

## **The Georgia Planning Act 1989**

### **ARTICLE 6 PLANNING AND DEVELOPMENT**

#### **45-12-200. Legislative findings and purpose.**

Coordinated and comprehensive planning by all levels of government within the State of Georgia is of vital importance to the state and its citizens. The state has an essential public interest in promoting, developing, sustaining, and assisting coordinated and comprehensive planning by all levels of government. This article is intended to provide for the coordination of planning, at the direction of the Governor, by departments, agencies, commissions, and other institutions of the state, and this article shall be liberally construed to achieve that end.

(Code 1981, § 45-12-200, enacted by Ga. L. 1989, p. 1317, § 1.1.)

**Law reviews.** - For article, "Georgia Wetlands: Values, Trends, and Legal Status," see 41 Mercer L. Rev. 791 (1990).

#### **45-12-201. Definitions.**

As used in this article, the term:

- (1) "Council" means the Governor's Development Council.
- (2) "Planning" means the process of determining actions which state agencies shall take.
- (3) "State agency" means any department, agency, commission, or other institution of the executive branch of the government of the State of Georgia.

(Code 1981, § 45-12-201, enacted by Ga. L. 1989, p. 1317, § 1.1.)

#### **45-12-202. Governor's Development Council created.**

The Governor's Development Council is created in the office of the Governor.

(Code 1981, § 45-12-202, enacted by Ga. L. 1989, p. 1317, § 1.1.)

#### **The Georgia Planning Act 1989**

#### **45-12-203. Council membership; chair; meetings.**

(a) The members of the board of directors of the Georgia Regional Transportation Authority provided by Code Section 50-32-4, upon their initial appointment and thereafter, shall constitute the membership of the council. Membership on that authority or the council shall not constitute an appointment to an office of honor or trust for purposes of subsection (a) of Code Section 50-32-4.

(b) The chair of the Georgia Regional Transportation Authority shall serve as the chair of the council.

(c) The council shall hold meetings as often as the chair determines, but not more than 12 days each year. The chair may call special meetings upon adequate written, personal, telephone, or facsimile notice to members of the council. A majority of the members of the council shall constitute a quorum for conducting business. No member may act through a proxy, designee, or delegate. The council may establish, from time to time, such additional rules and procedures as the council deems appropriate for conducting the council's business. These rules and procedures may be established in bylaws or in such other form as the council deems appropriate.

(Code 1981, § 45-12-203, enacted by Ga. L. 1989, p. 1317, § 1.1; Ga. L. 1992, p. 6, § 45; Ga. L. 1992, p. 2039, § 1; Ga. L. 1993, p. 1399, § 2; Ga. L. 1999, p. 112, § 5.)

**Law reviews.** - For note on 1999 amendment to this section, see 16 Ga. St. U.L. Rev. 233 (1999).

#### **45-12-204. Powers and duties of council.**

The council, at the direction of the Governor and subject to this article, shall perform the following functions:

- (1) Advise the Governor on the state's economic development policy;
- (2) Coordinate, supervise, and review planning by state agencies. This shall include, but shall not be limited to, coordination of long-range planning and coordination of the location and construction of public facilities on the basis of state, regional, and local considerations identified in the comprehensive state-wide plan developed by the Governor with the assistance of the Department of Community Affairs; and
- (3) Establish procedures for, and take action to require, communication and coordination among state agencies in any respect which the council deems necessary or appropriate in order to further the coordination of planning by state agencies.

(Code 1981, § 45-12-204, enacted by Ga. L. 1989, p. 1317, § 1.1; Ga. L. 1992, p. 2039, § 2.)

#### **The Georgia Planning Act 1989**

**45-12-205. Attachment to Department of Community Affairs; technical support.**

The council shall be attached to the Department of Community Affairs for administrative purposes. The Department of Community Affairs and the Office of Planning and Budget shall provide technical support to the council as directed by the chair and approved by the Governor.

(Code 1981, § 45-12-205, enacted by Ga. L. 1989, p. 1317, § 1.1; Ga. L. 1992, p. 2039, § 3; Ga. L. 1993, p. 1399, § 2; Ga. L. 1999, p. 112, § 6.)

**Law reviews.** - For note on 1999 amendment to this section, see 16 Ga. St. U.L. Rev. 233 (1999).

**45-12-206. (For effective date, see note.) Cooperation of state agencies, counties, municipalities, and other political subdivisions with council.**

All state agencies and all counties, municipalities, or other political subdivisions of the state, regional commissions, and other public agencies or public authorities shall have the power and authority to take all actions which may be necessary or appropriate to respond to inquiries and requests from the council, to cooperate with the council in carrying out its duties, and otherwise to take any action which the Governor or the council may direct or require in carrying out their duties under this article.

(Code 1981, § 45-12-206, enacted by Ga. L. 1989, p. 1317, § 1.1; Ga. L. 2008, p. 181, § 22/HB 1216.)

**Delayed effective date.** - This Code section, as set out above, becomes effective July 1, 2009. For version of this Code section in effect until July 1, 2009, see the 2008 amendment note.

**The 2008 amendment,** effective July 1, 2009, substituted "regional commissions" for "regional development centers" in this Code section.

**45-12-207. Construction of article.**

The provisions of this article shall not be construed so as to permit an agency to initiate, carry out, fail to perform, or otherwise take actions in any manner which is not authorized by law applicable to such agency or the subject matter. The provisions of this article shall not be construed so as to authorize an agency to locate, fail to locate, construct, or fail to construct public projects or facilities in any manner which is inconsistent with the directives of the General Assembly as specified in the authorization of such public projects or facilities.

(Code 1981, § 45-12-207, enacted by Ga. L. 1989, p. 1317, § 1.1; Ga. L. 2002, p. 415, § 45.)

**The Georgia Planning Act 1989**

**The 2002 amendment**, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, deleted "to" preceding "otherwise" in the first sentence.

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## **ARTICLE 1 GENERAL PROVISIONS**

**Editor's notes.** - Ga. L. 1988, p. 38, § 1, effective February 24, 1988, repealed the Code sections formerly codified as this article and enacted the current article. The former article consisted of Code Sections 50-8-1 through 50-8-12 and was based on Ga. L. 1957, p. 446; Ga. L. 1967, p. 252; Ga. L. 1970, p. 321; Ga. L. 1976, p. 648; Ga. L. 1976, p. 658; Ga. L. 1977, p. 381; Ga. L. 1978, p. 1542; Ga. L. 1978, 1592; Ga. L. 1979, p. 1063; Ga. L. 1980, p. 1316; Ga. L. 1981, Ex. Sess., p. 8 (Code Enactment Act) and Ga. L. 1982, p. 3; Ga. L. 1982, p. 2310; Ga. L. 1983, p. 3; Ga. L. 1984, p. 378; Ga. L. 1984, p. 1177; Ga. L. 1985, p. 149; and Ga. L. 1987, p. 345.  
**Law reviews.** - For article, "Georgia Wetlands: Values, Trends, and Legal Status," see 41 Mercer L. Rev. 791 (1990).

### **50-8-1. Creation and continuation of department.**

The Department of Community Affairs is created as a department of the executive branch of state government. The Department of Community Affairs, as it existed immediately prior to July 1, 1989, shall continue to exist as a department of the executive branch of state government in accordance with this article. From and after July 1, 1989, the Department of Community Affairs shall have the duties, responsibilities, functions, power, and authority set forth in this article and otherwise provided by law.

(Code 1981, § 50-8-1, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1.)

**Administrative Rules and Regulations.** - Rules of the department, Official Compilation of Rules and Regulations of State of Georgia, Rules of Georgia Department of Community Affairs, Chapter 110-1.

### **50-8-2. (For effective date, see note.) Definitions.**

(a) As used in this article, the term:

- (1) "Board" means the Board of Community Affairs.
- (2) "Commissioner" means the commissioner of community affairs.
- (3) (For effective date, see note.) "Comprehensive plan" means any plan by a county or municipality covering such county or municipality or any plan by a regional commission covering the center's region proposed or prepared pursuant to the minimum standards and procedures for preparation of comprehensive plans and for implementation of comprehensive plans, established by the department in accordance with this article.
- (4) "Conflict" means any conflict, dispute, or inconsistency arising:

#### **The Georgia Planning Act 1989**

- (A) Between or among comprehensive plans for any counties or municipalities, as proposed, prepared, proposed to be implemented, or implemented;
- (B) Between or among comprehensive plans for any regions, as proposed, prepared, proposed to be implemented, or implemented;
- (C) Between or among comprehensive plans for any counties or municipalities and comprehensive plans for the region which includes such counties or municipalities, as such plans may be proposed, prepared, proposed to be implemented, or implemented;
- (D) With respect to or in connection with any action proposed to be taken or taken by any county, municipality, or other local government relating to or affecting regionally important resources, as defined by the department pursuant to this article; or
- (E) With respect to or in connection with any action proposed to be taken or taken by any county, municipality, or other local government relating to or affecting developments of regional impact, as defined by the department pursuant to this article.
- (5) "Constitution" means the Constitution of the State of Georgia.
- (6) "Contract" means any contract, agreement, or other legally binding arrangement.
- (7) (For effective date, see note.) "Coordinated and comprehensive planning" means planning by counties and municipalities and by regional commissions in accordance with the minimum standards and procedures. Coordinated and comprehensive planning is one of the local government affairs for which the department is authorized to assist in the performance of local government services.
- (8) "County" means any county of this state.
- (9) "Department" means the Department of Community Affairs.
- (10) "Eligible recipient" means any local government, school district, or other government entity which may be eligible to receive funds from the department pursuant to terms for eligibility established by the department or those established by the government or other source which makes the funds available to the department.
- (11) "Government" means any governmental unit on the federal, state, or local level and any department, agency, or authority of any such governmental unit and shall include all local governments, school districts, state agencies, and state authorities.
- (12) (For effective date, see note.) "Local government" means any county, municipality, or other political subdivision of the state; any regional commission; any public agency or public authority, except any state agency or state authority, created under the Constitution or by Act of the General Assembly; and shall include public agencies and public authorities which are created or activated pursuant to the Constitution or Act of the General Assembly or by action of the governing body of any county, municipality, or other political subdivision of the state, separately or in any combination, and shall include any group of counties or municipalities which forms the group to carry out jointly any of their lawful purposes but shall not include school districts.
- (13) "Local government affairs" means all matters involving or affecting local governments including, but not limited to, coordinated and comprehensive planning in which the state is or may become empowered or authorized to perform any duties, responsibilities, or functions or to exercise any power or authority.
- (14) "Local government services" means the activities performed or authorized to be performed by the department including, but not limited to, its performance of duties, responsibilities, and functions in local government affairs and its exercise of power and authority in local government affairs.

**The Georgia Planning Act 1989**

(15) (For effective date, see note.) "Minimum standards and procedures" means the minimum standards and procedures, including the minimum elements which shall be addressed and included, for preparation of comprehensive plans, for implementation of comprehensive plans, and for participation in the coordinated and comprehensive planning process, as established by the department in accordance with this article. Minimum standards and procedures shall include any elements, standards, and procedures for such purposes prescribed by a regional commission for counties and municipalities within its region and approved in advance by the department, in accordance with this article.

(16) "Municipality" means any municipal corporation of the state and any consolidated city-county government of the state.

(17) "Necessary" means necessary, desirable, or appropriate, as determined by the commissioner, unless the context clearly indicates a different meaning.

(18) "Qualified local government" means a county or municipality which:

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

(B) (For effective date, see note.) Has made its local plan implementation mechanisms consistent with those established in its comprehensive plan and with the minimum standards and procedures; and

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

(19) (For effective date, see note.) "Region" means the territorial area within the boundaries of operation for any regional commission, as such boundaries shall be established from time to time by the board in accordance with the provisions of subsection (f) of Code Section 50-8-4.

(20) (For effective date, see note.) "Regional commission" means a regional commission established under Article 2 of this chapter.

(21) "Rural area" means any nonurban area in the state as defined in rules and regulations of the department.

(22) "School district" means any school district, independent school system, or other local school system in the state.

(23) "State" means the State of Georgia.

(24) "State agency" means any department, agency, commission, or other institution of the executive branch of the government of the State of Georgia.

(b) A reference to the terms of any contract or writing or to the terms under which any funds are made available shall be construed as a reference to all terms, conditions, covenants, representations, warranties, and other provisions.

(Code 1981, § 50-8-2, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 2008, p. 181, §§ 1, 18, 24/HB 1216.)

**Delayed effective date.** - Paragraphs (a)(3), (a)(7), (a)(12), (a)(15), (a)(19), and (a)(20), and subparagraph (a)(18)(B), as set out above, become effective July 1, 2009. For versions of paragraphs (a)(3), (a)(7), (a)(12), (a)(15), (a)(19), and (a)(20), and subparagraph (a)(18)(B) in

#### The Georgia Planning Act 1989

effect until July 1, 2009, see the 2008 amendment note.

**The 2008 amendment**, effective July 1, 2009, in subsection (a), substituted "regional commission" for "regional development center" in paragraphs (a)(3), (a)(12), (a)(15), (a)(19), and (a)(20); in paragraph (a)(7), substituted "regional commissions" for "regional development centers" in the first sentence; and, in subparagraph (a)(18)(B), substituted "made its local plan implementation mechanisms consistent with those established in" for "established regulations consistent with".

## **JUDICIAL DECISIONS**

**Cited in** Kingsley v. Fla. Rock Indus., 259 Ga. App. 207, 575 S.E.2d 921 (2002).

### **50-8-3. Purpose of article; duties of department.**

(a) The local governments of the State of Georgia are of vital importance to the state and its citizens. The state has an essential public interest in promoting, developing, sustaining, and assisting local governments. The natural resources, environment, and vital areas of the state are also of vital importance to the state and its citizens. The state has an essential public interest in establishing minimum standards for land use in order to protect and preserve its natural resources, environment, and vital areas. The purpose of this article is to provide for the department to serve these essential public interests of the state by developing, promoting, sustaining, and assisting local governments, by developing, promoting, and establishing standards and procedures for coordinated and comprehensive planning, by assisting local governments to participate in an orderly process for coordinated and comprehensive planning, and by assisting local governments to prepare and implement comprehensive plans which will develop and promote the essential public interests of the state and its citizens. This article shall be liberally construed to achieve its purpose. This article is enacted pursuant to the authority granted the General Assembly in the Constitution of the State of Georgia, including, but not limited to, the authority provided in Article III, Section VI, Paragraphs I and II(a)(1) and Article IX, Section II, Paragraphs III and IV.

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

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

#### **The Georgia Planning Act 1989**

government level for such programs, studies, and functions provided by the department and for those provided by others;

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

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

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

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

(8) Reserved; and

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

(Code 1981, § 50-8-3, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 1996, p. 872, § 5; Ga. L. 1998, p. 1386, § 4; Ga. L. 2002, p. 1059, § 1; Ga. L. 2005, p. 306, § 4/SB 125.)

**The 2005 amendment**, effective April 26, 2005, deleted paragraph (b)(8), which read: "Assist the Georgia Music Hall of Fame Authority for any purpose necessary or incidental in the administration and performance of the Georgia Music Hall of Fame Authority's duties, powers, responsibilities, and functions as provided in Part 10 of Article 7 of Chapter 3 of Title 12; and".

**Cross references.** - Duty of Department of Community Affairs to prepare annual report on local government finances, § 36-81-8.

**Code Commission notes.** - Pursuant to Code Section 28-9-5, in 1996, "this title" was substituted for "Title 50" in paragraph (b)(7).

**Law reviews.** - For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003).

## JUDICIAL DECISIONS

**Cited in** Kingsley v. Fla. Rock Indus., 259 Ga. App. 207, 575 S.E.2d 921 (2002).

### The Georgia Planning Act 1989

### **50-8-3.1. Power and duty of department.**

(a) The department shall have the power and duty to investigate fraud and abuse in the federal Section 8 Housing Choice Voucher Program administered by the department pursuant to 42 U.S.C. Section 1437, et seq.

(b) When cases of criminal fraud or abuse are discovered or detected, the department shall refer such cases where warranted to the district attorney of the county in which the fraud or abuse occurred for prosecution. Such cases shall be prosecuted as violations of Code Section 16-8-3, relating to theft by deception; Code Section 16-10-20, relating to making false statements or writings; Code Section 16-10-71, relating to false swearing; or any other such criminal provision as the district attorney may deem appropriate under the facts and circumstances of the case.

(c) When a case of fraud or abuse is discovered or detected that is not criminal in nature or when a prosecutor declines to prosecute a case referred by the department under this Code section, the department shall have the authority to settle such case on such terms and conditions as the department finds suitable under the facts and circumstances of the case. In addition, the department shall be authorized to initiate and prosecute civil actions to recoup overpayments or improper payments. The department shall also have the authority to settle such civil cases on such terms and conditions as the department finds suitable under the facts and circumstances of the cases.

(d) (1) Prior to the filing of an accusation or the return of an indictment alleging fraud or abuse in the federal Section 8 Housing Choice Voucher Program administered by the department, a prosecuting attorney may defer further prosecution of such accusation or indictment and shall have the authority to enter into a consent agreement with the individual in which such individual admits to any overpayment, consents to disqualification for such period of time as is or may hereafter be provided by law or by the rules and regulations of the department, and agrees to repay, as restitution, such overpayment. Such agreement may provide for a lump sum repayment, installment payments, formula reduction of benefits, or any combination thereof. Such agreement shall toll the running of the statute of limitations for such offense for the period of the agreement. Prior to entering into such consent agreement with an individual, the prosecuting attorney or his or her designee shall advise such person that he or she may consult with an attorney prior to signing such consent agreement. If the individual so requests, he or she shall be afforded a reasonable amount of time, not to exceed 15 days, to engage or consult an attorney. A consent agreement entered into in accordance with this subsection shall not constitute a criminal charge.

(2) Any such agreement shall be filed in the criminal docket of the court having jurisdiction over the violation without the necessity of the state filing an accusation or an indictment being returned by a grand jury. The clerk shall enter upon the docket "CONSENT AGREEMENT NOT A CRIMINAL CHARGE."

(3) Upon successful completion of the terms and conditions of the consent agreement, criminal prosecution of the individual for such offense shall be barred; provided, however, that nothing in this paragraph shall prohibit the state from introducing evidence of such offense as a similar transaction in any subsequent prosecution or for the purpose

of impeachment. The successful completion of the terms and conditions of the agreement shall not be considered a criminal conviction.

(4) If the individual fails to comply with the terms of such consent agreement, the state may proceed with a criminal prosecution.

(Code 1981, § 50-8-3.1, enacted by Ga. L. 2006, p. 694, § 1/HB 1162.)

**Effective date.** - This Code section became effective May 3, 2006.

#### **50-8-4. Board of Community Affairs.**

(a) The Board of Community Affairs, as it existed immediately prior to July 1, 1996, shall be abolished effective July 1, 1996, and the Board of Community Affairs, from and after July 1, 1996, is established in accordance with this Code section. The board shall establish policy and direction for the department and shall perform such other functions as may be provided or authorized by law.

(b) Membership on the board shall be determined as follows:

(1) The terms of all members of the Board of Community Affairs serving immediately prior to July 1, 1996, shall expire effective July 1, 1996. The Governor shall appoint the initial members of the board for terms beginning on July 1, 1996, or the date on which the Governor makes the appointment, whichever is later. The terms of initial members of the board shall expire on a staggered basis, as follows: the terms of four of the members shall expire on July 1, 1997, and the terms of three other members shall expire on each July 1 thereafter through July 1, 2001, when the terms of all initial members of the board shall have expired. The Governor shall specify, when he appoints each initial member of the board, the expiration date of that member's term. Upon expiration of the term of each initial member of the board, the Governor shall appoint all successor members of the board for terms of five years. The terms of initial members and subsequent members of the board shall extend beyond the date of expiration and until their successors are appointed and qualified;

(2) The board shall be composed of one member from each United States congressional district in the state and five additional members from the state at large. Members of the board shall include elected officials of either counties or municipalities, individuals who have an interest or expertise in community or economic development, environmental issues, housing development, or finance, or other citizens who in the judgment and discretion of the Governor would enhance the board by their membership;

(3) The term of a member shall expire when it ends or shall terminate earlier immediately upon:

(A) Resignation by a member;

(B) Death of a member or inability to serve as a member due to medical infirmity or other incapacity; or

(C) Any change in local elective office or residence of a member which would cause the composition of the board not to comply with the requirements of paragraph (2) of this subsection;

#### **The Georgia Planning Act 1989**

- (4) The Governor shall appoint a new member within 60 days after the expiration or termination of a member's term. The Governor may reappoint members of the board to consecutive terms unless such reappointment would cause the composition of the board not to comply with the requirements of paragraph (2) of this subsection; and
- (5) Membership on the board does not constitute public office to the extent that a member of the board is precluded from holding other public office.
- (c) Officers of the board shall be elected and shall serve as follows:
- (1) The officers of the board serving immediately prior to July 1, 1996, shall cease to serve the respective terms for which they were elected, effective July 1, 1996;
- (2) Thereafter the members of the board shall elect a chairman, a vice chairman, and a secretary from among the members of the board;
- (3) The board shall elect officers at each July meeting or, if there is no July meeting, at the next monthly meeting;
- (4) Officers shall serve for a term of one year, beginning with their election and qualification and ending with the election and qualification of their respective successors; and
- (5) No person shall hold the same office on the board for more than one term consecutively.
- (d) The board shall hold meetings as often as it determines to do so. The board may establish a regular meeting schedule and a procedure for calling special meetings. Unless the board establishes another procedure, the chairman or any five members of the board may call special meetings upon adequate written, personal, telephone, or facsimile notice to members of the board. A majority of the members in office shall constitute a quorum for conducting business, and a majority of those present at any meeting shall be required to approve any action taken by the board. A member must be present at a meeting to count for purposes of determining whether a quorum exists and to vote or otherwise act on matters which come before that meeting. No member may vote or otherwise act through a proxy, designee, or delegate. The board may establish such additional rules and procedures as it deems appropriate for conducting its business from time to time. These rules and procedures may be established in bylaws or in such other form as the board deems appropriate.
- (e) Each member of the board shall receive the same per diem expense allowance as that received by members of the General Assembly for each day a board member is in attendance at a meeting of the board or a committee meeting of the board, plus reimbursement for actual transportation expenses incurred while traveling by public carrier or the mileage allowance authorized for state officials and employees for the use of a personal automobile in connection with such attendance. This per diem and reimbursement for transportation expenses shall be paid in lieu of any other per diem, allowance, remuneration, or compensation.
- (f) The board shall determine and establish, from time to time, the territorial boundaries for the region of operation by each regional development center; provided, however, any action of the board altering the boundaries of a regional development center shall not be effective until approved by the General Assembly at the next regular session following such action by the board by means of the adoption of a joint resolution ratifying such action. The boundaries of each region shall be established initially so that, for the period through June 30, 1990, each region will cover the same territorial area as covered by the

#### **The Georgia Planning Act 1989**

regional development center's predecessor area planning and development commission in effect on June 30, 1989. Each county shall be wholly within the region of one regional development center, and no county shall be divided among more than one region. Without limiting the generality of the foregoing, the board shall establish the boundaries of any region for which a metropolitan area planning and development commission, created pursuant to Article 4 of this chapter, also serves as the regional development center.

