

House Bill 1393 (AS PASSED HOUSE AND SENATE)

By: Representatives Royal of the 164th, Coleman of the 142nd, Walker of the 141st, Skipper of the 137th, Porter of the 143rd and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 50 of the Official Code of Georgia Annotated, relating to state government,
2 so as to transfer the OneGeorgia Authority from the Department of Industry, Trade, and
3 Tourism to the Department of Community Affairs; to change certain provisions regarding
4 duties of the Department of Community Affairs; to change certain provisions relating to
5 contracts with public and private individuals and entities; to change certain provisions
6 regarding the creation, membership, powers, and authority of the OneGeorgia Authority; to
7 provide for additional powers; to change certain provisions regarding specific powers of such
8 authority; to provide for the transfer of personnel positions and establish employment status
9 with respect to the Department of Community Affairs; to provide for related matters; to
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
14 by striking subsection (b) of Code Section 50-8-3, relating to the duties of the department,
15 and inserting in lieu thereof a new subsection (b) to read as follows:

16 "(b) The department shall serve as the principal department in the executive branch of state
17 government for local government affairs. The department shall perform the state's role in
18 local government affairs by carrying out the state's duties, responsibilities, and functions
19 in local government affairs and by exercising its power and authority in local government
20 affairs. Without limiting the generality of the purposes served by the department, the
21 department shall:

- 22 (1) Develop, promote, sustain, and assist local governments;
- 23 (2) Provide a liaison between local governments and other governments, including the
24 state government and the federal government;
- 25 (3) Act as the state's principal department for local government affairs and local
26 government services generally and for programs, functions, and studies in local

1 government affairs and local government services and act as the coordinator on the state
 2 government level for such programs, studies, and functions provided by the department
 3 and for those provided by others;

4 (4) Act as the state's principal department for developing, promoting, maintaining, and
 5 encouraging coordinated and comprehensive planning;

6 (5) Develop, promote, sustain, and assist local governments in the performance of their
 7 duties and responsibilities under law to their citizens, including among such duties and
 8 responsibilities of local governments coordinated and comprehensive planning; the
 9 provision of infrastructure and other public works and improvements; the development,
 10 promotion, and retention of trade, commerce, industry, and employment opportunities;
 11 the provision of transportation systems; and the promotion of housing supply;

12 (6) Serve as the representative of the Governor to local governments and in local
 13 government affairs on a regular basis and on special assignments as authorized by the
 14 Governor;

15 (7) Assist the Georgia Housing and Finance Authority for any purpose necessary or
 16 incidental in the administration and performance of the Georgia Housing and Finance
 17 Authority's duties, powers, responsibilities, and functions as provided in Chapter 26 of
 18 this title; ~~and~~

19 (8) Assist the Georgia Music Hall of Fame Authority for any purpose necessary or
 20 incidental in the administration and performance of the Georgia Music Hall of Fame
 21 Authority's duties, powers, responsibilities, and functions as provided in Part 10 of
 22 Article 7 of Chapter 3 of Title 12; and

23 (9) Assist the OneGeorgia Authority for any purpose necessary or incidental in the
 24 administration and performance of the OneGeorgia Authority's duties, powers,
 25 responsibilities, and functions as provided in Chapter 34 of this title."

26 SECTION 2.

27 Said title is further amended by adding a new subsection at the end of Code Section 50-8-9,
 28 relating to contracts with public and private entities or individuals, to be designated
 29 subsection (e), to read as follows:

30 "(e) The department shall have the power to enter into contracts with the OneGeorgia
 31 Authority for any purpose necessary or incidental in assisting the OneGeorgia Authority
 32 in carrying out or performing its duties, responsibilities, and functions; provided, however,
 33 that all such assistance shall be performed on behalf of and pursuant to the lawful purposes
 34 of the OneGeorgia Authority and not on behalf of the department; and provided, further,
 35 that such assistance shall not include the authorization of the issuance of any bonds or other
 36 indebtedness of the authority. The department may undertake joint or complementary

1 programs with the OneGeorgia Authority, including the provision for joint or
2 complementary services, within the scope of their respective powers."

3 **SECTION 3.**

4 Said title is further amended by striking Code Section 50-34-3, relating to the creation,
5 membership, power, and authority of the OneGeorgia Authority, and inserting in lieu thereof
6 the following:

7 "50-34-3.

