

House Bill 1439

By: Representatives Thomas of the 21st, Gullett of the 19th, Anderson of the 10th, Blackmon of the 146th, Ballinger of the 23rd, 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 municipal annexation of territory, so as to repeal certain provisions relating to authority,
3 procedures, identification, and status of lands relative to municipal deannexation; to provide
4 for municipal deannexation of property; to provide for procedures, conditions, and
5 limitations; to provide for facilities and services; to provide for special tax districts for
6 outstanding general obligation bonded indebtedness; to provide for deannexation dispute
7 resolution; to provide for procedures, conditions, and limitations; to provide for related
8 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Chapter 36 of Title 36 of the Official Code of Georgia Annotated, relating to municipal
12 annexation of territory, is amended by revising Code Section 36-36-22, relating to authority,
13 procedures, identification, and status of lands relative to deannexation, as follows:

14 "36-36-22.

15 ~~Authority is granted to the governing bodies of the several municipal corporations of this~~
16 ~~state to deannex an area or areas of the existing corporate limits thereof, in accordance with~~

H. B. 1439

17 ~~the procedures provided in this article and in Article 1 of this chapter, upon the written and~~
 18 ~~signed applications of all of the owners of all of the land, except the owners of any public~~
 19 ~~street, road, highway, or right of way, proposed to be deannexed, containing a complete~~
 20 ~~description of the lands to be deannexed and the adoption of a resolution by the governing~~
 21 ~~authority of the county in which such property is located consenting to such deannexation.~~
 22 ~~Lands to be deannexed at any one time shall be treated as one body, regardless of the~~
 23 ~~number of owners, and all parts shall be considered as adjoining the limits of the municipal~~
 24 ~~corporation when any one part of the entire body abuts such limits. When such application~~
 25 ~~is acted upon by the municipal authorities and the land is, by ordinance, deannexed from~~
 26 ~~the municipal corporation, an identification of the property so deannexed shall be filed with~~
 27 ~~the Department of Community Affairs and with the governing authority of the county in~~
 28 ~~which the property is located in accordance with Code Section 36-36-3. When so~~
 29 ~~deannexed, such lands shall cease to constitute a part of the lands within the corporate~~
 30 ~~limits of the municipal corporation as completely and fully as if the limits had been marked~~
 31 ~~and defined by local Act of the General Assembly Reserved.~~"

32 **SECTION 2.**

33 Said chapter is further amended by adding new articles to read as follows:

34 "ARTICLE 8

35 36-36-130.

36 The procedures of this article shall apply to all deannexations pursuant to this chapter but
 37 shall not apply to deannexations by local Acts of the General Assembly.

38 36-36-131.

39 (a) Authority is granted to the governing authority of any municipality to deannex an area
40 or areas of the existing corporate limits thereof, in accordance with the procedures provided
41 in this article and in Article 1 of this chapter, upon the written and signed applications of
42 all of the owners of all of the land, except the owners of any public street, road, highway,
43 or right of way, proposed to be deannexed, containing a complete description of the lands
44 to be deannexed, and upon the adoption of a resolution by the governing authority of the
45 county in which such property is located consenting to such deannexation.

46 (b) Lands to be deannexed at any one time under this article shall be treated as one body,
47 regardless of the number of owners, and all parts shall be considered as adjoining the limits
48 of the municipality when any one part of the entire body abuts such limits.

49 (c) When such application is acted upon by the municipal governing authority and the land
50 is, by ordinance, deannexed from the municipality, an identification of the property so
51 deannexed shall be filed with the Department of Community Affairs and with the
52 governing authority of the county in which the property is located in accordance with Code
53 Section 36-36-3.

54 (d) When so deannexed, such lands shall cease to constitute a part of the lands within the
55 corporate limits of the municipality as completely and fully as if the limits had been
56 marked and defined by local Act of the General Assembly.

57 (e)(1) Except as provided in paragraph (2) of this subsection and Code Section
58 36-36-132, when so deannexed, the land shall be deannexed from the municipality
59 effective for ad valorem tax purposes on December 31 of the year during which such
60 application is submitted and for all other purposes on the first day of the next calendar
61 quarter which begins at least one month after the month during which the requirements
62 of this article have been met.