(g) In addition to ratification by resolution, the General Assembly may ratify regional development center boundary changes by Act; and the particular changes adopted by the Board of Community Affairs on January 13, 1999, and February 10, 1999, and affecting Johnson and Emanuel counties are ratified to become effective July 1, 1999.

(Code 1981, § 50-8-4, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 1996, p. 872, § 6; Ga. L. 1999, p. 789, § 4; Ga. L. 2008, p. 181, § 2/HB 1216.)

**Delayed effective date.** - Ga. L. 2008, p. 181, § 26, provides that the 2008 amendment becomes effective only if funds are specifically appropriated for purposes of paragraph (2) of subsection (b) of Code Section 50-8-33 as enacted by Section 4 of this Act in the General Appropriations Act for State Fiscal Year 2010 making specific reference to this Act, and such Section 2 of this Act shall become effective when funds so appropriated for such fiscal year become available for expenditure. This Code section as amended is not set out in the Code owing to the delayed effective date. After the appropriation is made, subsections (f) and (g) will read as follows: "(f)(1) The initial territorial boundaries for the operation of the regional commissions shall be as follows: Region 1 shall be made up of Bartow, Catoosa, Chattooga, Dade, Fannin, Floyd, Gilmer, Gordon, Haralson, Murray, Paulding, Pickens, Polk, Walker, and Whitfield; Region 2 shall be made up of Banks, Dawson, Forsyth, Franklin, Habersham, Hall, Hart, Lumpkin, Rabun, Stephens, Towns, Union, and White; Region 3 shall be made up of Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Fulton, Gwinnett, Henry, and Rockdale; Region 4 shall be made up of Butts, Carroll, Coweta, Heard, Lamar, Meriwether, Pike, Spalding, Troup, and Upson; Region 5 shall be made up of Barrow, Clarke, Elbert, Greene, Jackson, Jasper, Madison, Morgan, Newton, Oconee, Oglethorpe, and Walton; Region 6 shall be made up of Baldwin, Bibb, Crawford, Houston, Jones, Monroe, Peach, Pulaski, Putnam, Twiggs, and Wilkinson; Region 7 shall be made up of Burke, Columbia, Glascock, Hancock, Jefferson, Jenkins, Lincoln, McDuffie, Richmond, Taliaferro, Warren, Washington, and Wilkes; Region 8 shall be made up of Chattahoochee, Clay, Crisp, Dooly, Harris, Macon, Marion, Muscogee, Quitman, Randolph, Schley, Stewart, Sumter, Talbot, Taylor, and Webster; Region 9 shall be made up of Appling, Bleckley, Candler, Dodge, Emanuel, Evans, Jeff Davis, Johnson, Laurens, Montgomery, Tattnall, Telfair, Toombs, Treutlen, Wayne, Wheeler, and Wilcox; Region 10 shall be made up of Baker, Calhoun, Colquitt, Decatur, Dougherty, Early, Grady, Lee, Miller, Mitchell, Seminole, Terrell, Thomas, and Worth; Region 11 shall be made up of Atkinson, Bacon, Ben Hill, Berrien, Brantley, Brooks, Charlton, Clinch, Coffee, Cook, Echols, Irwin, Lanier, Lowndes, Pierce, Tift, Turner, and Ware; and Region 12 shall be made up of Bryan, Bulloch, Camden, Chatham, Effingham, Glynn, Liberty, Long, McIntosh, and Screven. The board for each regional commission shall ratify the boundaries provided for in this paragraph. If a regional commission fails to ratify such boundaries, such commission shall continue to operate under the existing boundaries for such commission prior to June 30, 2009. The provisions of Article 2 of this chapter shall apply to a regional commission failing to ratify the boundaries provided for in this Code section; provided, however, that such commission shall not be eligible to receive funding pursuant to Code Section 50-8-33.

"(2) Notwithstanding the territorial boundaries established pursuant to paragraph (1) of this subsection, the board shall determine and establish, from time to time, the territorial boundaries for the region of operation by each regional commission as well as the total number of the

#### The Georgia Planning Act 1989

regions; provided, however, that any action of the board altering the boundaries of a regional commission or changing the total number of the regions shall not be effective until approved by the General Assembly at the next regular session following such action by the board by means of the adoption of a joint resolution ratifying such action. Each county shall be wholly within the region of one regional commission, and no county shall be divided among more than one region. Without limiting the generality of the foregoing, the board shall establish the boundaries of any region for which a metropolitan area planning and development commission, created pursuant to Article 4 of this chapter, also serves as the regional commission.

"(g) In addition to ratification by resolution, the General Assembly may ratify regional commission boundary changes by Act."

**The 2008 amendment**, in subsection (f), designated the existing provisions as paragraph (f)(2), and added paragraph (f)(1); in paragraph (f)(2), in the first sentence, substituted "Notwithstanding the territorial boundaries established pursuant to paragraph (1) of this subsection, the board" for "The board" near the beginning; substituted "commission as well as the total number of the regions; provided, however, that any action of the board altering the boundaries of a regional commission or changing the total number of the regions" for "development center; provided, however, any action of the board altering the boundaries of a regional development center" near the middle; deleted the former second sentence, which read: "The boundaries of each region shall be established initially so that, for the period through June 30, 1990, each region will cover the same territorial area as covered by the regional development center's predecessor area planning and development commission in effect on June 30, 1989."; in the present second sentence, substituted "regional commission" for "regional development center" twice; in subsection (g), substituted "regional commission" for "regional development center", and deleted "; and the particular changes adopted by the Board of Community Affairs on January 13, 1999, and February 10, 1999, and affecting Johnson and Emanuel counties are ratified to become effective July 1, 1999" from the end. For effective date of this amendment, see the delayed effective date note.

**Cross references.** - Per diem expense allowance allowed to members of General Assembly, § 45-7-4(a)(22).  
Legal mileage allowance, § 50-19-7.

## **OPINIONS OF THE ATTORNEY GENERAL**

**Participation of county or municipality as member of Atlanta Regional Commission.** - A county or municipality may participate as a member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations governing metropolitan planning organizations while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are obtained. 2004 Op. Att'y Gen. No. 2004-1.

## **RESEARCH REFERENCES**

**Am. Jur. 2d.** - 63C Am. Jur. 2d, Public Officers and Employees, §§ 63, 65, 88, 105, 108 et seq.

**C.J.S.** - 81A C.J.S., States, §§ 169, 170.

### **The Georgia Planning Act 1989**

#### **50-8-5. Commissioner; powers.**

(a) The office of the commissioner of community affairs, as it existed immediately prior to July 1, 1989, shall continue to exist in accordance with this article. The commissioner shall be the department head, whose duties shall include serving as the department's chief executive officer and administrative head. The commissioner serving immediately prior to July 1, 1989, shall continue to serve as commissioner at the pleasure of the board. Thereafter the commissioner shall be appointed by the board and shall serve at the pleasure of the board. The board shall establish the compensation for the commissioner limited by any amount that may be specified in the appropriations Act.

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

(1) The power and authority to take or cause to be taken any or all action necessary to perform any local government services or otherwise necessary to perform any duties, responsibilities, or functions which the department is authorized by law to perform or to exercise any power or authority which the department is authorized by law to exercise;

(2) The power and authority to make, promulgate, enforce, or otherwise require compliance with any and all rules, regulations, procedures, or directives necessary to perform any local government services, to carry into effect the minimum standards and procedures for coordinated and comprehensive planning, or otherwise necessary to perform any duties, responsibilities, or functions which the department is authorized by law to perform or to exercise any power or authority which the department is authorized by law to exercise;

(3) The power and authority to certify, from time to time, municipalities and counties as qualified local governments, which certification shall not be unreasonably withheld; and

(4) The power and authority to assist the board in the performance of its duties, responsibilities, and functions and the exercise of its power and authority.

(Code 1981, § 50-8-5, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1.)

**Cross references.** - Duties of commissioner with regard to factory-built housing, § 8-2-110 et seq.

#### **50-8-6. Divisions, sections, and offices of department.**

The department shall be divided into such divisions, sections, or offices as may be necessary from time to time. All divisions, sections, or offices in existence immediately prior to July 1, 1989, shall continue to exist in accordance with this article. Thereafter, divisions, sections, and offices shall be abolished, reorganized, or established from time to time by the commissioner and as otherwise specified by law. The commissioner shall appoint such directors, deputies, and assistants as may be necessary to manage such divisions, sections, and offices. Such positions shall be in the unclassified service of the State Merit System of Personnel Administration.

#### **The Georgia Planning Act 1989**

(Code 1981, § 50-8-6, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1.)

**50-8-7. (For effective date, see note.) Planning and technical assistance activities; gathering and distribution of information and studies.**

(a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall undertake and carry out such planning and technical assistance activities as the board or the commissioner may deem necessary for performing local government services and as may be specified by law. Such planning and technical assistance activities may include, but shall not be limited to, the following:

(1) The department may provide technical assistance to local governments. This assistance may be directed to any and all activities of local government including, but not limited to, preparation and implementation of a comprehensive plan, community and economic development, and governmental administration, finance, management, and operations;

(2) The department may provide planning assistance to local governments. This assistance may include assistance with respect to preparation or implementation of a local government's comprehensive plan and participation in the process for coordinated and comprehensive planning. This assistance may also include long-range planning relevant to one or more local governments to identify the needs of such local governments or planning with respect to downtown development and the redevelopment and revitalization of downtown areas and central business districts;

(3) The department may assist local governments in planning for the consequences or other results of decisions or actions by any government which have an impact on local governments or on any of their citizens;

(4) The department may provide planning assistance to any local government or any state agency or state authority in connection with housing and dwelling places for citizens of the state. This assistance may include planning with respect to the availability of single-family, multifamily, and other types of housing units, the anticipated changes in such availability, the potential occupants for such housing, and the anticipated changes in such potential occupants. This assistance may also include planning with respect to homeless persons and the shelter needs of homeless persons; and

(5) The department's planning and technical assistance activities may include planning, technical assistance, analysis, recommendations for policies or action, and related activities and services with respect to any lawful purpose or activity of a local government.

(b) The department shall undertake and carry out, and shall coordinate with other state agencies and local governments in undertaking and carrying out, such gathering of information, such distribution of information, and such studies and recommendations as the board or the commissioner may deem necessary for performing local government services and as may be specified by law. Such coordinating, gathering, and distribution of information and studies may include, but shall not be limited to, the following:

**The Georgia Planning Act 1989**

(1) (For effective date, see note.) The department shall coordinate and participate in compiling, and other state agencies and local governments shall participate in compiling, a Georgia data base and network to serve as a comprehensive source of information available, in an accessible form, to local governments and state agencies. The Georgia data base and network shall collect, analyze, and disseminate information with respect to local governments, regional commissions, and state agencies. The Georgia data base and network shall include information obtained or available from other governments and information developed by the department. To maintain the Georgia data base and network, the department shall make, and shall coordinate with other state agencies and local governments in making, comprehensive studies, investigations, and surveys of the physical, social, economic, governmental, demographic, and other conditions of the state and of local governments and of such other aspects of the state as may be necessary to serve the purposes of the department. The department shall make available the Georgia data base and network, or provide access to the Georgia data base and network, to other state agencies, local governments, members of the General Assembly, and residents of the state;

(2) (For effective date, see note.) The department may assist the Governor, the General Assembly, any committees of the General Assembly, any state department, any state agency, any state authority, or any local government with studies, surveys, investigations, maps, reports, plans, recommendations, advice, and information prepared, developed, or obtained by the department;

(2.1) The department may assist any local government or local authority owning or operating a facility for convention and trade show purposes or any other similar or related purposes in identifying and promoting regional economic assistance projects within their respective jurisdictions, and such facility, if the subject of a reciprocal use agreement, shall be an adjacent facility satisfying the criteria of paragraph (1) of subsection (c) of Code Section 50-8-191;

(3) (For effective date, see note.) The department may undertake studies, investigations, and surveys to identify potential physical, social, economic, governmental, demographic, or other problems and opportunities in the urban, suburban, and rural areas of the state and to assist local governments in preparing to avoid the consequences of such problems or to take advantage of such opportunities; and

(4) (For effective date, see note.) The department may write, draft, prepare, or publish any studies, surveys, investigations, maps, reports, plans, recommendations, advice, and information with respect to local or regional government affairs. The department may distribute or otherwise disseminate any such studies, surveys, investigations, maps, reports, plans, recommendations, advice, and information to any government, any state authority or state agency, or any private entity.

(c) The duties, responsibilities, and functions of the department and the power and authority of the department described in this Code section are cumulative with, and in addition to, all other duties, responsibilities, and functions and power and authority of the department and are not intended to, and shall not be construed to, conflict with any other duties, responsibilities, or functions or any other power or authority of the department, including, but not limited to, the duties, responsibilities, and functions and the power and authority described in Code Section 50-8-7.1.

#### **The Georgia Planning Act 1989**

(Code 1981, § 50-8-7, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 2008, p. 181, § 3/HB 1216; Ga. L. 2008, p. 363, § 2/HB 1280.)

**Delayed effective date.** - Paragraphs (b)(1), (b)(2), (b)(3), and (b)(4), as set out above, become effective July 1, 2009. For version of paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) in effect until July 1, 2009, see the 2008 amendment note.

**The 2008 amendments.** The first 2008 amendment, effective July 1, 2008, added paragraph (b)(2.1). The second 2008 amendment, effective July 1, 2009, in paragraph (b)(1), substituted "regional commissions" for "regional development centers" in the second sentence; deleted former paragraph (b)(2), which read: "The department shall maintain a strategic rural economic development plan in cooperation with the regional development centers, the university system of the state, other state agencies and departments, and local governments. The plan shall include, without being limited to, identifying industries for which the rural areas of the state have a comparative advantage, exploring resources for venture capital for the rural areas of the state, and providing state financial assistance to support local initiatives for rural economic development in rural areas;" redesignated former paragraphs (b)(3) through (b)(5) as present paragraphs (b)(2) through (b)(4), respectively; and, in paragraph (b)(4), inserted "or regional" in the first sentence.

**Code Commission notes.** - Pursuant to Code Section 28-9-5, in 2008, a semicolon was substituted for a period at the end of paragraph (b)(2.1).

**Administrative Rules and Regulations.** - Developments of regional impact, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Community Development Block Grant Program, Chapter 110-12-3.  
Mediation of interjurisdictional conflicts, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-12-5.

## **OPINIONS OF THE ATTORNEY GENERAL**

**Use of money from emergency fund to prepare planning study.** - The Planning and Programming Bureau (now Department of Community Affairs) can use money from the Governor's emergency fund to prepare a municipal planning study itself or, in the alternative, contract with a third party, such as a planning consultant, for preparation of the study by the latter. 1969 Op. Att'y Gen. No. 69-312.

**Grant for construction of local government facilities.** - The Department of Community Affairs is without legal authority to make a grant of state funds to a city or county for the construction of a civic center or carpet exposition facility. 1987 Op. Att'y Gen. No. 87-15.

## **RESEARCH REFERENCES**

**ALR.** - Constitutionality of levee and flood control acts, 70 ALR 1274.  
Liability of municipality or other governmental subdivision in connection with flood-protection measures, 5 ALR2d 57.

### **The Georgia Planning Act 1989**

**50-8-7.1. (For effective date, see note.) General powers and duties.**

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

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

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

(3) The department shall examine and analyze plans of state agencies, comprehensive plans of regional commissions, and comprehensive plans of municipalities and counties, undertaken as part of the coordinated and comprehensive planning process, and advise the Governor with respect to those plans; and

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

(b) The department shall establish in accordance with the provisions of Code Section 50-8-7.2 minimum standards and procedures for coordinated and comprehensive planning, including standards and procedures for preparation of plans, for implementation of plans, and for participation in the coordinated and comprehensive planning process. The department shall undertake and carry out such activities as may be specified by law. Such activities may include, but shall not be limited to, the following:

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

(2) The department shall establish minimum standards and procedures which shall be used by local governments in developing, preparing, and implementing their comprehensive plans. The department shall incorporate the minimum standards and procedures with respect to natural resources, the environment, and vital areas of the state established and administered by the Department of Natural Resources pursuant to Code Section 12-2-8. In establishing such minimum standards and procedures, the department shall be authorized to differentiate among local governments and among regions based upon factors which the department determines merit differentiation, such as total population, density of population, geographic features, the size of tax base, the type and

**The Georgia Planning Act 1989**

character of services furnished by local governments, the size of budget, and other factors;

(3) The department shall develop planning procedures with respect to regionally important resources, for planning with respect to developments of regional impact, and for encouraging interjurisdictional cooperation among local governments. The department shall determine, in its judgment and for each region, what shall constitute developments of regional impact. Such determinations by the department shall be made for each region after receiving any necessary information from the regional commission for the region, from local governments within the region, and from others within the region. The department's determinations shall be publicly promulgated, using such means as the commissioner may determine, so that all local governments within a region will receive notice of the department's determinations affecting that region; and

(4) The department shall establish and shall promulgate procedures for obtaining input from, and participation by, local governments and the public in establishing, amending, and updating from time to time the minimum standards and procedures.

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

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

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

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

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

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

(3) The department may establish rules and procedures which require that local governments submit for review any proposed action which would, based upon guidelines which the department may establish, affect regionally important resources or further any development of regional impact. Any such proposed action by a local government (other than a regional commission) shall be submitted for review to the local government's regional commission. Any such proposed action by a regional commission shall be submitted for review to the department. Review shall be in accordance with rules and procedures established by the department. The review shall result in a public finding by the regional commission or the department, as the case may be, that the action will be in

#### **The Georgia Planning Act 1989**

the best interest of the region and state or that it will not be in the best interest of the region and state;

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

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

(Code 1981, § 50-8-7.1, enacted by Ga. L. 1989, p. 1317, § 2.1; Ga. L. 2008, p. 181, § 4/HB 1216.)

**Delayed effective date.** - This Code section, as set out above, becomes effective July 1, 2009. For version of this Code section in effect until July 1, 2009, see the 2008 amendment note.

**The 2008 amendment,** effective July 1, 2009, substituted "regional commission" and "regional commissions" for "regional development center" and "regional development centers" throughout this Code section; in paragraphs (a)(1) and (a)(2), inserted "regional commissions and" near the beginning; in paragraph (b)(1), inserted "and cultural" in the second sentence; and, in paragraph (c)(3), inserted "region and" twice in the last sentence.

**Cross references.** - Amendment and revision of code provisions, § 8-2-23.  
Duty of Department of Community Affairs to prepare annual report on local government finances, § 36-81-8.

**Editor's notes.** - By resolution (Ga. L. 1990, p. 406), the General Assembly ratified the initial minimum standards and procedures for the protection of the natural resources, environment, and vital areas of the state adopted by the Department and Board of Natural Resources on December 6, 1989.

By resolution (Ga. L. 1990, p. 945), the General Assembly ratified the initial minimum standards and procedures for coordinated and comprehensive planning adopted by the Department and Board of Community Affairs on January 10, 1990.

## **JUDICIAL DECISIONS**

**Cited in** Kingsley v. Fla. Rock Indus., 259 Ga. App. 207, 575 S.E.2d 921 (2002).

### **50-8-7.2. Ratification of department standards and procedures by General Assembly.**

The initial minimum standards and procedures promulgated by the department pursuant to Code Section 50-8-7.1 shall be submitted by the department to the General Assembly at the next regular session following July 1, 1989, and shall become effective only when

#### **The Georgia Planning Act 1989**

ratified by joint resolution of the General Assembly. The power of the department to promulgate such initial minimum standards and procedures shall be deemed to be dependent upon such ratification. Any subsequent amendments or additions to the initial minimum standards and procedures promulgated by the department pursuant to Code Section 50-8-7.1 shall be promulgated in accordance with and subject to the provisions of Chapter 13 of this title, the "Georgia Administrative Procedure Act."

(Code 1981, § 50-8-7.2, enacted by Ga. L. 1989, p. 1317, § 2.1.)

**Code Commission notes.** - Pursuant to Code Section 28-9-5, in 1990, "July 1, 1989," was substituted for "the effective date of this Act" in the middle of the first sentence.

**Editor's notes.** - By resolution (Ga. L. 1990, p. 406), the General Assembly ratified the initial minimum standards and procedures for the protection of the natural resources, environment, and vital areas of the state adopted by the Department and Board of Natural Resources on December 6, 1990.

By resolution (Ga. L. 1990, p. 206), the General Assembly ratified the supplemental funding formula for regional development centers adopted by the Department and Board of Community Affairs on February 14, 1990.

### **50-8-7.3. Solid waste management education program; establishment of Georgia Clean and Beautiful Advisory Committee and Interagency Council on Solid Waste Management.**

The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall establish a solid waste management education program in the state. Such program shall include, but not be limited to, the following:

(1)(A) The establishment of a Georgia Clean and Beautiful Advisory Committee that shall assist the department in developing, coordinating, and implementing efforts to educate the citizens of the state on methods of solid waste management.

(B) The advisory committee shall consist of no more than 30 members, who shall be appointed by the Governor and be representative of state and local government; business and industry; community, environmental, and civic organizations; the news media; educators; and other areas as the Governor may deem appropriate.

(C) Members of the advisory committee are authorized to receive reimbursement for actual expenses incurred in the performance of their duties from such funds as may be appropriated for such purposes and within such limits as may be established by the department; and

(2)(A) The establishment of an Interagency Council on Solid Waste Management that shall be chaired by the commissioner and shall consist of representatives from departments and agencies within state government that have responsibilities or activities relating to solid waste.

#### **The Georgia Planning Act 1989**

(B) The council shall serve as a forum for gathering and sharing information on solid waste management as well as for developing and initiating activities within state government relating to solid waste management and shall provide advice and assistance to the Georgia Clean and Beautiful Advisory Committee and its educational programs.

(Code 1981, § 50-8-7.3, enacted by Ga. L. 1990, p. 412, § 2.)

**Code Commission notes.** - Pursuant to Code Section 28-9-5, in 1990, the subsection (a) designation was deleted from the beginning of the section since there is no subsection (b).

**50-8-8. (For effective date, see note.) Grants, loans, and other disbursements of funds; state community development program.**

(a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall make grants or loans to eligible recipients or qualified local governments, which grants or loans are specified by amount, recipient, and purpose in an appropriation to the department; provided, however, that the department shall not make such a grant to any county or independent board of education for the construction or operation of athletic facilities during the fiscal year following the receipt by the department of certification by the State Board of Education that the county or independent board of education is not in compliance with the requirements of Code Section 20-2-315. The department shall also grant to any school district the proceeds of any general obligation debt for educational facilities for which the department is named user agency and the school district is named recipient in an appropriation authorizing the debt. The department may make grants or loans to eligible recipients or qualified local governments from appropriations made to the department generally for grant or loan purposes, without appropriations language specifying amounts, recipients, and purposes. The department:

(1) Shall disburse such grants or loans on the basis of criteria which include consideration of matters such as legislative intent; local, regional, or state-wide impact or benefit; public exigencies or emergencies; enhancement of community and economic development opportunities; improvement or expansion of government operations or services; community health, safety, and economic well-being; coordinated and comprehensive planning in accordance with minimum standards and procedures; and any other similar criteria that may from time to time be established by the department; and  
(2) May condition the award of any such grants or loans to a county or municipality upon the county or municipality, as the case may be, being a qualified local government.

