

House Bill 781 (AS PASSED HOUSE AND SENATE)

By: Representatives Holly of the 116<sup>th</sup>, Crowe of the 118<sup>th</sup>, Douglas of the 78<sup>th</sup>, Mathiak of the 74<sup>th</sup>, Lewis-Ward of the 115<sup>th</sup>, and others

A BILL TO BE ENTITLED

AN ACT

1 To create and establish the Henry County Building and Facilities Authority; to provide that  
2 the authority is a body corporate and politic and an instrumentality of the State of Georgia;  
3 to authorize the authority to acquire, construct, equip, maintain, and operate certain projects,  
4 including buildings and facilities for use by Henry County or any municipality or political  
5 subdivision within Henry 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 Henry 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

H. B. 781

- 1 -

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 this Act; to define the scope of the authority's operation; to provide for  
25 disposition of property upon authority dissolution; to provide for severability; to provide for  
26 a short title; 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 "Henry County Building and Facilities  
31 Authority Act."

32 **SECTION 2.**

33 Henry County Building and Facilities Authority.

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

45 **SECTION 3.**

46 **Membership.**

47 The authority shall consist of six members who shall be eligible to succeed themselves. One  
48 member shall be appointed by the chairperson of the Board of Commissioners of Henry  
49 County. Five members shall be appointed by the Board of Commissioners of Henry County,  
50 with one member appointed from each commission district in Henry County. The six  
51 members so appointed shall serve for terms of office of two years and until their successors  
52 are appointed and qualified. Successors to such members shall be appointed as the original  
53 members were appointed, as provided in this section, and any vacancies shall be filled by the  
54 appointing authority, as provided in this section, for the unexpired term. Immediately after  
55 their appointment, the members of the authority shall enter upon their duties. A majority of  
56 the members of the authority shall constitute a quorum, and no vacancy on the authority shall  
57 impair the right of the quorum to exercise all the rights and perform all the duties of the  
58 authority, and, in every instance, a majority vote of a quorum shall authorize any legal act  
59 of the authority, including all things necessary to authorize and issue revenue bonds. The  
60 authority shall elect one of its number as chairperson and another of its number as vice  
61 chairperson. The secretary-treasurer of the authority shall be appointed by the authority and  
62 need not be a member of the authority. The members of the authority shall not be entitled  
63 to compensation for their services but shall be entitled to and shall be reimbursed for the  
64 actual expenses necessarily incurred in the performance of their duties. The authority shall  
65 promulgate rules and regulations for its own governance and it shall have perpetual

66 existence. Any change in name or composition of the authority shall in no way affect the  
67 vested rights of any person under the provisions of this Act or impair the obligations of any  
68 contracts existing under this Act.

69 **SECTION 4.**

70 Definitions.

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

73 (1) "Authority" shall mean the Henry County Building and Facilities Authority created  
74 by this Act.

75 (2) "Board of commissioners" shall mean the Board of Commissioners of Henry County.

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

84 (4) "Project" shall mean and include real and personal property acquired, financed, or  
85 held by the authority, including all land, buildings, structures, sanitary and surface water  
86 sewers, storm water management projects, historic preservation projects, and other public  
87 property determined by the authority to be desirable for the efficient operation of any  
88 department, board, office, commission, or agency of Henry County, any municipality or  
89 other political subdivision within Henry County, or of the State of Georgia, in the  
90 performance of its governmental, proprietary, and administrative functions.

