

House Bill 1461 (AS PASSED HOUSE AND SENATE)

By: Representatives Anderson of the 10th, Jones of the 47th, Hawkins of the 27th, Taylor of the 173rd, Thomas of the 21st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 36 of Title 36 of the Official Code of Georgia Annotated, relating to
2 annexation of territory, so as to revise provisions relating to dispute resolution; to provide
3 definitions; to revise notice provisions; to revise provisions relating to deadlines; to provide
4 additional grounds to object to an annexation; to revise qualifications for arbitration panel
5 members; to provide for court reporters and hearing officers during arbitrations; to revise
6 provisions relating to sharing the costs of arbitration; to provide for rule making; to authorize
7 virtual and teleconference arbitration meetings; to require arbitration findings to be sent to
8 the Department of Community Affairs; to provide for regular reports on arbitration findings;
9 to revise per diems for arbitration panel members; to extend the period of a zoning freeze
10 following an arbitration; to revise provisions regarding notice municipalities must provide
11 to counties regarding annexation applications; to provide for written notice of public hearings
12 to property owners in proposed areas of annexation, under certain circumstances; to provide
13 for related matters; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Chapter 36 of Title 36 of the Official Code of Georgia Annotated, relating to annexation of
17 territory, is amended by revising Article 7, relating to procedure for resolving annexation
18 disputes, as follows:

19 "ARTICLE 7

20 36-36-110.

21 The procedures of this article shall apply to all annexations pursuant to this chapter but
22 shall not apply to annexations by local Acts of the General Assembly.

23 36-36-110.1.

24 As used in this article, the term:

25 (1) 'Cost' or 'costs' means expenses incurred by a county, municipality, and property
26 owner or owners whose property is at issue, including, but not limited to, per diems,
27 venue rental, teleconference charges, the use of court reporters or hearing officers, and
28 arbitrators' fees and expenses.

29 (2) 'Department' means the Department of Community Affairs.

30 (3) 'Impacted school system' means a county or independent school system operating or
31 providing services to the territory to be annexed or which would operate or provide
32 services in a territory to be annexed.

33 (4) 'Notice' or 'notify' means a letter that includes a description of the property to be
34 annexed, a description of the proposed zoning classification and land use of the area to
35 be annexed, and pursuant to Code Section 36-36-4, information on the time and place of
36 the public hearing on zoning of the property to be annexed.

37 (5) 'Verifiable delivery' means hand delivery, electronic mail, certified mail, or statutory
38 overnight delivery, provided that the means of delivery allows for verification of the
39 delivery of such notice.

40 36-36-111.

41 ~~Upon receipt~~ Within 30 days of a municipal corporation's acceptance of a petition of
42 annexation, a the municipal corporation shall notify the governing authority of the county
43 and any impacted school system in which the territory to be annexed is located by ~~certified~~
44 ~~mail or by statutory overnight~~ verifiable delivery. Such notice shall include a copy of the
45 annexation petition which shall include the proposed zoning and land use for such area.
46 The municipal corporation shall take no final action on such annexation except as
47 otherwise provided in this article.

48 36-36-112.

49 If no objection is received as provided in Code Section 36-36-113, the annexation may
50 proceed as otherwise provided by law; provided, however, that as a condition of the
51 annexation, the municipal corporation shall not change the zoning or land use plan relating
52 to the annexed property to a more intense density than that stated in the notice provided for
53 in Code Section 36-36-111 for one year after the effective date of the annexation unless
54 such change is made in the service delivery agreement or comprehensive plan and is
55 adopted by the affected city and county and all required parties.

56 36-36-113.

57 (a) The county governing authority may by majority vote, as defined by applicable general
58 or local law, object to the annexation because of a material increase in burden upon the
59 county directly related to any one or more of the following:

60 (1) The proposed change in zoning or land use;

61 (2) Proposed increase in density; and

62 (3) Infrastructure demands related to the proposed change in zoning or land use.

63 (b) Delivery of services may not be a basis for a valid objection but may be used in support
64 of a valid objection if directly related to one or more of the subjects enumerated in
65 paragraphs (1), (2), and (3) of subsection (a) of this Code section.

66 (c) The objection provided for in subsection (a) of this Code section shall document the
67 nature of the objection specifically providing evidence of any financial impact forming the
68 basis of the objection and shall be delivered to the municipal governing authority and the
69 department by ~~certified mail or statutory overnight~~ verifiable delivery to be received not
70 later than the end of the ~~thirtieth~~ forty-fifth calendar day following receipt of the notice
71 provided for in Code Section 36-36-111.

