

Senate Bill 86

By: Senators Ginn of the 47th, Miller of the 49th, Williams of the 19th, Rogers of the 21st, Murphy of the 27th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 50 of the Official Code of Georgia Annotated, relating to the
2 Department of Community Affairs, so as to repeal the definition of a "qualified local
3 government"; to provide that comprehensive planning by local governments shall be
4 optional; to eliminate reviews of developments of regional impact; to provide that the
5 department shall provide assistance in planning to local governments; to provide for related
6 matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 SECTION 1.

9 Chapter 8 of Title 50 of the Official Code of Georgia Annotated, relating to the Department
10 of Community Affairs, is amended by revising paragraph (18) of subsection (a) of Code
11 Section 50-8-2, relating to definitions, as follows:

12 ~~“(18) ‘Qualified local government’ means a county or municipality which:~~
13 ~~(A) Has a comprehensive plan in conformity with the minimum standards and~~
14 ~~procedures;~~
15 ~~(B) Has made its local plan implementation mechanisms consistent with those~~
16 ~~established in its comprehensive plan and with the minimum standards and procedures;~~
17 ~~and~~
18 ~~(C) Has not failed to participate in the department’s mediation or other means of~~
19 ~~resolving conflicts in a manner which, in the judgment of the department, reflects a~~
20 ~~good faith effort to resolve any conflict Reserved.”~~

21 SECTION 2.

22 Said chapter is further amended by revising subsection (b) of Code Section 50-8-5, relating
23 to the powers of the commissioner, as follows:

24 “(b) The commissioner shall have and may exercise the following power and authority:

- 25 (1) The power and authority to take or cause to be taken any or all action necessary to
 26 perform any local government services or otherwise necessary to perform any duties,
 27 responsibilities, or functions which the department is authorized by law to perform or to
 28 exercise any power or authority which the department is authorized by law to exercise;
- 29 (2) The power and authority to make, promulgate, enforce, or otherwise require
 30 compliance with any and all rules, regulations, procedures, or directives necessary to
 31 perform any local government services, to carry into effect the minimum standards and
 32 procedures for coordinated and comprehensive planning, or otherwise necessary to
 33 perform any duties, responsibilities, or functions which the department is authorized by
 34 law to perform or to exercise any power or authority which the department is authorized
 35 by law to exercise; and
- 36 ~~(3) The power and authority to certify, from time to time, municipalities and counties as~~
 37 ~~qualified local governments, which certification shall not be unreasonably withheld; and~~
- 38 ~~(4)~~(3) The power and authority to assist the board in the performance of its duties,
 39 responsibilities, and functions and the exercise of its power and authority."

40 **SECTION 3.**

41 Said chapter is further amended by revising Code Section 50-8-7.1, relating to general
 42 powers and duties of the department, as follows:

43 "50-8-7.1.

44 (a) The department shall perform the duties, responsibilities, and functions and may
 45 exercise the power and authority described in this Code section. The department, utilizing
 46 the comprehensive plans of ~~qualified~~ local governments, shall undertake and carry out such
 47 activities as may be necessary to assist the Governor in encouraging, coordinating,
 48 developing, and implementing coordinated and comprehensive planning. Such activities
 49 may include, but shall not be limited to, the following:

50 (1) The department, utilizing the comprehensive plans of regional commissions and
 51 ~~qualified~~ local governments, shall assist the Governor in coordinated and comprehensive
 52 planning on the state level and throughout the state, including, but not limited to,
 53 assistance in the development of a comprehensive plan for the state;

54 (2) The department, utilizing the comprehensive plans of regional commissions and
 55 ~~qualified~~ local governments, shall assist the Governor in defining the state's long-term
 56 goals, objectives, and priorities and implementing those goals, objectives, and priorities
 57 through coordinated and comprehensive planning;

58 (3) The department shall examine and analyze plans of state agencies, comprehensive
 59 plans of regional commissions, and comprehensive plans of municipalities and counties,

60 undertaken as part of the coordinated and comprehensive planning process, and advise
61 the Governor with respect to those plans; and

62 (4) The department shall serve as policy liaison for the Governor, with respect to
63 coordinated and comprehensive planning, with and among state agencies and local
64 governments.

