

House Bill 708 (AS PASSED HOUSE AND SENATE)

By: Representatives Dreyer of the 59th and Schofield of the 60th

A BILL TO BE ENTITLED
AN ACT

1 To create the City of Hapeville Public Facilities Authority; to provide for a short title; to
2 provide for the appointment of members of the authority; to provide for the purpose and
3 scope of operation; to provide for definitions; to confer powers upon the authority; to
4 authorize the issuance of revenue bonds of the authority; to provide for interests and
5 remedies to bondholders; to fix and provide the venue and jurisdiction of actions relating to
6 any provisions of this Act; to provide for moneys received to be deemed trust funds; to
7 provide for tort immunity; to provide for tax exemption; to provide for rates, charges, and
8 revenues; to provide for effect on other governments; to provide for construction of the act
9 and severability; to provide for related matters; to provide an effective date; to repeal
10 conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Short title.

14 This Act shall be known and may be cited as the "City of Hapeville Public Facilities
15 Authority Act."

H. B. 708

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SECTION 2.

City of Hapeville Public Facilities Authority; creation.

(a) There is hereby created a public body corporate and politic to be known as the "City of Hapeville Public Facilities Authority," which shall be deemed to be a political subdivision of the state and a public corporation, and 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. The authority shall have perpetual existence.

(b) The authority shall consist of five members who shall be appointed by the city council of the City of Hapeville. With respect to the initial appointment, all members shall be appointed for a term of two years until successors are appointed and qualified. Thereafter, all appointments shall be made annually at the expiration of each two-year term and the previous year's appointees shall continue to serve until their successors are appointed and qualified. Immediately after such appointments the members of the authority shall enter upon their duties. To be eligible for appointment as a member of the authority, a person shall be at least 21 years of age, shall be a resident of the city for at least 12 months prior to the date of his or her appointment and shall not have been convicted of a felony. Any member of the authority may be selected and appointed to succeed himself or herself.

(c) The members of the authority shall not be compensated for their services; provided, however, that the members shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties.

(d) The members of the authority shall elect one of their number as chairperson and another as a vice-chairperson. The members of the authority shall also elect a secretary, who need not be a member of the authority, and may also elect a treasurer, who need not be a member of the authority. The secretary may also serve as treasurer. If the secretary or the treasurer is not a member of the authority, such officer shall have no voting rights. Each of such

41 officers shall serve for a period of two years and until their successors are duly elected and
42 qualified.

43 (e) Three members of the authority shall constitute a quorum and a majority of a quorum is
44 required to take action. No vacancy on the authority shall impair the right of the quorum to
45 exercise all of the rights and perform all of the duties of the authority.

46 (f) Any member of the authority can be removed by a majority vote of the city council. The
47 city council shall fill such vacancy within three months of removal of any member. If a
48 member resigns or is unable to diligently perform his or her duties, the city council shall
49 declare the seat vacant and shall fill such vacancy within three months' time of resignation.

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SECTION 3.

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Purpose of the authority; scope of operations.

52 Without limiting the generality of any provision of this Act, the general purpose of the
53 authority is declared to be that of providing buildings, facilities, equipment, and services for
54 corporate purposes for the citizens of the city.

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SECTION 4.

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Definitions.

57 As used in this Act, the term:

58 (1) "Authority" means the City of Hapeville Public Facilities Authority created by this
59 Act.

60 (2) "City" means the City of Hapeville, Georgia.

61 (3) "Costs of the project" means and embraces the cost of construction; the cost of all
62 lands, properties, rights, easements, and franchises acquired; the cost of all machinery and
63 equipment; financing charges; interest prior to and during construction and for six months

64 after completion of construction; the cost of engineering, architectural, fiscal agents'
65 expenses, legal expenses, plans and specifications, and other expenses necessary or
66 incidental to determining the feasibility or practicability of the project; administrative
67 expenses and such other expenses as may be necessary or incidental to the financing
68 authorized in this Act; working capital; and all other costs necessary to acquire, construct,
69 add to, extend, improve, equip, operate, and maintain the project.

70 (4) "Project" means all buildings, facilities, services, and equipment necessary or
71 convenient for the efficient operation of the city or any department, agency, division, or
72 commission thereof, permitted by the Revenue Bond Law.