8 (a) There is created a body corporate and politic to be known as the OneGeorgia Authority
9 which shall be deemed to be an instrumentality of the state, and not a state agency, and a
10 public corporation performing an essential governmental function.

11 ~~(b) The authority is assigned to the Department of Industry, Trade, and Tourism for
12 administrative purposes only.~~

13 ~~(c)~~(b) The authority shall consist of the Governor, who shall serve as chair of the authority;
14 the Lieutenant Governor, who shall serve as vice chair of the authority; the director of the
15 Office of Planning and Budget, who shall serve as secretary of the authority; the
16 commissioner of community affairs; the commissioner of industry, trade, and tourism; and
17 the commissioner of revenue.

18 ~~(d)~~(c) Except for the authorization of the issuance of bonds, the authority may delegate to
19 the executive director such powers and duties as it may deem proper.

20 ~~(e)~~(d) The Governor shall appoint an executive director of the authority whose
21 compensation shall be fixed by the authority. ~~The executive director shall appoint such
22 directors, deputies, and assistants and hire such staff as may be necessary to manage the
23 operations of the authority and may fix their compensation. The executive director may
24 organize the authority into such divisions, sections, or offices as may be deemed necessary
25 or convenient.~~

26 ~~(f)~~(e) No part of the funds of the authority shall inure to the benefit of or be distributed to
27 its members or officers or other private persons, except that the authority shall be
28 authorized and empowered to pay reasonable compensation for services rendered and to
29 reimburse expenses incurred. In addition, the authority shall be authorized and empowered
30 to make loans and grants, allocate credits, provide financial assistance, and otherwise
31 exercise its other powers in furtherance of its corporate purposes. No such loans or grants
32 or financial assistance shall be made to, no credits shall be allocated to, and no property
33 shall be purchased or leased from or sold, leased, or otherwise disposed of to any member
34 or officer of the authority in his or her individual capacity or by virtue of partnership or
35 ownership of a for profit corporation. This subsection does not preclude loans or grants to,

1 financial assistance or allocation of credit to, or purchase or lease from or sale, lease, or
2 disposal of property to any subsidiary corporation of the authority.

3 ~~(g)~~(h) The Attorney General shall provide legal services for the authority, and, in
4 connection therewith, Code Sections 45-15-13 through 45-15-16 shall be fully applicable."

5 SECTION 4.

6 Said title is further amended by striking Code Section 50-34-6, relating to the specific powers
7 of the OneGeorgia Authority, and inserting in lieu thereof the following:

8 "50-34-6.

9 (a) The authority shall have any and all powers necessary or convenient to its usefulness
10 in carrying out and effectuating the purposes and provisions of this chapter which are not
11 in conflict with the Constitution of this state, including, but without limiting the generality
12 of the foregoing, the following powers:

13 (1) To sue and be sued in contract and in tort and to complain and defend in all courts;

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

15 (3) To adopt, amend, and repeal bylaws, rules and regulations, and policies and
16 procedures for the regulation of its affairs and the conduct of its business, the election and
17 duties of officers and employees of the authority, and such other matters as the authority
18 may determine;

19 (4) To appoint and select officers, agents, and employees, including professional and
20 administrative staff and personnel, financial advisers, consultants, fiscal agents, trustees,
21 and accountants and to fix their compensation and pay their expenses, including the
22 power to contract with the Department of Community Affairs and any other department,
23 agency, board, commission, or authority of state government for professional, technical,
24 clerical, and administrative support as may be required;

25 (5) To procure or to provide insurance against any loss in connection with its programs,
26 property, and other assets;

27 (6) To borrow money and to issue notes and bonds and other obligations to accomplish
28 its public purposes and to provide for the rights of the lenders or holders thereof;

29 (7) To pledge, mortgage, convey, assign, hypothecate securities, or otherwise encumber
30 any property of the authority, including, but not limited to, real property, fixtures,
31 personal property, intangible property, revenues, income, charges, fees, or other funds
32 and to execute any lease, trust indenture, trust agreement, resolution, agreement for the
33 sale of the authority's bonds, loan agreement, mortgage, deed to secure debt, trust deed,
34 security agreement, assignment, or other agreement or instrument as may be necessary
35 or desirable, in the judgment of the authority, to secure any such bonds, which
36 instruments or agreements may provide for foreclosure or forced sale of any property of