63 (2) Unless otherwise agreed in writing by a county governing authority and a municipal
64 governing authority, where property zoned and used for commercial purposes is

65 deannexed from a municipality with an independent school system, the effective date for
66 the purposes of ad valorem taxes levied for educational purposes shall be December 31
67 of the year after the year in which the requirements of this article have been met.

68 (f) Property that has been deannexed from a municipality under this article shall not be
69 annexed again until at least two calendar years after the effective date of such deannexation
70 unless such annexation is accomplished by local Act of the General Assembly.

71 36-36-132.

72 Property that has been deannexed from a municipality under this article shall be subject to
73 all general obligation bonded indebtedness of the municipality which is outstanding on the
74 effective date of such deannexation. On the effective date of such deannexation, a special
75 tax district shall be created whose geographical boundary shall correspond to and be
76 conterminous with the property that has been deannexed. The ad valorem taxes imposed
77 by the municipality on the effective date of the deannexation to retire such bonded
78 indebtedness shall continue to be imposed within such special district in the same manner
79 and to the same extent that such ad valorem taxes were previously imposed by the
80 municipality in accordance with the terms of the obligations of such bonded indebtedness.
81 The governing authority of the municipality shall administer such special district for the
82 purposes relating to such bonded indebtedness, including enforcement of the rights and
83 remedies of the bondholders.

84

ARTICLE 9

85 36-36-150.

86 The procedures of this article shall apply to all deannexations pursuant to this chapter but
87 shall not apply to deannexations by local Acts of the General Assembly.

88 36-36-151.

89 Upon receipt of a petition of deannexation, a county shall notify the governing authority
90 of the municipality in which the territory to be deannexed is located by certified mail or by
91 statutory overnight delivery. Such notice shall include a copy of the deannexation petition
92 which shall include the proposed zoning and land use for such area. The county shall take
93 no final action on such deannexation except as otherwise provided in this article.

94 36-36-152.

95 If no objection is received as provided in Code Section 36-36-153, the deannexation may
96 proceed as otherwise provided by law; provided, however, that as a condition of the
97 deannexation the county shall not change the zoning or land use plan relating to the
98 deannexed property to a more intense density than that stated in the notice provided for in
99 Code Section 36-36-151 for one year after the effective date of the deannexation unless
100 such change is made in the service delivery agreement or comprehensive plan and is
101 adopted by the affected county and municipality and all required parties.

102 36-5-153.

103 (a) The municipal governing authority may by majority vote object to the deannexation
104 because of a material increase in burden upon the municipality directly related to any one
105 or more of the following:

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

107 (2) Proposed increase in density; and

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

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

112 (c) The objection provided for in subsection (a) of this Code section shall document the
113 nature of the objection, specifically providing evidence of any financial impact forming the
114 basis of the objection, and shall be delivered to the county governing authority by certified
115 mail or statutory overnight delivery to be received not later than the end of the thirtieth
116 calendar day following receipt of the notice provided for in Code Section 36-36-151.

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

119 (1) Result in:

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

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

126 (2) Differ substantially from the existing uses suggested for the property by the county's
127 comprehensive land use plan or permitted for the property pursuant to the county's zoning
128 ordinance or its land use ordinances.

129 36-36-154.

130 (a) Not later than the fifteenth calendar day following the date the county received the first
131 objection provided for in Code Section 36-36-153, an arbitration panel shall be appointed
132 as provided in this Code section.

133 (b) The arbitration panel shall be composed of five members to be selected as provided in
134 this subsection. The Department of Community Affairs shall develop three pools of
135 arbitrators, one pool which consists of persons who are currently or within the previous six
136 years have been county elected officials, one pool which consists of persons who are
137 currently or within the previous six years have been municipal elected officials, and one

138 pool which consists of persons with a master's degree or higher in public administration or
139 planning and who are currently employed by an institution of higher learning in this state,
140 other than the Carl Vinson Institute of Government. The pool shall be sufficiently large
141 to ensure as nearly as practicable that no person shall be required to serve on more than two
142 panels in any one calendar year and serve on no more than one panel in any given county
143 in any one calendar year. The Department of Community Affairs is authorized to
144 coordinate with the Association County Commissioners of Georgia, the Georgia Municipal
145 Association, the Council of Local Governments, and similar organizations in developing
146 and maintaining such pools.