65 (b) The department shall establish in accordance with the provisions of Code
66 Section 50-8-7.2 minimum standards and procedures for coordinated and comprehensive
67 planning, including standards and procedures for preparation of plans, for implementation
68 of plans, and for participation in the coordinated and comprehensive planning process.
69 Notwithstanding any provision of law or previously adopted and ratified rules and
70 regulations, a county or municipality is authorized, but not required, to prepare a
71 comprehensive plan. Any county or municipality may, in its discretion, prepare a
72 comprehensive plan conforming to the minimum standards and procedures adopted by the
73 department. The department shall undertake and carry out such activities as may be
74 specified by law, but shall not penalize a county or municipality for not participating in the
75 coordinated and comprehensive planning process. Such activities may include, but shall
76 not be limited to, the following:

77 (1) As part of such minimum standards and procedures, the department shall establish
78 minimum elements which ~~shall~~ may be addressed and included in comprehensive plans
79 of local governments which are prepared as part of the coordinated and comprehensive
80 planning process. These elements shall include, but shall not be limited to, housing,
81 human services, natural resources, the environment, vital areas, historic and cultural
82 resources, infrastructure, land use other than zoning, recreation, transportation, and
83 economic development;

84 (2) The department shall establish minimum standards and procedures which ~~shall~~ may
85 be used by local governments in developing, preparing, and implementing their
86 comprehensive plans. The department shall incorporate the minimum standards and
87 procedures with respect to natural resources, the environment, and vital areas of the state
88 established and administered by the Department of Natural Resources pursuant to Code
89 Section 12-2-8. In establishing such minimum standards and procedures, the department
90 shall be authorized to differentiate among local governments and among regions based
91 upon factors which the department determines merit differentiation, such as total
92 population, density of population, geographic features, the size of tax base, the type and
93 character of services furnished by local governments, the size of budget, and other
94 factors; and

95 ~~(3) The department shall develop planning procedures with respect to regionally~~
96 ~~important resources, for planning with respect to developments of regional impact, and~~

97 ~~for encouraging interjurisdictional cooperation among local governments. The~~
 98 ~~department shall determine, in its judgment and for each region, what shall constitute~~
 99 ~~developments of regional impact. Such determinations by the department shall be made~~
 100 ~~for each region after receiving any necessary information from the regional commission~~
 101 ~~for the region, from local governments within the region, and from others within the~~
 102 ~~region. The department's determinations shall be publicly promulgated, using such~~
 103 ~~means as the commissioner may determine, so that all local governments within a region~~
 104 ~~will receive notice of the department's determinations affecting that region; and~~

105 ~~(4)~~(3) The department shall establish and shall promulgate procedures for obtaining input
 106 from, and participation by, local governments and the public in establishing, amending,
 107 and updating from time to time the minimum standards and procedures. These
 108 procedures shall include, but shall not be limited to, a 45 day public notice to all affected
 109 local governments, an analysis of the fiscal impact of the proposed amendments or
 110 updates, and 30 day written comment period regarding any proposed change.

111 (c) The department shall undertake and carry out such activities as the board or the
 112 commissioner may deem necessary for supervising regional commissions and as may be
 113 specified by law. Such activities may include, but shall not be limited to, the following:

114 (1) The department shall recommend to the board from time to time the boundaries for
 115 the regions for each of the regional commissions; and

116 (2) The department shall review and comment on comprehensive plans prepared by, and
 117 coordinated and comprehensive planning activities undertaken by or under the direction
 118 of, regional commissions.

