

House Bill 1461 (COMMITTEE SUBSTITUTE)

By: Representatives Anderson of the 10<sup>th</sup>, Jones of the 47<sup>th</sup>, Hawkins of the 27<sup>th</sup>, Taylor of the 173<sup>rd</sup>, Thomas of the 21<sup>st</sup>, 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 related matters; to repeal  
12 conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 1461 (SUB)

14 **SECTION 1.**

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

## 18 "ARTICLE 7

19 36-36-110.

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

22 36-36-110.1.

23 As used in this article, the term:

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

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

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

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

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

39 36-36-111.

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

47 36-36-112.

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

55 36-36-113.

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

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

60 (2) Proposed increase in density; and

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

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

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

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

73 (1) Result in:

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

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

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

82 36-36-114.

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

- 86 (b) The arbitration panel shall be composed of five members to be selected as provided in  
87 this subsection. The ~~Department of Community Affairs~~ department shall develop three  
88 pools of arbitrators, one pool which consists of persons who are currently or within the  
89 previous six years have been municipal elected officials, one pool which consists of  
90 persons who are currently or within the previous six years have been county elected  
91 officials, and one pool which consists of persons with a master's degree or higher in public  
92 administration or planning and who are currently employed by an institution of higher  
93 learning in this state, other than the Carl Vinson Institute of Government of the University  
94 of Georgia. The pool shall be sufficiently large to ensure as nearly as practicable that no  
95 person shall be required to serve on more than ~~two~~ four panels in any one calendar year and  
96 serve on no more than one panel in any given county in any one calendar year. The  
97 department is authorized to coordinate with the Georgia Municipal Association, the  
98 Association County Commissioners of Georgia, the Council of Local Governments, and  
99 similar organizations in developing and maintaining such pools.
- 100 (c) Upon receiving notice of a disputed annexation, the department shall choose at random  
101 four names from the pool of municipal officials, four names from the pool of county  
102 officials, and three names from the pool of academics; provided, however, that none of  
103 such selections shall include a person who is a resident of the county which has interposed  
104 the objection or any municipal corporation located wholly or partially in such county, and  
105 further provided that none of such selections shall include a person who has already served  
106 on four other arbitration panels in the then-current calendar year. The municipal  
107 corporation shall be permitted to strike or excuse two of the names chosen from the county  
108 officials pool; the county shall be permitted to strike or excuse two of the names chosen  
109 from the municipal officials pool; and the county and municipal corporation shall each be  
110 permitted to strike or excuse one of the names chosen from the academic pool.
- 111 (d) Prior to being eligible to serve on any of the three pools, persons interested in serving  
112 on such panels shall receive joint training in alternative dispute resolution together with

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

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

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

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

139 36-36-115.

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

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

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

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

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

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

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

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



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

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

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

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

209 36-36-116.

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

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

221 36-36-117.

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

233 36-36-118.

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

244 36-36-119.  
245 The county, the municipal governing authorities, and the property owner or owners shall  
246 negotiate in good faith throughout the annexation proceedings provided by this article and  
247 may at any time enter into a written agreement governing the annexation. Such agreement  
248 may provide for changing the zoning, land use, or density of the annexed property during  
249 a period of less than two years. If such agreement is reached after the arbitration panel has  
250 been appointed and before its dissolution, such agreement shall be adopted by the panel as  
251 its findings and recommendations. If such agreement is reached after an appeal is filed in  
252 the superior court and before the court issues an order, such agreement shall be made a part  
253 of the court's order. Any agreement reached as provided in this Code section shall be  
254 recorded as provided in Code Section 36-36-115. Copies of such agreement shall also be  
255 provided by the parties to the department in the same manner as the findings and  
256 recommendations of an arbitration panel."

257 **SECTION 2.**

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

261 "36-36-6.

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

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

274 **SECTION 3.**

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