147 (c) Upon receiving notice of a disputed deannexation, the Department of Community
148 Affairs shall choose at random four names from the pool of county officials, four names
149 from the pool of municipal officials, and three names from the pool of academics;
150 provided, however, that none of such selections shall include a person who is a resident of
151 the municipality which has interposed the objection, or any municipal corporation located
152 wholly or partially in such county. The county shall be permitted to strike or excuse two
153 of the names chosen from the municipal officials pool; the municipality shall be permitted
154 to strike or excuse two of the names chosen from the county officials pool; and the county
155 and municipality shall each be permitted to strike or excuse one of the names chosen from
156 the academic pool.

157 (d) Prior to being eligible to serve on any of the three pools, persons interested in serving
158 on such panels shall receive joint training in alternative dispute resolution together with
159 zoning and land use training, which may be designed and overseen by the Carl Vinson
160 Institute of Government in conjunction with the Association County Commissioners of
161 Georgia and the Georgia Municipal Association, provided such training is available.

162 (e) At the time any person is selected to serve on a panel for any particular deannexation
163 dispute, he or she shall sign the following oath: 'I do solemnly swear or affirm that I will
164 faithfully perform my duties as an arbitrator in a fair and impartial manner without favor

165 or affection to any party, and that I have not and will not have any ex parte communication
166 regarding the facts and circumstances of the matters to be determined, other than
167 communications with my fellow arbitrators, and will only consider, in making my
168 determination, those matters which may lawfully come before me.'

169 36-36-155.

170 (a)(1) The arbitration panel appointed pursuant to Code Section 36-36-154 shall meet as
171 soon after appointment as practicable and shall receive evidence and argument from the
172 county, the municipality, and the applicant or property owner or owners and shall by
173 majority vote render a decision which shall be binding on all parties to the dispute as
174 provided for in this article not later than the sixtieth day following such appointment.
175 The meetings of the panel in which evidence is submitted or arguments of the parties are
176 made shall be open to the public pursuant to Chapter 14 of Title 50. The panel shall first
177 determine the validity of the grounds for objection as specified in the objection. If an
178 objection involves the financial impact on the municipality as a result of a change in
179 zoning or land use or the provision of maintenance of infrastructure, the panel shall
180 quantify such impact in terms of cost. As to any objection which the panel has
181 determined to be valid, the panel, in its findings, may establish reasonable zoning, land
182 use, or density conditions applicable to the deannexation and propose any reasonable
183 mitigating measures as to an objection pertaining to infrastructure demands.

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

- 185 (A) The existing comprehensive land use plans of both the county and city;
186 (B) The existing land use patterns in the area of the subject property;
187 (C) The existing zoning patterns in the area of the subject property;
188 (D) Each jurisdiction's provision of infrastructure to the area of the subject property;
189 (E) Whether the municipality has approved similar changes in intensity or allowable
190 uses on similar developments in its corporate limits;

191 (F) Whether the municipality has approved similar developments in its corporate limits
192 which have a similar impact on infrastructure as complained of by the municipality in
193 its objection; and

194 (G) Whether the infrastructure or capital outlay project which is claimed adversely
195 impacted by the municipality in its objection was funded by a city-wide tax.

196 (3) The municipality shall provide supporting evidence that its objection is consistent
197 with its land use plan and the pattern of existing land uses and zonings in the area of the
198 subject property.

199 (4) The municipality shall bear at least 75 percent of the cost of the arbitration. The
200 panel shall apportion the remaining 25 percent of the cost of the arbitration equitably
201 between the county and the municipality as the facts of the appeal warrant; provided,
202 however, that, if the panel determines that any party has advanced a position that is
203 substantially frivolous, the costs shall be borne by the party that has advanced such
204 position.