119 (d) The department shall undertake and carry out such activities as may be necessary to
 120 mediate, or otherwise assist in resolving, conflicts. Such activities may include, but shall
 121 not be limited to, the following:

122 (1) The department may establish such procedures and guidelines for mediation or other
 123 forms of resolving conflicts as the commissioner may deem necessary. The procedures
 124 and guidelines shall specify the times within which steps in the mediation or other form
 125 of conflict resolution shall take place and shall provide that such times shall not exceed,
 126 in the aggregate, 90 days from the date on which mediation or other conflict resolution
 127 begins. The department shall promulgate and make public all such procedures and
 128 guidelines; and

129 (2) The department may act to mediate or otherwise assist in resolving conflicts upon
 130 written request from any regional commission or local government or may act, without
 131 any such request, on its own initiative; ;

132 ~~(3) The department may establish rules and procedures which require that local~~
 133 ~~governments submit for review any proposed action which would, based upon guidelines~~

134 ~~which the department may establish, affect regionally important resources or further any~~
 135 ~~development of regional impact. Any such proposed action by a local government (other~~
 136 ~~than a regional commission) shall be submitted for review to the local government's~~
 137 ~~regional commission. Any such proposed action by a regional commission shall be~~
 138 ~~submitted for review to the department. Review shall be in accordance with rules and~~
 139 ~~procedures established by the department. The review shall result in a public finding by~~
 140 ~~the regional commission or the department, as the case may be, that the action will be in~~
 141 ~~the best interest of the region and state or that it will not be in the best interest of the~~
 142 ~~region and state;~~

143 ~~(4) Any conflict which remains after review pursuant to the procedures established under~~
 144 ~~paragraph (3) of this subsection shall be submitted to mediation or such other form of~~
 145 ~~resolving conflicts as the commissioner may deem necessary; and~~

146 ~~(5) The department may decline to certify a local government as a qualified local~~
 147 ~~government or may take or recommend action which would reduce state or other funding~~
 148 ~~for a regional commission if such local government or regional commission, as the case~~
 149 ~~may be, is a party to a conflict but fails to participate in the department's mediation or~~
 150 ~~other means of resolving conflicts in a manner which, in the judgment of the department~~
 151 ~~and a majority of the Board of Community Affairs, reflects a good faith effort to resolve~~
 152 ~~the conflict."~~

153 **SECTION 4.**

154 Said chapter is further amended by revising Code Section 50-8-8, relating to grants, loans,
 155 and other disbursements of funds, as follows:

156 "50-8-8.

157 (a) The department shall perform the duties, responsibilities, and functions and may
 158 exercise the power and authority described in this Code section. The department shall
 159 make grants or loans to eligible recipients or ~~qualified~~ local governments, which grants or
 160 loans are specified by amount, recipient, and purpose in an appropriation to the department;
 161 provided, however, that the department shall not make such a grant to any county or
 162 independent board of education for the construction or operation of athletic facilities during
 163 the fiscal year following the receipt by the department of certification by the State Board
 164 of Education that the county or independent board of education is not in compliance with
 165 the requirements of Code Section 20-2-315. The department shall also grant to any school
 166 district the proceeds of any general obligation debt for educational facilities for which the
 167 department is named user agency and the school district is named recipient in an
 168 appropriation authorizing the debt. The department may make grants or loans to eligible
 169 recipients or ~~qualified~~ local governments from appropriations made to the department

170 generally for grant or loan purposes, without appropriations language specifying amounts,
 171 recipients, and purposes. The department:

172 ~~(1) Shall~~ shall disburse such grants or loans on the basis of criteria which include
 173 consideration of matters such as legislative intent; local, regional, or state-wide impact
 174 or benefit; public exigencies or emergencies; enhancement of community and economic
 175 development opportunities; improvement or expansion of government operations or
 176 services; community health, safety, and economic well-being; coordinated and
 177 comprehensive planning in accordance with minimum standards and procedures; and any
 178 other similar criteria that may from time to time be established by the department; ~~and~~

179 ~~(2) May condition the award of any such grants or loans to a county or municipality upon~~
 180 ~~the county or municipality, as the case may be, being a qualified local government.~~