73 (5) "Revenue Bond Law" means the Revenue Bond Law of the State of Georgia
74 (codified in Article 3 of Chapter 82 of Title 36 of the O.C.G.A., as amended), or any
75 other similar law hereinafter enacted.

76 (6) "Revenue bonds" means revenue bonds authorized to be issued pursuant to this Act.

77 (7) "Self-liquidating" means any project which the revenues and earnings to be derived
78 by the authority therefrom, including, but not limited to, any contractual payments with
79 governmental or private entities, and all properties used, leased, and sold in connection
80 herewith, together with any grants and any other available funds, will be sufficient to pay
81 the costs of operating, maintaining, and repairing the project and to pay the principal and
82 interest on the revenue bonds or other obligations which may be issued for the purpose
83 of paying the costs of the project.

84 (8) "State" means the State of Georgia.

85 **SECTION 5.**

86 **Powers.**

87 The authority shall have the power:

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

- 89 (2) To acquire by purchase, lease, gift, condemnation, or otherwise, and with or without
90 consideration, to hold, operate, maintain, lease, and dispose of real and personal property
91 of every kind and character for its corporate purposes or on behalf of the city;
- 92 (3) To acquire in its own name by purchase, on such terms and conditions and in such
93 manner as it may deem proper, or by condemnation in accordance with the provisions of
94 any and all existing laws applicable to the condemnation of property for public use, real
95 property or rights or easements therein, or franchises necessary or convenient for its
96 corporate purposes, and to use the same so long as its corporate existence shall continue,
97 and to lease or make contracts with respect to the use of or disposition of the same in any
98 manner it deems to the best advantage of the authority, the authority being under no
99 obligation to accept and pay for any property condemned under this Act, except from the
100 funds provided under the authority of this Act, and in any proceedings to condemn, such
101 orders may be made by the court having jurisdiction of the suit, action, or proceedings
102 as may be just to the authority and to the owners of the property to be condemned, and
103 no property shall be acquired under the provisions of this Act upon which any lien or
104 encumbrance exists, unless at the time such property is so acquired a sufficient sum of
105 money is to be deposited in trust to pay and redeem the fair value of such lien or
106 encumbrance;
- 107 (4) To acquire, construct, add to, extend, improve, equip, operate, maintain, lease, and
108 dispose of projects;
- 109 (5) To execute contracts, leases, installment sale agreements, and other agreements and
110 instruments necessary or convenient in connection with the acquisition, construction,
111 addition, extension, improvement, equipping, operation, maintenance, disposition, or
112 financing of a project;
- 113 (6) To appoint, select, and employ officers, agents, and employees, including, but not
114 limited to, engineering, architectural, and construction experts; fiscal agents; and
115 attorneys; and to fix their respective compensations;

116 (7) To pay the costs of the project with the proceeds of revenue bonds, certificates of
117 participation, notes, or other forms of obligations issued by the authority or from any
118 grant or contribution from the United States of America or any agency or instrumentality
119 thereof or from the state or any agency, instrumentality, municipality, or political
120 subdivision thereof, from any private foundation or other private source or from any other
121 source whatsoever;

122 (8) To pledge to the payment of revenue bonds, certificates of participation, notes, and
123 other forms of obligations issued by the authority any and all revenues and properties of
124 the authority, both real and personal;

125 (9) To accept loans or grants of money or materials or property of any kind from the
126 United States of America or any agency or instrumentality thereof, upon such terms and
127 conditions as the United States of America or such agency or instrumentality may
128 require;

129 (10) To accept loans or grants of money or materials or property of any kind from the
130 state or any agency, instrumentality, municipality, or political subdivision thereof, upon
131 such terms and conditions as the state or such agency, instrumentality, municipality, or
132 political subdivision may require;

133 (11) To accept loans or grants of money or materials or property of any kind from any
134 public or private foundation or any other private source upon such terms and conditions
135 as such public or private foundation or other private source may require;

136 (12) To borrow money for any of its corporate purposes and to issue or execute revenue
137 bonds, certificates of participation, notes, and other forms of obligations, deeds to secure
138 debt, security agreements, and such other instruments as may be necessary or convenient
139 to evidence and secure such borrowing;

140 (13) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the
141 manner in which its business is transacted;

- 142 (14) To prescribe rules, regulations, service policies, and procedures for the operation
143 of any project; and
144 (15) To do all things necessary or convenient to carry out the powers expressly given in
145 this Act.

