



4800 Ashford Dunwoody Road
Dunwoody, Georgia 30338
dunwoodyga.gov | 678.382.6700

MEMORANDUM

To: Mayor and City Council
From: Madalyn Smith, Senior Planner
Date: May 8, 2023
Subject: Text Amendment
Chapter 27 – Changes to the Zoning Procedures Law

ITEM DESCRIPTION

This item is a proposed text amendment to the zoning ordinance to comply with the updated Zoning Procedures Law (ZPL), HB 1405, and updated appeals process, HB 916, adopted by state legislature.

DISCUSSION

Two bills recently adopted by the state legislature, HB 1405 and HB 916, affect the City’s zoning procedure. Georgia municipalities have until June 1 to adopt these new regulations into their local ordinances.

Per the Georgia General Assembly, the revisions to the ZPL, HB 1405, are as follows:

A BILL to be entitled an Act to amend Title 36 of the Official Code of Georgia Annotated, relating to local governments, so as to revise "The Zoning Procedures Law"; to revise provisions related to judicial review of zoning decisions; to revise definitions; to provide for requirements for zoning decisions by boards or agencies using delegated powers; to require review procedures for decisions made by boards or agencies using delegated powers; to provide for judicial review of zoning decisions; to require certain designations relating to appeals of quasi-judicial decisions; to provide for related matters; to repeal conflicting laws; and for other purposes.

HB 1405 specifically lays out additional public hearing and public notice requirements for city-initiated rezonings for specific changes to single-family zoning districts. The new ZPL dictates that signs are required every 500 feet in the affected area, specifies the size of the required newspaper ads, requires additional public hearings, and specifies a new timeline for approval by the City Council. Additionally, HB 1405 updated the public-notice requirements for quasi-judicial proceedings.

In response to HB 1405, staff has added a new section to the Amendments regulations, Sec. 27-238, titled "Special Provisions for City-Initiated Amendments for Applicable Zoning

Lynn Deutsch Mayor
Eric Linton ICMA-CM City Manager
Sharon Lowery CMC City Clerk
Catherine Lautenbacher City Council Post 1
Rob Price City Council Post 2
Tom Lambert City Council Post 3
Stacey Harris City Council Post 4
Joe Seconder City Council Post 5
John Heneghan City Council Post 6



4800 Ashford Dunwoody Road
Dunwoody, Georgia 30338
dunwoodyga.gov | 678.382.6700

Decisions”, which reflects the ZPL updates. Staff has also updated the public notice requirements for variances, special exceptions, and special land use permits accordingly.

Separately, the Georgia Assembly has revised the appeals process ~~through~~ as follows:

A BILL to be entitled an Act to amend Title 5 of the O.C.G.A., relating to appeal and error, so as to provide for a unified procedure for appealing decisions of a lower judicatory to a superior or state court; to repeal and reserve Chapter 4 of said title, relating to certiorari to superior court; to amend various titles of the Official Code of Georgia Annotated, so as to provide for conforming changes; to correct cross-references and remove obsolete or improper references; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

HB 916 lays out a new process for appealing zoning decisions. Rather than requiring a “writ or certiorari”, appeals can be made as a “petition for review”.

In response to HB 916, staff has updated the appeals process for all applicable sections accordingly.

STAFF RECOMMENDATION

Staff recommends **APPROVAL**.

ATTACHMENTS

- Current and Proposed Code for Chapter 27, Article V, Division 2
- Current and Proposed Code for Chapter 27, Article V, Division 3
- Current and Proposed Code for Chapter 27, Article V, Division 5
- Current and Proposed Code for Chapter 27, Article V, Division 6
- Current and Proposed Code for Chapter 27, Article V, Division 8
- HB 1405
- HB 916

Sec. 27-327. - Authority to initiate.

Amendments to the comprehensive plan's land use map, the zoning map and the text of this zoning ordinance may be initiated by mayor following a motion and a second, any member of the city council following a motion and a second, official action of the planning commission or by the community development director acting on behalf of the mayor and city council. In addition, amendments to the comprehensive plan land use map and the zoning map may be initiated upon application by the owner of the subject property or the subject property owner's authorized agent.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-18.20), 10-14-2013)

Sec. 27-328. - Pre-application conference.