181 (b) The department shall direct the distribution of any appropriations or other funds
 182 available for coordinated and comprehensive planning in accordance with the Act of the
 183 General Assembly providing for such appropriations. No grant or loan by the department
 184 to any eligible recipient or ~~qualified~~ local government shall adversely affect any grant,
 185 loan, or service to the eligible recipient or ~~qualified~~ local government by any other unit or
 186 instrumentality of state government. Without limiting the foregoing, the Department of
 187 Education, the Department of Transportation, the Georgia Environmental Finance
 188 Authority, and the state treasurer shall not diminish or fail to award any funds, loans, or
 189 service to any recipient under any state or federal program in whole or in part on account
 190 of a grant or loan by the department. Grants or loans by the department are and shall be
 191 deemed to be of a special nature and in addition to all such other grants, loans, or awards.
 192 The following provisions shall apply to making such funds available to eligible recipients
 193 or ~~qualified~~ local governments:

194 (1) The department may make available funds by grant or loan to an eligible recipient
 195 or ~~qualified~~ local government, by direct payments on behalf of an eligible recipient or
 196 ~~qualified~~ local government, or by any other lawful means. In the event the department
 197 determines that, in its judgment, a regional commission has failed to comply with its
 198 duties as provided by law or with the terms of a contract between such regional
 199 commission and a local government, the department shall be authorized to make
 200 payments, which it otherwise would have made to the regional commission, directly to
 201 the local government or as the department otherwise determines in order to carry out the
 202 duties of the regional commission under the law or such contract;

203 (2) The department may accept, use, and disburse gifts and grants made to it on terms
 204 consistent with its legal powers, from any public or private source;

205 (3) The department shall specify the terms under which it makes any funds available to
 206 an eligible recipient or ~~qualified~~ local government. The terms shall be those established

207 or otherwise required by the government or other source which makes the funds available
208 to the department. If such government or other source does not establish or otherwise
209 require any such terms, the department may establish the terms;

210 (4) The department shall set forth in writing the terms under which the department makes
211 funds available to a ~~qualified~~ local government or eligible recipient. The terms may be
212 set forth in a contract. The department may execute any such contract on behalf of the
213 state, and any eligible recipient which is a ~~qualified~~ local government, school district,
214 state agency, or state authority is authorized to execute any such contract. Any such
215 writing or contract may incorporate other terms or laws by reference to such terms or
216 laws;

217 (5) The department shall manage and administer all funds made available pursuant to this
218 Code section; and

219 (6) The department may make funds available for any purpose for which the eligible
220 recipient or ~~qualified~~ local government may lawfully use such funds. Unless precluded
221 by general law, these purposes may include, but shall not be limited to, assisting in or
222 furthering any of the purposes, duties, responsibilities, functions, power, or authority of
223 local governments or the department. These purposes may also include, but shall not be
224 limited to, establishing, developing, constructing, improving, maintaining, restoring, or
225 protecting local government projects or purposes of any nature, such as:

226 (A) Construction projects;

227 (B) Capital outlay projects;

228 (C) Infrastructure projects;

229 (D) Planning services;

230 (E) Technical assistance;

231 (F) Coordinated and comprehensive planning;

232 (G) Marketing and promotional projects to encourage tourism and to develop, promote,
233 and retain trade, commerce, industry, and employment opportunities, agriculture, and
234 agribusiness;

235 (H) Purchase or lease of equipment;

236 (I) Operating expenses;

237 (J) Housing projects;

238 (K) Any project for the purposes of acquiring, constructing, equipping, maintaining,
239 and operating regional commerce and trade center facilities suitable for housing
240 conventions and trade shows as well as cultural, political, musical, educational, athletic,
241 and other events, in order to provide for the establishment, development, and
242 maintenance of commerce and trade;

