

The Senate Committee on Judiciary offered the following substitute to HB 1405:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local governments,
2 so as to revise "The Zoning Procedures Law"; to revise provisions related to judicial review
3 of zoning decisions; to revise definitions; to provide for requirements for zoning decisions
4 by boards or agencies using delegated powers; to require review procedures for decisions
5 made by boards or agencies using delegated powers; to provide for judicial review of zoning
6 decisions; to require certain designations relating to appeals of quasi-judicial decisions; to
7 provide for related matters; to provide for an effective date and applicability; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Title 36 of the Official Code of Georgia Annotated, relating to local governments, is
12 amended by revising Chapter 66, relating to zoning procedures, as follows:

13 "CHAPTER 66

14 36-66-1.

15 This chapter shall be known and may be cited as ~~"The Zoning~~ the 'Zoning Procedures Law.'

16 36-66-2.

17 (a) While recognizing and confirming the authority of local governments to exercise
18 zoning power within their respective territorial boundaries, it is the intention of this chapter
19 to establish as state policy minimum procedures governing the exercise and means of
20 judicial review of the exercise of that power. The purpose of these minimum procedures
21 is to assure that due process is afforded to the general public when local governments
22 regulate the uses of property through the exercise of the zoning power. Nothing in this
23 chapter shall be construed to invalidate any zoning decision made by a local government
24 prior to ~~January 1, 1986~~ July 1, 2023, or to require a local government to exercise its
25 zoning power.

26 (b) Consistent with the minimum procedures required by this chapter, local governments
27 may:

28 (1) Provide by ordinance or resolution for such administrative officers, ~~bodies~~ boards,
29 or agencies as may be expedient for the efficient exercise of ~~their~~ delegated,
30 quasi-judicial zoning powers and to establish procedures and notice requirements for
31 hearings before such quasi-judicial officers, boards, or agencies that are consistent with
32 the minimum procedures provided for in this chapter to assure due process is afforded the
33 general public; and

34 (2) Provide by ordinance or resolution for procedures and requirements in addition to or
35 supplemental to those required by this chapter and, where so adopted, thereby establish
36 the minimum procedures for such local government's exercise of zoning powers.

37 36-66-3.

38 As used in this chapter, the term:

39 (1) 'Local government' means any county or municipality which exercises zoning power
40 within its territorial boundaries.

41 (1.1) 'Quasi-judicial officers, boards, or agencies' means an officer, board, or agency
42 appointed by a local government to exercise delegated, quasi-judicial zoning powers
43 including hearing appeals of administrative decisions by such officers, boards, or
44 agencies and hearing and rendering decisions on applications for variances, special
45 administrative permits, special exceptions, conditional use permits, or other similar
46 permits not enumerated herein as a zoning decision, pursuant to standards for the exercise
47 of such quasi-judicial authority adopted by a local government.

48 (2) 'Territorial boundaries' means, in the case of counties, the unincorporated areas
49 thereof and any area defined in paragraph (5.1) of Code Section 36-70-2, and, in the case
50 of municipalities, the area lying within the corporate limits thereof except any area
51 defined in paragraph (5.1) of Code Section 36-70-2.

52 (3) 'Zoning' means the power of local governments to provide within their respective
53 territorial boundaries for the zoning or districting of property for various uses and the
54 prohibition of other or different uses within such zones or districts and for the regulation
55 of development and the improvement of real estate within such zones or districts in
56 accordance with the uses of property for which such zones or districts were established.

57 (4) 'Zoning decision' means final legislative action by a local government which results
58 in:

59 (A) The adoption or repeal of a zoning ordinance;

60 (B) The adoption of an amendment to a zoning ordinance which changes the text of the
61 zoning ordinance;

62 (C) The adoption or denial of an amendment to a zoning ordinance ~~which rezones to~~
63 rezone property from one zoning classification to another;

64 (D) The adoption or denial of an amendment to a zoning ordinance by a municipal
65 local government ~~which zones to zone~~ property to be annexed into the municipality; ~~or~~

66 (E) The grant or denial of a permit relating to a special use of property;

67 (F) The grant or denial of a variance or conditions concurrent and in conjunction with
68 a decision pursuant to subparagraphs (C) or (E) of this paragraph.

69 (5) 'Zoning ordinance' means an ordinance or resolution of a local government
70 establishing procedures and zones or districts within its respective territorial boundaries
71 which regulate the uses and development standards of property within such zones or
72 districts. The term also includes the zoning map adopted in conjunction with a zoning
73 ordinance which shows the zones and districts and zoning classifications of property
74 therein.