72 (d) In order for an objection pursuant to this Code section to be valid, the proposed ~~change~~
73 ~~in zoning or land use~~ annexation must:

74 (1) Result in:

75 (A) A substantial change in the intensity of the allowable use of the property or a
76 change to a significantly different allowable use; or

77 (B) A use which significantly increases the net cost of infrastructure or significantly
78 diminishes the value or useful life of a capital outlay project, as such term is defined in
79 Code Section 48-8-110, which is furnished by the county to the area to be annexed; and

80 (2) Authorize or result in a land use that differs ~~Differ~~ substantially from the existing
81 uses suggested for the property by the county's comprehensive land use plan or permitted
82 for the property pursuant to the county's zoning ordinance or its land use ordinances.

83 36-36-114.

84 (a) Not later than the fifteenth calendar day following the date the ~~municipal corporation~~
85 department received the first objection provided for in Code Section 36-36-113, an
86 arbitration panel shall be appointed as provided in this Code section.

87 (b) The arbitration panel shall be composed of five members to be selected as provided in
88 this subsection. The ~~Department of Community Affairs~~ department shall develop three
89 pools of arbitrators, one pool which consists of persons who are currently or within the
90 previous six years have been municipal elected officials, one pool which consists of
91 persons who are currently or within the previous six years have been county elected
92 officials, and one pool which consists of persons with a master's degree or higher in public
93 administration or planning and who are currently employed by an institution of higher
94 learning in this state, other than the Carl Vinson Institute of Government of the University
95 of Georgia. The pool shall be sufficiently large to ensure as nearly as practicable that no
96 person shall be required to serve on more than ~~two~~ four panels in any one calendar year and
97 serve on no more than one panel in any given county in any one calendar year. The
98 department is authorized to coordinate with the Georgia Municipal Association, the
99 Association County Commissioners of Georgia, the Council of Local Governments, and
100 similar organizations in developing and maintaining such pools.

101 (c) Upon receiving notice of a disputed annexation, the department shall choose at random
102 four names from the pool of municipal officials, four names from the pool of county
103 officials, and three names from the pool of academics; provided, however, that none of
104 such selections shall include a person who is a resident of the county which has interposed
105 the objection or any municipal corporation located wholly or partially in such county, and
106 further provided that none of such selections shall include a person who has already served
107 on four other arbitration panels in the then-current calendar year. The municipal
108 corporation shall be permitted to strike or excuse two of the names chosen from the county
109 officials pool; the county shall be permitted to strike or excuse two of the names chosen
110 from the municipal officials pool; and the county and municipal corporation shall each be
111 permitted to strike or excuse one of the names chosen from the academic pool.

112 (d) Prior to being eligible to serve on any of the three pools, persons interested in serving
113 on such panels shall receive joint training in alternative dispute resolution together with

114 zoning and land use training, which may be designed and overseen by the Carl Vinson
115 Institute of Government of the University of Georgia in conjunction with the Association
116 County Commissioners of Georgia and the Georgia Municipal Association, provided such
117 training is available. Provided that the General Assembly appropriates sufficient funds in
118 an applicable fiscal year, the Carl Vinson Institute of Government of the University of
119 Georgia shall provide at least one training program per year to train new potential panel
120 members.

121 (e) At the time any person is selected to serve on a panel for any particular annexation
122 dispute, he or she shall sign the following oath: 'I do solemnly swear or affirm that I will
123 faithfully perform my duties as an arbitrator in a fair and impartial manner without favor
124 or affection to any party, and that I have not and will not have any ex parte communication
125 regarding the facts and circumstances of the matters to be determined, other than
126 communications with my fellow arbitrators, and will only consider, in making my
127 determination, those matters which may lawfully come before me.'

128 (f) The department shall develop and maintain a list of court reporters and hearing officers
129 that may be employed by the department at the request of an arbitration panel to assist the
130 panel in formulating the record before the panel. An arbitration panel may by majority
131 vote of its members elect to employ court reporters and hearing officers from such list.
132 Any costs or charges related to the employment of court reporters and hearing officers
133 pursuant to this subsection shall be evenly divided between the city and the county.

134 (g) The department shall promulgate rules and regulations to provide for uniform
135 procedures and operations of arbitration panels established pursuant to this article.
136 Notwithstanding any provision of Chapter 13 of Title 50, the 'Georgia Administrative
137 Procedure Act,' to the contrary, such proposed rules and regulations shall be submitted to
138 the chairperson of the House Governmental Affairs Committee and the Senate Committee
139 on State and Local Government Operations.

140 36-36-115.

141 (a)(1)(A) The arbitration panel appointed pursuant to Code Section 36-36-114 shall
142 meet as soon after appointment as practicable and shall receive evidence and argument
143 from the municipal corporation, the county, and the applicant or property owner and
144 shall by majority vote render a decision which shall be binding on all parties to the
145 dispute as provided for in this article not later than ~~the sixtieth day~~ 60 days following
146 such appointment, provided that the chairperson of the arbitration panel shall be
147 authorized to extend such deadline one time for a period of up to ten business days.
148 Notwithstanding anything in this subparagraph to the contrary, the municipal
149 corporation and county may by mutual agreement, postpone the arbitration procession
150 for a period of up to 180 days to negotiate a potential settlement, and such
151 postponement shall stay the 60 day deadline provided herein.