Pre-application conferences with staff are required for all owner-initiated amendment applications (see the pre-application provisions of section 27-305).

(Ord. No. 2013-10-15, § 1(Exh. A § 27-18.30), 10-14-2013)

Sec. 27-329. - Applicant-initiated meeting.

Applicant-initiated meetings are required for all owner-initiated applications for amendments (see the applicant-initiated meeting provisions of section 27-306). If there is no residential zoned property within 500 feet of the property under consideration, the applicant is exempt from applicant-initiated meeting requirements.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-18.40), 10-14-2013; Ord. No. 2015-06-11, § 1, 6-8-2015)

Editor's note— Section 1 of Ord. No. 2015-06-11, adopted June 8, 2015, changed the title of § 27-329 from "Neighbor communications summary" to read as herein set out.

Sec. 27-330. - Application filing.

- (a) Owner-initiated applications for comprehensive plan land use map amendments and zoning map amendments must be filed with the community development director.
- (b) Owner-initiated applications for zoning map amendments may be proposed with or without conditions. Conditions may include:
 - (1) Written conditions;
 - (2) Site plans, architectural renderings, elevations, photographs, or other graphic representations of the proposed use/development; or
 - (3) Any combination of written conditions and graphic representations.
- (c) Any site plan filed as a proposed condition must be prepared, signed and sealed by a state-licensed architect, landscape architect or engineer.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-18.50), 10-14-2013)

Sec. 27-331. - Public hearing notices.

- (a) *Published notice.* At least 15 days before but not more than 45 days before the date of the public hearing to be held by the mayor and city council, notice of the public hearing must be published in a

newspaper of general circulation in the city. This required notice must indicate the date, time, place and purpose of the public hearing. In the case of proposed amendments initiated by a party other than the city, the notice must also identify the location of the subject property and the property's existing and proposed zoning classification.

- (b) *Written (mailed) notice.* Written notice is required for all proposed amendments initiated by a party other than the city. The community development director is responsible for sending written notice via first class mail to all property owners within 500 feet of the boundaries of the subject property, as those property owners are listed on the tax records of the city. The notices must be mailed at least 15 days before the date of the planning commission public hearing and not more than 45 days before the date of the city council public hearing. Written notices must indicate the nature of the proposed amendment and the date, time, place and purpose of the public hearing.
- (c) *Posted notice.* For all proposed amendments initiated by a party other than the city, a public hearing notice sign must be placed in a conspicuous location on the subject property at least 15 days before the date of the public hearing to be held by the mayor and city council. This notice sign must indicate the date, time, place and purpose of the public hearing.
- (d) *Special requirements for drug treatment and dependency facilities.* When a proposed zoning map amendment relates to or will allow the location or relocation of a halfway house, drug rehabilitation center, or other facility for treatment of drug dependency, all published, written and posted notices of the public hearing to be held by the mayor and city council must include a prominent statement that the proposed zoning map amendment relates to or will allow the location or relocation of a halfway house, drug rehabilitation center, or other facility for treatment of drug dependency. The published notice must be at least six-column inches in size and may not be located in the classified advertising section of the newspaper.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-18.60), 10-14-2013)

Sec. 27-332. - Reserved.

Editor's note— Section 1 of Ord. No. 2015-06-11, adopted June 8, 2015, repealed former § 27-332 which pertained to community council meeting and recommendation, and derived from Ord. No. 2013-10-15, § 1(Exh. A § 27-18.70), adopted Oct. 14, 2013; and Ord. No. 2015-01-05, § 1, adopted Jan. 26, 2015.

Sec. 27-333. - Planning commission public hearing and recommendation.

The planning commission must hold a public hearing on all proposed amendments. Following the close of the hearing, the planning commission must act by simple majority vote to recommend that the proposed amendment be approved, approved with conditions or denied based on the applicable review and approval criteria of section 27-335. Per section 27-311 the planning commission may vote to defer action or continue a hearing in order to receive additional information or deliberate further. The planning commission's recommendation must be transmitted to the mayor and city council.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-18.80), 10-14-2013; Ord. No. 2015-01-05, § 1, 1-26-2015)

Sec. 27-334. - City council public hearing and decision.