(b) The department shall direct the distribution of any appropriations or other funds available for coordinated and comprehensive planning in accordance with the Act of the General Assembly providing for such appropriations. No grant or loan by the department to any eligible recipient or qualified local government shall adversely affect any grant, loan, or service to the eligible recipient or qualified local government by any other unit or instrumentality of state government. Without limiting the foregoing, the Department of Education, the Department of Transportation, the Georgia Environmental Facilities Authority, and the director of the Office of Treasury and Fiscal Services shall not

**The Georgia Planning Act 1989**

diminish or fail to award any funds, loans, or service to any recipient under any state or federal program in whole or in part on account of a grant or loan by the department. Grants or loans by the department are and shall be deemed to be of a special nature and in addition to all such other grants, loans, or awards. The following provisions shall apply to making such funds available to eligible recipients or qualified local governments:

- (1) (For effective date, see note.) The department may make available funds by grant or loan to an eligible recipient or qualified local government, by direct payments on behalf of an eligible recipient or qualified local government, or by any other lawful means. In the event the department determines that, in its judgment, a regional commission has failed to comply with its duties as provided by law or with the terms of a contract between such regional commission and a local government, the department shall be authorized to make payments, which it otherwise would have made to the regional commission, directly to the local government or as the department otherwise determines in order to carry out the duties of the regional commission under the law or such contract;
- (2) The department may accept, use, and disburse gifts and grants made to it on terms consistent with its legal powers, from any public or private source;
- (3) The department shall specify the terms under which it makes any funds available to an eligible recipient or qualified local government. The terms shall be those established or otherwise required by the government or other source which makes the funds available to the department. If such government or other source does not establish or otherwise require any such terms, the department may establish the terms;
- (4) The department shall set forth in writing the terms under which the department makes funds available to a qualified local government or eligible recipient. The terms may be set forth in a contract. The department may execute any such contract on behalf of the state, and any eligible recipient which is a qualified local government, school district, state agency, or state authority is authorized to execute any such contract. Any such writing or contract may incorporate other terms or laws by reference to such terms or laws;
- (5) The department shall manage and administer all funds made available pursuant to this Code section; and
- (6) The department may make funds available for any purpose for which the eligible recipient or qualified local government may lawfully use such funds. Unless precluded by general law, these purposes may include, but shall not be limited to, assisting in or furthering any of the purposes, duties, responsibilities, functions, power, or authority of local governments or the department. These purposes may also include, but shall not be limited to, establishing, developing, constructing, improving, maintaining, restoring, or protecting local government projects or purposes of any nature, such as:
  - (A) Construction projects;
  - (B) Capital outlay projects;
  - (C) Infrastructure projects;
  - (D) Planning services;
  - (E) Technical assistance;
  - (F) Coordinated and comprehensive planning;
  - (G) Marketing and promotional projects to encourage tourism and to develop, promote, and retain trade, commerce, industry, and employment opportunities, agriculture, and agribusiness;
  - (H) Purchase or lease of equipment;

**The Georgia Planning Act 1989**

- (I) Operating expenses;
  - (J) Housing projects;
  - (K) Any project for the purposes of acquiring, constructing, equipping, maintaining, and operating regional commerce and trade center facilities suitable for housing conventions and trade shows as well as cultural, political, musical, educational, athletic, and other events, in order to provide for the establishment, development, and maintenance of commerce and trade;
  - (L) Any project or purpose described in or permitted under any appropriations to the department;
  - (M) Any project or purpose described in or permitted under any grant made to, or to be made by or through, the department;
  - (N) Any project or purpose provided for in the federal Housing and Community Development Act of 1974, as amended, or any successor to the Housing and Community Development Act of 1974;
  - (O) Any project or purpose provided for in the federal Public Works and Economic Development Act of 1965, as amended, or any successor to the Public Works and Economic Development Act of 1965;
  - (P) Any project or purpose authorized by federal or state law; or
  - (Q) Any other project or purpose consistent with the duties, responsibilities, functions, power, and authority of the department.
- (c) The department may apply for, receive, administer, and use any grant, other financial assistance, or other funds made available to the department from any government or other source for furthering the purposes of the department. The department's actions in this respect may be taken for itself or on behalf of qualified local governments or other eligible recipients. The department's power and authority under this subsection includes, but shall not be limited to, the following:
- (1) The department may apply on behalf of qualified local governments or other eligible recipients for receipt of state appropriated funds from the Governor's emergency fund as provided by Code Section 45-12-77. If such an application is approved, or if state appropriated funds from the Governor's emergency fund as provided by Code Section 45-12-77 are otherwise made available to the department, the department may be authorized by the Governor to disburse such emergency funds to the local government or other eligible recipient; and
  - (2) The department may accept on behalf of qualified local governments or other eligible recipients funds provided to the department by an executive order of the Governor and may disburse such funds to such local governments or other eligible recipients. The eligible recipient and the terms under which such funds are made available for use by the eligible recipient shall be specified in the executive order and shall be made a part of any writing or contract between the department and the eligible recipient.
- (d) The department is authorized and shall have all powers necessary to participate in federal programs and to comply with laws relating thereto.
- (e) The governing authority of any county, municipality, or combination thereof may expend public funds received from the department to perform any public service or public function as authorized under the terms specified by the department or, in the absence of any such terms, as otherwise authorized by the Constitution or by law or to perform any other service or function as authorized by the Constitution.

**The Georgia Planning Act 1989**

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

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

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

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

(Code 1981, § 50-8-8, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 97, § 50; Ga. L. 2000, p. 1129, § 3; Ga. L. 2000, p. 1423, § 1; Ga. L. 2008, p. 181, § 18/HB 1216.)

**Delayed effective date.** - Paragraph (b)(1), as set out above, becomes effective July 1, 2009. For version of paragraph (b)(1) in effect until July 1, 2009, see the 2008 amendment note.

**The 2008 amendment,** substituted "regional commission" for "regional development center" four times in paragraph (b)(1).

**Code Commission notes.** - Pursuant to Code Section 28-9-5, in 2000, "Code Section 20-2-315" was substituted for "Code Section 20-2-314" at the end of the second sentence in the introductory paragraph of subsection (a).

**Editor's notes.** - Ga. L. 2000, p. 1129, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Equity in Sports Act.'"

**U.S. Code.** - The federal Housing and Community Development Act of 1974, referred to in subparagraph (b)(6)(N), appears mainly as 42 U.S.C. §§ 1437 through 1490f. The federal Public Works and Economic Development Act of 1965, referred to in subparagraph (b)(6)(O), appears as 42 U.S.C. §§ 3121 through 3245.

**Administrative Rules and Regulations.** - Local development fund grants, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-6-1.

Financial assistance grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-13-1.

#### The Georgia Planning Act 1989

**Law reviews.** - For note on 2000 amendment of O.C.G.A. § 50-8-8, see 17 Ga. St. U.L. Rev. 168 (2000).

## **OPINIONS OF THE ATTORNEY GENERAL**

**Editor's notes.** - In light of the similarity of the provisions, decisions under Ga. L. 1967, pp. 252 and 258 are included in the annotations for this Code section.

**Use of funds by planning and development commissioners.** - The Department of Community Development (now Department of Community Affairs) is not legally responsible for the manner in which the area planning and development commissions utilize funds made available to them by the General Assembly through the department; those commissions are basically self-governing entities, not state agencies or political subdivisions. 1974 Op. Att'y Gen. No. 74-73 (decided under Ga. L. 1967, pp. 252 and 258).

**Independent determination of grant eligibility.** - A state agency making grants to local governments must independently exercise its statutory discretion in determining eligible applicants and may not limit eligibility solely on the basis of an administrative document of the General Assembly. 1993 Op. Att'y Gen. No. 93-19.

**Eligibility of area planning and development commissions.** - Department of Community Affairs has responsibility for determining eligibility of area planning and development commissions for funds. 1981 Op. Att'y Gen. No. 81-15 (decided under Ga. L. 1967, pp. 252 and 258).

**Identification of recipients.** - Since authority under this former section is merely to "make available such funds as may be appropriated by the General Assembly," the Department of Community Affairs should not have to identify any particular recipients. The legislature will itself identify recipients. 1981 Op. Att'y Gen. No. 81-15 (decided under Ga. L. 1967, pp. 252 and 258).

**Housing assistance programs.** - Where the funds are not sought to create a planning service or to provide technical assistance, information, or advice in accordance with the purposes of Title II of the Housing and Community Development Act of 1974 (42 U.S.C. § 1437 et seq.), the department does not have the requisite statutory authority to apply for, receive, or administer federal grants under the section 8 housing assistance payments program for existing units established pursuant to such Act. 1976 Op. Att'y Gen. No. 76-15 (decided under Ga. L. 1967, pp. 252 and 258).

**No discretion in disbursement of funds made available.** - The Department of Community Affairs has responsibility to disburse funds to area planning and development commissions. However, this disbursement cannot be contingent on department's views of either use made of moneys or adequacy of record-keeping procedures. In short, it has no discretion in that disbursement. 1981 Op. Att'y Gen. No. 81-15 (decided under Ga. L. 1967, pp. 252 and 258).

### **50-8-9. Contracts with public and private entities or individuals.**

(a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall have the power to enter into contracts with local governments, school districts, state agencies, state authorities, and other public and private entities or individuals for any

#### **The Georgia Planning Act 1989**

purpose necessary or incidental to carrying out or performing the duties, responsibilities, or functions of the department or exercising the power and authority of the department. No such contract shall constitute a donation or gratuity or the forgiveness of any debt or obligation owing to the public. No such contract shall constitute or be intended to constitute security for bonds or other obligations issued by any public agency, public corporation, or authority. No such contract shall constitute a pledge or loan of the credit of the state to any individual, company, corporation, or association, and the state, through the department, shall not become a joint owner or stockholder in or with any individual, company, association, or corporation.

(b) The power and authority of the department under this Code section to enter into contracts shall be limited to entering into contracts permitted under the Constitution and laws of the state and as specified in this Code section but shall not otherwise be limited.

(c) The department shall have the power to enter into contracts with the Georgia Housing and Finance Authority for any purpose necessary or incidental in assisting the Georgia Housing and Finance Authority in carrying out or performing its duties, responsibilities, and functions; provided, however, all such assistance shall be performed on behalf of and pursuant to the lawful purposes of the Georgia Housing and Finance Authority and not on behalf of the department; and provided, further, such assistance shall not include the authorization of the issuance of any bonds or other indebtedness of the authority. The department may undertake joint or complementary programs with the Georgia Housing and Finance Authority, including the provision for joint or complementary services, within the scope of their respective powers.

(d) Reserved.

(e) The department shall have the power to enter into contracts with the OneGeorgia Authority for any purpose necessary or incidental in assisting the OneGeorgia Authority in carrying out or performing its duties, responsibilities, and functions; provided, however, that all such assistance shall be performed on behalf of and pursuant to the lawful purposes of the OneGeorgia Authority and not on behalf of the department; and provided, further, that such assistance shall not include the authorization of the issuance of any bonds or other indebtedness of the authority. The department may undertake joint or complementary programs with the OneGeorgia Authority, including the provision for joint or complementary services, within the scope of their respective powers.

(Code 1981, § 50-8-9, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 1996, p. 872, § 7; Ga. L. 1997, p. 143, § 50; Ga. L. 1998, p. 1386, § 5; Ga. L. 2002, p. 1059, § 2; Ga. L. 2005, p. 306, § 5/SB 125.)

**The 2005 amendment**, effective April 26, 2005, deleted subsection (d), which read: "The department shall have the power to enter into contracts with the Georgia Music Hall of Fame Authority for any purpose necessary or incidental in assisting the Georgia Music Hall of Fame Authority in carrying out or performing its duties, responsibilities, and functions; provided, however, that all such assistance shall be performed on behalf of and pursuant to the lawful purposes of the Georgia Music Hall of Fame Authority and not on behalf of the department; and provided, further, that such assistance shall not include the authorization of the issuance of any bonds or other indebtedness of the authority. The department may undertake joint or complementary programs with the Georgia Music Hall of Fame Authority, including the provision

#### **The Georgia Planning Act 1989**

for joint or complementary services, within the scope of their respective powers."

**Cross references.** - Parks, Historic Areas, Memorials, and Recreation, Ch. 3, T. 12.

**50-8-10. Coordination of policies, programs, and actions of governments; research center on intergovernmental relations; leadership and community development programs.**

(a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall undertake and carry out such activities as may be necessary to coordinate policies, programs, and actions of governments in local government affairs and as may be specified by law. Such activities may include, but shall not be limited to, the following:

(1) The department may take such action as the commissioner may deem necessary, to the extent feasible and practicable as determined by the commissioner, to make the programs and policies including, but not limited to, comprehensive plans of all levels of government consistent and to minimize duplicated or inconsistent programs and policies including, but not limited to, comprehensive plans within the state government and among local governments;

(2) The department may review, on a continuous basis, the programs and policies including, but not limited to, comprehensive plans of all governments acting within the state to determine their consistency with long-range programs and policies of the state; and

(3) The department may consult with, meet with, confer with, and cooperate with the executive or legislative authorities of other states, with representatives of municipalities and counties of other states, with other representatives of governments, with representatives of private entities, and with others for the purpose of furthering the coordination of programs and policies affecting local government affairs within this state.

(b) The department shall serve as the state's clearing-house and research center on intergovernmental relations, including relationships among federal, state, and local levels of government and, to this end, the department shall:

(1) Monitor, review, analyze, and communicate with and to others with respect to actions and developments in the United States Congress, in the federal agencies, and in other states which affect local governments or which may affect relations between the state and any local governments; and

(2) Coordinate its activities with the office of the Governor, other state agencies and authorities, and the state's members of the United States Congress.

(c) The department may provide, supervise, or coordinate leadership and community development programs for local governments and other programs with respect to local government affairs. The department may develop pilot programs or projects designed to address the problems and needs of local government.

(Code 1981, § 50-8-10, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1.)

**The Georgia Planning Act 1989**

**Code Commission notes.** - Pursuant to Code Section 28-9-5, in 1988, "and," was substituted for ", and" following "levels of government" near the end of the introductory language of subsection (b).

**50-8-11. Power to take action for furtherance of purposes of department; disposition of revenues.**

(a) The department shall have the duty, responsibility, power, and authority to take all action necessary to further the purposes of the department, without regard for whether any such duty, responsibility, power, or authority is specifically mentioned in this article or otherwise specifically granted by law. Without limiting the general nature of this Code section:

(1) The department shall have all duties, responsibilities, power, and authority granted or specified under or pursuant to any other laws of the state and any executive orders issued by the Governor prior to July 1, 1989. To the extent permitted by law, the Governor may, by executive order issued on or after July 1, 1989, authorize the department to take specific action in furtherance of the purposes of the department; and in that event, the department shall take such action;

(2) The department shall promote and encourage assistance from private entities and individuals in carrying out and performing local government services;

(3) The department shall assist local governments in developing, promoting, and retaining trade, industry, commerce, and employment opportunities;

(4) The department may define, identify, and establish criteria or requirements for local governments or others to participate with or to use any local government services; and

(5) The department may receive, use, and spend money received from the state for any of the purposes of the department.

(b) Revenues for all fees and charges imposed or otherwise charged by the department for local government services shall be paid into the general fund of the state treasury, except that charges intended to reimburse expenses incurred by the department shall be used to reimburse the department for such expenses.

(Code 1981, § 50-8-11, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1.)

**50-8-12. No limitations by article on county or municipal zoning power.**

Nothing in this article shall limit or compromise the right of the governing authority of any county or municipality to exercise the power of zoning.

(Code 1981, § 50-8-12, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1.)

**RESEARCH REFERENCES**

**The Georgia Planning Act 1989**

**ALR.** - Validity and construction of zoning laws setting minimum requirements for floorspace or cubic footage inside residence, 87 ALR4th 294.

**50-8-13. Authorities and agencies assigned to department.**

(a) Authorities or agencies may be assigned to the department for administrative purposes in accordance with Code Section 50-4-3. The following authorities are assigned to the department in accordance with such Code section:

(1) The Georgia Environmental Facilities Authority; and

(2) The Georgia Housing and Finance Authority.

(b) The department may induce, by payment of state funds or other consideration, any agency or authority assigned to the department for administrative purposes to perform any local government services and to perform its own statutory function.

(Code 1981, § 50-8-13, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1991, p. 1653, § 2-3.)

**50-8-14. Exemption from "Georgia Administrative Procedure Act."**

The administration of programs, grants, and other activities covered by this chapter shall not be covered by, subject to, or required to comply with or satisfy any provision of Chapter 13 of this title, known as the "Georgia Administrative Procedure Act."

(Code 1981, § 50-8-14, enacted by Ga. L. 1988, p. 38, § 1.)

**50-8-15. Rights of state employees transferred from State Building Administrative Board; validity of board's legal contracts.**

(a) State employees transferred from the State Building Administrative Board on March 31, 1980, shall continue to retain all rights, entitlements, and privileges as state employees and participate in the various state personnel programs as they were previously entitled or otherwise authorized.

(b) Any legal contracts entered into by the State Building Administrative Board which were in effect on March 31, 1980, are transferred and shall continue in effect under the Department of Community Affairs until their normally prescribed termination or expiration.

(Code 1981, § 50-8-15, enacted by Ga. L. 1988, p. 38, § 1.)

**50-8-16. Rights of state employees transferred from Bureau of Community Affairs; validity of bureau's legal contracts.**

**The Georgia Planning Act 1989**

(a) State employees transferred from the Bureau of Community Affairs to the Department of Community Affairs on July 1, 1977, shall retain all rights, entitlements, and privileges as state employees and shall participate in the various state personnel programs as they were previously entitled or authorized to participate.

(b) Any legal contracts entered into by the bureau which were in effect on July 1, 1977, are transferred and shall continue in effect under the Department of Community Affairs under their normally prescribed termination or expiration.

(Code 1981, § 50-8-16, enacted by Ga. L. 1988, p. 38, § 1.)

**50-8-17. Employees serve in unclassified service; election option for current classified employees.**

Employees of the department shall serve in the unclassified service of the state merit system as defined by Code Section 45-20-6, provided that employees who serve in the classified service of the state merit system as defined by Code Section 45-20-6 may elect to remain in the classified service and be governed by the provisions thereof; provided, however, that if such person accepts a promotion or transfer to another position, he or she shall become an employee in the unclassified service.

(Code 1981, § 50-8-17, enacted by Ga. L. 1996, p. 872, § 8.)

**50-8-18. (Effective July 1, 2010) Energy efficient construction of major state-funded facility projects; short title; legislative findings; "major facility project" defined.**

(a) This Code section shall be known and may be cited as the "Energy Efficiency and Sustainable Construction Act of 2008."

(b) The General Assembly finds that the welfare of this state is enhanced by the promotion of effective energy and environmental standards for construction, rehabilitation, and maintenance of state-funded facilities and that such standards in turn improve this state's capacity to design, build, and operate high-performance buildings, contributing to economic growth, promoting job development, and increasing energy conservation.

(c) For purposes of this Code section, "major facility project" means a state-funded:

- (1) New construction building project of a building exceeding 10,000 square feet;
- (2) A renovation project that is more than 50 percent of the replacement value, as determined by the Department of Administrative Services Risk Management Division, of the facility, a change in occupancy, or any roof replacement project exceeding 10,000 square feet; or
- (3) A commercial interior tenant fit-out project exceeding 10,000 square feet of leasable area where the state is intended to be the lessor of such property.

**The Georgia Planning Act 1989**

A major facility project shall not include a building, regardless of size, that does not have conditioned space as defined by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) and shall not include a state owned building that is on the historical registry or any local, county, or municipal building.

(d) Consistent with the intent of this Code section, the department, in consultation with the Georgia State Finance and Investment Commission, shall adopt policies and procedures as recommended standards for all buildings owned or managed by this state that:

- (1) Optimize the energy performance;
- (2) Increase the demand for construction materials and furnishings produced in Georgia;
- (3) Improve the environmental quality in this state by decreasing the discharge of pollutants from such state buildings;
- (4) Conserve energy and utilize local and renewable energy sources;
- (5) Protect and restore this state's natural resources by avoiding the development of inappropriate building sites;
- (6) Reduce the burden on municipal water supply and treatment by reducing potable water consumption;
- (7) Establish life cycle assessments as the appropriate and most efficient analysis to determine a building project's environmental performance level; and
- (8) Encourage obtaining Energy Star designation from the United States Environmental Protection Agency to further demonstrate a building project's energy independence.

(e) All major facility projects may be designed, constructed, and commissioned or modeled to exceed the standards set forth in ASHRAE 90.1.2004 by 30 percent where it is determined by the department that such 30 percent efficiency is cost effective based on a life cycle cost analysis with a payback at no more than ten years. Commissioning or modeling must be performed by a professional engineer, design professional, or commissioning agent using software methodology approved by the Internal Revenue Service, the Department of Energy, current ASHRAE standards, or other similar methodology. For all major renovation projects, such requirements shall apply to the specific building assemblies, envelope components, and equipment involved in the project.

(f) All major facility projects shall be designed, constructed, and commissioned or modeled to achieve a 15 percent reduction in water use when compared to water use based on plumbing fixture selection in accordance with the Energy Policy Act of 1992.

(g) To achieve sustainable building standards, construction projects may utilize a nationally recognized high performance energy modeling and environmental building rating system; provided, however, that any such rating system that uses a material or product based credit system that operates to the detriment of materials or products manufactured or produced in Georgia shall not be utilized. The department shall designate rating systems that meet these criteria and is authorized to establish its own alternative rating system. All major facility projects shall include Georgia products such that not less than 10 percent of all building materials used in a project are harvested, extracted, or manufactured in the State of Georgia where such products are commercially available in a manner consistent with the purposes of this Code section.

(h) A professional engineer, design professional, or commissioning agent shall certify that the building project's systems for heating, ventilating, air conditioning, energy

#### **The Georgia Planning Act 1989**

conservation, and water conservation are installed and working properly to ensure that each building project performs according to the building's overall environmental design intent and operational objectives.

(Code 1981, § 50-8-18, enacted by Ga. L. 2008, p. 224, § 4/SB 130.)

**Effective date.** - This Code section becomes effective July 1, 2010.

**Editor's notes.** - Ga. L. 2008, p. 224, § 7, not codified by the General Assembly, provides that this Code section shall apply to design agreements for major facilities projects entered into on or after July 1, 2010.

**U.S. Code.** - The Energy Policy Act of 1992, referred to in subsection (f), is codified at 42 U.S.C. § 13201 et seq.

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## ARTICLE 2 REGIONAL DEVELOPMENT CENTERS

**Editor's notes.** - Ga. L. 1989, p. 1317, § 3.1, effective July 1, 1989, repealed the Code sections formerly codified in this article and enacted the current article. The former article, which dealt with area planning and development commissions, consisted of Code Sections 50-8-30 through 50-8-45, and was based on Ga. L. 1970, p. 321; Ga. L. 1975, p. 735; Ga. L. 1977, p. 782; Ga. L. 1978, p. 2066; Ga. L. 1978, p. 2293; Ga. L. 1980, p. 736; Ga. L. 1982, p. 3; Ga. L. 1982, p. 2107; Ga. L. 1982, p. 2310; Ga. L. 1983, p. 3; and Ga. L. 1984, p. 22.