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

95 **SECTION 5.**

96 Powers.

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

100 (1) To sue and be sued;

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

102 (3) To make and execute with public and private persons and corporations contracts,  
103 trusts, leases, rental agreements, and other instruments relating to its projects and in  
104 furtherance of the purposes of the authority, including contracts for constructing, renting,  
105 leasing, and selling of its projects for the use of any county, municipality, or other  
106 political subdivision located in Henry County;

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

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

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

143 upon default, on such obligations, either in payment of principal or interest or in the  
144 performance of any term or condition, as are contained in such agreement or indenture;  
145 (15) To borrow money for any of its corporate purposes, to issue revenue bonds payable  
146 solely from funds pledged for that purpose, and to provide for the payment of the same  
147 and for the rights of the holders thereof;

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

150 (17) Pursuant to proper resolution of the authority, to issue revenue bonds payable from  
151 the rents and revenues of the authority and its projects, which bonds may be issued in  
152 either fully negotiable coupon form, in which event they shall have all the qualities and  
153 incidents of negotiable instruments under the laws of this state, or they may be issued in  
154 whole or in part in nonnegotiable fully registered form without coupons, payable to a  
155 designated payee or to the registered assigns of the payee with such conversion privileges  
156 as the authority may provide, for the purpose of paying all or any part of the cost  
157 associated with the projects authorized by the authority, including the cost of  
158 constructing, reconstructing, equipping, extending, adding to, or improving such projects,  
159 or for the purpose of refunding, as provided in this Act, any such bonds of the authority  
160 theretofore issued. Such bonds are declared to be issued for an essential public and  
161 governmental purpose, and such bonds and all income therefrom shall be exempt from  
162 all taxation within the State of Georgia. For the purpose of the exemption from taxation  
163 of such bonds and the income therefrom, the authority shall be deemed to be a political  
164 subdivision of the State of Georgia.

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**SECTION 6.**

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Credit not pledged and debt not created by bonds.

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

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**SECTION 7.**

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Trust agreement.

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In the discretion of the authority, any issue of revenue bonds may be secured by an agreement or indenture made by the authority with a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without this state. Such trust agreement or indenture may pledge and assign rents, fees, charges, revenues, and earnings to be received by the authority. The resolution providing for the issuance of revenue bonds and such trust agreements or indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders, including the right of appointment of a receiver upon default of the payment of any principal or interest obligation and the right of any receiver or trustee to enforce collection of any rents, fees, charges, or revenues for use

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

204 **SECTION 8.**

205 Refunding bonds.

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

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**SECTION 9.**

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Venue of actions, jurisdiction.

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

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**SECTION 10.**

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Revenue bond validation.

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The petition for validation of all revenue bonds of the authority shall be brought against the authority, and any contracting party whose obligation is pledged as security for the payment of the bonds sought to be validated, as defendants, and the defendants shall be required to show cause, if any exists, as to why such contract or contracts and the terms and conditions thereof shall not be adjudicated to be in all respects valid and binding upon such contracting parties. It shall be incumbent upon such defendants to defend against adjudication of the validity and binding effect of such contract or contracts or be forever bound thereby. Notice of such proceedings shall be included in the notice of the validation hearing required to be issued and published by the clerk of the Superior Court of Henry County in which court such validation proceedings shall be initiated. All such revenue bonds shall be issued and validated under and in accordance with the procedure of Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," and in accordance with all terms and provisions thereof not in conflict herewith and in accordance with Code Section 50-17-1 of the O.C.G.A., relating to use of facsimile signatures on public securities authorized, and, as

234 security for the payment of any revenue bonds so authorized, any rents and revenue of the  
235 authority may be pledged and assigned.

236 **SECTION 11.**

237 Interest of bondholders protected.

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

244 **SECTION 12.**

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

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

253 (1) Pay the cost of operating, maintaining, and repairing the project or projects, including  
254 reserves for insurance and extraordinary repairs and other reserves required by the  
255 resolution or trust agreement or indenture pertaining to such bonds and the issuance  
256 thereof, unless such cost shall be otherwise provided for;