1 the authority upon default in any obligation of the authority, either in payment of
2 principal, premium, if any, or interest or in the performance of any term or condition
3 contained in any such agreement or instrument; the state, on behalf of itself and each
4 political subdivision, public body corporate and politic, or taxing district therein, waives
5 any right it or such political subdivision, public body corporate and politic, or taxing
6 district may have to prevent the forced sale or foreclosure of any property of the authority
7 upon such default and agrees that any agreement or instrument encumbering such
8 property may be foreclosed in accordance with law and the terms thereof;

9 (8) To extend credit, to make loans, to participate in the making of loans, to provide
10 credit enhancement, and to provide or procure insurance;

11 (9) To collect fees and charges in connection with its bonds, loans, commitments,
12 insurance, credit enhancement, and servicing, including, but not limited to,
13 reimbursement of costs of financing;

14 (10) To sell loans, security interests, and other obligations of the authority at public or
15 private sale; to negotiate modifications or alterations in loans, security interests, and other
16 obligations of the authority; to foreclose on any security interest in default or commence
17 any action to protect or enforce any right conferred upon it by any law, security
18 agreement, deed of trust, deed to secure debt, contract, or other agreement; to bid for and
19 purchase property which was the subject of such loan, security interest, or other
20 obligation of the authority at any foreclosure or at any other sale; to acquire or take
21 possession of such property; and to exercise any and all rights as provided by law or
22 contract for the benefit or protection of the authority or holders of the authority's notes,
23 bonds, or other obligations;

24 (11) To procure or to make and execute contracts, agreements, and other instruments,
25 including interest rate swap or currency swap agreements, letters of credit, or other credit
26 facilities or agreements, and to take such other actions and do such other things as the
27 authority may deem appropriate to secure the payment of any loan, lease, or purchase
28 payment owed to the authority or any bonds or other obligations issued by the authority,
29 including the power to pay the cost of obtaining any such contracts, agreements, and
30 other instruments;

31 (12) To receive and use the proceeds of any tax levied by the state or a local government
32 or taxing district of the state enacted for the purposes of providing credit enhancement
33 or for any other purpose for which the authority may use its own funds pursuant to this
34 chapter;

35 (13) To receive and administer gifts, grants, and devises of money and property of any
36 kind; to administer trusts; and to receive such part of the proceeds paid to the State of
37 Georgia pursuant to funds received by the state pursuant to the settlement of the lawsuit

1 filed by the state against certain tobacco companies (*State of Georgia, et al. v. Philip*
2 *Morris, Inc., et al.*, Civil Action #E-61692, V19/246 (Fulton County Superior Court, 19
3 December 9, 1998)), as the General Assembly shall from time to time appropriate for the
4 purposes of the authority, and to sell, convey, or otherwise encumber such moneys
5 appropriated from the proceeds of such settlement by capitalizing or securitizing the same
6 and entering into contracts pertaining thereto in order to enable the authority, in its
7 judgment, to better accomplish the purposes of this chapter;

8 (14) To acquire real and personal property in its own name to promote any of the public
9 purposes of the authority or for the administration and operation of the authority;

10 (15) To provide and administer grant moneys for any of the public purposes of the
11 authority and to comply with all conditions attached thereto;

12 (16) To contract for any period, not exceeding 50 years, with the state, any institution,
13 department, agency, or authority of the state, or any local government within the state for
14 the use by the authority of any facilities or services of any such entity or for the use by
15 any such entity of any facilities or services of the authority, provided that such contracts
16 shall deal with such activities and transactions as the authority and any such entity with
17 which the authority contracts are authorized by law to undertake;

18 (17) To invest any accumulation of its funds, including, but without limiting the
19 generality of the foregoing, funds received from the issuance of bonds and any sinking
20 funds or reserves in any manner as it determines is in its best interests and to purchase its
21 own bonds and notes;

22 (18) To hold title to any project financed by it, but it shall not be required to do so;

23 (19) To establish eligibility standards for financing and financial assistance and technical
24 assistance authorized for projects under this chapter;

25 (20) To sell or otherwise dispose of unneeded or obsolete equipment or property of every
26 nature and every kind;

27 (21) To lease as lessor any facility or any project for such rentals and upon such terms
28 and conditions as the authority considers advisable and not in conflict with this chapter;

29 (22) To sell by installment or otherwise to sell by option or contract for sale and to
30 convey all or any part of any item of any project or facility for such price and upon such
31 terms and conditions as the authority considers advisable and which are not in conflict
32 with this chapter;

