

House Bill 1405 (AS PASSED HOUSE AND SENATE)

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>, Paris of the 142<sup>nd</sup>, and others

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 provide additional notice and hearing  
5 provisions for changes to zoning ordinances that revise single-family residential  
6 classifications and definitions so as to authorize multifamily residential property uses; to  
7 require review procedures for decisions made by boards or agencies using delegated powers;  
8 to provide for judicial review of zoning decisions; to require certain designations relating to  
9 appeals of quasi-judicial decisions; to provide for related matters; to provide for an effective  
10 date and applicability; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

15 style="text-align:center">"CHAPTER 66

H. B. 1405

16 36-66-1.

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

18 36-66-2.

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

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

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

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

39 36-66-3.

40 As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

- 68 (E) The grant or denial of a permit relating to a special use of property;
- 69 (F) The grant or denial of a variance or conditions concurrent and in conjunction with
- 70 a decision pursuant to subparagraphs (C) or (E) of this paragraph.
- 71 (5) 'Zoning ordinance' means an ordinance or resolution of a local government
- 72 establishing procedures and zones or districts within its respective territorial boundaries
- 73 which regulate the uses and development standards of property within such zones or
- 74 districts. The term also includes the zoning map adopted in conjunction with a zoning
- 75 ordinance which shows the zones and districts and zoning classifications of property
- 76 therein.

77 36-66-4.

78 (a) A local government taking action resulting in a zoning decision shall provide for a

79 hearing on the proposed action. Where the proposed action includes any combination of

80 zoning decisions under subparagraphs (C), (E), or (F) of paragraph (4) of Code Section

81 36-66-3 for the same property, only one hearing shall be required under this Code Section.

82 At least 15 but not more than 45 days prior to the date of the hearing, the local government

83 shall cause to be published within a newspaper of general circulation within the territorial

84 boundaries of the local government a notice of the hearing. The notice shall state the time,

85 place, and purpose of the hearing.

86 (b) If a zoning decision of a local government is for the rezoning of property and the

87 rezoning is initiated by a party other than the local government, then:

88 (1) The notice, in addition to the requirements of subsection (a) of this Code section,

89 shall include the location of the property, the present zoning classification of the property,

90 and the proposed zoning classification of the property; and

91 (2) A sign containing information required by local ordinance or resolution shall be

92 placed in a conspicuous location on the property not less than 15 days prior to the date

93 of the hearing.

- 94 (c) If the zoning decision of a local government is for the rezoning of property and the  
95 amendment to the zoning ordinance to accomplish the rezoning is defeated by the local  
96 government, then the same property may not again be considered for rezoning until the  
97 expiration of at least six months immediately following the defeat of the rezoning by the  
98 local government.
- 99 (d) If the zoning is for property to be annexed into a municipality, then:
- 100 (1) Such municipal local government shall complete the procedures required by this  
101 chapter for such zoning, except for the final vote of the municipal governing authority,  
102 prior to adoption of the annexation ordinance or resolution or the effective date of any  
103 local Act but no sooner than the date the notice of the proposed annexation is provided  
104 to the governing authority of the county as required under Code Section 36-36-6;
- 105 (2) The hearing required by subsection (a) of this Code section shall be conducted prior  
106 to the annexation of the subject property into the municipality;
- 107 (3) In addition to the other notice requirements of this Code section, the municipality  
108 shall cause to be published within a newspaper of general circulation within the territorial  
109 boundaries of the county wherein the property to be annexed is located a notice of the  
110 hearing as required under the provisions of subsection (a) or (b), as applicable, of this  
111 Code section and shall place a sign on the property when required by subsection (b) of  
112 this Code section; and
- 113 (4) The zoning classification approved by the municipality following the hearing  
114 required by this Code section shall become effective on the later of:
- 115 (A) The date the zoning is approved by the municipality;
- 116 (B) The date that the annexation becomes effective pursuant to Code Section 36-36-2;
- 117 or
- 118 (C) Where a county has interposed an objection pursuant to Code Section 36-36-11,  
119 the date provided for in paragraph (8) of subsection (c) of said Code section.