**Administrative Rules and Regulations.** - Minimum standards and procedures for regional planning, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-12-6.

### **50-8-30. (Effective until July 1, 2009) Legislative findings and intent; construction of article.**

The local governments of the State of Georgia are of vital importance to the state and its citizens. The state has an essential public interest in promoting, developing, sustaining, and assisting local governments. The natural resources, environment, and vital areas of the state are also of vital importance to the state and its citizens. The state has an essential public interest in establishing minimum standards for land use in order to protect and preserve its natural resources, environment, and vital areas. Coordinated and comprehensive planning by local governments, under direction from the state, is necessary in order to serve these essential public interests of the state. The purpose of this article is to provide for regional development centers to develop, promote, and assist in establishing coordinated and comprehensive planning in the state, to assist local governments to participate in an orderly process for coordinated and comprehensive

#### **The Georgia Planning Act 1989**

planning, to assist local governments to prepare and implement comprehensive plans which will develop and promote the essential public interests of the state and its citizens, and to prepare and implement comprehensive regional plans which will develop and promote the essential public interests of the state and its citizens. This article shall be construed liberally to achieve its purpose. This article is enacted pursuant to the authority granted the General Assembly in the Constitution of the State of Georgia, including, but not limited to, the authority provided in Article III, Section VI, Paragraphs I and II(a)(1) and Article IX, Section II, Paragraphs III and IV.

(Code 1981, § 50-8-30, enacted by Ga. L. 1989, p. 1317, § 3.1.)

**Cross references.** - Approval by General Assembly of alteration of boundaries of a regional development center, § 50-8-4.

## **OPINIONS OF THE ATTORNEY GENERAL**

**Participation of county or municipality as member of Atlanta Regional Commission.** - A county or municipality may participate as a member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations governing metropolitan planning organizations while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are obtained. 2004 Op. Att'y Gen. No. 2004-1.

### **50-8-31. (Effective until July 1, 2009) Definitions.**

As used in this article, the term:

- (1) "Board" means the board of a regional development center.
- (2) "Center" means a regional development center established under this article, including its predecessor area planning and development commission.
- (3) "Commissioner" means the commissioner of community affairs.
- (4) "Comprehensive plan" means any plan by a county or municipality covering such county or municipality or any plan by a regional development center covering the center's region proposed or prepared pursuant to the minimum standards and procedures for preparation of comprehensive plans and for implementation of comprehensive plans, established by the department in accordance with Article 1 of this chapter.
- (5) "Conflict" means any conflict, dispute, or inconsistency arising:
  - (A) Between or among comprehensive plans for any counties or municipalities, as proposed, prepared, proposed to be implemented, or implemented;
  - (B) Between or among comprehensive plans for any counties or municipalities and comprehensive plans for the region which includes such counties or municipalities, as such plans may be proposed, prepared, proposed to be implemented, or implemented;
  - (C) With respect to or in connection with any action proposed to be taken or taken by any county, municipality, or other local government relating to or affecting regionally important resources, as defined by the department; or

#### **The Georgia Planning Act 1989**

(D) With respect to or in connection with any action proposed to be taken or taken by any county, municipality, or other local government relating to or affecting developments of regional impact, as defined by the department.

(6) "Constitution" means the Constitution of the State of Georgia.

(7) "Contract" means any contract, agreement, or other legally binding arrangement.

(8) "Coordinated and comprehensive planning" means planning by counties and municipalities and by regional development centers in accordance with the minimum standards and procedures.

(9) "County board member" means any member of the board representing a county, determined pursuant to paragraph (1) of subsection (b) of Code Section 50-8-34.

(10) "Department" means the Department of Community Affairs.

(11) "Governing body" means the board of commissioners of a county, sole commissioner of a county, council, commissioners, or other governing authority for a county or municipality.

(12) "Government" means any governmental unit on the federal, state, or local level and any department, agency, or authority of any such governmental unit and shall include all local governments, school districts, state agencies, and state authorities.

(13) "Local government" means any county, municipality, or other political subdivision of the state; any regional development center; any public agency or public authority, except any state agency or state authority, created under the Constitution or by Act of the General Assembly; and shall include public agencies and public authorities which are created or activated pursuant to the Constitution or Act of the General Assembly or by action of the governing body of any county, municipality, or other political subdivision of the state, separately or in any combination, and shall include any group of counties or municipalities which forms the group to carry out jointly any lawful purposes but shall not include school districts.

(14) "Local plan" means the comprehensive plan for any county or municipality.

(15) "Minimum standards and procedures" means the minimum standards and procedures, including the minimum elements which shall be addressed and included, for preparation of comprehensive plans, for implementation of comprehensive plans, and for participation in the coordinated and comprehensive planning process, as established by the department. Minimum standards and procedures shall include any elements, standards, and procedures for such purposes prescribed by a regional development center for counties and municipalities within its region and approved in advance by the department, in accordance with Article 1 of this chapter.

(16) "Municipal board member" means any member of the board representing a municipality, determined pursuant to paragraph (1) of subsection (b) of Code Section 50-8-34.

(17) "Municipality" means any municipal corporation of the state and any consolidated city-county government of the state.

(18) "Necessary" means necessary, desirable, or appropriate, as determined by the commissioner, unless the context clearly indicates a different meaning.

(19) "Nonpublic board member" means any board member who is a resident of a county within the region, who is not an elected or appointed official or employee of any county or municipality, and who is elected as a nonpublic member for that county pursuant to paragraph (1) of subsection (b) of Code Section 50-8-34.

#### **The Georgia Planning Act 1989**

(19.1) "Nonpublic funds" means the servicing fees which are received by a nonprofit corporation for administering federal or state revolving loan programs or loan packaging programs.

(20) "Qualified local government" means a county or municipality which:

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

(B) Has established regulations consistent with its comprehensive plan and with the minimum standards and procedures; and

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

(21) "Region" means the territorial area within the boundaries of operation for any regional development center, as such boundaries shall be established from time to time by the board of the department.

(22) "Regional development center" means a regional development center established under this article.

(23) "Regional plan" means the comprehensive plan for a region.

(24) "State" means the State of Georgia.

(Code 1981, § 50-8-31, enacted by Ga. L. 1989, p. 1317, § 3.1; Ga. L. 1993, p. 1374, § 1; Ga. L. 1994, p. 1636, §§ 2, 3.)

#### **OPINIONS OF THE ATTORNEY GENERAL**

**Authority to loan or borrow funds.** - The expanded duty and authority given Regional Development Centers under O.C.G.A. § 50-8-35(e) would authorize a Regional Development Center to loan funds to the extent necessary in administering any federal or state programs; however, it would not authorize a Regional Development Center to borrow money from private lenders. 1992 Op. Att'y Gen. No. 92-1.

#### **50-8-32. (Effective until July 1, 2009) Creation of regional development centers.**

Regional development centers are created and established as public agencies and instrumentalities of their members which shall facilitate coordinated and comprehensive planning in conformity with minimum standards and procedures established pursuant to law. Each such agency and instrumentality shall be known as a regional development center and shall be designated, by name for all purposes, with such identifying words before the term "regional development center" as the board may, from time to time in accordance with the provisions of subsection (f) of Code Section 50-8-4, choose and designate by official action. The number of regional development centers and the region within which each regional development center shall operate shall be established from time to time by the board of community affairs. The board of community affairs shall initially establish the boundaries of each region so that, for the period through June 30, 1990, each region will cover the same territorial area as covered by the regional

#### **The Georgia Planning Act 1989**

development center's predecessor area planning and development commission in effect on June 30, 1989. Each county shall be wholly within the region of one regional development center, and no county shall be divided among more than one region. Without limiting the generality of the foregoing, the board of community affairs shall establish the boundaries of any region for which a metropolitan area planning and development commission, created pursuant to Article 4 of this chapter, also serves as the regional development center.

(Code 1981, § 50-8-32, enacted by Ga. L. 1989, p. 1317, § 3.1.)

**Cross references.** - Approval by General Assembly of alteration of boundaries of a regional development center, § 50-8-4.

#### **OPINIONS OF THE ATTORNEY GENERAL**

**No authority to create nonprofit corporation.** - Because a Regional Development Center is a public agency and an instrumentality of the municipalities and counties in its region, it is not an entity authorized by law to create a nonprofit corporation. 1992 Op. Att'y Gen. No. 92-1.

**Participation of county or municipality as member of Atlanta Regional Commission.** - A county or municipality may participate as a member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations governing metropolitan planning organizations while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are obtained. 2004 Op. Att'y Gen. No. 2004-1.

#### **50-8-33. (Effective until July 1, 2009) Municipal and county membership; annual dues; distribution of state funds.**

(a) Each municipality and county in the state shall automatically be a member of the regional development center for the region which includes the municipality or county, as the case may be.

(b)(1) Each county and municipality in the state shall pay the annual dues for membership in its regional development center. Each county and the municipalities within such county shall continue to use the arrangement for the payment of dues which was in effect on June 30, 1989, for the payment of dues to the area planning and development commission which preceded the regional development center created by this article until a revised arrangement for the amount, apportionment, and payment of annual dues is established by the county and the municipalities within such county. If an arrangement for the payment of such dues is structured so that a county pays dues only on behalf of residents of the unincorporated areas of the county, then the annual dues paid by such county shall come solely from revenues derived from the unincorporated areas of the county.

(2) State funds appropriated to the department and available for the purpose of assisting regional development centers shall be distributed in accordance with this paragraph. The

#### **The Georgia Planning Act 1989**

department shall establish a minimum funding amount for regional development centers, conditioned upon the amount of state funds appropriated, and a supplemental funding formula to be used for the distribution of available state funds in excess of the minimum funding amount. To be eligible for the minimum funding amount, each regional development center must assess and collect annual dues in the amount of 25¢ for each resident of each county within the regional development center, based upon the most recent estimate of population approved by the department for this purpose. To be eligible for any supplemental funding, each regional development center shall be required to match the amount of the supplemental funds on a dollar-for-dollar basis and shall only use for the purpose of computing matching funds revenues of the regional development center in excess of the amount required for the minimum funding amount.

(3) The initial supplemental funding formula established by the department to be used for the distribution of available state funds in excess of the minimum funding amount shall be promulgated by the department in accordance with the procedures of Code Section 50-8-7.2.

(Code 1981, § 50-8-33, enacted by Ga. L. 1989, p. 1317, § 3.1.)

**Editor's notes.** - By resolution (Ga. L. 1990, p. 206), the General Assembly ratified the supplemental funding formula for regional development centers adopted by the Department and Board of Community Affairs on February 14, 1990.

#### **50-8-34. (Effective until July 1, 2009) Boards of centers.**

(a) The board of each regional development center shall establish policy and direction for the regional development center and shall perform such other functions as may be provided or authorized by law.

(b) Membership on the board shall be determined as follows:

(1) The board of each regional development center shall be comprised of not less than two nor more than five representatives from each member county served by the regional development center. The manner of selecting such regional development center board members shall be as prescribed by its bylaws, provided that the board shall have at least one elected or appointed municipal government official from each member county and at least one elected or appointed county government official from each member county. The bylaws of a regional development center may authorize the regional development center to include nonpublic board members;

(2) At the next regular meeting of each regional development center board held not less than 30 days following July 1, 1993, the chairperson of each regional development center board shall convene a meeting of the present membership of such board for the purpose of amending the regional development center's bylaws to provide for the election of the initial regional development center board in accordance with the provisions of paragraph (1) of this subsection. Not less than 30 nor more than 60 days following the adoption of such amended bylaws, the chairperson of each regional development center board shall convene a meeting of the present membership of each regional development center board to elect the initial regional development center board in accordance with the provisions of

#### **The Georgia Planning Act 1989**

such amended bylaws. The terms of office of initial regional development center board members selected pursuant to this subsection shall commence upon such date and time as specified in the amended regional development center's bylaws; and

(3) In addition to the members of the board provided for in paragraphs (1) and (2) of this subsection, the Board of Community Affairs shall have the authority to appoint one nonvoting member from within each region to the membership of the board for that region.

(c) The term of a member shall be for a period of one year and until the member's successor is elected and qualified. The term of a member shall terminate immediately upon:

(1) Resignation by a member;

(2) Death of a member or inability to serve as a member due to medical infirmity or other incapacity; or

(3) Any change in local elective office or residence of a member which would cause the composition of the board not to comply with the requirements of subsection (b) of this Code section.

(d) Each member of the board shall have one vote. Establishment of a quorum for purposes of the conduct of business shall be determined by the bylaws of the regional development center.

(e) Each regional development center board shall elect from among its board members a chairperson, vice chairperson, and secretary who shall serve for a term of one year and until their successors are elected and qualified. Such elections shall be held annually at a meeting designated for that purpose in the regional development center's bylaws.

(f) The board shall meet not less than ten times each year and at such times as provided by its bylaws.

(g) Each board shall exercise the following powers:

(1) The powers, duties, responsibilities, and functions enumerated in Code Section 50-8-35;

(2) The appointment and removal of a full-time executive director for the regional development center;

(3) The establishment of such committees as the board shall deem appropriate;

(4) The adoption of an annual work program for the regional development center;

(5) The adoption of an annual budget; and

(6) The determination of the policies and programs to be implemented and operated by the regional development center as may be provided or authorized by law.

(Code 1981, § 50-8-34, enacted by Ga. L. 1989, p. 1317, § 3.1; Ga. L. 1993, p. 1374, § 2; Ga. L. 1994, p. 1636, § 4.)

**Code Commission notes.** - Pursuant to Code Section 28-9-5, in 1993, "July 1, 1993" was substituted for "the effective date of this Code section" in paragraph (b)(2).

#### The Georgia Planning Act 1989

## **OPINIONS OF THE ATTORNEY GENERAL**

**Scope of authority.** - A Regional Development Center has only such powers as are conferred upon it by the legislature, either expressly or by necessary implication. 1992 Op. Att'y Gen. No. 92-1.

**Election of nonpublic board members, presence required.** - A Regional Development Center board member's right to vote for a nonpublic board member is limited to those board members who are actually present at the time the vote is taken in a legal meeting. 1994 Op. Att'y Gen. No. 94-17.

### **50-8-34.1. (Effective until July 1, 2009) Executive director of center; performance standards and annual performance review.**

(a) Each regional development center shall have an executive director who shall serve at the pleasure of the board and who shall be subject to appointment and removal by a majority vote of the members of the board. The executive director shall perform such duties as assigned by the board.

(b) Each regional development center board shall require performance standards for measurement of the activities of the regional development center. The board shall conduct an annual performance review of the executive director of the regional development center measured by standards developed by the board.

(Code 1981, § 50-8-34.1, enacted by Ga. L. 1993, p. 1374, § 3.)

### **50-8-35. (Effective until July 1, 2009) General powers.**

(a) Each regional development center, as authorized by the board of such regional development center and consistent with federal and state law, shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. Each center may exercise the following power and authority:

(1) Each center may adopt bylaws and make rules and regulations for the conduct of its affairs;

(2) Each center may make and enter into all contracts necessary or incidental to the performance of its duties and functions. Neither a center, nor any nonprofit corporation established or controlled by that center, may enter into any contract obligating that center or nonprofit corporation to perform services for any political subdivision, individual, or business entity located wholly outside the boundaries of that center's region, except that one center, on its own behalf and not on behalf or for the direct benefit of any political subdivision, individual, or business entity within that center's boundaries, may contract with another center to provide services for the benefit of one or both centers;

(3) Each center may acquire and dispose of real and personal property;

(4) Each center may utilize the services of the Department of Administrative Services;

#### **The Georgia Planning Act 1989**

- (5) Each center may prepare studies of the area's resources as they affect existing and emerging problems of industry, commerce, transportation, population, housing, agriculture, public services, local governments, and any other matters relating to area planning and development;
  - (6) Each center may collect, process, and analyze, at regular intervals, the social and economic statistics for the region, which statistics are necessary to planning studies, and make the results available to the general public;
  - (7) Each center may participate with local, state, or federal governmental agencies, educational institutions, and public and private organizations in the coordination and implementation of research and development activities;
  - (8) Each center may cooperate with all units of local government and planning and development agencies within the center's region and coordinate area planning and development activities with those of the state and of the units of local government within the center's region as well as neighboring regions and with the programs of federal departments, agencies, and regional commissions; and provide such technical assistance, including data processing and grant administration services for local governments, as may be requested of it by a unit or units of local government within the center's region; and such technical assistance shall not be limited to planning and development activities but may include technical assistance of any nature requested by a unit or units of local government within the center's region;
  - (9) Each center may carry out such other programs as its board or the department shall require from time to time;
  - (10) Each center may, when appropriate, administer funds involving more than one political subdivision;
  - (11) Each center may, upon the signed resolution of its board and written approval by each unit of local government affected, initiate, continue, or renew arrangements with the United States government, an adjoining state, this state, a unit of local government, any agency or instrumentality of the foregoing, or a public or private organization for the management, administration, or operation of human service programs by such regional development center; but, in the conduct of any such human service programs, a center shall not engage in the direct delivery of goods or services to individual consumers but may enter into contracts with other authorized entities, including units of local government, for the delivery of such goods or services by and in the name of such entities; and
  - (12) Each center may provide the following benefits to its employees, their dependents, and survivors, in addition to any compensation or other benefits provided to such persons:
    - (A) Retirement, pension, disability, medical, and hospitalization benefits, through the purchase of insurance or otherwise;
    - (B) Life insurance coverage and coverage under federal old age and survivors' insurance programs;
    - (C) Sick leave, annual leave, and holiday leave; and
    - (D) Any other similar benefits including, but not limited to, death benefits.
- (b) Each center shall adopt personnel policies and practices with specific reference to job descriptions and qualifications. Minimum qualifications for the professional personnel of

**The Georgia Planning Act 1989**

each regional development center shall be established by the board of the regional development center and the Board of Community Affairs.

(c) Each center shall undertake and carry out such planning and technical assistance activities as its board or the department may deem necessary for the development, preparation, and implementation of comprehensive plans for the center's region and for municipalities and counties within the center's region and such planning and technical assistance activities as its board or the department may deem necessary for coordinated and comprehensive planning within the center's region. Such planning and technical assistance activities may include, but shall not be limited to, the following:

(1) A center may coordinate and assist local governments in preparing local plans for submission to the center;

(2) A center may provide technical planning assistance to local governments;

(3) A center may develop and prepare a local plan for a county or municipality if the county or municipality enters into a contract with a center for that purpose;

(4) A center may require that comprehensive plans within its region include elements in addition to those established by the department as minimum standards and procedures but, before imposing any such requirement, the center shall have received the department's approval of any additional elements to be included in such comprehensive plans;

(5) A center may establish goals and objectives, consistent with those established by the Governor's Development Council or by the department, for its region; and

(6) Each center shall prepare and adopt a regional plan and submit the regional plan to the department. The regional plan shall take into consideration local plans within the region. The regional plan may be prepared but shall not be adopted by the board until after a proposed regional plan has been made public and after the board has held, or caused to be held by a designated hearing officer, a public hearing on the regional plan, in accordance with such procedures as the department may establish.

(d) Each center shall participate in compiling a Georgia data base and network, coordinated by the department, to serve as a comprehensive source of information available, in an accessible form, to local governments, state agencies, and members of the General Assembly.

(e) A center shall serve as liaison with other governments, including federal government agencies and state agencies. In this capacity, a center may administer programs within the state upon the request of local governments and may administer federal or state government programs upon designation by the federal or state government. Each center shall be designated as the official planning agency for all state and federal programs to be carried out in the region if such designation is required and if the department concurs in such designation. A center may take all action and shall have all power and authority necessary to carry out its responsibilities, duties, and functions under any such state or federal programs.

(f)(1)(A) In order to accomplish the intent of subsection (e) of this Code section, each center is authorized to create nonprofit corporations to administer federal or state revolving loan programs or loan packaging programs, and to administer federal or state housing and development programs and funds available only to nonprofit corporations.

#### **The Georgia Planning Act 1989**

Each such nonprofit corporation must be authorized by the center's board and each unit of local government affected.

(B) Any nonprofit corporation which, prior to April 1, 1994, has been created by a center and has had articles of incorporation which are regular on their face accepted for filing by the Secretary of State shall be recognized as and have legal status as a validly created nonprofit corporation under the laws of this state for all purposes, notwithstanding the requirements of subparagraph (A) of this paragraph and notwithstanding any lack of express statutory authority on the part of the center to carry out such incorporation at the time of filing of the articles of incorporation. Nothing in this subparagraph, however, shall excuse such a nonprofit corporation from complying on and after April 1, 1994, with any and all requirements imposed by law for continuation of its corporate existence in the same manner as other nonprofit corporations created under this paragraph are required to comply with legal requirements for their continued existence.

(2) Employees and any other authorized representatives of a nonprofit corporation created pursuant to paragraph (1) of this subsection are authorized to expend nonpublic funds of such corporation for the business meals and incidental expenses of bona fide industrial prospects and other persons who attend any meeting at the request of the nonprofit corporation to discuss the location or development of new business, industry, or tourism within the center's region. All such expenditures shall be verified by vouchers showing date, place, purpose, and persons for whom such expenditures were made. All receipts of nonpublic funds shall be evidenced by vouchers showing the date, amount, and source of each receipt. A schedule shall be included in each annual audit which reports the beginning balance of unexpended nonpublic funds; the date, amount, and source of all receipts of nonpublic funds; the date, place, purpose, and persons for whom expenditures were made for all such expenditures of nonpublic funds; and the ending balance of unexpended nonpublic funds. The auditor shall verify and test such beginning balances, receipts, expenditures, and ending balances sufficient to express an opinion thereon in accordance with generally accepted government auditing standards.

(3) A nonprofit corporation shall keep books of account reflecting all funds received, expended, and administered by the nonprofit corporation which shall be independently audited at least once in each fiscal year during which a nonprofit corporation functions. Such audit shall be conducted in accordance with generally accepted government auditing standards. The state auditor shall promulgate policies and procedures for procurement of such audit of the financial affairs of a nonprofit corporation and shall annually review the audit procurement process to determine compliance with established policies and procedures. The nonprofit corporation shall be responsible for the costs associated with such audit. The auditor's report shall be presented to the commissioner, who shall make such report available to each board member within the region and to the Board of Community Affairs. The books of account shall be kept in a standard, uniform format to be determined by the state auditor and the commissioner. Each nonprofit corporation shall update its books of account on a quarterly basis and shall present the quarterly update to the commissioner. The department with the assistance of the commissioner of banking and finance shall conduct at least biennially a performance audit of each nonprofit corporation. The department shall provide copies of each such performance audit to the respective chief elected official of each county and municipality within the center's region.

#### **The Georgia Planning Act 1989**

(4) Each nonprofit corporation shall submit to the department copies of all filings made to federal, state, or local taxing authorities, including filings related to tax exemptions simultaneous with such filings.

(5)(A) Each annual audit report of a nonprofit corporation shall be completed and a copy of the report forwarded to the state auditor within 180 days after the close of the nonprofit corporation's fiscal year. In addition to the audit report, the nonprofit corporation shall forward to the state auditor, within 30 days after the audit report due date, written comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, the written comments should include a statement describing the reason it is not.