- 243 (L) Any project or purpose described in or permitted under any appropriations to the
 244 department;
- 245 (M) Any project or purpose described in or permitted under any grant made to, or to
 246 be made by or through, the department;
- 247 (N) Any project or purpose provided for in the federal Housing and Community
 248 Development Act of 1974, as amended, or any successor to the Housing and
 249 Community Development Act of 1974;
- 250 (O) Any project or purpose provided for in the federal Public Works and Economic
 251 Development Act of 1965, as amended, or any successor to the Public Works and
 252 Economic Development Act of 1965;
- 253 (P) Any project or purpose authorized by federal or state law; or
- 254 (Q) Any other project or purpose consistent with the duties, responsibilities, functions,
 255 power, and authority of the department.
- 256 (c) The department may apply for, receive, administer, and use any grant, other financial
 257 assistance, or other funds made available to the department from any government or other
 258 source for furthering the purposes of the department. The department's actions in this
 259 respect may be taken for itself or on behalf of ~~qualified~~ local governments or other eligible
 260 recipients. The department's power and authority under this subsection includes, but shall
 261 not be limited to, the following:
- 262 (1) The department may apply on behalf of ~~qualified~~ local governments or other eligible
 263 recipients for receipt of state appropriated funds from the Governor's emergency fund as
 264 provided by Code Section 45-12-77. If such an application is approved, or if state
 265 appropriated funds from the Governor's emergency fund as provided by Code
 266 Section 45-12-77 are otherwise made available to the department, the department may
 267 be authorized by the Governor to disburse such emergency funds to the local government
 268 or other eligible recipient; and
- 269 (2) The department may accept on behalf of ~~qualified~~ local governments or other eligible
 270 recipients funds provided to the department by an executive order of the Governor and
 271 may disburse such funds to such local governments or other eligible recipients. The
 272 eligible recipient and the terms under which such funds are made available for use by the
 273 eligible recipient shall be specified in the executive order and shall be made a part of any
 274 writing or contract between the department and the eligible recipient.
- 275 (d) The department is authorized and shall have all powers necessary to participate in
 276 federal programs and to comply with laws relating thereto.
- 277 (e) The governing authority of any county, municipality, or combination thereof may
 278 expend public funds received from the department to perform any public service or public
 279 function as authorized under the terms specified by the department or, in the absence of any

280 such terms, as otherwise authorized by the Constitution or by law or to perform any other
281 service or function as authorized by the Constitution.

282 (f) The department shall make available to any state agency or authority assigned to the
283 department for administrative purposes all funds made available to the department for the
284 use of any such state authority or agency. The department may make available funds to
285 such state agencies or authorities for any lawful purposes of any such state agencies or
286 authorities.

287 (g) The power and authority of the department under this Code section to make available
288 to local governments or any other eligible recipient any funds shall be limited by the
289 Constitution and laws of the state, and as specified in this Code section, but shall not
290 otherwise be limited.

291 (h) Pursuant to Article VII, Section III, Paragraph III of the Constitution and as otherwise
292 may be authorized, all grants and other disbursements of funds made by the department or
293 from the emergency fund through the department prior to July 1, 1989, are approved,
294 ratified, and confirmed.

295 (i) There is established within the department a state community development program.
296 Funds may be appropriated to such a program by line item reference in any appropriations
297 Act. Using such funds as may be appropriated the department may provide assistance to
298 eligible local governments that are qualified to participate in the state administered federal
299 community development block grant program, in the form of grants, loans, loan guarantees,
300 or any combination thereof. Nothing contained in this subsection shall be construed to
301 limit any other powers of the department."

302 SECTION 5.

303 Said chapter is further amended by revising paragraph (22) of Code Section 50-8-31, relating
304 to definitions relative to regional commissions, as follows:

305 "~~(22) 'Qualified local government' means a county or municipality which:~~

306 ~~(A) Has a comprehensive plan in conformity with the minimum standards and~~
307 ~~procedures;~~

308 ~~(B) Has made its local plan implementation mechanisms consistent with those~~
309 ~~established in its comprehensive plan and with the minimum standards and procedures;~~
310 ~~and~~

311 ~~(C) Has not failed to participate in the department's mediation or other means of~~
312 ~~resolving conflicts in a manner which, in the judgment of the department, reflects a~~
313 ~~good faith effort to resolve any conflict~~ Reserved."

314

SECTION 6.

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