33 (23) To manage property, intangible, real, and personal, owned by the authority or under
34 its control by lease or by other means;

35 (24) To do any and all things necessary, desirable, convenient, or incidental for the
36 accomplishment of the objectives of this chapter and to exercise any power usually
37 possessed by private corporations performing similar functions which is not in conflict

1 with the public purposes of the authority or the Constitution and laws of this state,
2 including:

3 (A) The power to retain accounting and other financial services;

4 (B) The power to purchase all kinds of insurance, including, without limitation,
5 insurance against tort liability and against risks of damage to property;

6 (C) The power to indemnify and hold harmless any parties contracting with the
7 authority or its agents from damage to persons or property; and

8 (D) The power to act as self-insurer with respect to any loss or liability and to create
9 insurance reserves;

10 (25) To incorporate one or more nonprofit corporations as subsidiary corporations of the
11 authority for the purpose of carrying out any of the powers of the authority and to
12 accomplish any of the purposes of the authority. Any such subsidiary corporation shall
13 be a nonprofit corporation, a public body, a political subdivision of the state, and an
14 instrumentality of the state and shall exercise essential governmental functions. Any
15 subsidiary corporations created pursuant to this power shall be created pursuant to
16 Chapter 3 of Title 14, the 'Georgia Nonprofit Corporation Code,' and the Secretary of
17 State shall be authorized to accept such filings. The members of the board of directors
18 of any such corporation shall be appointed by the authority and may include persons who
19 are members of the authority; provided, however, that a majority of the members of the
20 board of directors of any such corporation shall be persons who are not members of the
21 authority and who are not officials or employees of the State of Georgia. Upon
22 dissolution of any subsidiary corporation of the authority, any assets shall revert to the
23 authority or to any successor to the authority or, failing such succession, to the State of
24 Georgia. The authority shall not be liable for the debts or obligations or bonds of any
25 subsidiary corporation or for the actions or omissions to act of any subsidiary corporation
26 unless the authority expressly so consents;

27 (26) To lease any authority owned facilities or property or any state owned facilities or
28 property which the authority is managing under contract with the state; and no such lease
29 agreement shall be deemed to be a contract subject to any law requiring that contracts
30 shall be let only after receipt of competitive bids;

31 (27) To provide advisory, technical, consultative, training, management, educational,
32 project assistance, and other services related to the purposes of the authority to the state
33 and any institution, department, agency, or authority of the state, to any local government,
34 or to any nonprofit or for profit business, corporation, partnership, association, sole
35 proprietorship, or other entity or enterprise and to enter into contracts with the foregoing,
36 including without limitation the Department of ~~Industry, Trade, and Tourism~~ Community
37 Affairs, to provide such services; and the state, any institution, department, agency, or

1 authority of the state, including without limitation the Department of ~~Industry, Trade, and~~
 2 ~~Tourism~~ Community Affairs, and any local government are authorized to enter into
 3 contracts with the authority for such services, to perform all duties required by the
 4 contract, and to pay for such services as may be provided them;

5 (28) To impose restrictive covenants which shall be deemed to be running with the land
 6 to any person, corporation, partnership, or other form of business entity which receives
 7 financial assistance from the authority, which form of financial assistance shall include
 8 tax credits, bond financing, grants, guarantees of the authority, guarantees of the state,
 9 insurance of the authority, and all other forms of financial assistance, regardless of
 10 whether the authority enjoys privity of estate or whether the covenant touches and
 11 concerns the property burdened; and such restrictive covenants shall be valid for a period
 12 of up to the later of 40 years or the termination or satisfaction of such financial assistance,
 13 notwithstanding any other provision of law;

14 (29) To enter into partnership agreements, to sell and purchase partnership interests, and
 15 to serve as general or limited partner of a partnership created to further the public
 16 purposes of the authority;

17 (30) To allocate and issue any federal or state tax credits for which the authority is
 18 designated as the state allocating agency;

19 (31) To make and execute contracts and all other instruments necessary or convenient
 20 for the performance of its duties and the exercise of its powers and functions under this
 21 chapter;

22 (32) To cooperate with and exchange services, personnel, and information with any
 23 federal, state, or local governmental agency;

24 (33) To adopt regulations for its own governance regarding cost-effective distribution
 25 of authority funds and prioritization of projects, subject to the direction of the General
 26 Assembly with regard to funds appropriated for the purposes of the authority; ~~and~~