152 (B) Meetings of the panel may occur in person, virtually, or via teleconference. The
153 meetings of the panel in which evidence is submitted or arguments of the parties are
154 made, whether such meeting is in person, virtual, or via teleconference, shall be open
155 to the public pursuant to Chapter 14 of Title 50.

156 (C) The panel shall first determine the validity of the grounds for objection as specified
157 in the objection. If an objection involves the financial impact on the county as a result
158 of a change in zoning or land use or the provision of maintenance of infrastructure, the
159 panel shall quantify such impact in terms of cost. As to any objection which the panel
160 has determined to be valid, the panel, in its findings, may establish reasonable zoning,
161 land use, or density conditions applicable to the annexation and propose any reasonable
162 mitigating measures as to an objection pertaining to infrastructure demands.

163 (2) In arriving at its determination, the panel shall consider:

164 (A) The existing comprehensive land use plans of both the county and city;

165 (B) The existing land use patterns in the area of the subject property;

166 (C) The existing zoning patterns in the area of the subject property;

- 167 (D) Each jurisdiction's provision of infrastructure to the area of the subject property
168 and to the areas in the vicinity of the subject property;
- 169 (E) Whether the county has approved similar changes in intensity or allowable uses on
170 similar developments in other unincorporated areas of the county;
- 171 (F) Whether the county has approved similar developments in other unincorporated
172 areas of the county which have a similar impact on infrastructure as complained of by
173 the county in its objection; and
- 174 (G) Whether the infrastructure or capital outlay project which is claimed adversely
175 impacted by the county in its objection was funded by a county-wide tax.
- 176 (3) The county shall provide supporting evidence that its objection is consistent with its
177 land use plan and the pattern of existing land uses and zonings in the area of the subject
178 property, which may include, but not be limited to, adopted planning documents and
179 capital or infrastructure plans.
- 180 (4) ~~The county shall bear at least 75 percent of the cost of the arbitration. The panel shall~~
181 ~~apportion the remaining 25 percent of the cost of the arbitration equitably~~ shall be equally
182 divided between the city and the county ~~as the facts of the appeal warrant;~~ provided,
183 however, that if the panel determines that any party has advanced a position that is
184 ~~substantially frivolous~~ not valid, the costs shall be borne by the party or parties that ~~has~~
185 have advanced such position.
- 186 (5) The reasonable costs of participation in the arbitration process of the property owner
187 or owners whose property is at issue shall be borne by the county and the city in the same
188 proportion as costs are apportioned under paragraph (4) of this subsection.
- 189 (6) The panel shall deliver its findings and recommendations to the parties and the
190 department by ~~certified mail or statutory overnight~~ verifiable delivery. The department
191 shall maintain a data base and record of arbitration panel results and at least annually
192 publish a report on such decisions and make such report freely available on the
193 department's website.

194 (b) If the decision of the panel contains zoning, land use, or density conditions, the
195 findings and recommendations of the panel shall be recorded in the deed records of the
196 county with a caption describing the name of the current owner of the property, recording
197 reference of the current owner's acquisition deed and a general description of the property,
198 and plainly showing the expiration date of any restrictions or conditions.

199 (c) The arbitration panel shall be dissolved on the tenth day after it renders its findings and
200 recommendations but may be reconvened as provided in Code Section 36-36-116.

201 (d) ~~The~~ Notwithstanding the provisions of subsection (b) of Code Section 45-7-21, the
202 members of the arbitration panel shall receive the same per diem, expenses, and allowances
203 for their service on the ~~committee panel~~ as is authorized by law for members of interim
204 ~~legislative study committees~~ the General Assembly.

205 (e) If the panel so agrees, any one or more additional annexation disputes which may arise
206 between the parties prior to the panel's initial meeting may be consolidated for the purpose
207 of judicial economy if there are similar issues of location or similar objections raised to
208 such other annexations or the property to be annexed in such other annexations is
209 within 2,500 feet of the subject property.

210 36-36-116.

211 The municipal or county governing authority or an applicant for annexation may appeal the
212 decision of the arbitration panel by filing an action in the superior court of the county
213 within ten calendar days from receipt of the panel's findings and recommendations. The
214 sole grounds for appeal shall be to correct errors of fact or of law, the bias or misconduct
215 of an arbitrator, or the panel's abuse of discretion. The superior court shall schedule an
216 expedited appeal and shall render a decision within 20 days from the date of filing. If the
217 court finds that an error of fact or law has been made, that an arbitrator was biased or
218 engaged in misconduct, or that the panel has abused its discretion, the court shall issue such
219 orders governing the proposed annexation as the circumstances may require, including

220 remand to the panel. Any unappealed order shall be binding upon the parties. The appeal
221 shall be assigned to a judge who is not a judge in the circuit in which the county is located.