75 36-66-4.

76 (a) A local government taking action resulting in a zoning decision shall provide for a
77 hearing on the proposed action. Where the proposed action includes any combination of
78 zoning decisions under subparagraphs (C), (E), or (F) of paragraph (4) of Code Section
79 36-66-3 for the same property, only one hearing shall be required under this Code Section.

80 At least 15 but not more than 45 days prior to the date of the hearing, the local government
81 shall cause to be published within a newspaper of general circulation within the territorial
82 boundaries of the local government a notice of the hearing. The notice shall state the time,
83 place, and purpose of the hearing.

84 (b) If a zoning decision of a local government is for the rezoning of property and the
85 rezoning is initiated by a party other than the local government, then:

86 (1) The notice, in addition to the requirements of subsection (a) of this Code section,
87 shall include the location of the property, the present zoning classification of the property,
88 and the proposed zoning classification of the property; and

89 (2) A sign containing information required by local ordinance or resolution shall be
90 placed in a conspicuous location on the property not less than 15 days prior to the date
91 of the hearing.

92 (c) If the zoning decision of a local government is for the rezoning of property and the
93 amendment to the zoning ordinance to accomplish the rezoning is defeated by the local
94 government, then the same property may not again be considered for rezoning until the
95 expiration of at least six months immediately following the defeat of the rezoning by the
96 local government.

97 (d) If the zoning is for property to be annexed into a municipality, then:

98 (1) Such municipal local government shall complete the procedures required by this
99 chapter for such zoning, except for the final vote of the municipal governing authority,
100 prior to adoption of the annexation ordinance or resolution or the effective date of any
101 local Act but no sooner than the date the notice of the proposed annexation is provided
102 to the governing authority of the county as required under Code Section 36-36-6;

103 (2) The hearing required by subsection (a) of this Code section shall be conducted prior
104 to the annexation of the subject property into the municipality;

105 (3) In addition to the other notice requirements of this Code section, the municipality
106 shall cause to be published within a newspaper of general circulation within the territorial
107 boundaries of the county wherein the property to be annexed is located a notice of the
108 hearing as required under the provisions of subsection (a) or (b), as applicable, of this
109 Code section and shall place a sign on the property when required by subsection (b) of
110 this Code section; and

111 (4) The zoning classification approved by the municipality following the hearing
112 required by this Code section shall become effective on the later of:

113 (A) The date the zoning is approved by the municipality;

114 (B) The date that the annexation becomes effective pursuant to Code Section 36-36-2;
115 or

116 (C) Where a county has interposed an objection pursuant to Code Section 36-36-11,
117 the date provided for in paragraph (8) of subsection (c) of said Code section.

118 (e) A qualified municipality into which property has been annexed may provide, by the
119 adoption of a zoning ordinance, that all annexed property shall be zoned by the
120 municipality, without further action, for the same use for which that property was zoned
121 immediately prior to such annexation. A qualified county which includes property which
122 has been deannexed by a municipality may provide, by the adoption of a zoning ordinance,
123 that all deannexed property shall be zoned by the county, without further action, for the
124 same use for which that property was zoned immediately prior to such deannexation. A
125 municipality shall be a qualified municipality only if the municipality and the county in
126 which is located the property annexed into such municipality have a common zoning
127 ordinance with respect to zoning classifications. A county shall be a qualified county only
128 if that county and the municipality in which was located the property deannexed have a
129 common zoning ordinance with respect to zoning classifications. A zoning ordinance
130 authorized by this subsection shall be adopted in compliance with the other provisions of
131 this chapter. The operation of such ordinance to zone property which is annexed or
132 deannexed shall not require any further action by the adopting municipality, adopting
133 county, or owner of the property annexed or deannexed. Property which is zoned pursuant
134 to this subsection may have such zoning classification changed upon compliance with the
135 other provisions of this chapter.

136 (f) When a proposed zoning decision relates to or will allow the location or relocation of
137 a halfway house, drug rehabilitation center, or other facility for treatment of drug
138 dependency, a public hearing shall be held on the proposed action. Such public hearing
139 shall be held at least six months and not more than nine months prior to the date of final
140 action on the zoning decision. The hearing required by this subsection shall be in addition
141 to any hearing required under subsection (a) of this Code section. The local government
142 shall give notice of such hearing by:

143 (1) Posting notice on the affected premises in the manner prescribed by subsection (b)
144 of this Code section; and

145 (2) Publishing in a newspaper of general circulation within the territorial boundaries of
146 the local government a notice of the hearing at least 15 days and not more than 45 days
147 prior to the date of the hearing.