(B) The state auditor shall review the audit report and written comments submitted to his or her office to ensure that they meet the requirements for audits provided for in paragraph (3) of this subsection. If the state auditor finds the requirements for audits have not been complied with, the state auditor shall, within 60 days of his or her receipt of the audit or written comments, notify the nonprofit corporation and the auditor who performed the audit and shall submit to them a list of the deficiencies to be corrected. A copy of this notification shall also be sent by the state auditor to the center related to the nonprofit corporation, the chief elected official of each county and municipality within the center's region, and to each member of the General Assembly whose senatorial or representative district includes any part of the center's region.

(C) If the state auditor has not received any required audit or written comments by the date specified in subparagraph (A) of this paragraph, the state auditor shall within 30 days of such date notify the nonprofit corporation that the audit has not been received as required by law. A copy of this notification shall also be sent by the state auditor to the center related to the nonprofit corporation, the chief elected official of each county and municipality within the related center's region, and to each member of the General Assembly whose senatorial or representative district includes any part of the related center's region.

(D) The state auditor, for good cause shown by those nonprofit corporations in which an audit is in the process of being conducted or will promptly be conducted, may waive the requirement for completion of the audit within 180 days. Such waiver shall be for an additional period of not more than 180 days and no such waiver shall be granted for more than two successive years to the same nonprofit corporation.

(6) A copy of the report and of any comments made by the state auditor pursuant to subparagraph (B) of paragraph (5) of this subsection shall be maintained as a public record for public inspection during the regular working hours at the principal office of the nonprofit corporation and the related center.

(7) Upon a failure, refusal, or neglect to have an annual audit made or a failure to file a copy of the annual audit report with the state auditor or a failure to correct auditing deficiencies noted by the state auditor, the state auditor shall cause a prominent notice to be published in the legal organ of and any other newspapers of general circulation within each county and municipality within the related center's region. Such notice shall be a prominently displayed advertisement or news article and shall not be placed in that section of the newspaper where legal notices appear. Such notice shall be published once

**The Georgia Planning Act 1989**

a week for two consecutive weeks and shall state that the nonprofit corporation has failed or refused to file an audit report or to correct auditing deficiencies, as the case may be, for the fiscal year or years in question. Such notice shall further state that such failure or refusal is in violation of state law.

(8) The state auditor may waive the requirement of correction of auditing deficiencies for a period of one year from the required audit filing date, provided that evidence is presented that substantial progress is being made toward removing the cause of the need for the waiver. No such waiver for the same set of deficiencies shall be granted for more than two successive years to the same nonprofit corporation.

(g) Notwithstanding the provisions of paragraphs (2) and (8) of subsection (a) of this Code section, a center may contract with the department for coordinated and comprehensive planning covering areas not within the territorial boundary of the center, provided that any such contract is made with the approval of the regional development center's board of directors having jurisdiction in the area affected.

(h) A center shall be prohibited from either creating or controlling or causing to be created any nonprofit corporation, except as authorized in paragraph (1) of subsection (f) of this Code section.

(i) Neither a center nor a nonprofit corporation either created or controlled or caused to be created by the center shall administer any federal program which prohibits the department from conducting a performance audit relative to such program.

(j) In any case where a center contracts with a state agency, the contract shall include a provision requiring cancellation of the contract if the department determines that the center or a nonprofit corporation either created or controlled or caused to be created by the center is not fully cooperating with a performance audit conducted by the department.

(k) The department and the centers, jointly, shall develop a continuing education program for professional staff members of such centers.

(Code 1981, § 50-8-35, enacted by Ga. L. 1989, p. 1317, § 3.1; Ga. L. 1992, p. 2108, § 1; Ga. L. 1993, p. 1374, § 4; Ga. L. 1994, p. 1636, §§ 5, 6, 9.)

**Editor's notes.** - By resolution (Ga. L. 2005, HR 66, p. 1061), the General Assembly authorized each regional development center's board of directors to adopt a resolution or amend an existing resolution establishing the specific operating area for the certified development company it created to include areas within the state beyond the geographic boundaries of the regional development center, provided for articles of incorporation, and other provisions relating thereto.

## JUDICIAL DECISIONS

**Performance audits of regional development centers and nonprofit corporations.** - The Department of Community Affairs had statutory authority to conduct performance audits of all nonprofit corporations created by regional development centers and the audits necessarily included authorized access to all of the books and records of the regional development centers and nonprofit corporations created by such centers. Coastal Ga. Regional Dev. Ctr. v. Higdon, 263 Ga. 827, 439 S.E.2d 902 (1994).

### The Georgia Planning Act 1989

## **OPINIONS OF THE ATTORNEY GENERAL**

**Public accountability.** - A regional development center is not subject to the minimum budget and auditing requirements set forth in O.C.G.A. § 36-81-1 et seq.; however, a center is subject to public accountability under other provisions of state law. 1990 Op. Att'y Gen. No. 90-37. A regional development center lacks authority to abrogate its duty to be accountable for the nonprofit corporations it is authorized to create. 1996 Op. Att'y Gen. No. 96-8.

**Administration of Job Training Partnership Program by Private Industry Council.** - A regional development center is authorized to contract with a Private Industry Council to administer the Job Training Partnership Program within the council's service delivery area as long as the council's service delivery area overlaps the territorial boundary of the regional development center. 1990 Op. Att'y Gen. No. 90-27.

**Use of grant funds.** - A Regional Development Center cannot accept grant funds for a purpose which is either specifically prohibited or which it lacks authority to perform, except that, upon the signed resolution of its board and written approval by each unit of local government affected, a Regional Development Center may enter into contracts with other authorized entities for the delivery of human service programs; provided, the service delivery area overlaps the territorial boundaries of the Regional Development Center. 1992 Op. Att'y Gen. No. 92-1.

**Delivery of goods and services.** - A Regional Development Center would not be prohibited from performing eligibility certification under the Job Training Partnership Act, 29 U.S.C. § 1501 et seq., inasmuch as the "intake" process merely involves screening applicants for appropriate referral to the organization which will actually conduct the training or delivery of services. 1992 Op. Att'y Gen. No. 92-1.

**Authority to loan or borrow funds.** - The expanded duty and authority given Regional Development Centers under O.C.G.A. § 50-8-35(e) would authorize a Regional Development Center to loan funds to the extent necessary in administering any federal or state programs; however, it would not authorize a Regional Development Center to borrow money from private lenders. 1992 Op. Att'y Gen. No. 92-1.

**No authority to create nonprofit corporation.** - Because a Regional Development Center is a public agency and an instrumentality of the municipalities and counties in its region, it is not an entity authorized by law to create a nonprofit corporation. 1992 Op. Att'y Gen. No. 92-1.

**No authority to pay entertainment expenses.** - Regional Development Centers, as public agencies and instrumentalities of the municipalities and counties in its region, are subject to the Georgia Constitution's gratuities clause. Absent any specific authorizing statute, the payment of entertainment expenses would be unauthorized. Indeed, such an expenditure would constitute a gratuity in violation of the Georgia Constitution. 1992 Op. Att'y Gen. No. 92-1.

**Membership in contracting corporation precluded.** - A Regional Development Center (RDC) board member may not also serve as a board member of a non-profit corporation created by the RDC, pursuant to former O.C.G.A. § 50-8-35(f)(1), during the period that a contract exists between the two entities. 1993 Op. Att'y Gen. No. 93-1.

### **The Georgia Planning Act 1989**

**50-8-36. (Effective until July 1, 2009) Human service programs; direct delivery of governmental services to consumers.**

(a) For the purposes of paragraph (11) of subsection (a) of Code Section 50-8-35, the term "human service programs" means any activity authorized by law to be undertaken by the state or by any unit of local government in which it is undertaken, the funds for which program are provided by or through the United States government, an adjoining state, this state, any unit of local government, any agency or instrumentality of the foregoing, or a public or private organization, the purpose of which is to provide assistance to and relieve the special burdens of the young, the indigent, the aged, persons with disabilities, the unemployed, or the ill.

(b) As used in this subsection, "governmental services" means those services provided by local units of government of this state. No authority granted to regional development centers by Code Section 50-8-35 shall be construed to authorize a regional development center to manage, administer, or operate any program involving the direct delivery of governmental services to consumers or to administer contracts for the delivery of governmental services to consumers, except that:

- (1) The authority of regional development centers with respect to human service programs, as defined by subsection (a) of this Code section, shall be governed and controlled by paragraph (11) of subsection (a) of Code Section 50-8-35;
- (2) The department may specifically authorize governmental services other than human service programs in writing from time to time and for any specified period of time; and
- (3) Regional development centers shall be authorized to provide technical assistance to units of local government in areas of governmental services.

(Code 1981, § 50-8-36, enacted by Ga. L. 1989, p. 1317, § 3.1; Ga. L. 1992, p. 1271, § 1; Ga. L. 1995, p. 1302, § 15.)

**OPINIONS OF THE ATTORNEY GENERAL**

**Delivery of goods and services.** - A Regional Development Center would not be prohibited from performing eligibility certification under the Job Training Partnership Act, 29 U.S.C. § 1501 et seq., inasmuch as the "intake" process merely involves screening applicants for appropriate referral to the organization which will actually conduct the training or delivery of services. 1992 Op. Att'y Gen. No. 92-1.

**A Regional Development Center's authority to contract.** - A Regional Development Center's authority to contract with a nonprofit corporation is limited by the conflict of interest provisions of former O.C.G.A. § 50-8-36(c). 1992 Op. Att'y Gen. No. 92-1.

**The Georgia Planning Act 1989**

**50-8-37. (Effective until July 1, 2009) Review, comment, and recommendation regarding local municipal and county plans; hearings.**

- (a) Each local plan shall be submitted for review, comment, and recommendation to the appropriate regional development center and shall become effective in accordance with this Code section. Each municipality and county within a region shall submit its local plan to the regional development center for that region for review, comment, and recommendation by the regional development center. The center shall maintain all local plans which it receives in this manner in files available for inspection by the public.
- (b) Within ten days after receipt of a local plan, the center shall notify each municipality or county within its region which may be affected by the local plan of the general nature of the plan, the date of its submission, and the identity of the submitting municipality or county. In addition, any local governments contiguous to, or operating within, the submitting municipality or county shall be notified by the center in the same manner.
- (c) Within 15 days after the center gives the notice required by subsection (b) of this Code section, any local government within the region and any other local government which received notice from the regional development center may present, to the regional development center, its views on the local plan in a public meeting or hearing which shall be held in accordance with rules established by the center with prior approval of the department.
- (d) The center shall determine whether the adoption or implementation of the local plan would present any conflict. The center may recommend a modification of the local plan in such a manner as to eliminate any conflict or alleviate any problem or difficulty which such conflict may create. The center's determination shall be in writing, shall be made public, and shall be communicated by written notice given to the municipality or county which submitted the local plan within 15 days after the date of the public meeting or hearing.
- (e) The municipality or county which submitted the local plan may request reconsideration of any recommendation by a center within ten days after the center's recommendation is made public. For purposes of such reconsideration, the center shall schedule, announce, and hold a public hearing within 15 days after receipt of the request for reconsideration. Notice of the time and place of any such public hearing shall be given by the center to all members of the regional development center, in accordance with such procedures as the regional development center may establish, subject to the prior approval of the department. The regional development center shall also give such notice to all affected municipalities and counties and appropriate state regulatory boards and agencies.
- (f) Within ten days after the public hearing, the center shall either continue its recommendations or modify the recommendations. In either case, the center shall make public its determination and shall give written notice of its determination to the municipality or county which submitted the local plan.
- (g) No municipality or county shall take any action to adopt any local plan, or to put into effect any local plan, until 60 days after the date when the municipality or county, as the case may be, submitted the local plan to the center for review, comment, and recommendation, except that any request for reconsideration of any recommendation by a

**The Georgia Planning Act 1989**

center pursuant to subsection (e) of this Code section shall automatically operate to extend the 60 day period to 90 days.

(h) Nothing in this Code section shall limit or compromise the right of the governing authority of a county or municipality to exercise the power of zoning.

(Code 1981, § 50-8-37, enacted by Ga. L. 1989, p. 1317, § 3.1.)

**50-8-38. (Effective until July 1, 2009) Review by center of applications submitted to United States or state or agency thereof.**

A center shall review all applications of municipalities, counties, authorities, commissions, boards, or agencies within the area for a loan or grant from the United States, the state, or any agency thereof if review by a region-wide agency or body is required by federal or state law, rule, or regulation. In each case requiring review, the municipality, county, authority, commission, board, or agency shall, prior to submitting its application to the United States or state or agency thereof, transmit the same to the center for its review. The comments of the center shall then become a part of the application, to be appended thereto when finally submitted for the consideration of the United States, the state, or any agency thereof.

(Code 1981, § 50-8-38, enacted by Ga. L. 1989, p. 1317, § 3.1.)

**50-8-39. (Effective until July 1, 2009) Accounting of funds by center; disclosure; access to documents.**

(a) A center shall keep books of account reflecting all funds received, expended, and administered by the center which shall be independently audited at least once in each fiscal year during which a center functions. Such audit shall be conducted in accordance with generally accepted government auditing standards. The state auditor shall promulgate policies and procedures for procurement of such audit of the financial affairs of a center and shall annually review the audit procurement process to determine compliance with established policies and procedures. The center shall be responsible for the costs associated with such audit. The auditor's report shall be presented to the governing body of each member within the region and to the department. Beginning July 1, 1990, the books of account shall be kept in a standard, uniform format to be determined by the state auditor and the commissioner. Each regional development center shall update its books of account on a quarterly basis and shall present the quarterly update to the commissioner. The department shall conduct at least biennially a performance audit of each regional development center. The department shall provide copies of a performance audit of a center to the chief elected official of each county and municipality within the center's region.

(b) In conducting a performance audit of a center, the department shall be allowed access to all books, records, and documents of the center and all books, records, and documents

**The Georgia Planning Act 1989**

of any nonprofit corporations either created or controlled or caused to be created by the center, to the extent the commissioner deems necessary.

(c)(1) Each annual audit report of a center shall be completed and a copy of the report forwarded to the state auditor within 180 days after the close of the center's fiscal year. In addition to the audit report, the center shall forward to the state auditor, within 30 days after the audit report due date, written comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, the written comments should include a statement describing the reason it is not.

(2) The state auditor shall review the audit report and written comments submitted to his or her office to ensure that they meet the requirements for audits provided for in subsection (a) of this Code section. If the state auditor finds the requirements for audits have not been complied with, the state auditor shall, within 60 days of his or her receipt of the audit or the written comments, notify the center and the auditor who performed the audit and shall submit to them a list of deficiencies to be corrected. A copy of this notification shall also be sent by the state auditor to the chief elected official of each county and municipality within the center's region and to each member of the General Assembly whose senatorial or representative district includes any part of the center's region.

(3) If the state auditor has not received any required audit or written comments by the date specified in paragraph (1) of this subsection, the state auditor shall within 30 days of such date notify the center that the audit has not been received as required by law. A copy of this notification shall also be sent by the state auditor to the chief elected official of each county and municipality within the center's region and to each member of the General Assembly whose senatorial or representative district includes any part of the center's region.

(4) The state auditor, for good cause shown by those centers in which an audit is in the process of being conducted or will promptly be conducted, may waive the requirement for completion of the audit within 180 days. Such waiver shall be for an additional period of not more than 180 days and no such waiver shall be granted for more than two successive years to the same center.

(d) A copy of the report and of any comments made by the state auditor pursuant to paragraph (2) of subsection (c) of this Code section shall be maintained as a public record for public inspection during the regular working hours at the principal office of the center.

(e) Upon a failure, refusal, or neglect to have an annual audit made or a failure to file a copy of the annual audit report with the state auditor or a failure to correct auditing deficiencies noted by the state auditor, the state auditor shall cause a prominent notice to be published in the legal organ of and any other newspapers of general circulation within each county and municipality within the center's region. Such notice shall be a prominently displayed advertisement or news article and shall not be placed in that section of the newspaper where legal notices appear. Such notice shall be published once a week for two consecutive weeks and shall state that the center has failed or refused to file an audit report or to correct auditing deficiencies, as the case may be, for the fiscal

#### **The Georgia Planning Act 1989**

year or years in question. Such notice shall further state that such failure or refusal is in violation of state law.

(f) The state auditor may waive the requirement of correction of auditing deficiencies for a period of one year from the required audit filing date, provided that evidence is presented that substantial progress is being made toward removing the cause of the need for the waiver. No such waiver for the same set of deficiencies shall be granted for more than two successive years to the same center.

(g) Any other provision of this chapter to the contrary notwithstanding, nothing in this chapter shall be construed to require public disclosure of or access to any documents or information relating to loans made by or assigned to the United States Small Business Administration which are exempt from disclosure based upon the federal Privacy Act of 1974, the federal Freedom of Information Act, or the Code of Federal Regulations.

(h) Notwithstanding any other provision of this chapter, neither the state auditor nor the department shall be authorized or required to conduct financial or performance audits of any records or documents relating to loans made by or assigned to the United States Business Administration or any other entity or agency of the United States government if said agency's administrator certifies in writing to the state auditor that said records or documents may not be disclosed to state auditors under applicable federal regulations.

(Code 1981, § 50-8-39, enacted by Ga. L. 1989, p. 1317, § 3.1; Ga. L. 1994, p. 1636, § 7.)

**U.S. Code.** - The federal Privacy Act of 1974, referred to in subsection (g) of this Code section, is codified to 5 U.S.C. § 552a.

The federal Freedom of Information Act, referred to in subsection (g) of this Code section, is codified at 5 U.S.C. § 552.

## **JUDICIAL DECISIONS**

**Performance audits of regional development centers and nonprofit corporations.** - The Department of Community Affairs had statutory authority to conduct performance audits of all nonprofit corporations created by regional development centers and the audits necessarily included authorized access to all of the books and records of the regional development centers and nonprofit corporations created by such centers. *Coastal Ga. Regional Dev. Ctr. v. Higdon*, 263 Ga. 827, 439 S.E.2d 902 (1994).

## **RESEARCH REFERENCES**

**ALR.** - What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 ALR Fed. 571.

### **The Georgia Planning Act 1989**

**50-8-39.1. (Effective until July 1, 2009) Appointment of receiver of assets for protection of creditors upon center's ceasing of operations.**

Upon a center's ceasing operations, the local government members of the center shall, within 30 days of cessation of the center's operations, appoint a receiver of the assets of the center for the protection of creditors. The receiver shall be authorized to marshal, sell, or transfer assets, pay liabilities, and assess counties and municipalities which were members of the center. After the completion of such liquidation, a distribution shall be made to the local government members on a pro rata basis according to the amount of contributions such members made to the center.

(Code 1981, § 50-8-39.1, enacted by Ga. L. 1994, p. 1636, § 8.)

**50-8-40. (Effective until July 1, 2009) Notice of intent to designate area-wide or multicounty agency.**

When federal or state law or regulations require the designation of an area-wide or multicounty public or private corporation, organization, or agency for multicounty delivery of human service programs, the state agency administering such programs shall send a notice of intent to designate such area-wide or multicounty corporation, organization, or agency to units of local government in the area to be affected. The notice shall discuss in general the details of the program and, when applicable, possible local government involvement.

(Code 1981, § 50-8-40, enacted by Ga. L. 1989, p. 1317, § 3.1.)

**50-8-41. (Effective until July 1, 2009) Area planning and development commissions succeeded by regional development centers.**

Each area planning and development commission in existence as of June 30, 1989, shall automatically be succeeded by the regional development center for the same region as of July 1, 1989, and each such regional development center shall be governed, from and after July 1, 1989, by this article. All contractual obligations, obligations to employees, other duties, rights, and benefits of such area planning and development commissions shall automatically become duties, obligations, rights, and benefits of their respective successor regional development centers.

(Code 1981, § 50-8-41, enacted by Ga. L. 1989, p. 1317, § 3.1.)

**The Georgia Planning Act 1989**

**50-8-42. (Effective until July 1, 2009) Remaining powers of metropolitan area planning and development commissions.**

Any metropolitan area planning and development commission, created pursuant to Article 4 of this chapter, shall also serve as the regional development center for the area covered by such metropolitan area planning and development commission. The duties, responsibilities, and functions and the power and authority granted the metropolitan area planning and development commission by law are, and shall be construed to be, cumulative with, and in addition to, the duties, responsibilities, and functions and the power and authority granted regional development centers by law. In the event of any conflict between the provisions of law governing metropolitan planning and development commissions and those governing regional development centers, however, the laws governing metropolitan area planning and development commissions shall control and shall govern the metropolitan area planning and development commission. For example, but without intending to limit the generality of the foregoing statement, the provisions of Code Sections 50-8-84 through 50-8-87, regarding membership of a metropolitan area planning and development commission, terms of officers, quorums, and elections of officers, would govern a metropolitan area planning and development commission instead of the provisions covering the same subject matter under this article.

(Code 1981, § 50-8-42, enacted by Ga. L. 1989, p. 1317, § 3.1.)

**OPINIONS OF THE ATTORNEY GENERAL**

**Participation of county or municipality as member of Atlanta Regional Commission.** - A county or municipality may participate as a member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations governing metropolitan planning organizations while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are obtained. 2004 Op. Att'y Gen. No. 2004-1.

**50-8-43. (Effective until July 1, 2009) Appropriation or loan of funds, facilities, supplies, and equipment by local government entities.**

The governing authorities of the local governmental entities within each regional development center may appropriate or loan their funds, facilities, equipment, and supplies to the regional development center.

(Code 1981, § 50-8-43, enacted by Ga. L. 1989, p. 1317, § 3.1.)

**The Georgia Planning Act 1989**

**50-8-44. (Effective until July 1, 2009) Exemption from taxes.**

Each regional development center exists for nonprofit and public purposes; and it is found and declared that the carrying out of the purposes of each regional development center is exclusively for public benefit and its property is public property. Thus, no regional development center shall be required to pay any state or local ad valorem, sales, use, or income taxes.

(Code 1981, § 50-8-44, enacted by Ga. L. 1989, p. 1317, § 3.1.)

**50-8-45. (Effective until July 1, 2009) Authorized purchases by Department of Administrative Services; commissioner of administrative services to prescribe regulations and standards.**

- (a) The following provisions apply to all regional development centers. The Department of Administrative Services is authorized to permit regional development centers, on an optional basis, to purchase their motor vehicles, material, equipment, services, and supplies through the state and to issue purchase orders for regional development centers for motor vehicles, material, equipment, services, and supplies.
- (b) The regional development centers of this state are authorized to purchase stock from the state's central supply system operated by the Department of Administrative Services.
- (c) The regional development centers of this state are authorized to purchase under state-wide term contracts and price agreements established by the Department of Administrative Services.
- (d) The regional development centers of this state are authorized to receive directly from the Department of Administrative Services personal property declared surplus by the state.
- (e) The commissioner of administrative services shall prescribe regulations necessary for implementation of this Code section and is authorized to establish minimum standards and uniform standard specifications and procedures for the purchase and distribution of motor vehicles, material, equipment, services, and supplies for the regional development centers of this state.

(Code 1981, § 50-8-45, enacted by Ga. L. 1989, p. 1317, § 3.1.)

**OPINIONS OF THE ATTORNEY GENERAL**

**A regional development center may purchase airline tickets** under state-wide contracts established by the Department of Administrative Services with the respective airlines. 1992 Op. Att'y Gen. No. 92-22.