222 36-36-117.

223 If the annexation is completed after final resolution of any objection, whether by agreement
224 of the parties, act of the panel, or court order as a result of an appeal, the municipal
225 corporation shall not change the zoning, land use, or density of the annexed property for
226 a period of ~~one year~~ two years unless such change is made in the service delivery
227 agreement or comprehensive plan and adopted by the affected city and county and all
228 required parties. Following the conclusion of the dispute resolution process outlined in this
229 article, the municipal corporation and an applicant for annexation may either accept the
230 recommendations of the arbitration panel and proceed with the remaining annexation
231 process or abandon the annexation proceeding. A violation of the conditions set forth in
232 this Code section may be enforced thereafter at law or in equity until such conditions have
233 expired as provided in this Code section.

234 36-36-118.

235 If at any time during the proceedings the municipal corporation or applicant abandons the
236 proposed annexation, the county shall not change the zoning, land use, or density affecting
237 the property for a period of one year unless such change is made in the service delivery
238 agreement or comprehensive plan and adopted by the affected city and county and all
239 required parties. A violation of the conditions set forth in this Code section may be
240 enforced thereafter at law or in equity until such period has expired. After final resolution
241 of any objection, whether by agreement of the parties, act of the panel, or any appeal from
242 the panel's decision, the terms of such decision shall remain valid for the ~~one-year~~ two-year
243 period and such annexation may proceed at any time during the ~~one-year~~ two years without
244 any further action or without any further right of objection by the county.

245 36-36-119.
246 The county, the municipal governing authorities, and the property owner or owners shall
247 negotiate in good faith throughout the annexation proceedings provided by this article and
248 may at any time enter into a written agreement governing the annexation. Such agreement
249 may provide for changing the zoning, land use, or density of the annexed property during
250 a period of less than two years. If such agreement is reached after the arbitration panel has
251 been appointed and before its dissolution, such agreement shall be adopted by the panel as
252 its findings and recommendations. If such agreement is reached after an appeal is filed in
253 the superior court and before the court issues an order, such agreement shall be made a part
254 of the court's order. Any agreement reached as provided in this Code section shall be
255 recorded as provided in Code Section 36-36-115. Copies of such agreement shall also be
256 provided by the parties to the department in the same manner as the findings and
257 recommendations of an arbitration panel."

258 **SECTION 2.**

259 Said chapter is further amended by revising Code Section 36-36-6, relating to notice by
260 municipal governing authority to county governing authority of proposed annexation, as
261 follows:

262 "36-36-6.

263 Upon accepting an application for annexation pursuant to Code Section 36-36-21 or a
264 petition for annexation pursuant to Code Section 36-36-32, or upon adopting a resolution
265 calling for an annexation referendum pursuant to Code Section 36-36-57, the governing
266 authority of the annexing municipality shall within ~~five-business~~ 30 days give written
267 notice of the proposed annexation to the governing authority of the county wherein the area
268 proposed for annexation is located. Such notice shall include a map or other description
269 of the site proposed to be annexed sufficient to identify the area. Where the proposed
270 annexation is to be effected by a local Act of the General Assembly, a copy of the proposed

271 legislation shall be provided by the governing authority of the municipality to the
272 governing authority of the county in which the property proposed to be annexed is located
273 following the receipt of such notice by the governing authority of the municipality under
274 subsection (b) of Code Section 28-1-14."

275 **SECTION 3.**

276 Said Chapter is further amended by revising subsection (a) of Code Section 36-36-36,
277 relating to requirement of public hearing, notice of time and place, persons entitled to be
278 heard, and right of property owner to withdraw consent, as follows:

279 "(a) The municipal governing body shall hold a public hearing on any application which
280 has been determined to meet the requirements of this article. The hearing shall be held not
281 less than 15 nor more than 45 days from the time the governing body makes a
282 determination that the petition is valid. Notice of the time and place of the hearing shall
283 be given in writing to the persons presenting the application and shall be advertised once
284 a week for two consecutive weeks immediately preceding the hearing in a newspaper of
285 general circulation in the municipal corporation and in the area proposed for annexation.
286 Written notice of the time and place of the hearing shall also be sent by mail to the mailing
287 address reflected in the property tax records for each property owner whose property is in
288 the area proposed for annexation. The written notice required under this subsection shall
289 be mailed not less than 15 nor more than 45 days before the date of the hearing required
290 by this subsection."

291 **SECTION 4.**

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