal and
304 interest, and any premium upon bonds retired by call or purchase, and the use and disposition
305 of any sinking fund may be subject to such regulation as may be provided for in the

306 resolution authorizing the issuance of the bonds or in the trust instrument securing the
307 payment of the same.

308 **SECTION 14.**

309 Taxation status.

310 The exercise of the powers conferred upon the authority under this Act shall constitute an
311 essential governmental function for a public purpose, and to the maximum extent permitted
312 by general law, the authority shall be required to pay no taxes or assessments upon any of the
313 property acquired by it or under its jurisdiction, control, possession, or supervision or upon
314 its activities in the operation and maintenance of property acquired by it or of buildings
315 erected or acquired by it or any fees, rents, or other charges for the use of such property or
316 buildings or other income received by the authority. This section shall not include an
317 exemption from sales and use tax on property purchased by or for the use of the authority.

318 **SECTION 15.**

319 Immunity from tort actions.

320 The authority shall have the same immunity and exemption from liability for torts and
321 negligence as a Georgia county, and the officers, agents, and employees of the authority,
322 when in performance of work of the authority, shall have the same immunity and exemption
323 from liability for torts and negligence as officers, agents, and employees of a Georgia county.
324 The authority may be sued the same as private corporations on any contractual obligation of
325 the authority.

326 **SECTION 16.**

327 Property not subject to levy and sale.

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

329 **SECTION 17.**

330 Trust funds.

331 All funds received pursuant to the authority of Section 12 of this Act, whether as proceeds
332 from the sale of revenue bonds or as revenue, rents, fees, charges, or other earnings or as
333 grants, gifts, or other contributions, shall be deemed to be trust funds to be held and applied
334 by the authority, solely as provided in this Act. The bondholders entitled to receive the
335 benefits of such funds shall have a lien on all such funds until the same are applied as
336 provided for in any such resolution or trust instrument of the authority.

337 **SECTION 18.**

338 Construction.

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

341 **SECTION 19.**

342 Scope of operations.

343 The projects of the authority's operation shall be located in the territory embraced within the
344 jurisdictional limits of the City of Cochran as the same now or may hereafter exist.

345

SECTION 20.

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Conveyance of property upon dissolution.

347 Should the authority for any reason be dissolved after full payment of all bonded
348 indebtedness incurred under this Act, both as to principal and interest, title to all property of
349 any kind and nature, real and personal, held by the authority at the time of such dissolution
350 shall be conveyed to the City of Cochran, or title to any such property may be conveyed prior
351 to such dissolution in accordance with provisions which may be made therefor in any
352 resolution or trust instrument relating to such property, subject to any liens, leases, or other
353 encumbrances outstanding against or in respect to said property at the time of such
354 conveyance.

355

SECTION 21.

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Severability; effect of partial invalidity of Act.

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

362

SECTION 22.

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General repealer.

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