146 **SECTION 6.**

147 Revenue bonds.

148 The authority shall have power and is hereby authorized to provide by resolution for the
149 issuance of revenue bonds for the purpose of paying all or any part of the costs of the project
150 and for the purpose of refunding revenue bonds or other obligations previously issued. The
151 principal of and interest on such revenue bonds shall be payable solely from the revenues and
152 properties pledged to the payment of such revenue bonds. The revenue bonds issued by the
153 authority shall contain such terms as the authority shall determine are in the best interest of
154 the authority; provided, however, that no revenue bonds shall have a maturity exceeding 20
155 years.

156 **SECTION 7.**

157 Same; signatures; seal.

158 All such revenue bonds shall bear the manual or facsimile signature of the chairperson or
159 vice-chairperson of the authority, the attesting manual or facsimile signature of the secretary
160 or secretary-treasurer of the authority, and the official seal of the authority shall be impressed
161 or imprinted thereon. In case any officer whose signature shall appear on any revenue bond
162 shall cease to be such officer before the delivery of such revenue bond, such signature shall
163 nevertheless be valid and sufficient for all purposes, the same as if that person had remained
164 in office until such delivery.

165 **SECTION 8.**

166 Same; negotiability; exemption from taxation.

167 All revenue bonds shall have and are hereby declared to have all the qualities and incidents
168 of negotiable instruments under the laws of the state. All revenue bonds, their transfer, and
169 the income therefrom shall be exempt from all taxation within the state as provided by the
170 Revenue Bond Law.

171 **SECTION 9.**

172 Same; conditions precedent to issuance.

173 The authority shall adopt a resolution authorizing the issuance of the revenue bonds. In the
174 resolution, the authority shall determine that the project financed or refinanced with the
175 proceeds of the revenue bonds is self-liquidating. The mayor and city council of the city
176 shall also approve the issuance of revenue bonds. Revenue bonds may be issued without any
177 other proceedings or the happening of any other conditions or things other than those
178 proceedings, conditions, and things which are specified or required by this Act. Any
179 resolution providing for the issuance of revenue bonds under the provisions of this Act shall
180 become effective immediately upon its adoption and need not be published or posted, and
181 any such resolution may be adopted at any regular or special meeting of the authority by a
182 majority of its members.

183 **SECTION 10.**

184 Same; credit not pledged.

185 Revenue bonds shall not be deemed to constitute a debt of the state or the city nor a pledge
186 of the faith and credit of the state or the city. Revenue bonds shall be payable solely from

187 the revenues and properties pledged to the payment of such revenue bonds. The issuance of
188 revenue bonds shall not directly, indirectly, or contingently obligate the state or the city to
189 levy or to pledge any form of taxation whatsoever for the payment of such revenue bonds or
190 to make any appropriation for their payment. All revenue bonds shall contain recitals on
191 their face covering substantially the foregoing provisions of this section. Notwithstanding
192 the foregoing provisions, this Act shall not affect the ability of the authority and the city to
193 enter into an intergovernmental contract pursuant to which the city agrees to pay amounts
194 sufficient to pay operating charges and other costs of the authority or any project including,
195 without limitation, the principal of and interest on revenue bonds, in consideration for
196 services, facilities, or equipment of the authority.

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SECTION 11.

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Same; trust indenture as security.

199 In the discretion of the authority, any issuance of revenue bonds may be secured by a trust
200 indenture by and between the authority and a corporate trustee, which may be any trust
201 company or bank having the powers of a trust company within or without the state. Such
202 trust indenture may contain such provisions for protecting and enforcing the rights and
203 remedies of the bondholders as may be reasonable and proper and not in violation of law,
204 including covenants setting forth the duties of the authority in relation to the acquisition and
205 construction of the project, the maintenance, operation, repair, and insuring of the project,
206 and the custody, safeguarding, and application of all moneys.

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SECTION 12.

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Same; trust indenture as security; remedies of bondholders.

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Any holder of revenue bonds and the trustee under the trust indenture, if any, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the revenue bonds or by the trust indenture, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights it may have under the laws of the state, including specifically, but without limitation, the Revenue Bond Law, or granted hereunder or under such resolution or trust indenture, and may enforce and compel performance of all duties required by this Act or by such resolution or trust indenture to be performed by the authority or any officer thereof, including the fixing, charging, and collecting of revenues, fees, tolls, fines, and other charges for the use of the facilities and services furnished.