**The Georgia Planning Act 1989**

**50-8-46. (Effective until July 1, 2009) No limits by article on county or municipal zoning power.**

Nothing in this article shall limit or compromise the right of the governing authority of any county or municipality to exercise the power of zoning.

(Code 1981, § 50-8-46, enacted by Ga. L. 1989, p. 1317, § 3.1.)

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**ARTICLE 3**  
**CONFLICTS OF INTEREST IN CONTRACT ADMINISTRATION**

**50-8-60. (For effective date, see note.) Definitions.**

As used in this article, the term:

- (1) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, trust, or other legal entity.
- (2) "Commission" means a regional commission established pursuant to Article 2 of this chapter.
- (3) "Commissioner" means the commissioner of community affairs.
- (4) "Council member" means any member of the council of a regional commission established under Article 2 of this chapter.
- (5) "Employee" means any person who, pursuant to a written or oral contract, is employed by a regional commission or by a nonprofit corporation.
- (6) "Family" means spouse and dependents.
- (7) "Nonprofit corporation" means any nonprofit corporation created or controlled by a regional commission as expressly authorized by law, or as administratively authorized pursuant to subsection (f) of Code Section 50-8-35.
- (8) "Person" means any person, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, or other legal entity.
- (9) "Substantial interest" means the direct or indirect ownership of more than 25 percent of the assets or stock of any business.
- (10) "Transact business" or "transact any business" means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative; to purchase surplus real or personal property on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative; or to obtain loans or loan packaging services on behalf of oneself or any

**The Georgia Planning Act 1989**

third party as an agent, dealer, broker, or representative.

(Code 1981, § 50-8-60, enacted by Ga. L. 1992, p. 1271, § 2; Ga. L. 1993, p. 1374, § 5; Ga. L. 2008, p. 181, § 6/HB 1216.)

**Delayed effective date.** - This Code section, as set out above, becomes effective July 1, 2009. For version of this Code section in effect until July 1, 2009, see the 2008 amendment note.

**The 2008 amendment**, effective July 1, 2009, deleted former paragraph (1), which read: "Board member' means any member of the board of a regional development center established under Article 2 of this chapter."; redesignated former paragraphs (2) through (4) as present paragraphs (1) through (3), respectively; in paragraph (2), substituted "'Commission' means a regional commission established pursuant to Article 2 of this chapter" for "'Center' means a regional development center established under Article 2 of this chapter"; added present paragraph (4); in paragraph (5), substituted "regional commission" for "center"; and, in paragraph (7), substituted "regional commission" for "regional development center" and deleted "paragraph (18) of Code Section 50-8-31 and" preceding "subsection (f)".

#### **50-8-61. Prohibited employment of employee of center or nonprofit corporation; penalties.**

(a) For the purposes of this chapter, when a center or nonprofit corporation administers a contract in which it procures goods or services or makes loans or otherwise directs the expenditure of funds, no employee who is compensated for his or her services by either the center or nonprofit corporation or any member of a board or advisory committee of the center or nonprofit corporation that plays a role in determining such contracts, loans, or procurement decisions shall also serve, during the period of any such contract, loan, or procurement decision, as a board member, officer, independent contractor, or paid employee of the entity contracting with, borrowing from, or otherwise receiving funds from the center or nonprofit corporation.

(b) This Code section shall not preclude an employee of a center from serving, without compensation, as an officer of a nonprofit corporation for the purposes of executing loan transactions; nor shall this Code section preclude a center and any nonprofit corporation that it creates or controls from entering into a contract with the other for the provision of staff services. In addition, this Code section shall not preclude an employee of a private financial institution from serving on a loan review or other advisory committee of a nonprofit corporation even when such financial institution participates in a loan of the nonprofit corporation. Further, this Code section shall not preclude a board member of a center from also serving as a member of a board or advisory committee of a nonprofit corporation created pursuant to paragraph (1) of subsection (f) of Code Section 50-8-35.

(c) Any person who knowingly violates this Code section shall be subject to the penalties provided for in Code Section 50-8-66.

(Code 1981, § 50-8-61, enacted by Ga. L. 1992, p. 1271, § 2; Ga. L. 1993, p. 1374, § 6; Ga. L. 1998, p. 128, § 50.)

#### **The Georgia Planning Act 1989**

## **OPINIONS OF THE ATTORNEY GENERAL**

**Membership on board of contracting corporation.** - A Regional Development Center (RDC) board member may not also serve as a board member of a non-profit corporation created by the RDC, pursuant to former O.C.G.A. § 50-8-35(g)(1), during the period that a contract exists between the two entities. 1993 Op. Att'y Gen. No. 93-1.

### **50-8-62. Employee's business transactions with center or nonprofit corporation prohibited; penalties.**

It shall be unlawful for any employee, any member of an employee's family, or any business in which such employee or member of his family has substantial interest, individually or collectively, to transact any business with either the center or nonprofit corporation by which such employee is employed or affiliated. Any person who knowingly violates this Code section shall be subject to the penalties provided for in Code Section 50-8-66.

(Code 1981, § 50-8-62, enacted by Ga. L. 1992, p. 1271, § 2.)

### **50-8-63. Disclosure of employee's business transactions with local government; exempt transactions; disclosure of loan transactions by member of board or advisory committee; penalties.**

(a) Except as provided in subsection (b) of this Code section, any employee, any member of such employee's family, or any business in which such employee or any member of his family has a substantial interest, individually or collectively, who transacts business with any local government shall disclose such transactions annually. Such disclosures shall be submitted to the board of directors of the center and to the commissioner prior to January 31 each year on such forms as are prescribed by the commissioner. At a minimum, the disclosures shall include an itemized list of the previous year's transactions with the dollar amount of each transaction reported and totaled. Such disclosure statements shall be public records.

(b) The requirement to disclose certain transactions as provided in subsection (a) of this Code section shall not apply to any transaction when the amount of a single transaction does not exceed \$100.00 and when the aggregate of all transactions does not exceed \$2,000.00 per calendar year.

(c) Any member of a board or advisory committee of the center or nonprofit corporation who plays a role in determining loan transactions or any member of such person's family who obtains a loan or loan packaging services from such center or nonprofit corporation shall disclose such transaction at the time of application for such loan or loan packaging

#### **The Georgia Planning Act 1989**

services to the board of directors of the center and to the commissioner. Such disclosure statements shall be public records.

(d) Any person who fails to file a disclosure statement as required in subsections (a) and (c) of this Code section shall be subject to the penalties provided for in Code Section 50-8-66.

(Code 1981, § 50-8-63, enacted by Ga. L. 1992, p. 1271, § 2.)

#### **50-8-64. Competitive bidding requirement.**

On or before January 1, 1993, each center shall develop a system for competitive bidding relating to the purchase of supplies, equipment, and services and the letting of other contracts and submit written procedures governing such systems to the board of directors of the center and to the commissioner. Such procedures must accommodate any applicable fund source requirements relating to procurement and must provide, at a minimum, that contracts let out for bid shall be awarded to the lowest responsible bidder.

(Code 1981, § 50-8-64, enacted by Ga. L. 1992, p. 1271, § 2.)

#### **50-8-65. Annual report to Board of Community Affairs.**

Within 30 days after the completion of its fiscal year, each center shall provide to the Board of Community Affairs a report containing the following information:

- (1) The name and address of each contractor, public or private, with which the center contracted and which received more than a total of \$500.00 from the center; and
- (2) The amount of public funds received by the contractor from the center.

(Code 1981, § 50-8-65, enacted by Ga. L. 1992, p. 1271, § 2.)

#### **50-8-66. Civil fine for violations.**

Any employee who violates Code Section 50-8-61, 50-8-62, or 50-8-63 shall be subject to a civil fine not to exceed \$10,000.00.

(Code 1981, § 50-8-66, enacted by Ga. L. 1992, p. 1271, § 2.)

**50-8-67. (For effective date, see note.) Influence of election of council members prohibited; executive directors of regional commissions prohibited from participation in partisan political activities; adoption of disciplinary measures.**

A member of a regional commission's council or executive director of a regional commission shall not actively or directly attempt to influence the election of persons as members of the council of such regional commission. An executive director of a regional commission shall not participate in any partisan political activities. The council of a regional commission may adopt, as part of its personnel policies, disciplinary measures to be imposed for noncompliance with this Code section.

(Code 1981, § 50-8-67, enacted by Ga. L. 1992, p. 1271, § 2; Ga. L. 1993, p. 1374, § 7; Ga. L. 2008, p. 181, § 7/HB 1216.)

**Delayed effective date.** - This Code section, as set above, becomes effective July 1, 2009. For version of this Code section in effect until July 1, 2009, see the 2008 amendment note.

**The 2008 amendment**, effective July 1, 2009, substituted "regional commission" for "regional development center" throughout this Code section; in the first sentence, substituted "A member of a regional commission's council or executive director of a regional commission" for "A director or chief administrative officer of a regional development center" near the beginning, and substituted "council" for "board" near the end; in the second sentence, substituted "An executive director" for "A director or chief administrative officer"; and, in the third sentence, substituted "The council" for "The board" near the beginning.

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**ARTICLE 4  
METROPOLITAN AREA PLANNING AND DEVELOPMENT  
COMMISSIONS**

**50-8-80. Definitions.**

As used in this article, the term:

(1) "Area" means a standard metropolitan statistical area located wholly within this state as defined by the United States Executive Office of the President, Standard Metropolitan Statistical Area 1967, Part I Criteria, Office of Management and Budget, subject to any changes made by the Board of Community Affairs pursuant to Code Section 50-8-30. No area, county, or municipality may be designated as an "area" and added to this commission and come under the effective operation of this article without the affirmative vote of such area, county, or municipality or its governing body.

(2) "Area plan" means a written proposal that involves governmental action, expenditure of public funds, use of public property, or the exercise of franchise rights granted by any

**The Georgia Planning Act 1989**

public body and which affects the citizens of more than one political subdivision of an area and which may have a substantial effect on the development of an area. Area plans may involve, but shall not be limited to, such matters as land use (not including zoning), water and sewerage systems, storm drainage systems, parks and open spaces, airports, highways and transit facilities, hospitals, public buildings, and other community facilities and services.

(3) "Commission" means a metropolitan area planning and development commission created in accordance with Code Section 50-8-82.

(4) "Development guides" means the comprehensive development guides adopted by a commission in accordance with Code Section 50-8-92.

(5) "District" means a district created pursuant to paragraph (5) of subsection (a) of Code Section 50-8-84.

(6) "Governing body" means the board of commissioners of a county or the mayor and city council of a municipality or other legislative body which governs a county or municipality.

(7) "Members at large" means those members of a commission elected pursuant to paragraph (6) of subsection (a) of Code Section 50-8-84.

(8) "Municipality" means an incorporated municipality of this state lying primarily within the area.

(9) "Political subdivision" means a county or municipality of this state lying wholly or partially within the area.

(10) "Public members" means those members of a commission holding office pursuant to paragraphs (1) through (5) of subsection (a) of Code Section 50-8-84.

(11) "Redistricting" means a redistricting of an area after publication of a United States decennial census in accordance with paragraph (5) of subsection (a) of Code Section 50-8-84.

(Code 1981, § 50-8-80, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1988, p. 1834, § 1; Ga. L. 1997, p. 442, § 1.)

**Cross references.** - Approval by General Assembly of alteration of boundaries of a regional development center, § 50-8-4.

## **OPINIONS OF THE ATTORNEY GENERAL**

**Participation of county or municipality as member of Atlanta Regional Commission.** - A county or municipality may participate as a member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations governing metropolitan planning organizations while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are obtained. 2004 Op. Att'y Gen. No. 2004-1.

## **RESEARCH REFERENCES**

25C Am. Jur. Pleading and Practice Forms, Zoning and Planning, § 2.

### **The Georgia Planning Act 1989**

**50-8-81. (For effective date, see note.) Legislative intent.**

It is in the public interest to create an agency composed of officials of political subdivisions and private citizens to coordinate planning and development within each area of this state having a population of more than 1,000,000 according to the United States decennial census of 1970 or any future such census; to designate the agency as the regional commission under Article 2 of this chapter to make the agency the official metropolitan agency for comprehensive research, study, advice, and review concerning area plans; to improve relationships between political subdivisions and public agencies within areas; and to provide policy direction for the solution of common problems through short and long-range comprehensive planning within areas.

(Code 1981, § 50-8-81, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1989, p. 1317, § 6.22; Ga. L. 2008, p. 181, § 18/HB 1216.)

**Delayed effective date.** - This Code section, as set out above, becomes effective July 1, 2009. For version of this Code section in effect until July 1, 2009, see the 2008 amendment note.

**The 2008 amendment**, effective July 1, 2009, substituted "regional commission" for "regional development center" near the middle of the Code section.

**50-8-82. Creation of metropolitan area planning and development commission; first meeting.**

There is created a metropolitan area planning and development commission in each area of this state having a population of more than 1,000,000 according to the United States decennial census of 1970 or any future such census. The chairman of the county commission of the most populous county in an area so having a population of more than 1,000,000 shall, within ten days after July 1, 1971, or within 30 days after the publication of the first United States decennial census which reports that an area has a population of more than 1,000,000, as the case may be, activate the commission to serve that area by convening a meeting of the members provided for by paragraphs (1) through (4) of subsection (a) of Code Section 50-8-84.

(Code 1981, § 50-8-82, enacted by Ga. L. 1982, p. 2107, § 51.)

**50-8-83. (For effective date, see note.) Powers, duties, and obligations of regional commission.**

A commission shall be, for its area, a regional commission as defined in and with all the powers, duties, and obligations of a regional commission set forth in Article 2 of this chapter and any other law of general application pertaining to regional commissions on July 1, 2009; and in addition shall have all of the other powers, duties, and obligations set

**The Georgia Planning Act 1989**

forth in this article.

(Code 1981, § 50-8-83, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1989, p. 1317, § 6.23; Ga. L. 2008, p. 181, § 8/HB 1216.)

**Delayed effective date.** - This Code section, as set out above, becomes effective July 1, 2009. For version of this Code section in effect until July 1, 2009, see the 2008 amendment note.

**The 2008 amendment,** effective July 1, 2009, substituted "regional commission" for "regional development center" twice; substituted "regional commissions" for "regional development centers"; and substituted "July 1, 2009" for "July 1, 1989".

## **OPINIONS OF THE ATTORNEY GENERAL**

**Participation of county or municipality as member of Atlanta Regional Commission.** - A county or municipality may participate as a member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations governing metropolitan planning organizations while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are obtained. 2004 Op. Att'y Gen. No. 2004-1.

### **50-8-84. Composition of membership of commission; redistricting of areas removed from jurisdiction of existing commission.**

- (a) The members of a commission for an area shall consist of:
- (1) The chairman of the board of commissioners of each county within the area;
  - (2) The mayor of the most populous municipality within the area;
  - (3) From each county within the area, except the most populous county within the area, the mayor of a municipality within such county, to be designated by majority vote of the mayors (except the mayor of the most populous municipality within the area) of all municipalities lying within such county, provided that if the mayors of the municipalities eligible to vote on such matter fail to designate one of their number within 45 days after a vacancy exists, one of their number shall be selected by a majority vote of the county commission of the applicable county;
  - (4) From the most populous county within the area, the mayor of a municipality located within the northern half of such county elected by majority vote of the mayors of all municipalities located within the northern half of such county and the mayor of a municipality located within the southern half of such county elected by a majority vote of the mayors of all municipalities located within the southern half of such county, provided that if the mayors of the municipalities eligible to vote on such matter fail to designate one of their number within 45 days after a vacancy exists, one of their number shall be selected by a majority vote of the county commission of the most populous county in the area;
  - (5) A member of the legislative body of the most populous municipality lying within the area chosen by majority vote of the members of that legislative body; and

#### **The Georgia Planning Act 1989**

(6) Fifteen at-large members not holding elective or appointed public office and not employed by any of the political subdivisions of the area, who shall be elected as follows:

(A) Within ten days after a commission has been activated pursuant to Code Section 50-8-82 and within 90 days after the publication of a subsequent United States decennial census, the members of the General Assembly whose representative or senatorial districts lie wholly or partially within an area shall meet upon call by the Speaker of the House of Representatives and the President of the Senate and shall divide the area into 15 districts. Each district shall contain approximately the same population; shall consist of combinations of contiguous census tracts from the latest available United States decennial census; but may cross the boundary lines of political subdivisions; and

(B) Within ten days after the area has been so divided into districts, the public members of a commission shall meet upon call of the chairman of the county commission of the most populous county within its area and elect one resident of each district as a member of the commission.

(b) Any other provision of this article to the contrary notwithstanding, the General Assembly shall be authorized by local Act to remove any county within an area from the provisions of this article upon the recommendation of a majority of the full membership of the board of commissioners of any such county.

(c) Within 90 days after any area, county, or municipality is added to or removed from the jurisdiction of an existing commission under the provisions of paragraph (1) of Code Section 50-8-80 or subsection (b) of this Code section, the resulting area shall be redistricted and the 15 members at large shall be elected in accordance with paragraph (6) of subsection (a) of this Code section relative to redistricting after a United States decennial census.

(Code 1981, § 50-8-84, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1984, p. 653, § 1; Ga. L. 1988, p. 1834, §§ 2, 3; Ga. L. 1997, p. 442, §§ 2, 3.)

#### **50-8-85. Terms of office; removal from office; filling of vacancies.**

(a) The public members of a commission shall have terms of office concurrent with their respective terms of public office. Members at large of a commission shall serve for a term of four years, except that one-half (or if an odd number of members at large are elected to a commission, a majority of such members at large) shall serve an initial term (either upon activation of a commission or after a redistricting of a commission) of two years as designated by the public members at the time of election; provided, however, that the terms of all members at large shall terminate at the end of any calendar year during which redistricting of the area has occurred.

(b) The full terms of the members at large shall commence on January 1 of the year following the year in which they are elected except that the first members at large of a newly created commission shall have added to their term the period of time commencing with their election until the first January thereafter.

(c) Any member at large who moves his residence outside a district shall be removed from office by the commission. A commission may remove from office any member at

#### **The Georgia Planning Act 1989**

large who has failed to attend the last three or more consecutive regular meetings of the commission. A member at large may be elected to two or more successive terms on a commission. If a member of the commission dies, resigns, is removed from office, or for any other reason ceases to be a member of the commission, his unexpired term shall be filled by the same persons and in the same manner as such member was originally elected to the commission pursuant to Code Section 50-8-84.

(d)(1) Except as provided in paragraph (2) of this subsection, upon the expiration of the term of office of a mayor of a municipality who has been designated by a majority vote of the mayors of all municipalities lying within a county in an area, the chairman of the board of commissioners of such county shall call a meeting of the mayors of all municipalities lying within such county, and such mayors shall designate a mayor from their number as a successor member of the commission, provided that nothing herein shall prevent an incumbent mayor who has been elected to another term of public office from being redesignated as a member of the commission; provided, further, that if the mayors of the municipalities eligible to vote on such matter fail to designate one of their number as a successor member within 45 days after a vacancy exists, one of their number shall be selected by a majority vote of the county commission of the applicable county.

(2) Upon the expiration of the term of office of the mayor of a municipality located within the northern half of the most populous county within an area, the chairman of the board of commissioners shall call a meeting of the mayors of all the municipalities located within the northern half of such county and such mayors shall designate a mayor from their number as a successor member of the commission. Upon the expiration of the term of office of the mayor of a municipality located within the southern half of the most populous county within an area, the chairman of the board of commissioners of such county shall call a meeting of the mayors of all municipalities located within the southern half of such county and such mayors shall designate a mayor from their number as a successor member of the commission. Nothing in this paragraph shall prevent an incumbent mayor who has been elected to another term of office as mayor from being redesignated as a member of the commission. In the event the mayors of the municipalities eligible to vote on such matter fail to designate one of their number as a successor member within 45 days after a vacancy exists, one of their number shall be selected by a majority vote of the county commission of the most populous county in the area.

(Code 1981, § 50-8-85, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1984, p. 653, § 2; Ga. L. 1997, p. 442, § 4.)

#### **50-8-86. Quorum; votes equally weighted.**

A quorum for taking action at a meeting of a commission may be set in such manner as the bylaws of the commission shall provide, but it shall not consist of less than one-half of the total number of authorized members of the commission. The vote of any member of the commission shall be equal to the vote of any other member in considering or acting

#### **The Georgia Planning Act 1989**

upon any question, proposal, or other matter before the commission.

(Code 1981, § 50-8-86, enacted by Ga. L. 1982, p. 2107, § 51.)

**50-8-87. Chairman; election; powers and duties; salary and expense allowances; removal.**

(a) The chairman of a commission shall be elected by the commission from among its members for a two-year term, but no person shall serve as chairman if, after his election to office, he ceases to be a member of the commission. A chairman may succeed himself.

(b) The chairman of a commission shall preside at all meetings of the commission. The chairman shall appoint all officers and committees of the commission, subject to the approval of the commission, and be responsible for carrying out all policy decisions of the commission. The chairman's salary and expense allowances shall be fixed by the commission.

(c) A chairman may be removed from office by the commission.

(Code 1981, § 50-8-87, enacted by Ga. L. 1982, p. 2107, § 51.)

**50-8-88. Election of officers; compensation of officers and members.**

A commission shall elect such officers as it deems necessary for the conduct of its affairs, including a secretary and treasurer, who need not be members of the commission, and shall be compensated as determined by the commission. Each member of a commission, other than the chairman, may be paid a per diem compensation not to exceed \$44.00 for each meeting which he attends and additional compensation for such other services as are specifically authorized by the commission, and may be reimbursed for his actual expenses. No commission member, other than the chairman, shall receive compensation in excess of \$2,400.00 per year.

(Code 1981, § 50-8-88, enacted by Ga. L. 1982, p. 2107, § 51.)

**50-8-89. Executive director; selection and appointment.**

A commission shall appoint an executive director to serve at the pleasure of the commission as the principal operating administrator for the commission. An executive director shall be chosen from among the citizens of the nation at large and shall be selected on the basis of his training and experience.

(Code 1981, § 50-8-89, enacted by Ga. L. 1982, p. 2107, § 51.)

**The Georgia Planning Act 1989**

**50-8-90. Terms of employment of officers, employees, and agents; power to contract with private individuals; officers and employees to be public employees.**

A commission may prescribe the compensation, benefits, and all terms and conditions of employment of its officers, employees, and agents. A commission may contract with private individuals or firms for professional services deemed necessary to carry out its responsibilities under this article. Officers and employees of a commission shall be public employees. Comparability with existing wage classifications, pay plans, and other benefits of political subdivisions in its area shall be considered by a commission when carrying out this Code section.

(Code 1981, § 50-8-90, enacted by Ga. L. 1982, p. 2107, § 51.)

**50-8-91. Establishment of advisory committees; appointment of members; compensation.**

A commission may establish and appoint persons to advisory committees to assist the commission in the performance of its duties. Members of advisory committees shall serve without compensation but may be reimbursed for their reasonable expenses as determined by the commission.

(Code 1981, § 50-8-91, enacted by Ga. L. 1982, p. 2107, § 51.)