- (a) Upon receipt of recommendations from the planning commission, the mayor and city council must hold a public hearing on proposed amendments. Following the close of the public hearing, the mayor and city council must act by simple majority vote to approve the proposed amendment, approve the proposed amendment with conditions or deny the proposed amendment based on the applicable

review and approval criteria of section 27-335. The mayor and city council are also authorized to defer action on the proposed amendment or allow the applicant to withdraw the proposed amendment without prejudice.

- (b) When a proposed zoning map amendment relates to or will allow the location or relocation of a halfway house, drug rehabilitation center, or other facility for treatment of drug dependency, the mayor and city council public hearing must be held at least six months before and not more than nine months before the date of final action on the application.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-18.90), 10-14-2013)

Sec. 27-335. - Review and approval criteria.

- (a) *Comprehensive plan land use map.* The following review and approval criteria must be used in reviewing and taking action on all comprehensive plan land use map amendments:
- (1) Whether the proposed land use change will permit uses that are suitable in view of the use and development of adjacent and nearby property;
 - (2) Whether the proposed land use change will adversely affect the existing use or usability of adjacent or nearby property;
 - (3) Whether the proposed land use change will result in uses that will or could cause excessive or burdensome use of existing streets, transportation facilities, utilities or schools;
 - (4) Whether the amendment is consistent with the written policies in the comprehensive plan text;
 - (5) Whether there are environmental impacts or consequences resulting from the proposed change;
 - (6) Whether there are impacts on properties in an adjoining governmental jurisdiction in cases of proposed changes near city boundary lines;
 - (7) Whether there are other existing or changing conditions affecting the use and development of the affected land areas that support either approval or denial of the proposed land use change; and
 - (8) Whether there are impacts on historic buildings, sites, districts or archaeological resources resulting from the proposed change.
- (b) *Zoning map amendments.* The following review and approval criteria must be used in reviewing and taking action on all zoning map amendments:
- (1) Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan;
 - (2) Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties;
 - (3) Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;
 - (4) Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;
 - (5) Whether there are other existing or changing conditions affecting the use and development of the property that provide supporting grounds for either approval or disapproval of the zoning proposal;
 - (6) Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources; and
 - (7) Whether the zoning proposal will result in a use that will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

- (c) *Zoning ordinance text amendments.* The following review and approval criteria must be used in reviewing and taking action on all zoning ordinance text amendments:
- (1) Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan; and
 - (2) Whether the proposed zoning ordinance text amendment corrects an error or inconsistency in the zoning ordinance, meets the challenge of a changing condition or is necessary to implement established policy.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-18.100), 10-14-2013)

Sec. 27-336. - Successive applications.

An application for a comprehensive plan land use map amendment, zoning map amendment or a major amendment to one or more conditions attached to previously approved zoning map amendments affecting all or a portion of the same property may not be submitted more than once every 24 months measured from the date of final action by the mayor and city council. The mayor and city council are authorized to waive or reduce this 24-month time interval by resolution, except that the time interval between the date of action to deny or the date that the application is withdrawn with prejudice and the date of filing of any subsequent amendment affecting the same property may not be less than six months.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-18.110), 10-14-2013)

Sec. 27-337. - Amending conditions of approval.

(a) *Major changes.*

- (1) Without limiting the meaning of the phrase, modification of any of the following conditions, if attached to an approved amendment, constitute a "major change" for purposes of interpreting this section:
 - a. The movement of any building or structure adjacent to an exterior boundary line, closer to the boundary line of the property to which it is adjacent;
 - b. Any increase in the number of dwelling units or any increase in the total amount of floor space of any nonresidential building;
 - c. Any decrease in the minimum size of residential units;
 - d. Any reduction in any buffer requirement;
 - e. Any increase in building or structure height; or
 - f. Any change in the proportion of floor space devoted to different authorized uses.
- (2) Any request for major changes to conditions attached to approved amendments must be processed as a new amendment application in accordance with the procedures of this division, including the requirement for fees, notices and hearings.

(b) *Minor changes.*

- (1) Modification of conditions attached to an approved amendment that are not classified as a major change pursuant to subsection (a)(1), constitute a "minor change" for purposes of interpreting this section.
- (2) The community development director is authorized to approve minor changes to conditions attached to approved amendments.