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

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

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

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

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

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

161 (h)(1) Notwithstanding any other provisions of this chapter to the contrary, when a  
162 proposed zoning decision relates to an amendment of the zoning ordinance to revise one  
163 or more zoning classifications or definitions relating to single-family residential uses of  
164 property so as to authorize multifamily uses of property pursuant to such classification  
165 or definitions, or to grant blanket permission, under certain or all circumstances, for  
166 property owners to deviate from the existing zoning requirements of a single-family  
167 residential zoning, such zoning decision must be adopted in the following manner:

168 (A) The zoning decision shall be adopted at two regular meetings of the local  
169 government making the zoning decision, during a period of not less than 21 days apart;  
170 and

171 (B) Prior to the first meeting provided for in subparagraph (A) of this paragraph, at  
172 least two public hearings shall be held on the proposed action. Such public hearings  
173 shall be held at least three months and not more than nine months prior to the date of

174 final action on the zoning decision. Furthermore, at least one of the public hearings  
175 must be held between the hours of 5:00 P.M. and 8:00 P.M. The hearings required by  
176 this paragraph shall be in addition to any hearing required under subsection (a) of this  
177 Code section. The local government shall give notice of such hearing by:

178 (i) Posting notice on each affected premises in the manner prescribed by  
179 subsection (b) of this Code section; provided, however, that when more than 500  
180 parcels are affected, in which case posting notice is required every 500 feet in the  
181 affected area; and

182 (ii) Publishing in a newspaper of general circulation within the territorial boundaries  
183 of the local government a notice of each hearing at least 15 days and not more than 45  
184 days prior to the date of the hearing.

185 Both the posted notice and the published notice shall include a prominent statement that  
186 the proposed zoning decision relates to or will authorize multifamily uses or give blanket  
187 permission to the property owner to deviate from the zoning requirements of a  
188 single-family residential zoning of property in classification previously relating to  
189 single-family residential uses. The published notice shall be at least nine column inches  
190 in size and shall not be located in the classified advertising section of the newspaper. The  
191 notice shall state that a copy of the proposed amendment is on file in the office of the  
192 clerk or the recording officer of the local government and in the office of the clerk of the  
193 superior court of the county of the legal situs of the local government for the purpose of  
194 examination and inspection by the public. The local government shall furnish anyone,  
195 upon written request, a copy of the proposed amendment, at no cost.

196 (2) The provisions of paragraph (1) of this subsection shall also apply to any zoning  
197 decisions that provide for the abolition of all single-family residential zoning  
198 classifications within the territorial boundaries of a local government or zoning decisions  
199 that result in the rezoning of all property zoned for single-family residential uses within

200 the territorial boundaries of a local government to multifamily residential uses of  
201 property.

202 (3) This subsection shall not apply to zoning decisions for the rezoning of property from  
203 a single-family residential use of property to a multifamily residential use of property  
204 when the rezoning is initiated by the owner or authorized agent of the owner of such  
205 property.

206 36-66-5.

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

215 (b) In addition to policies and procedures required by subsection (a) of this Code section,  
216 each local government rendering a zoning decision shall adopt standards governing the  
217 exercise of the zoning power, and such standards may include any factors which the local  
218 government finds relevant in balancing the interest in promoting the public health, safety,  
219 morality, or general welfare against the right to the unrestricted use of property. Such  
220 standards shall be printed and copies thereof shall be available for distribution to the  
221 general public.

222 (b.1) In addition to policies and procedures required by subsection (a) of this Code section,  
223 each local government providing for a quasi-judicial officer's, board's, or agency's grant,  
224 denial, or review of a quasi-judicial matter may adopt specific standards and criteria  
225 governing the exercise of such quasi-judicial decision-making authority, and such standards

226 shall include the factors by which the local government directs the evaluation of a  
227 quasi-judicial matter. Such standards shall be printed and copies thereof made available  
228 for distribution to the general public.