205 (5) The reasonable costs of participation in the arbitration process of the property owner
206 or owners whose property is at issue shall be borne by the municipality and the county
207 in the same proportion as costs are apportioned under paragraph (4) of this subsection.

208 (6) The panel shall deliver its findings and recommendations to the parties by certified
209 mail or statutory overnight delivery.

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

215 (c) The arbitration panel shall be dissolved on the tenth day after it renders its findings and
216 recommendations but may be reconvened as provided in Code Section 36-36-156.

217 (d) The members of the arbitration panel shall receive the same per diem, expenses, and
218 allowances for their service on the committee as is authorized by law for members of
219 interim legislative study committees.

220 (e) If the panel so agrees, any one or more additional deannexation disputes which may
221 arise between the parties prior to the panel's initial meeting may be consolidated for the
222 purpose of judicial economy if there are similar issues of location or similar objections
223 raised to such other deannexations or the property to be deannexed in such other
224 deannexations is within 2,500 feet of the subject property.

225 36-36-156.

226 The county or municipal governing authority or an applicant for deannexation may appeal
227 the decision of the arbitration panel by filing an action in the superior court of the county
228 within ten calendar days of receipt of the panel's findings and recommendations. The sole
229 grounds for appeal shall be to correct errors of fact or of law, the bias or misconduct of an
230 arbitrator, or the panel's abuse of discretion. The superior court shall schedule an expedited
231 appeal and shall render a decision within 20 days from the date of filing. If the court finds
232 that an error of fact or law has been made, that an arbitrator was biased or engaged in
233 misconduct, or that the panel has abused its discretion, the court shall issue such orders
234 governing the proposed deannexation as the circumstances may require, including remand
235 to the panel. Any unappealed order shall be binding upon the parties. The appeal shall be
236 assigned to a judge who is not a judge in the circuit in which the county is located.

237 36-36-157.

238 If the deannexation is completed after final resolution of any objection, whether by
239 agreement of the parties, decision of the panel, or court order as a result of an appeal, the
240 county shall not change the zoning, land use, or density of the deannexed property for a
241 period of one year unless such change is made in the service delivery agreement or

242 comprehensive plan and is adopted by the affected county and municipality and all required
243 parties. Following the conclusion of the dispute resolution process outlined in this article,
244 the county and an applicant for deannexation may either accept the recommendations of
245 the arbitration panel and proceed with the remaining deannexation process or abandon the
246 deannexation proceeding. A violation of the conditions set forth in this Code section may
247 be enforced thereafter at law or in equity until such conditions have expired as provided
248 in this Code section.

249 36-36-158.

250 If at any time during the proceedings the county or applicant abandons the proposed
251 deannexation, the municipality shall not change the zoning, land use, or density affecting
252 the property for a period of one year unless such change is made in the service delivery
253 agreement or comprehensive plan and adopted by the affected county and municipality and
254 all required parties. A violation of the conditions set forth in this Code section may be
255 enforced thereafter at law or in equity until such period has expired. After final resolution
256 of any objection, whether by agreement of the parties, decision of the panel, or any appeal
257 from the panel's decision, the terms of such decision shall remain valid for the one-year
258 period and such deannexation may proceed at any time during the one year without any
259 further action or without any further right of objection by the municipality.

260 36-36-159.

261 The municipal governing authority, the county governing authority, and the property owner
262 or owners shall negotiate in good faith throughout the deannexation proceedings provided
263 by this article and may at any time enter into a written agreement governing the
264 deannexation. If such agreement is reached after the arbitration panel has been appointed
265 and before its dissolution, such agreement shall be adopted by the panel as its findings and
266 recommendations. If such agreement is reached after an appeal is filed in the superior

267 court and before the court issues an order, such agreement shall be made a part of the
268 court's order. Any agreement reached as provided in this Code section shall be recorded
269 as provided in Code Section 36-36-155."

270 **SECTION 3.**

271 This Act shall become effective upon its approval by the Governor or upon its becoming law
272 without such approval.

273 **SECTION 4.**

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