- (3) Any request for minor change of conditions must be made in writing to the community development director. If an approved site plan exists, the request for minor change must be accompanied by copies of the revised site plan.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-18.120), 10-14-2013; Ord. No. 2015-01-05, § 1, 1-26-2015)

Sec. 27-338. Special Provisions for City-Initiated Amendments for Applicable Zoning Decisions

(a) Applicability.

The provisions of this section shall apply to any amendments, initiated by the City of Dunwoody, that provide for the abolition of all single-family residential zoning classifications within the territorial boundaries of the City of Dunwoody or zoning decisions that result in the rezoning of all property zoned for single-family residential uses within the territorial boundaries of the City of Dunwoody to multifamily residential uses of property. This section shall not apply to zoning decisions for the rezoning of property from a single-family residential use of property to a multifamily residential use of property when the rezoning is initiated by the owner or authorized agent of the owner of such property.

(b) Public Hearings.

Prior to the City council decision, at least two public hearings shall be held on the proposed action. Such public hearings shall be held at least three months and not more than nine months prior to the date of final action on the zoning decision. Furthermore, at least one of the public hearings must be held between the hours of 5:00 P.M. and 8:00 P.M. The hearings required by this paragraph shall be in addition to the hearing required in Section 27-334.

(c) Public Hearing Notices.

(1) Content of the Public Hearing Notices.

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

- (2) Published notice. At least 15 days before but not more than 45 days before the date of the public hearing, notice of the public hearing must be published in a newspaper of general circulation in the city. This required notice must indicate the date, time, place and purpose of the public hearing.

(3) Written (mailed) notice. Written notice is required for all proposed amendments initiated by the city. The community development director is responsible for sending written notice via first class mail to all property owners within 500 feet of the boundaries of the subject property (or properties), as those property owners are listed on the tax records of the city. The notices must be mailed at least 15 days but not more than 45 days before the date of the public hearing. Written notices must indicate the nature of the proposed amendment and the date, time, place and purpose of the public hearing.

(4) Posted notice. A public hearing notice sign must be placed in a conspicuous location on the subject property (or properties), provided, however, that when more than 500 parcels are affected, in which case posting notice is required every 500 feet in the affected area, at least 15 days before the date of the public hearing. This notice sign must indicate the date, time, place and purpose of the public hearing.

(d) City Council Decision.

The amendment decision shall be adopted at two regular meetings of the City council, during a period of not less than 21 days apart.

Secs. 27-338—27-350. - Reserved.

Sec. 27-392. - Prohibited variances.

The variance procedures of this zoning ordinance may not be used to:

- (1) Allow a structure or use not authorized in the subject zoning district or a residential density of development that is not authorized within the subject district;
- (2) Allow an increase in maximum building height;
- (3) Waive, vary, modify or otherwise override a site plan or condition of approval attached to an amendment, special land use permit or other development approval under this zoning ordinance;
- (4) Reduce, waive or modify in any manner the minimum lot area established for any use permitted by special land use permit or by special exception;
- (5) Permit the expansion or enlargement of any nonconforming use;
- (6) Permit the reestablishment of any nonconforming use that has been abandoned or lost its nonconforming rights; or
- (7) Vary the home occupation regulations.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-21.20), 10-14-2013; Ord. No. 2015-01-05, § 1, 1-26-2015; Ord. No. 2017-04-07, § 4, 4-11-2017)

Sec. 27-393. - Authority to file.

Applications for approval of variances may be filed by the owner of the subject property or the property owner's authorized agent.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-21.30), 10-14-2013)

Sec. 27-394. - Application filing.

Variance applications must be filed with the community development director.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-21.40), 10-14-2013)

Sec. 27-395. - Public hearing notices.

- (a) *Published notice.* At least 30 days before the date of the public hearing to be held by the board of appeals, notice of the public hearing must be published in a newspaper of general circulation in the city. This required notice must indicate the date, time, place and purpose of the public hearing.
- (b) *Written (mailed) notice.* The community development director is responsible for sending written notice via first class mail to the subject property owner and all property owners within 500 feet of the boundaries of the subject property, as those property owners are listed on the tax records of the city. The notices must be mailed at least 30 days before the public hearing to be held by the board of appeals. Written notices must indicate the nature of the proposed use or activity and the date, time, place and purpose of the public hearing.
- (c) *Posted notice.* A public hearing notice sign must be placed in a conspicuous location on the subject property at least 30 days before the date of the public hearing to be held by board of appeals. This notice sign must indicate the date, time, place and purpose of the public hearing.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-21.50), 10-14-2013)

Sec. 27-396. - Zoning board of appeals public hearing and decision.