148 Both the posted notice and the published notice shall include a prominent statement that
149 the proposed zoning decision relates to or will allow the location or relocation of a halfway
150 house, drug rehabilitation center, or other facility for treatment of drug dependency. The
151 published notice shall be at least six column inches in size and shall not be located in the
152 classified advertising section of the newspaper.

153 (g) A local government delegating decision-making power to a quasi-judicial officer,
154 board, or agency shall provide for a hearing on each proposed action described in
155 paragraph (1.1) of Code Section 36-66-3. Notice of such hearing shall be provided at
156 least 30 days prior to the quasi-judicial hearing, with such notice being made as provided
157 for in subsection (a) of this Code section and with additional notice being mailed to the
158 owner of the property that is the subject of the proposed action.

159 36-66-5.

160 (a) Local governments shall adopt policies and procedures which govern calling and
161 conducting hearings required by Code Section 36-66-4, and printed copies of such policies
162 and procedures shall be available for distribution to the general public. Such policies and
163 procedures shall specify a minimum time period at hearings on proposed zoning decisions
164 or quasi-judicial decisions for presentation of data, evidence, and opinion by proponents
165 of each zoning decision and an equal minimum time period for presentation by opponents
166 of each proposed zoning decision, such minimum time period to be no less than ten
167 minutes per side.

168 (b) In addition to policies and procedures required by subsection (a) of this Code section,
169 each local government rendering a zoning decision shall adopt standards governing the
170 exercise of the zoning power, and such standards may include any factors which the local

171 government finds relevant in balancing the interest in promoting the public health, safety,
172 morality, or general welfare against the right to the unrestricted use of property. Such
173 standards shall be printed and copies thereof shall be available for distribution to the
174 general public.

175 (b.1) In addition to policies and procedures required by subsection (a) of this Code section,
176 each local government providing for a quasi-judicial officer's, board's, or agency's grant,
177 denial, or review of a quasi-judicial matter may adopt specific standards and criteria
178 governing the exercise of such quasi-judicial decision-making authority, and such standards
179 shall include the factors by which the local government directs the evaluation of a
180 quasi-judicial matter. Such standards shall be printed and copies thereof made available
181 for distribution to the general public.

182 (c) The policies and procedures required by subsection (a) of this Code section and the
183 adoption of standards required by subsection (b) and permitted by subsection (b.1) of this
184 Code section ~~may~~ shall be included in and adopted as part of the zoning ordinance. Prior
185 to the adoption of any zoning ordinance enacted on or after ~~January 1, 1986~~ July 1, 2022,
186 a local government shall conduct a public hearing on a proposed action which may be
187 advertised and held concurrent with the hearing required by subsection (a) of Code Section
188 36-66-4 for the adoption of a zoning ordinance. The provisions of subsection (a) of Code
189 Section 36-66-4 relating to notices of public hearings for the purposes of that subsection
190 shall also apply to public hearings required by this subsection.

191 36-66-5.1.

192 (a) To ensure that the general public is afforded due process in an orderly way to petition
193 the courts for review of a local government's exercise of zoning, administrative, or
194 quasi-judicial powers as guaranteed by Article I, Section I, Paragraphs IX and XII of the
195 Constitution, the General Assembly, pursuant to its authority under Article VI, Section IV,
196 Paragraph I of the Constitution, provides the following mechanism by which each of the

197 powers described in this chapter may be reviewed by the superior court of the county
198 wherein such property is located:

199 (1) Zoning decisions as described in this chapter, being legislative in nature, shall be
200 subject to direct constitutional challenge regarding the validity of maintaining the existing
201 zoning on the subject property or the validity of conditions or an interim zoning category
202 other than what was requested in the superior court pursuant to its original jurisdiction
203 over declaratory judgments pursuant to Chapter 4 of Title 9 and equity jurisdiction under
204 Title 23. Such challenges shall be by way of a de novo review by the superior court
205 wherein such review brings up the whole record from the local government and all
206 competent evidence shall be admissible in the trial thereof, whether adduced in a local
207 government process or not and employing the presumption that a governmental zoning
208 decision is valid and can be overcome only by a petitioner showing by clear and
209 convincing evidence that the zoning classification is a significant detriment to the
210 petitioner and is insubstantially related to the public health, safety, morality, or general
211 welfare; or

212 (2) Quasi-judicial decisions as described in this chapter and zoning decisions under
213 subparagraph (E) of paragraph (4) of Code Section 36-66-3 shall be subject to appellate
214 review by the superior court pursuant to its appellate jurisdiction from a lower judicatory
215 body and shall be brought by way of a petition for such review as provided for in Title 5.
216 Such matters shall be reviewed on the record which shall be brought to the superior court
217 as provided in Title 5.