229 (c) The policies and procedures required by subsection (a) of this Code section and the  
230 adoption of standards required by subsection (b) and permitted by subsection (b.1) of this  
231 Code section may shall be included in and adopted as part of the zoning ordinance. Prior  
232 to the adoption of any zoning ordinance enacted on or after ~~January 1, 1986~~ July 1, 2022,  
233 a local government shall conduct a public hearing on a proposed action which may be  
234 advertised and held concurrent with the hearing required by subsection (a) of Code Section  
235 36-66-4 for the adoption of a zoning ordinance. The provisions of subsection (a) of Code  
236 Section 36-66-4 relating to notices of public hearings for the purposes of that subsection  
237 shall also apply to public hearings required by this subsection.

238 36-66-5.1.

239 (a) To ensure that the general public is afforded due process in an orderly way to petition  
240 the courts for review of a local government's exercise of zoning, administrative, or  
241 quasi-judicial powers as guaranteed by Article I, Section I, Paragraphs IX and XII of the  
242 Constitution, the General Assembly, pursuant to its authority under Article VI, Section IV,  
243 Paragraph I of the Constitution, provides the following mechanism by which each of the  
244 powers described in this chapter may be reviewed by the superior court of the county  
245 wherein such property is located:

246 (1) Zoning decisions as described in this chapter, being legislative in nature, shall be  
247 subject to direct constitutional challenge regarding the validity of maintaining the existing  
248 zoning on the subject property or the validity of conditions or an interim zoning category  
249 other than what was requested in the superior court pursuant to its original jurisdiction  
250 over declaratory judgments pursuant to Chapter 4 of Title 9 and equity jurisdiction under  
251 Title 23. Such challenges shall be by way of a de novo review by the superior court

252 wherein such review brings up the whole record from the local government and all  
253 competent evidence shall be admissible in the trial thereof, whether adduced in a local  
254 government process or not and employing the presumption that a governmental zoning  
255 decision is valid and can be overcome substantively by a petitioner showing by clear and  
256 convincing evidence that the zoning classification is a significant detriment to the  
257 petitioner and is insubstantially related to the public health, safety, morality, or general  
258 welfare; or

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

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

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

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

276 (2) The elected official or his or designee who shall have authority to accept service and  
277 upon whom service of an appeal of a quasi-judicial decision may be effected or accepted

278 on behalf of the local governing authority, during normal business hours, at the regular  
279 offices of the local government.

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

288 36-66-6.

289 (a) In any local government which has established a planning department or other similar  
290 agency charged with the duty of reviewing zoning proposals, such planning department or  
291 other agency shall, with respect to each proposed zoning decision involving land that is  
292 adjacent to or within 3,000 feet of any military base or military installation or within  
293 the 3,000 foot Clear Zone and Accident Prevention Zones Numbers I and II as prescribed  
294 in the definition of an Air Installation Compatible Use Zone of a military airport,  
295 investigate and make a recommendation with respect to each of the matters enumerated in  
296 subsection (b) of this Code section, in addition to any other duties with which the planning  
297 department or agency is charged by the local government. The planning department or  
298 other agency shall request from the commander of such military base, military installation,  
299 or military airport a written recommendation and supporting facts relating to the use of the  
300 land being considered in the proposed zoning decision at least 30 days prior to the hearing  
301 required by subsection (a) of Code Section 36-66-4. If the base commander does not  
302 submit a response to such request by the date of the public hearing, there shall be a  
303 presumption that the proposed zoning decision will not have any adverse effect relative to

304 the matters specified in subsection (b) of this Code section. Any such information provided  
305 shall become a part of the public record.

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

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

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

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

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

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

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

325 **SECTION 2.**

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

331 **SECTION 3.**

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