- (a) The zoning board of appeals must hold a public hearing to consider all variance applications.
- (b) Following the close of the hearing and consideration of all testimony, documentary evidence and matters of record, the zoning board of appeals must act by simple majority vote of board members present and voting to approve the variance, approve the variance with conditions or deny the requested variance. The zoning board of appeals is also authorized to defer action on the variance or allow the applicant to withdraw the variance without prejudice. The board's final decision must be made within a reasonable period of time but in no event more than 60 days from the date of the close of the hearing.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-21.60), 10-14-2013)

Sec. 27-397. - Review and approval criteria.

- (a) The zoning board of appeals may authorize variances from the provisions of this zoning ordinance only after making all of the following findings:
 - (1) The grant of the variance will not be detrimental to the public health, safety or welfare or injurious to property or improvements;
 - (2) The variance request is based on conditions that (1) are unique to the subject property (2) are not generally applicable to other properties in the same zoning district and (3) were not created by the owner or applicant;
 - (3) Because of the particular conditions, shape, size, orientation or topographic conditions, the strict application of the requirements of this zoning ordinance would deprive the property owner of rights and privileges enjoyed by other similarly situated property owners;
 - (4) The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other similarly situated properties;
 - (5) The literal interpretation and strict application of the applicable provisions or requirements of this zoning ordinance would cause undue hardship or practical difficulty, as distinguished from a mere inconvenience; and
 - (6) The requested variance would be consistent with the spirit and purpose of this zoning ordinance and the comprehensive plan.
- (b) The zoning board of appeals may authorize variances from the provisions of the noise ordinance only after making all of the following findings:
 - (1) Because of the existence of exceptional conditions that were not created by the owner or applicant, the strict application of the noise ordinance would deprive the property owner of rights and privileges enjoyed by other similarly situated property owners;
 - (2) The requested variance does not go beyond the minimum necessary to afford relief, and the applicant has exhausted the best practical noise control measures, such as those promulgated by INCE, without being able to conform to the noise levels established in the noise ordinance;
 - (3) The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located;
 - (4) The literal interpretation and strict application of the applicable provisions or requirements of the noise ordinance would cause undue and unnecessary hardship; and
 - (5) The requested variance would be consistent with the purposes of the noise ordinance and would not allow noise to exceed:

- a. Ten dB(A) above what is allowed by the noise ordinance during the hours of 7:00 a.m. to 10:00 p.m.; and
- b. Five dB(A) above what is allowed by the noise ordinance during the hours of 10:00 p.m. to 7:00 a.m.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-21.70), 10-14-2013)

Sec. 27-398. - Successive applications.

If a variance application is denied, an application to vary the same zoning ordinance provision for the same portion of the subject property may not be resubmitted for 24 months from the date of the denial. The zoning board of appeals is authorized to waive or reduce this 24-month time interval, provided that the time interval between the date of action to deny the application or the date that the application is withdrawn with prejudice and the date of filing of a subsequent variance application affecting the same property may not be less than six months.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-21.80), 10-14-2013)

Sec. 27-399. - Appeals.

- (a) Any person aggrieved by a final variance decision of the zoning board of appeals, including any officer, department, board or agency affected by such decision, may seek review of such decision by petitioning the superior court for a writ of certiorari review, setting forth the alleged errors. The petition must be filed within 30 days of the date that the zoning board of appeals renders its final decision.
- (b) When a petition ~~is for a writ of certiorari for review~~ is filed, the zoning board of appeals must be designated the respondent in certiorari the petition for review and the city the defendant in certiorari the petition for review. The secretary of the zoning board of appeals is authorized to acknowledge service of a copy of the petition ~~and writ~~ on behalf of the zoning board of appeals, as respondent. Service upon the city as defendant must be as provided by law.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-21.90), 10-14-2013)

Sec. 27-400. - Transfer of variances.

Approved variances, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-21.100), 10-14-2013)

Sec. 27-401. - Amending conditions of approval.