**50-8-92. Development guides; contents.**

A commission shall prepare and adopt and from time to time amend, change, or repeal, after appropriate study and such public hearings as may be deemed necessary, comprehensive development guides for its area. The development guides shall consist of policy statements, goals, standards, programs, and maps prescribing an orderly and economic development, public and private, of the area. The development guides shall be based upon and encompass physical, economic, and health needs of the area and shall take into consideration future development which may have an impact on the area including, but not limited to, such matters as land use not including zoning, water and sewerage systems, storm drainage systems, parks and open spaces, land needs and the location of airports, highways, transit facilities, hospitals, public buildings, and other community facilities and services.

(Code 1981, § 50-8-92, enacted by Ga. L. 1982, p. 2107, § 51.)

**50-8-93. Review of area plans; designation as official planning agency; responsibility to carry out assigned or delegated planning functions for an area.**

- (a) It is in the public interest and it is provided by this article that:
- (1) A commission review each area plan prepared for use in an area by a political subdivision or by a public authority, commission, board, utility, or agency;
  - (2) Each commission be designated as the official planning agency for all state and federal programs to be carried out in the area; and
  - (3) A commission carry out such other planning functions for an area as may be assigned or delegated to the commission by other agencies or boards, public or private, and accepted by the commission.
- (b) As set forth in Code Section 50-8-83, a commission shall be the planning and development commission for an area in accordance with Article 2 of this chapter.
- (c) All powers, duties, obligations, and property vested in or imposed upon any metropolitan planning commission in an area are transferred to, imposed upon, and vested in the commission created by this article as the successor of such commission.
- (d) A commission shall be designated for its area as the planning agency under 40 U.S.C.A. Section 461 and 40 U.S.C.A. Section 461(g), as amended, P.L. 89-117 (1965), and P.L. 90-448 (1968); 42 U.S.C.A. Section 3725, P.L. 90-351 (1968); 42 U.S.C.A. Section 246(b), P.L. 89-749, as amended, P.L. 90-174 (1967), and for comprehensive transportation studies required by 23 U.S.C.A. Sections 101, 134, P.L. 87-866 (1962); and 49 U.S.C.A. Section 1601, et seq. P.L. 88-365 (1964), as amended, and supplemented by administrative requirements of the United States Department of Transportation, and any similar law enacted before July 1, 1971. A commission is further granted all of the powers, duties, and authorities necessary to carry out its responsibilities and duties under such laws.
- (e) A commission shall have power and authority to undertake such other planning functions within its area as may be assigned or delegated to the commission by other agencies or boards, public or private, and for which the commission accepts responsibility.

(Code 1981, § 50-8-93, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1998, p. 128, § 50.)

**Code Commission notes.** - Pursuant to Code Section 28-9-5, in 1998, "Sections" was substituted for "Section" preceding "101" in subsection (d).

**U.S. Code.** - 40 U.S.C. § 461, referred to in subsection (d), was repealed in 1981. 42 U.S.C. § 3725, also referred to in subsection (d), has been omitted. 49 U.S.C. § 1601 et seq., also referred to in subsection (d), formerly appeared as 49 U.S.C. App. § 1601 et seq., which was subsequently repealed and is now codified as 49 U.S.C. App. § 5301.

**OPINIONS OF THE ATTORNEY GENERAL**

**Participation of county or municipality as member of Atlanta Regional Commission.** - A county or municipality may participate as a member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations governing metropolitan planning organizations

**The Georgia Planning Act 1989**

while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are obtained. 2004 Op. Att'y Gen. No. 2004-1.

**50-8-94. Submission by municipality and county of area plan; comment and recommendation; public hearing upon request for reconsideration of recommendation.**

(a) Each municipality within an area and each county within an area shall submit to the commission for comment and recommendation thereon every area plan prepared by such municipality or county. The commission shall maintain all area plans in its files available for inspection by members of the public. No action shall be taken by any municipality or county to put an area plan into effect until 60 days have elapsed after its submission to the commission. Within ten days after submission, the commission shall notify each municipality or county which may be affected by the area plan submitted of the general nature of the plan, the date of submission, and the identity of the submitting municipality or county. Political subdivisions contiguous to the submitting municipality or county shall be notified in all cases by the commission. Within 30 days after receipt of such notice, a municipality or county may present its views to the commission.

(b) If, from its own investigation, from the views presented by a municipality or county affected by the area plans submitted, or otherwise, the commission finds that there are any inconsistencies between the area plan and the area's development guides, the commission may recommend modification of the area plan in such manner as to be consistent with the area's guides.

(c) A submitting municipality or county may request reconsideration of any recommendation by a commission at a public hearing. Such public hearing shall be held by the commission within 30 days after receipt of such request. Notice stating the time and place of each public hearing shall be mailed by the secretary of the commission, at least five days prior to the hearing, to the submitting municipality or county, all affected municipalities and counties, appropriate state regulatory boards and agencies, and members of the commission.

(d) Within 30 days after a public hearing, the commission shall make its recommendations known to the submitting municipality or county, the affected municipalities and counties, and appropriate state regulatory boards and agencies.

(e) Nothing in this Code section shall limit or compromise the right of a municipality or county to establish and administer its own zoning laws and regulations.

(Code 1981, § 50-8-94, enacted by Ga. L. 1982, p. 2107, § 51.)

**50-8-95. Submission by public entity of area plan; review; public hearing upon request for reconsideration of recommendation.**

(a) A commission shall review every area plan prepared for use within the area by a public authority, public commission, public board, public utility, or public agency. Each

**The Georgia Planning Act 1989**

such area plan shall be submitted to the commission by the public authority, public commission, public board, public utility, or public agency preparing the plan before any action is taken to put the plan into effect.

(b) No action shall be taken to put any area plan into effect until 60 days have elapsed after its submission to the commission or until the commission finds and notifies the submitting public authority, public commission, public board, public utility, or public agency that the area plan is not inconsistent with its development guides, whichever first occurs. If, within 60 days after the date of submission, the commission finds that an area plan is inconsistent with its development guides, the commission may recommend modification of the area plan or such part thereof in such a manner as to be consistent with its development guides.

(c) A submitting public authority, public commission, public board, public utility, or public agency may request reconsideration of any recommendation of the commission at a public hearing. Such public hearing shall be held by the commission within 30 days of such request. Notice stating the time and place of a public hearing shall be mailed, at least five days prior to the hearing, to the submitting public authority, public commission, public board, public utility, or public agency; all affected municipalities and counties within the area; appropriate state regulatory boards and agencies; and members of the commission.

(d) Within 30 days of such public hearing, the commission shall make its recommendations known to the submitting authority, commission, board, utility, or agency, all affected municipalities and counties in the area, and appropriate state regulatory boards and agencies.

(Code 1981, § 50-8-95, enacted by Ga. L. 1982, p. 2107, § 51.)

**50-8-96. Commission to review all applications of governmental entities for state or federal loan or grant; procedure.**

A commission shall review all applications of municipalities, counties, authorities, commissions, boards, or agencies within the area for a loan or grant from the United States, the State of Georgia, or any agency thereof if review by a region-wide agency or body is required by federal or state law, rule, or regulation. In each case requiring review, the municipality, county, authority, commission, board, or agency shall, prior to submitting its application to the United States or State of Georgia or agency thereof, transmit the same to the commission for its review. The comments of the commission shall then become a part of the application, to be appended thereto when finally submitted for the consideration of the United States, the State of Georgia, or any agency thereof.

(Code 1981, § 50-8-96, enacted by Ga. L. 1982, p. 2107, § 51.)

**The Georgia Planning Act 1989**

**50-8-97. Commission to engage in continuous program of research, study, and planning of matters affecting its area.**

A commission shall engage in a continuous program of research, study, and planning of matters affecting its area including but not limited to:

- (1) Land use;
- (2) Transportation within the area, including highways, railroads, airports, streets, and mass transit;
- (3) The acquisition and financing of facilities for the disposal of solid waste material for the area and the means of financing such facilities;
- (4) The acquisition and financing of storm water drainage facilities for the area and the means of financing such facilities;
- (5) The acquisition and financing of suitable major parks and open spaces within and adjacent to the area;
- (6) The control and prevention of air and water pollution;
- (7) Environmental quality;
- (8) Law enforcement agencies and increased efficiency of the criminal justice systems in the area;
- (9) Planning for the provision of health facilities and services; and
- (10) The feasibility of the consolidation of common services of political subdivisions.

(Code 1981, § 50-8-97, enacted by Ga. L. 1982, p. 2107, § 51.)

**50-8-98. Determination of whether plan is area plan under Code Section 50-8-80; procedure; authorization to adopt bylaws, rules, and regulations.**

- (a) A commission shall have and exercise all power and authority which may be necessary or convenient to enable it to perform and carry out the duties and responsibilities imposed on it by this article.
- (b) A commission shall have the authority to determine whether or not a plan is an area plan as defined by paragraph (2) of Code Section 50-8-80. Any member of the commission, governing body of a political subdivision or public authority, commission, board, utility, or agency whose plans may be area plans may request in writing that the commission determine whether a plan is an area plan as defined in paragraph (2) of Code Section 50-8-80. A commission shall make such determination within 15 days after such request and shall afford the requesting party the right to be heard prior thereto. The determination shall be in writing and shall state the basis therefor.
- (c) A commission shall also be authorized to adopt bylaws and rules and regulations concerning all aspects of its functions and operations. Such bylaws, rules, and regulations shall be determinative and control all matters unless expressly contradicted or forbidden by other provisions of law.

**The Georgia Planning Act 1989**

(Code 1981, § 50-8-98, enacted by Ga. L. 1982, p. 2107, § 51.)

**50-8-99. Authorization to accept gifts, loans, and grants from governments and agencies.**

In carrying out the purposes of this article, a commission shall be authorized to contract with, apply for, and accept gifts, loans, and grants from federal, state, or local governments, public agencies, semipublic agencies, or private agencies, to expend such funds, and to carry out cooperative undertakings or contracts with any such government or agency.

(Code 1981, § 50-8-99, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1983, p. 3, § 39.)

**50-8-99.1. Commission authorized to be contracting agent for certain local governments.**

(a) For purposes of this Code section, the term "participating affected local government" means the governing body of a political subdivision which is or will be affected by a regional public project and which agrees to authorize the commission to act on its behalf as described in this Code section.

(b) In order to more efficiently coordinate and manage the planning, development, implementation, construction, management, and operation of public projects which are regional, rather than purely local, in nature, the commission is authorized pursuant to this Code section to act as the contracting and coordinating agent for the participating affected local governments.

(c) Upon receiving written approval from each participating affected local government, the commission is authorized to act as the sponsor and coordinator of regional public projects. Upon receipt of such approval, the commission shall be authorized to enter into agreements with third parties as agent on behalf of the participating affected local governments. All agreements with third parties related to the planning, development, implementation, construction, management, or operation of the project shall be between the commission as agent for the participating affected local governments and such third parties. Upon contracting with third parties as the project sponsor, the commission shall then enter into subcontracts with the participating affected local governments in order to allocate appropriately the costs and benefits associated with the project, establish obligations and responsibilities of each of the participating affected local governments in connection therewith, delineate the relationships among the parties, and address any other matters which may be necessary or convenient in order to assure the successful completion and operation of the project.

(d) The commission shall not have the power to tax or to incur long-term indebtedness in connection with its authority under this Code section. The commission may make arrangements for the financing of any project described in this Code section if authorized by the participating affected local governments and if any resulting debt thereby created

**The Georgia Planning Act 1989**

is authorized pursuant to the laws and Constitution of this state. Any such financing or credit shall be extended directly to the participating affected local governments, which shall assume all responsibility to repay same. No debt as authorized in this subsection shall be incurred in any manner so as to be a responsibility of an affected government unless that affected government's portion of that debt is first approved by a majority of the voters of such affected government voting in an election called by the governing authority of the affected government in the manner provided for calling and holding other special elections if such debt is required to be so approved pursuant to Article IX, Section V of the Constitution.

(Code 1981, § 50-8-99.1, enacted by Ga. L. 1986, p. 1049, § 1; Ga. L. 1987, p. 3, § 50; Ga. L. 1988, p. 13, § 50.)

**50-8-100. Annual report to General Assembly and to each political subdivision and supporting agency; contents.**

On or before February 1 of each year, a commission shall report to the General Assembly of this state and to each political subdivision and supporting agency within its area. The report shall include:

- (1) A statement of the commission's receipts and expenditures by category for the preceding calendar year;
- (2) A budget for the calendar year during which the report is filed including an outline of its program for such year;
- (3) An explanation of any development guides adopted for the area during the preceding calendar year;
- (4) A listing of all applications for federal moneys made by political subdivisions within the area submitted to the commission for review during the preceding calendar year;
- (5) A listing of area plans of political subdivisions submitted to the commission during the previous calendar year; and
- (6) Recommendations of the commission for legislation affecting the area, including legislation affecting the organization and functions of the commission.

(Code 1981, § 50-8-100, enacted by Ga. L. 1982, p. 2107, § 51.)

**50-8-101. Books of account; annual population estimates; operating funds; annual program and budget.**

(a) A commission shall keep books of account which shall be independently audited at least once in each full calendar year during which a commission functions. The auditor's report shall be presented to the governing body of each political subdivision within the area and to the General Assembly.

**The Georgia Planning Act 1989**

(b) Each year a commission shall make a separate estimate of the number of people who on the first day of April of such year resided within each county within the area and within the most populous municipality lying wholly or partially within the area specified on a county basis if the municipality lies in more than one county. Based on such population estimates, the governing body of each county in the area and of the said most populous municipality lying wholly or partially within the area shall, during the calendar year next following the year in which the population estimates were made, provide the commission with operating funds in the amount of \$5,000.00 or in the amount provided for each such political subdivision in the following schedule, whichever amount is greater:

(1) Every county within the area and the most populous municipality within the area shall each provide the commission with operating expenses of \$2,000.00; and

(2) In addition to the amount required under paragraph (1) of this subsection, every county within the area and the most populous municipality within the area shall each provide the commission with an amount based upon the number of residents of that county or municipality, respectively, and determined as follows:

(A) Each county which has no portion of the most populous municipality within its boundary shall provide an amount determined by multiplying the number of persons residing in that county by the following per resident amounts based upon the appropriate calendar year specified:

2001 .....	80¢
2002 .....	90¢
2003 .....	\$ 1.00

Calendar years subsequent to 2003 in accord with subparagraph (D) of this paragraph.

(B) Each county which has some portion of the most populous municipality within its boundary shall provide an amount determined by multiplying the number of persons residing in the county but outside that most populous municipality by the per resident amount specified for the applicable calendar year under subparagraph (A) of this paragraph and shall also provide an amount determined by multiplying the number of persons residing in the county inside that most populous municipality by the following per resident amounts based upon the appropriate calendar year specified:

2001 .....	32¢
2002 .....	36¢
2003 .....	40¢

Calendar years subsequent to 2003 in accord with subparagraph (D) of this paragraph.

(C) The most populous municipality shall provide an amount determined by multiplying the number of persons residing in the municipality by the following per resident amounts based upon the appropriate calendar year specified:

2001 .....	48¢
2002 .....	54¢

**The Georgia Planning Act 1989**

Calendar years subsequent to 2003 in accord with subparagraph (D) of this paragraph. (D) For calendar years subsequent to 2003, increases in the amounts specified in subparagraphs (A), (B), and (C) of this paragraph shall be based upon increases in the Average Annual Consumer Price Index for All Urban Consumers for the Atlanta Metropolitan Statistical Area, hereafter referred to as CPI-U. Upon approval by the commission, the amount specified for calendar year 2003 in subparagraph (A) of this paragraph shall increase by 10¢ when the latest available CPI-U exceeds 110 percent of the CPI-U for the base year 2001. The commission may also approve additional 10¢ increases in the amount specified in subparagraph (A) of this paragraph whenever the latest available CPI-U exceeds 110 percent of the CPI-U that was the basis for the most recent increase in that amount. Each time the amount in subparagraph (A) of this paragraph increases by 10¢, then the amount in subparagraph (B) of this paragraph shall increase by 04¢ and the amount in subparagraph (C) of this paragraph shall increase by 06¢.

(c) After the first day of April but before the first day of September of each year, a commission shall make the necessary population estimates and compute the amount due from the governing body of each political subdivision in accordance with the formula set forth in subsection (b) of this Code section and certify such population estimates and other data to each such governing body.

(d) Before the fifteenth day of December of each year, a commission shall, at a meeting called for the purpose, adopt a program and budget for the next calendar year. A copy of this program and budget shall be forwarded to each political subdivision and each agency which is expected to contribute to the support of the commission during the next calendar year. If the aggregate amount to be provided by the participating political subdivisions in accordance with the formula set out in subsection (b) of this Code section is greater than is necessary for such budget, the amount to be provided by each political subdivision shall be reduced pro rata and each such political subdivision shall be notified accordingly.

(e) Each political subdivision required to contribute to the support of a commission by subsection (b) of this Code section shall, on or before the first day of each quarter of a calendar year, furnish 25 percent of the total amount to be provided by it during such year unless such political subdivision shall not have adopted its own operating budget by January 1 of such year, in which event it shall immediately after the adopting of its budget furnish the amounts then due to the commission under this Code section.

(f) The governing body of any political subdivision shall have authority during any year to provide funds to a commission in excess of the amount computed in accordance with subsection (b) of this Code section.

(Code 1981, § 50-8-101, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1986, p. 1049, § 2; Ga. L. 1987, p. 555, § 1; Ga. L. 1989, p. 258, § 1; Ga. L. 1992, p. 6, § 50; Ga. L. 2001, p. 870, § 1.)

#### The Georgia Planning Act 1989

**50-8-102. Submission of negative or unfavorable recommendation based upon stale data.**

A commission shall not submit a negative or unfavorable recommendation which is based upon any data which has been accumulated for a period of time in excess of 24 months where more current data is available.

(Code 1981, § 50-8-102, enacted by Ga. L. 1982, p. 2107, § 51.)

**50-8-103. Determination of effective dates of certain Code sections by resolution of commission or by operation of law.**

Notwithstanding any other provision of this article, a commission shall determine by resolution the timing and sequence of the assumption of such duties, powers, and obligations it may have under Code Sections 50-8-88, 50-8-89, and Code Sections 50-8-93 through 50-8-96 and such Code sections shall not become effective until the date specified in such resolution. However, all such Code sections shall become effective on January 1 of the year following the year in which a commission is created.

(Code 1981, § 50-8-103, enacted by Ga. L. 1982, p. 2107, § 51.)

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**ARTICLE 5**  
**RURAL ECONOMIC DEVELOPMENT**

**50-8-120. Short title.**

This article shall be known and may be cited as the "Rural Economic Development Law."

(Code 1981, § 50-8-120, enacted by Ga. L. 1987, p. 1142, § 1.)

**50-8-121. (For effective date, see note.) Rural economic development areas.**

Each regional commission of this state, except the regional commission which is also the metropolitan area planning and development commission provided for in Article 4 of this chapter, shall constitute a rural economic development area for the purposes of this article.

**The Georgia Planning Act 1989**

(Code 1981, § 50-8-121, enacted by Ga. L. 1987, p. 1142, § 1; Ga. L. 1989, p. 1317, § 6.24; Ga. L. 2008, p. 181, § 18/HB 1216.)

**Delayed effective date.** - This Code section, as set out above, becomes effective July 1, 2009. For version of this Code section in effect until July 1, 2009, see the 2008 amendment note.

**The 2008 amendment,** effective July 1, 2009, substituted "regional commission" for "regional development center" twice.

**50-8-122. (For effective date, see note.) Studies for proposed projects.**

(a) (For effective date, see note.) The regional commission of each rural economic development area provided for in Code Section 50-8-121 may conduct a study for proposed major economic development projects within its respective rural economic development area. The study shall utilize the most recent economic information available.

(b) The proposed economic development projects must have a major impact on the economy of the area and particularly on the counties within each such area which have a per capita income of less than 70 percent of the United States average or a level of unemployment which is 35 percent or more higher than the state average.

(c) (For effective date, see note.) Funds for studies provided for in this Code section shall come from funds appropriated to the Department of Community Affairs specifically for such purpose. The department, in consultation with state agencies, local governments, regional commissions, local development organizations, and others, shall establish guidelines for the distribution of funds to carry out the studies provided for in this Code section and shall establish guidelines for the preparation of economic development project studies. Such guidelines shall be approved by the Board of Community Affairs.

(Code 1981, § 50-8-122, enacted by Ga. L. 1987, p. 1142, § 1; Ga. L. 1989, p. 1317, § 6.25; Ga. L. 2008, p. 181, §§ 18, 24/HB 1216.)

**Delayed effective date.** - Subsections (a) and (c), as set out above, become effective July 1, 2009. For version of subsections (a) and (c) in effect until July 1, 2009, see the 2008 amendment note.

**The 2008 amendment,** effective July 1, 2009, in subsection (a), substituted "regional commission" for "regional development center" in the first sentence; and, in subsection (c), substituted "regional commissions" for "regional development centers" in the second sentence.

**50-8-123. (For effective date, see note.) Recommendation, approval, funding, and implementation of projects.**

(a) (For effective date, see note.) Each rural economic development area may submit to the Department of Community Affairs proposed economic development projects by

**The Georgia Planning Act 1989**

January 1, 1989. All proposed projects shall be endorsed by the appropriate local government and shall be evaluated for funding based upon rating and selection criteria prepared by the department in consultation with state agencies, local governments, regional commissions, local development organizations, and others. Such criteria shall be approved by the Board of Community Affairs.

(b) (For effective date, see note.) The department shall be authorized to expend funds available to the department under subsection (c) of this Code section to assist in the implementation of projects approved under the procedures outlined in this Code section. In carrying out the intent of this Code section, the Department of Community Affairs, state agencies, regional commissions, local governments, local development organizations, and other agencies or organizations receiving funding from the department are authorized to incorporate other public or private funds into project budgets needed to assure the feasibility of proposed economic development projects authorized under this article.

(c) The funds necessary to carry out the provisions of this Code section shall come from funds appropriated to the Department of Community Affairs specifically for such purpose.

(Code 1981, § 50-8-123, enacted by Ga. L. 1987, p. 1142, § 1; Ga. L. 1989, p. 1317, § 6.26; Ga. L. 2008, p. 181, § 24/HB 1216.)

**Delayed effective date.** - Subsections (a) and (b), as set out above, become effective July 1, 2009. For version of subsections (a) and (b) in effect until July 1, 2009, see the 2008 amendment note.

**The 2008 amendment,** effective July 1, 2009, substituted "regional commissions" for "regional development centers" in the second sentences of subsections (a) and (b).

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## **CHAPTER 70**

### **COORDINATED AND COMPREHENSIVE PLANNING AND SERVICE DELIVERY BY COUNTIES AND MUNICIPALITIES**

#### **Article 1**

##### **Planning.**

36-70-1. Legislative intent and purpose.

36-70-2. (For effective date, see note.) Definitions.

36-70-3. (For effective date, see note.) Powers of municipalities and counties.

36-70-4. (For effective date, see note.) Municipality and county as members of regional commissions; membership dues; participation in compiling Department of Community Affairs data base.

36-70-5. Effect of chapter on county and municipal zoning powers.