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SECTION 13.

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Same; validation.

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Revenue bonds and the security therefor shall be issued, confirmed, and validated in accordance with the provisions of the Revenue Bond Law. The petition for validation shall also make the city party defendant to such action if the city has contracted with the authority for services or facilities relating to the project for which revenue bonds are to be issued and sought to be validated, and such defendant shall be required to show cause, if any exists, as to why such contract or contracts shall not be adjudicated as a part of the basis for the security for the payment of any such revenue bonds. The revenue bonds when validated, and the judgment of validation, shall be final and conclusive with respect to such revenue bonds and the security for the payment thereof and interest thereon and against the authority and all other defendants.

231 **SECTION 14.**

232 Same; interest of bondholders protected.

233 While any of the revenue bonds issued by the authority remain outstanding, the powers,
234 duties, or existence of the authority or its officers, employees, or agents, shall not be
235 diminished or impaired in any manner that will affect adversely the interests and rights of the
236 holders of such revenue bonds, and no other entity, department, agency, or authority will be
237 created which will compete with the authority to such an extent as to affect adversely the
238 interest and rights of the holders of such revenue bonds. The provisions of this Act shall be
239 for the benefit of the authority and the holders of any such revenue bonds under the
240 provisions hereof shall constitute a contract with the holders of such revenue bonds.

241 **SECTION 15.**

242 Venue and jurisdiction.

243 Any action to protect or enforce any rights under the provisions of this Act or any suit or
244 action against such authority shall be brought in the Superior Court of Fulton County,
245 Georgia, and any action pertaining to validation of any revenue bonds issued under the
246 provisions of this Act shall likewise be brought in such court, which shall have exclusive,
247 original jurisdiction of such actions.

248 **SECTION 16.**

249 Moneys received considered trust funds.

250 All moneys received pursuant to the authority of this Act, whether as proceeds from the sale
251 of revenue bonds, as grants or other contributions, or as revenue, income, fees, and earnings,
252 shall be deemed to be trust funds to be held and applied solely as provided in this Act.

253 **SECTION 17.**

254 Tort immunity.

255 To the extent permitted by law, the authority shall have the same immunity and exemption
256 from liability for torts and negligence as a county. The officers, agents, and employees of
257 the authority when in the performance of the work of the authority shall have the same
258 immunity and exemption from liability for torts and negligence as the officers, agents, and
259 employees of a county when in the performance of their public duties or work of a county.

260 **SECTION 18.**

261 Tax exemption.

262 The income of the authority, the properties of the authority, both real and personal, and all
263 revenue bonds, certificates of participation, notes, and other forms of obligations issued by
264 the authority shall be exempt from all state and local taxes and special assessments of any
265 kind to the extent permitted by and in accordance with the laws of the state.

266 **SECTION 19.**

267 Rates, charges, and revenues; use.

268 The authority is hereby authorized to prescribe and fix rates and to revise same from time to
269 time and to collect revenues, tolls, fees, and charges for the services, facilities, and
270 commodities furnished, and in anticipation of the collection of the revenues, provided that
271 the city has agreed to such rates, revenues, tolls, fees, and charges in an intergovernmental
272 agreement with the authority. The authority is hereby further authorized to issue revenue
273 bonds, certificates of participation, notes, or other types of obligations as herein provided to

274 finance, in whole or in part, the costs of the project, and to pledge to the punctual payment
275 of such revenue bonds or other obligations, all or any part of the revenues.

276 **SECTION 20.**

277 Effect on other governments.

278 This Act shall not and does not in any way take from the city or any political subdivision of
279 the state the power to own, operate, and maintain public facilities or to issue revenue bonds
280 as provided by the Revenue Bond Law.

281 **SECTION 21.**

282 Liberal construction of act.

283 This Act being for the welfare of the city and various political subdivisions of the state and
284 its inhabitants, shall be liberally construed to effect the purposes hereof.

285 **SECTION 22.**

286 Severability; effect of partial invalidity of act.

287 The provisions of this Act are severable, and if any of its provisions shall be held
288 unconstitutional by any court of competent jurisdiction, the decision of such court shall not
289 affect or impair any of the remaining provisions.

290 **SECTION 23.**

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

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SECTION 24.

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