- 257 (2) Pay the principal of and interest on such revenue bonds as the same shall become  
258 due, including call premium, if any, the proceeds of which shall have been or will be used  
259 to pay the cost of such project or projects;
- 260 (3) Comply with any sinking fund requirements contained in the resolution or trust  
261 agreement or indenture pertaining to the issuance of and security for such bonds;
- 262 (4) Perform fully all provisions of such resolution and trust agreement or indenture  
263 relating to the issuance of or security for such bonds to the payment of which such rent  
264 is pledged;
- 265 (5) Accumulate any excess income which may be required by the purchasers of such  
266 bonds or may be dictated by the requirements of such resolution, trust agreement, or  
267 indenture, or of achieving ready marketability of and low interest rates on such bonds;  
268 and
- 269 (6) Pay any expenses in connection with such bond issue or of such project or projects,  
270 including but not limited to trustees', attorneys', and fiscal agents' fees.
- 271 (b) Such rent shall be payable at such intervals as may be agreed upon and set forth in the  
272 rental contract or lease providing therefor, and any such contract or lease may provide for  
273 the commencement of rent payments to the authority prior to the completion of the  
274 undertaking by the authority of any such project and may provide for the payment of rent  
275 during such times as such project or projects may be partially or wholly untenable.
- 276 (c) Such rental contract or lease may obligate the tenants or lessees to operate, maintain,  
277 and keep in good repair, including complete reconstruction, if necessary, the rented or  
278 leased premises and projects, regardless of the cause of the necessity of such maintenance,  
279 repair, or reconstruction.
- 280 (d) Such rental contract or lease may obligate the tenants or lessees to indemnify and save  
281 harmless the authority from any and all damage to persons and property occurring on or  
282 by reason of the leased property or improvements thereon and to undertake, at the expense  
283 of the tenants or lessees, the defense of any action brought against the authority by reason

284 of injury or damages to persons or property occurring on or by reason of the leased  
285 premises.

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

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

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

297 **SECTION 13.**

298 **Sinking fund.**

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

309 revenue bonds as such interest shall become due, the principal of the bonds as the same shall  
310 mature, the necessary charges of any trustee or paying agent for paying such principal and  
311 interest, and any premium upon bonds retired by call or purchase. The use and disposition  
312 of any sinking fund may be subject to such regulation as may be provided for in the  
313 resolution authorizing the issuance of the bonds or in the trust instrument securing the  
314 payment of the same.

#### 315 **SECTION 14.**

316 Property acquired for public purpose.

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

#### 326 **SECTION 15.**

327 Immunity from tort actions.

328 The authority shall have the same immunity and exemption from liability for torts and  
329 negligence as the State of Georgia, and the officers, agents, and employees of the authority,  
330 when in performance of work of the authority, shall have the same immunity and exemption  
331 from liability for torts and negligence as officers, agents, and employees of the State of

332 Georgia. The authority may be sued the same as private corporations on any contractual  
333 obligation of the authority.

334 **SECTION 16.**

335 Property not subject to levy and sale.

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

337 **SECTION 17.**

338 Trust funds.

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

345 **SECTION 18.**

346 Construction.

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

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**SECTION 19.**

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Scope of operations.

351 The projects of the authority's operation shall be located in the territory embraced within the

352 jurisdictional limits of Henry County as the same now or may hereafter exist.

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**SECTION 20.**

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Conveyance of property upon dissolution.

355 Should the authority for any reason be dissolved after full payment of all bonded

356 indebtedness incurred under this Act, both as to principal and interest, title to all property of

357 any kind and nature, real and personal, held by the authority at the time of such dissolution

358 shall be conveyed to Henry County. The title to any such property may be conveyed prior

359 to such dissolution in accordance with provisions which may be made therefor in any

360 resolution or trust instrument relating to such property, subject to any liens, leases, or other

361 encumbrances outstanding against or in respect to said property at the time of such

362 conveyance.

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**SECTION 21.**

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Effect of partial invalidity of Act.

365 Should any sentence, clause, phrase, or part of this Act be declared for any reason to be

366 unconstitutional or invalid, the same shall not affect such remainder of this Act or any part

367 hereof, other than the part so held to be invalid, but the remaining provisions of this Act shall

368 remain in full force and effect. It is the express intention of this Act to enact each provision

369 of this Act independently of any other provision hereof.

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**SECTION 22.**

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Repealer.

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