##### **The Georgia Planning Act 1989**

# ARTICLE 1 PLANNING

## **36-70-1. Legislative intent and purpose.**

The local governments of the State of Georgia are of vital importance to the state and its citizens. The state has an essential public interest in promoting, developing, sustaining, and assisting local governments. In addition, the natural resources, environment, and vital areas of the state are of vital importance to the state and its citizens. The state has an essential public interest in protecting and preserving the natural resources, the environment, and the vital areas of the state. The purpose of this article is to provide for local governments to serve these essential public interests of the state by authorizing and promoting the establishment, implementation, and performance of coordinated and comprehensive planning by municipal governments and county governments, and this article shall be construed liberally to achieve that end. This article is enacted pursuant to the authority granted the General Assembly in the Constitution of the State of Georgia, including, but not limited to, the authority provided in Article III, Section VI, Paragraphs I and II(a)(1) and Article IX, Section II, Paragraphs III and IV.

(Code 1981, § 36-70-1, enacted by Ga. L. 1989, p. 1317, § 4.1; Ga. L. 1997, p. 1567, § 1.)

**Law reviews.** - For article, "Georgia Wetlands: Values, Trends, and Legal Status," see 41 Mercer L. Rev. 791 (1990).

## **36-70-2. (For effective date, see note.) Definitions.**

As used in this chapter, the term:

- (1) "Comprehensive plan" means any plan by a county or municipality covering such county or municipality proposed or prepared pursuant to the minimum standards and procedures for preparation of comprehensive plans and for implementation of comprehensive plans established by the department.
- (2) "Coordinated and comprehensive planning" means planning by counties and municipalities undertaken in accordance with the minimum standards and procedures for preparation of plans, for implementation of plans, and for participation in the coordinated and comprehensive planning process, as established by the department.
- (3) "County" means any county of this state.
- (4) "Department" means the Department of Community Affairs of the State of Georgia created pursuant to Article 1 of Chapter 8 of Title 50.
- (5) "Governing authority" or "governing body" means the board of commissioners of a county, sole commissioner of a county, council, commissioners, or other governing authority for a county or municipality.

### **The Georgia Planning Act 1989**

(5.1) "Inactive municipality" means any municipality which has not for a period of three consecutive calendar years carried out any of the following activities:

(A) The levying or collecting of any taxes or fees;

(B) The provision of any of the following governmental services: water; sewage; garbage collection; police protection; fire protection; or library; or

(C) The holding of a municipal election.

(5.2) "Local government" means any county as defined in paragraph (3) of this Code section or any municipality as defined in paragraph (7) of this Code section. The term does not include any school district of this state nor any sheriff, clerk of the superior court, judge of the probate court, or tax commissioner or the office, personnel, or services provided by such elected officials.

(5.3) "Mechanisms" includes, but is not limited to, intergovernmental agreements, ordinances, resolutions, and local Acts of the General Assembly in effect on July 1, 1997, or executed thereafter.

(6) (For effective date, see note.) "Minimum standards and procedures" means the minimum standards and procedures for preparation of comprehensive plans, for implementation of comprehensive plans, and for participation in the coordinated and comprehensive planning process, as established by the department, in accordance with Article 1 of Chapter 8 of Title 50. Minimum standards and procedures shall include any standards and procedures for such purposes prescribed by a regional commission for counties and municipalities within its region and approved in advance by the department.

(7) "Municipality" means any municipal corporation of the state and any consolidated city-county government of the state.

(8) (For effective date, see note.) "Region" means the territorial area within the boundaries of operation for any regional commission, as such boundaries shall be established from time to time by the board of the department.

(9) (For effective date, see note.) "Regional commission" means a regional commission established under Article 2 of Chapter 8 of Title 50.

(Code 1981, § 36-70-2, enacted by Ga. L. 1989, p. 1317, § 4.1; Ga. L. 1992, p. 2056, § 1; Ga. L. 1993, p. 91, § 36; Ga. L. 1997, p. 1567, § 1; Ga. L. 2004, p. 585, § 1; Ga. L. 2008, p. 181, § 16/ HB 1216.)

**Delayed effective date.** - Paragraphs (6), (8), and (9), as set out above, become effective July 1, 2009. For versions of paragraphs (6), (8), and (9) in effect until July 1, 2009, see the 2008 amendment note.

**The 2004 amendment,** effective May 13, 2004, added "nor any sheriff, clerk of the superior court, judge of the probate court, or tax commissioner or the office, personnel, or services provided by such elected officials" at the end of paragraph (5.2).

**The 2008 amendment,** effective July 1, 2009, substituted "commission" for "development center" in the last sentence of paragraph (6), in paragraph (8), and twice in paragraph (9).

#### The Georgia Planning Act 1989

**36-70-3. (For effective date, see note.) Powers of municipalities and counties.**

The governing bodies of municipalities and counties are authorized:

- (1) To develop, or to cause to be developed pursuant to a contract or other arrangement approved by the governing body, a comprehensive plan;
- (2) To develop, establish, and implement land use regulations which are consistent with the comprehensive plan of the municipality or county, as the case may be;
- (3) To develop, establish, and implement a plan for capital improvements which conforms to minimum standards and procedures and to make any capital improvements plan a part of the comprehensive plan of the municipality or county, as the case may be;
- (4) (For effective date, see note.) To employ personnel, or to enter into contracts with a regional commission or other public or private entity, to assist the municipality or county in developing, establishing, and implementing its comprehensive plan;
- (5) To contract with one or more counties or municipalities, or both, for assistance in developing, establishing, and implementing a comprehensive plan, regardless of whether the contract is to obtain such assistance or to provide such assistance; and
- (6) To take all action necessary or desirable to further the policy of the state for coordinated and comprehensive planning, without regard for whether any such action is specifically mentioned in this article or is otherwise specifically granted by law.

(Code 1981, § 36-70-3, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 2008, p. 181, § 16/HB 1216.)

**Delayed effective date.** - Paragraph (4), as set out above, becomes effective July 1, 2009. For version of paragraph (4) in effect until July 1, 2009, see the 2008 amendment note.

**The 2008 amendment,** effective July 1, 2009, substituted "regional commission" for "regional development center" in paragraph (4).

**36-70-4. (For effective date, see note.) Municipality and county as members of regional commissions; membership dues; participation in compiling Department of Community Affairs data base.**

- (a) (For effective date, see note.) Each municipality and county shall automatically be a member of the regional commission for the region which includes such municipality or county, as the case may be.
- (b) (For effective date, see note.) Each municipality and county shall pay, when and as they become due, the annual dues required for membership in its regional commission.
- (c) Each municipality and county shall participate in compiling a Georgia data base and network, coordinated by the department, to serve as a comprehensive source of information available, in an accessible form, to local governments and state agencies.

**The Georgia Planning Act 1989**

(Code 1981, § 36-70-4, enacted by Ga. L. 1989, p. 1317, § 4.1; Ga. L. 1997, p. 1567, § 1; Ga. L. 2008, p. 181, § 16/HB 1216.)

**Delayed effective date.** - Subsections (a) and (b), as set out above, become effective July 1, 2009. For versions of subsections (a) and (b) in effect until July 1, 2009, see the 2008 amendment note.

**The 2008 amendment,** effective July 1, 2009, substituted "regional commission" for "regional development center" in subsections (a) and (b).

### **36-70-5. Effect of chapter on county and municipal zoning powers.**

(a) Except as provided in subsection (b) of this Code section, nothing in this article shall limit or compromise the right of the governing body of any county or municipality to exercise the power of zoning.

(b) Any municipality which is as of April 17, 1992, an inactive municipality shall not on or after April 17, 1992, exercise any powers under this article or exercise any zoning powers, until and unless the municipality is restored to active status by the enactment of an appropriate new or amended charter by local Act of the General Assembly. Any municipality which becomes an inactive municipality after April 17, 1992, shall not after becoming inactive exercise powers under this article or exercise any zoning powers, until and unless the municipality is restored to active status by the enactment of an appropriate new or amended charter by local Act of the General Assembly.

(c) Any county which has located within its boundaries all or any part of any inactive municipality shall have full authority to exercise through its governing body all planning and zoning powers within the area of such inactive municipality within the county, in the same manner as if such area were an unincorporated area.

(Code 1981, § 36-70-5, enacted by Ga. L. 1989, p. 1317, § 4.1; Ga. L. 1992, p. 2056, § 2; Ga. L. 1993, p. 91, § 36; Ga. L. 1997, p. 1567, § 1.)

**Code Commission notes.** - Pursuant to Code Section 28-9-5, in 1992, "April 17, 1992" was substituted for "the effective date of this subsection" in three places in subsection (b).

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### **12-2-8. Promulgation of minimum standards and procedures for protection of natural resources, environment, and vital areas of state; stream and reservoir buffers.**

(a) The local governments of the State of Georgia are of vital importance to the state and its citizens. The state has an essential public interest in promoting, developing, sustaining, and assisting local governments. The natural resources, environment, and vital areas of the state are also of vital importance to the state and its citizens. The state has an essential

#### **The Georgia Planning Act 1989**

public interest in establishing minimum standards for land use in order to protect and preserve its natural resources, environment, and vital areas. The purpose of this Code section is to provide for the department to serve these essential public interests of the state. This Code section shall be liberally construed to achieve its purpose. This Code section is enacted pursuant to the authority granted the General Assembly in the Constitution of the State of Georgia, including, but not limited to, the authority provided in Article III, Section VI, Paragraphs I and II(a)(1) and Article IX, Section II, Paragraphs III and IV.

(b) The department is therefore authorized to develop minimum standards and procedures, in accordance with paragraph (2) of subsection (b) of Code Section 50-8-7.1 and in accordance with the procedures provided in Code Section 50-8-7.2 for the promulgation of minimum standards and procedures, for the protection of the natural resources, environment, and vital areas of the state, including, but not limited to, the protection of mountains, the protection of river corridors, the protection of watersheds of streams and reservoirs which are to be used for public water supply, for the protection of the purity of ground water, and for the protection of wetlands, which minimum standards and procedures shall be used by local governments in developing, preparing, and implementing their comprehensive plans as that term is defined in paragraph (3) of subsection (a) of Code Section 50-8-2.

(c) As used in this Code section, the term:

(1) "Land-disturbing activity" means any grading, scraping, excavating, or filling of land; clearing of vegetation; and any construction, rebuilding, or alteration of a structure. Land-disturbing activity shall not include activities such as ordinary maintenance and landscaping operations, individual home gardens, yard and grounds upkeep, repairs, additions or minor modifications to a single-family residence, and the cutting of firewood for personal use.

(2) "Mountain" or "protected mountain" means all land area 2,200 feet or more above mean sea level that has a percentage slope of 25 percent or greater for at least 500 feet horizontally and shall include the crests, summits, and ridge tops which lie at elevations higher than any such area.

(3) "River corridor" means all land not regulated under Code Sections 12-5-440 through 12-5-457, and Part 4 of Article 4 of Chapter 5 of this title, the "Coastal Marshlands Protection Act of 1970," in the areas of a perennial stream or watercourse with an average annual flow of at least 400 cubic feet per second as defined by the United States Geologic Survey and being within 100 feet on both sides of the river as measured from the river banks at mean high water.

(d) The minimum standards and procedures for watershed protection referred to in subsection (b) of this Code section shall specifically include, but shall not be limited to, buffer areas along streams and reservoirs, land development densities, and land use activities. The department may adopt differing minimum standards and procedures of watershed protection based on the size of the watershed, the size or flow volume of the stream or reservoir, and whether or not the actual use of the municipal water supply is existing or proposed.

(e) The minimum standards and procedures for protection of ground water referred to in subsection (b) of this Code section shall also specifically include, but shall not be limited to, land use activities and development densities for the protection of ground water. The

#### **The Georgia Planning Act 1989**

department may adopt differing minimum standards and procedures for ground-water purity protection based on the relative sizes, depths, and water volumes of various aquifers and based on the relative susceptibility of ground water to contamination by various land use activities and development densities.

(f) The minimum standards and procedures for protection of wetlands referred to in subsection (b) of this Code section shall include, but shall not be limited to, land use activities, land development densities, and activities which involve alteration of wetlands. The department may adopt differing minimum standards and procedures for wetlands protection based on the size or type of wetlands, the need to protect endangered or protected species or other unusual resources, and the need for a particular land use activity which will affect a wetland.

(g) The department shall, by January 1, 1992, promulgate the minimum standards and procedures for protection of river corridors referred to in subsection (b) of this Code section including, but not limited to, regulated activities within river corridor areas. In promulgating such standards, the department may classify river corridor areas and activities by type, size, and other factors relevant to the advancement of the policies and purposes of this Code section. Such standards shall include, but are not limited to, the following:

(1) Perennial river corridors shall be protected by the following criteria:

(A) A natural vegetative buffer area shall be maintained for a distance of 100 feet on both sides of the stream as measured from the stream banks; provided, however, that nothing in such standards shall prohibit or be construed to prohibit the building of a single-family dwelling, including the usual appurtenances thereto, within said area subject to the following conditions: (i) such dwelling must be in compliance with all other local zoning regulations; (ii) a septic tank or tanks serving such dwelling may be located in said area but the drainfield for any such tank or tanks must be outside said area; and (iii) any such dwelling must be located on a tract containing at least two acres of land and there shall be only one such dwelling on each such two-acre or larger tract; and

(B) Except as expressly provided otherwise in subparagraph (A) of this paragraph, septic tanks and septic tank drainfields are prohibited within such set-back area; and

(C) Such criteria shall provide for encroachments into the buffer area as needed for the construction of public roads and public utility crossings of river corridors and must meet all applicable requirements of Chapter 7 of this title, the "Erosion and Sedimentation Act of 1975," and of any applicable local ordinances on soil erosion and sedimentation control.

(2) Local governments shall identify existing river corridors and shall adopt river corridor protection plans as part of their planning process. Local governments may exempt from the planning process:

(A) Land uses existing prior to the promulgation of a river corridor protection plan from the criteria of the river corridor protection plan;

(B) Mining activities permitted by the Department of Natural Resources pursuant to Part 3 of Article 2 of Chapter 4 of this title, the "Georgia Surface Mining Act of 1968," from the criteria of the river corridor protection plan; and

(C) Utilities from the buffer and set-back area criteria of the river corridor protection plan if such utilities cannot feasibly be located outside of such areas, provided:

(i) The utilities shall be located as far from the stream bank as reasonably possible;

#### **The Georgia Planning Act 1989**

- (ii) The installation and maintenance of the utilities shall be such as to protect the integrity of the buffer and set-back areas as well as is reasonably possible; and
- (iii) The utilities shall not impair the drinking quality of the stream water; and
- (D) Specific forestry and agricultural activities from buffer and set-back criteria in accordance with the following conditions:
  - (i) The activity shall be consistent with the best management practices established by the Georgia Forestry Commission or the State Soil and Water Conservation Commission; and
  - (ii) The activity shall not impair the drinking quality of the stream water as defined by the federal Clean Water Act of 1977 (P.L. 95-217);
- (3) River corridors shall be appropriately identified and mapped in the land use plans developed by local and regional governments. Such land use plans shall address, at a minimum, the following considerations with regard to river corridors:
  - (A) Whether the impact the land use plan has on an area would adversely affect the public health, safety, welfare, or the property of others;
  - (B) Whether the area is unique or significant in the conservation and movement of flora and fauna including threatened, rare, or endangered species;
  - (C) Whether alteration or the effects of alteration to river corridors will adversely affect the function, including the flow or quality of water, cause erosion or shoaling, or have an adverse impact on navigation;
  - (D) Whether modification or the effects of modification by a project would adversely affect fishing or recreational use of river corridors;
  - (E) Whether an alteration or the effects of alteration would be temporary in nature;
  - (F) Whether the project contains significant state historical and archeological resources, defined as "Properties on or Eligible for the National Register of Historic Places"; and
  - (G) Whether alteration of river corridors would have a measurably adverse impact on adjacent sensitive natural areas;
- (4) (A) Land use plans shall provide the following acceptable uses of river corridors without long-term impairment of functions:
  - (i) Timber production and harvesting;
  - (ii) Wildlife and fisheries management;
  - (iii) Waste-water treatment;
  - (iv) Recreation;
  - (v) Natural water quality treatment or purification;
  - (vi) Agriculture production and management; and
  - (vii) Other uses including those permitted by the Department of Natural Resources or under Section 404 of the Federal Water Pollution Control Act as amended by the federal Clean Water Act of 1977 (P.L. 95-217).
  - (B) The following uses shall not be acceptable:
    - (i) Receiving areas for toxic or hazardous waste or other contaminants;
    - (ii) Hazardous or sanitary waste landfills; and
    - (iii) Other uses unapproved by local governments;
- (5) The provisions of this subsection shall apply to each local government which contains within its boundaries any river corridor.
- (h) The department shall, by January 1, 1992, promulgate the minimum standards and procedures for protection of mountains referred to in subsection (b) of this Code section

**The Georgia Planning Act 1989**

including, but not limited to, land-disturbing activities within protected mountain areas. Such standards shall include, but are not limited to:

- (1) The proposed land-disturbing activity must meet all applicable requirements of Chapter 7 of this title, the "Erosion and Sedimentation Act of 1975," and of any applicable local ordinances on soil erosion and sedimentation control;
- (2) Where one or more septic tanks are to be used for individual sewage disposal, the proposed land-disturbing activity must meet all applicable requirements imposed by the local governing authority;
- (3) Where one or more wells are to be used for individual water supply, the proposed land-disturbing activity must meet all applicable requirements of Part 3 of Article 3 of Chapter 5 of this title, the "Water Well Standards Act of 1985," the requirements of the rules and regulations of the Department of Human Resources regarding individual or nonpublic wells, and any more stringent requirements imposed by the local governing authority;
- (4) If sewage treatment is to be provided by any means other than one or more individual septic tanks, the sewage treatment must meet all applicable requirements of Article 2 of Chapter 5 of this title, the "Georgia Water Quality Control Act";
- (5) If a public water supply system is to be provided, the water supply system must meet all applicable requirements of Part 5 of Article 3 of Chapter 5 of this title, the "Georgia Safe Drinking Water Act of 1977";
- (6) No single-family residences may be constructed at a density of more than one per acre, but no such acre shall be less than 100 feet wide at the building site, except that this density restriction shall not apply to:
  - (A) Any lot of less than one acre if such lot was as of July 1, 1991, owned and described as a discrete parcel of real property according to the instrument of title of the person or persons owning the lot on July 1, 1991; or such lot was as of July 1, 1991, shown as a discrete parcel of real property on a plat of survey properly recorded in the real property records of the clerk of superior court by the person or persons owning the lot on July 1, 1991; or
  - (B) Any land or part of any land which was contained in or subject to any master plan, planned unit development, special approved development plan, or any other development plan if such plan was filed with and approved by the local governing authority prior to July 1, 1991, pursuant to a duly enacted planning and zoning ordinance; provided, further, that any such planning and zoning ordinance must have provided for rules and procedures and governed lot sizes, density, types of buildings, and other limitations usually associated with the implementation of local zoning ordinances;
- (7) No multifamily residences may be constructed at a density of more than four dwelling units per acre, except where there is a public water supply and sewerage system available to this property then the density may be increased to no more than six dwelling units per acre, but no such acre shall be less than 100 feet wide at the building site;
- (8) Any application for a building permit to construct a commercial structure shall contain a detailed landscaping plan. Such landscaping plan shall identify all trees which are to be removed that exceed eight inches in diameter as measured at a point on such tree four and one-half feet above the surface of the ground and shall contain a plan for replacement of any such trees that are removed. Such application shall also include a topographical survey of the project site and an assessment of the impact that the project

#### **The Georgia Planning Act 1989**

will have on the environment of the protected mountain after it has been completed and is in operation. Nothing in this paragraph shall be construed to require commercial structures to comply with the density provision of paragraphs (6) and (7) of this subsection;

(9) No structure may extend more than 40 feet, as measured from the highest point at which the foundation of such structure intersects the ground, above the uppermost point of the crest, summit, or ridge top of the protected mountain on which the structure is constructed; provided, however, that this height restriction shall not apply to water, radio, or television towers or any equipment for the transmission of electricity or to minor vertical projections of a parent building, including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires, or windmills; and

(10) No person engaging in land-disturbing activity shall remove more than 50 percent of the existing trees which exceed eight inches in diameter as measured at a point on such tree four and one-half feet above the surface of the ground unless such person has filed with the application a plan of reforestation developed by a registered forester.

(Code 1981, § 12-2-8, enacted by Ga. L. 1989, p. 1317, § 5.1; Ga. L. 1991, p. 1719, § 1; Ga. L. 1992, p. 6, § 12; Ga. L. 1993, p. 91, § 12.)

**Cross references.** - Stream buffers, §§ 12-5-451, 12-5-453, 12-5-582, 12-7-6.

**Code Commission notes.** - Pursuant to Code Section 28-9-5, in 1991, "minimum" was substituted for "mimumum" in the first sentence of subsection (g).

Pursuant to Code Section 28-9-5, in 1992, "two-acre" was substituted for "two acre" in subparagraph (g)(1)(A).

Pursuant to Code Section 28-9-5, in 1996, "State Soil and Water Conservation Commission" was substituted for "Georgia Soil and Water Conservation Commission" in division (g)(2)(D)(i).

**Editor's notes.** - By resolution (Ga. L. 1990, p. 406), the General Assembly ratified the initial minimum standards and procedures for the protection of the natural resources, environment, and vital areas of the state adopted by the Department and Board of Natural Resources on December 6, 1989.

**Law reviews.** - For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 11 (1992).

## RESEARCH REFERENCES

**ALR.** - Actions brought under Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act)(33 USCA § 1251 et seq.) - Supreme Court cases, 163 ALR Fed. 531.

### **2-6-28. (For effective date, see note.) Number and boundaries of soil and water conservation districts; alteration of existing districts or formation of new districts.**

(a) The number and geographical boundaries of the several soil and water conservation districts shall remain as they existed on July 1, 1973, unless changed as provided in this Code section.

#### **The Georgia Planning Act 1989**

(b) (For effective date, see note.) If two-thirds of the supervisors within each of the affected districts, each of the governing authorities of each county within any affected district, and the State Soil and Water Conservation Commission agree to the alteration of any district or the formation of any new district, the alteration or formation may be effected if all such approvals are filed with the commission along with the description of the altered boundaries or the boundaries of the new districts. The alteration of existing districts or formation of new districts may not be effected so that the boundaries of any such district will traverse the boundaries of any regional commission within the district or districts. All of the property and assets of any altered district shall be distributed among the affected districts in accordance to the same ratio used in the distribution of state appropriated funds to the affected districts.

(Ga. L. 1937, p. 377, § 5; Ga. L. 1973, p. 929, § 2; Ga. L. 1988, p. 269, § 7; Ga. L. 1989, p. 1317, § 6.1; Ga. L. 2008, p. 181, § 11/HB 1216.)

**Delayed effective date.** - Subsection (b), as set out above, becomes effective July 1, 2009. For version of subsection (b) in effect until July 1, 2009, see the 2008 amendment note.

**The 2008 amendment,** effective July 1, 2009, substituted "regional commission" for "regional development center" in the second sentence of subsection (b).

**Code Commission notes.** - Pursuant to Code Section 28-9-5, in 1988, the hyphen in "state appropriated" near the end of subsection (b) was deleted.

## **OPINIONS OF THE ATTORNEY GENERAL**

**Federal funds finance construction of watershed projects.** - The local soil and water conservation districts carry out the construction of watershed projects financed in whole or in part by federal funds. 1975 Op. Att'y Gen. No. 75-29.

### **The Georgia Planning Act 1989**