218 (b) All such challenges or appeals shall be brought within 30 days of the written decision
219 of the challenged or appealed action.

220 (c) To ensure that the citizens of this state are not unnecessarily burdened by the review
221 process as a mechanism of appeal, local governments shall designate by ordinance or
222 resolution:

223 (1) The officer of the quasi-judicial board or agency who shall have authority, without
224 additional board or agency action, to approve or issue any form or certificate necessary
225 to perfect the petition described in Title 5 for review of lower judicatory bodies and upon
226 whom service of such petition may be effected or accepted on behalf of the lower
227 judicatory board or agency, during normal business hours, at the regular offices of the
228 local government; and

229 (2) The elected official or his or designee who shall have authority to accept service and
230 upon whom service of an appeal of a quasi-judicial decision may be effected or accepted
231 on behalf of the local governing authority, during normal business hours, at the regular
232 offices of the local government.

233 (d) An appeal or challenge by an opponent filed pursuant to this chapter shall stay all legal
234 proceedings in furtherance of the action appealed from or challenged, unless the local
235 government, officer, board, or agency from which or from whom the appeal or challenge
236 is taken certifies that, by reason of the facts stated in the certificate, a stay would cause
237 imminent peril to life or property. In such actions, the applicant for the zoning decision or
238 the quasi-judicial decision shall be a necessary party and shall be named as a defendant in
239 the action and served in accordance with the requirements of Title 5 or Title 9, as
240 appropriate.

241 36-66-6.

242 (a) In any local government which has established a planning department or other similar
243 agency charged with the duty of reviewing zoning proposals, such planning department or
244 other agency shall, with respect to each proposed zoning decision involving land that is
245 adjacent to or within 3,000 feet of any military base or military installation or within
246 the 3,000 foot Clear Zone and Accident Prevention Zones Numbers I and II as prescribed
247 in the definition of an Air Installation Compatible Use Zone of a military airport,
248 investigate and make a recommendation with respect to each of the matters enumerated in

249 subsection (b) of this Code section, in addition to any other duties with which the planning
250 department or agency is charged by the local government. The planning department or
251 other agency shall request from the commander of such military base, military installation,
252 or military airport a written recommendation and supporting facts relating to the use of the
253 land being considered in the proposed zoning decision at least 30 days prior to the hearing
254 required by subsection (a) of Code Section 36-66-4. If the base commander does not
255 submit a response to such request by the date of the public hearing, there shall be a
256 presumption that the proposed zoning decision will not have any adverse effect relative to
257 the matters specified in subsection (b) of this Code section. Any such information provided
258 shall become a part of the public record.

259 (b) The matters with which the planning department or agency shall be required to make
260 such investigation and recommendation shall be:

261 (1) Whether the zoning proposal will permit a use that is suitable in view of the use of
262 adjacent or nearby property within 3,000 feet of a military base, military installation, or
263 military airport;

264 (2) Whether the zoning proposal will adversely affect the existing use or usability of
265 nearby property within 3,000 feet of a military base, military installation, or military
266 airport;

267 (3) Whether the property to be affected by the zoning proposal has a reasonable
268 economic use as currently zoned;

269 (4) Whether the zoning proposal will result in a use which will or could cause a safety
270 concern with respect to excessive or burdensome use of existing streets, transportation
271 facilities, utilities, or schools due to the use of nearby property as a military base, military
272 installation, or military airport;

273 (5) If the local government has an adopted land use plan, whether the zoning proposal
274 is in conformity with the policy and intent of the land use plan; and

275 (6) Whether there are other existing or changing conditions affecting the use of the
276 nearby property as a military base, military installation, or military airport which give
277 supporting grounds for either approval or disapproval of the zoning proposal.”

278

SECTION 2.

279 This Act shall become effective on July 1, 2022, and shall apply to all zoning and
280 quasi-judicial decisions occurring on and after that date; however, no zoning or quasi-judicial
281 decision prior to July 1, 2023, shall be rendered invalid or void because of a local
282 government's failure to implement language in their ordinances accomplishing the provisions
283 of Code Section 36-66-5.1.

284

SECTION 3.

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