

House Bill 1405

By: Representatives Roberts of the 52<sup>nd</sup>, Washburn of the 141<sup>st</sup>, Crowe of the 110<sup>th</sup>, Dreyer of the 59<sup>th</sup>, and Paris of the 142<sup>nd</sup>

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 repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

12 "CHAPTER 66

13 36-66-1.

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

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15 36-66-2.

16 (a) While recognizing and confirming the authority of local governments to exercise  
17 zoning power within their respective territorial boundaries, it is the intention of this chapter  
18 to establish as state policy minimum procedures governing the exercise and means of  
19 judicial review of the exercise of that power. The purpose of these minimum procedures  
20 is to assure that due process is afforded to the general public when local governments  
21 regulate the uses of property through the exercise of the zoning power. Nothing in this  
22 chapter shall be construed to invalidate any zoning decision made by a local government  
23 prior to ~~January 1, 1986~~ July 1, 2022, or to require a local government to exercise its  
24 zoning power.

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

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

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

36 36-66-3.

37 As used in this chapter, the term:

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

40 (1.1) 'Quasi-judicial officers, boards, or agencies' means an officer, board, or agency  
41 appointed by a local government to exercise delegated, quasi-judicial zoning powers  
42 including hearing appeals of administrative decisions by such officers, boards, or  
43 agencies and hearing and rendering decisions on applications for variances, special  
44 administrative permits, special exceptions, conditional use permits, or other similar  
45 permits not enumerated herein as a zoning decision, pursuant to standards for the exercise  
46 of such quasi-judicial authority adopted by a local government.

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

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

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

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

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

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

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

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

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

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

74 36-66-4.

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

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

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

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

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

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

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

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

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

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

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

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

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

114 or

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

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

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

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

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

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

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

158 36-66-5.

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

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

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

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

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

190 36-66-5.1.

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

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

198 (1) Zoning decisions as described in this chapter, being legislative in nature, shall be  
199 subject to direct constitutionality and validity of maintaining the existing zoning on the  
200 subject property or imposing conditions or an interim zoning category other than what  
201 was requested in the superior court pursuant to its original jurisdiction over declaratory  
202 judgments pursuant to Chapter 4 of Title 9 and equity jurisdiction under Title 23. Such  
203 challenges shall be by way of a de novo review by the superior court wherein new  
204 evidence may be adduced; and

205 (2) Quasi-judicial decisions as described in this chapter shall be subject to appellate  
206 review by the superior court pursuant to its appellate jurisdiction and shall be brought by  
207 way of a petition for certiorari pursuant to Chapter 4 of Title 5. Such matters shall be  
208 reviewed on the record which shall be brought to the superior court as provided in Code  
209 Section 5-4-7.

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

212 (c) To ensure that the citizens of this state are not unnecessarily burdened by the certiorari  
213 process as a mechanism of appeal, local governments shall designate by ordinance or  
214 resolution:

215 (1) The officer of the quasi-judicial board or agency who shall have authority, without  
216 additional board or agency action, to approve and issue the bond and certificate of costs  
217 described in subsection (a) of Code Section 5-4-5 and who shall provide an officer, board,  
218 or agency within such local government whereby service of such petition may be effected  
219 or accepted on behalf of the members of the board or agency, in their official capacities,  
220 as respondents, during normal business hours, at the regular offices of the local  
221 government;

222 (2) The elected official or his or designee who shall have authority to accept service and  
223 upon whom service of an appeal of a quasi-judicial decision may be effected or accepted  
224 on behalf of the mayor and council and the chairperson or chief executive officer and  
225 board of commissioners, in their official capacities, as defendants, during normal business  
226 hours, at the regular offices of the local government; and

227 (3) That in the event an appeal of a quasi-judicial decision is initiated by an opponent of  
228 the applicant for such quasi-judicial decision, the applicant shall be a necessary party as  
229 an additional defendant in the appeal and shall be served in accordance with subsection  
230 (b) of Code Section 5-4-6 or Code Section 9-11-4, as appropriate.

231 (d) To ensure that the citizens of this state are not unnecessarily burdened by the judicial  
232 process as a mechanism for challenging a zoning decision, local governments shall  
233 designate by ordinance or resolution the elected official or his or her designee who shall  
234 have authority to accept service and upon whom service of a challenge may be effected or  
235 accepted on behalf of the mayor and council and the chairperson or chief executive officer  
236 and board of commissioners, in their official capacities, as defendants, during normal  
237 business hours, at the regular offices of the local government;

238 (e) An appeal or challenge by an opponent filed pursuant to this chapter shall stay all legal  
239 proceedings in furtherance of the action appealed from or challenged, unless the local  
240 government, officer, board, or agency from which or from whom the appeal or challenge  
241 is taken certifies that, by reason of the facts stated in the certificate, a stay would cause  
242 imminent peril to life or property. In such actions, the applicant for the zoning decision or  
243 the quasi-judicial decision shall be a necessary party and shall be named as a defendant in  
244 the action and served in accordance with subsection (b) of Code Section 5-4-6 or Code  
245 Section 9-11-4, as appropriate.

246 36-66-6.

247 (a) In any local government which has established a planning department or other similar  
248 agency charged with the duty of reviewing zoning proposals, such planning department or  
249 other agency shall, with respect to each proposed zoning decision involving land that is  
250 adjacent to or within 3,000 feet of any military base or military installation or within  
251 the 3,000 foot Clear Zone and Accident Prevention Zones Numbers I and II as prescribed  
252 in the definition of an Air Installation Compatible Use Zone of a military airport,  
253 investigate and make a recommendation with respect to each of the matters enumerated in  
254 subsection (b) of this Code section, in addition to any other duties with which the planning  
255 department or agency is charged by the local government. The planning department or  
256 other agency shall request from the commander of such military base, military installation,  
257 or military airport a written recommendation and supporting facts relating to the use of the  
258 land being considered in the proposed zoning decision at least 30 days prior to the hearing  
259 required by subsection (a) of Code Section 36-66-4. If the base commander does not  
260 submit a response to such request by the date of the public hearing, there shall be a  
261 presumption that the proposed zoning decision will not have any adverse effect relative to  
262 the matters specified in subsection (b) of this Code section. Any such information provided  
263 shall become a part of the public record.

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

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

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

- 272 (3) Whether the property to be affected by the zoning proposal has a reasonable  
273 economic use as currently zoned;
- 274 (4) Whether the zoning proposal will result in a use which will or could cause a safety  
275 concern with respect to excessive or burdensome use of existing streets, transportation  
276 facilities, utilities, or schools due to the use of nearby property as a military base, military  
277 installation, or military airport;
- 278 (5) If the local government has an adopted land use plan, whether the zoning proposal  
279 is in conformity with the policy and intent of the land use plan; and
- 280 (6) Whether there are other existing or changing conditions affecting the use of the  
281 nearby property as a military base, military installation, or military airport which give  
282 supporting grounds for either approval or disapproval of the zoning proposal."

283

**SECTION 2.**

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