27 (34) The authority shall have the power to contract with the Department of Community
 28 Affairs and any other ~~To contract with any~~ department, agency, board, commission, or
 29 authority of state government for any purpose necessary or incidental to carrying out or
 30 performing the duties, responsibilities, or functions of the authority in exercising the
 31 power and management of the authority; provided, however, such contracts shall not
 32 delegate the authorization of the issuance of any bonds or other indebtedness of the
 33 authority. No part of the funds or assets of the authority shall be distributed to the
 34 Department of Community Affairs or any other ~~any~~ department, authority, agency, board,
 35 or commission of the state unless otherwise provided by law, except that the authority
 36 shall be authorized and empowered to pay reasonable compensation for services rendered
 37 and to reimburse expenses incurred and, except as may be deemed necessary or desirable

1 by the authority, to fulfill the purposes of the authority as set forth in this chapter.
 2 Nothing in this paragraph shall be construed as precluding the provision by any
 3 department, authority, board, commission, or agency of the state and the authority of joint
 4 or complementary services or programs within the scope of their respective powers. The
 5 Department of ~~Industry, Trade, and Tourism~~ Community Affairs is authorized to acquire,
 6 construct, operate, maintain, expand, and improve a project for the purposes of the
 7 authority, and for the public good and general welfare, to contract with the authority for
 8 any such acquisition, construction, operation, maintenance, expansion, or improvement
 9 and to pay the cost of such project from any lawful fund source available to the
 10 department, including without limitation, where applicable, funds received by
 11 appropriation, proceeds of general obligation debt, funds of local government, grants of
 12 the United States or any agency or instrumentality thereof, gifts, and otherwise; and
 13 (35) To establish the Georgia Value-Added Agriculture Program and to develop and
 14 encourage value-added opportunities for farmers and agricultural producers in the state
 15 through establishment of an agricultural development fund and other means deemed
 16 appropriate by the authority.

17 (b) The powers enumerated in each paragraph of subsection (a) of this Code section are
 18 cumulative of and in addition to those powers enumerated in the other paragraphs of
 19 subsection (a) of this Code section and elsewhere in this chapter and no such power limits
 20 or restricts any other power of the authority.

21 (c) This chapter, being for the welfare of this state and being for the welfare of its citizens,
 22 shall be liberally construed to effect the purposes specified in this chapter.

23 (d) No portion of the state ceiling, as defined in Code Section 36-82-182, shall be set aside
 24 or reserved, and no separate pool or share shall be created within the state ceiling, for the
 25 purpose of reserving for or allocating to the authority a portion of the state ceiling for use
 26 by the authority in the financing of, or the provision of financial assistance for, any
 27 enterprise. The distribution to the authority by the Department of Community Affairs of
 28 any portion of the state ceiling for the purpose of permitting the financing of any enterprise
 29 shall be accomplished based upon the merits of each enterprise and shall be accomplished
 30 upon the same terms and conditions, without preference or priority of any kind, as shall be
 31 applicable to the distribution of any portion of the state ceiling for the benefit of any
 32 enterprise proposed to be financed by a local authority.

33 (e) No personal financial information submitted to the authority in connection with any of
 34 its programs shall be subject to public disclosure.

35 ~~(f) All contracts of the authority with any department, agency, board, commission, or~~
 36 ~~authority of state government shall be subject to review and approval by a subcommittee~~
 37 ~~of the board of directors to consist of the Lieutenant Governor, who shall chair such~~

1 ~~subcommittee, the commissioner of community affairs, and the commissioner of industry,~~
2 ~~trade, and tourism."~~

3 **SECTION 5.**

4 Said title is further amended by adding a new Code section immediately following Code
5 Section 50-34-17, to be designated Code Section 50-34-18, to read as follows:

6 "50-34-18.

7 Effective July 1, 2002, without diminishing the powers of the authority pursuant to Code
8 Section 50-34-6, all personnel positions authorized by the authority in Fiscal Year 2002
9 shall be transferred to the Department of Community Affairs. All employees of the
10 authority on June 30, 2002, whose positions are transferred by the authority to the
11 Department of Community Affairs shall become employees of the Department of
12 Community Affairs and shall become employees in the unclassified service of the state
13 merit system as defined by Code Section 45-20-6."

14 **SECTION 6.**

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