

House Bill 1127

By: Representatives Welch of the 110th, Anulewicz of the 42nd, and Stephens of the 164th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 66 of Title 36 of the Official Code of Georgia Annotated, relating to
2 zoning procedures, so as to provide for suits against counties and municipalities regarding
3 certain zoning procedures; to provide definitions; to provide for a waiver of sovereign
4 immunity regarding certain zoning decisions; to provide for an exception of state liability
5 regarding zoning powers of counties and municipalities; to provide for related matters;
6 repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 66 of Title 36 of the Official Code of Georgia Annotated, relating zoning procedures
10 is amended by revising Code Section 36-66-2, relating to legislative purpose and local
11 government zoning powers, as follows:

12 "36-66-2.

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

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

23 (1) Provide by ordinance or resolution for such administrative officers, bodies, or
24 agencies as may be expedient for the efficient exercise of their zoning powers; and

25 (2) Provide by ordinance or resolution for procedures and requirements in addition to or
26 supplemental to those required by this chapter.

27 (c) A suit against a county or municipality alleging that a zoning decision is
 28 unconstitutional or otherwise contrary to law shall be brought as a civil action pursuant to
 29 Chapter 11 of Title 9, the 'Georgia Civil Practice Act,' and not as an appeal under the
 30 procedures set forth in Chapter 3 of Title 5, even when such suit seeks an individualized
 31 determination as to a single parcel of real property.

32 (d)(1) A suit against a county or municipality alleging that a zoning decision is
 33 unconstitutional or otherwise contrary to law shall not be subject to dismissal on the
 34 ground that a county has sovereign immunity or is immune from suit pursuant to
 35 Chapter 1 of this title or that a municipality has sovereign immunity pursuant to Code
 36 Section 36-33-1.

37 (2) A waiver of sovereign immunity shall apply to suits alleging that zoning decisions
 38 are contrary to law, and to suits where conditions imposed with approved zoning
 39 decisions are alleged to be contrary to law, but shall not apply to claims for money
 40 damages, attorney fees, and costs of litigation, as provided in Chapter 15 of Title 9.

41 (e)(1) As used in this subsection, the term:

42 (A) 'Agency' means a board, commission, or administrative officer or other entity that
 43 is authorized by law to determine contested cases concerning the development and
 44 characteristics of the use of land related to its zoning, but excluding cases pending in
 45 county or municipal courts.

46 (B) 'Contested case' means a proceeding, including, but not limited to, variances,
 47 special exceptions, administrative permits, and other actions affecting the development
 48 and characteristics of the use of land related to its zoning, in which the legal rights,
 49 duties, or privileges of a party with respect to the development and characteristics of
 50 the use of land related to its zoning are required by law to be determined by an agency
 51 after an opportunity for hearing.

52 (C) 'Development and characteristics of the use of land related to its zoning' means the
 53 operation of a zoning ordinance that is not a zoning decision and shall include:

54 (i) The operation of an ordinance governing the subdivision of land;

55 (ii) The operation of an ordinance governing the alteration of riparian or vegetative
 56 resources; and

57 (iii) The application of building codes and fire codes except where the decisions by
 58 an agency may be appealed to the Department of Community Affairs as provided in
 59 Code Section 8-2-26.

60 (D) 'Party' means each person or agency named or admitted as a party or properly
 61 seeking and entitled as of right or by permission to be admitted as a party in a contested
 62 case.

63 (2) The defense of sovereign immunity is waived for purposes of a suit against a county
64 or municipality as provided for under subsection (c) of this Code section. An appeal to
65 a superior court, under the procedures set forth in Chapter 3 of Title 5, of a determination
66 made by an agency of a county or a municipality, that is not a zoning decision, but which
67 affects the development and characteristics of the use of land related to its zoning, shall
68 not be subject to dismissal on the ground that a county has sovereign immunity or is
69 immune from suit pursuant to Chapter 1 of this title or that a municipality has sovereign
70 immunity pursuant to Code Section 36-33-1."

71 **SECTION 2.**

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