A request for changes in conditions of approval attached to an approved variance must be processed as a new variance application in accordance with the procedures of this division, including the requirements for fees, notices and hearings.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-21.110), 10-14-2013)

Sec. 27-402. - Concurrent variances.

- (a) *Applicability.* This section applies to variances sought simultaneously with a zoning map amendment or with a special land use permit.

- (b) *Authority.* The city council may consider variances that would otherwise require approval under article V, division 6. The planning commission shall also hear and make recommendations on concurrent variances.
- (c) *Public hearing notices.* Public notification for concurrent variances shall follow the standards set in section 27-331 for concurrent variances sought simultaneously with a zoning map amendment or the standards set in section 27-356 for concurrent variances sought simultaneously with a special land use permit.
- (d) *Public hearings and decision.*
 - (1) The planning commission shall make a recommendation to the city council on the requested variance in addition to its recommendation on the companion map amendment or special land use permit application. When reviewing a map amendment or special land use application in conjunction with a concurrent variance, the planning commission may move to table an item to the next regularly scheduled meeting up to three times. Should the planning commission fail to make a recommendation at the fourth meeting the item shall be forwarded to the council without a recommendation. All other considerations of section 2-88 apply unchanged.
 - (2) The city council shall take action on the concurrent variance request by incorporating each concurrent variance into the motion for action on the companion map amendment or special land use permit application.
- (e) *Review and approval criteria.* In taking action on concurrent variance requests, the city council shall apply the variance review and approval criteria of section 27-397. The planning commission's review shall also be based on the variance review and approval criteria of section 27-397.
- (f) *No duplicative review.* A variance request to the zoning board of appeals may not be considered simultaneously with a concurrent variance request.

(Ord. No. 2021-09-14, § IX, 9-27-2021)

Secs. 27-403—27-415. - Reserved.

Sec. 27-417. - Authority to file.

Applications for approval of special exceptions may be filed by the owner of the subject property or the property owner's authorized agent.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-22.20), 10-14-2013)

Sec. 27-418. - Application filing.

Special exception applications must be filed with the community development director.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-22.30), 10-14-2013)

Sec. 27-419. - Public hearing notices.

- (a) *Published notice.* At least 30 days before the date of the public hearing to be held by the board of appeals, notice of the public hearing must be published in a newspaper of general circulation in the city. This required notice must indicate the date, time, place and purpose of the public hearing.
- (b) *Written (mailed) notice.* The community development director is responsible for sending written notice via first class mail to the subject property owner and all property owners within 500 feet of the boundaries of the subject property, as those property owners are listed on the tax records of the city. The notices must be mailed at least 30 days before the public hearing to be held by the board of appeals. Written notices must indicate the nature of the proposed use or activity and the date, time, place and purpose of the public hearing.
- (c) *Posted notice.* A public hearing notice sign must be placed in a conspicuous location on the subject property at least 30 days before the date of the public hearing to be held by board of appeals. This notice sign must indicate the date, time, place and purpose of the public hearing.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-22.40), 10-14-2013)

Sec. 27-420. - Zoning board of appeals public hearing and decision.

- (a) The zoning board of appeals must hold a public hearing to consider all special exception applications.
- (b) Following the close of the hearing and consideration of all testimony, documentary evidence and matters of record, the zoning board of appeals must act by simple majority vote of board members present and voting to approve the special exception, approve the special exception with conditions or deny the requested special exception. The zoning board of appeals is also authorized to defer action on the special exception or allow the applicant to withdraw the variance without prejudice. The board's final decision must be made within a reasonable period of time but in no event more than 60 days from the date of the close of the hearing.
- (c) The zoning board of appeals decision to approve or deny must be based on the approval criteria of section 27-421.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-22.50), 10-14-2013)

Sec. 27-421. - Review and approval criteria.

- (a) *Parking and loading increases.* The zoning board or appeals may approve an increase to the maximum number of parking spaces or the maximum number of loading spaces in any district upon an expressed finding that:

- (1) The maximum motor vehicle parking ratios do not accurately reflect the actual parking demand that can reasonably be anticipated for the proposed use.
- (b) *Other authorized special exceptions.* Special exceptions for matters other than parking or loading space reductions may be approved by the zoning board of appeals only when the zoning board of appeals determines that any specific approval criteria associated with the authorized special exception and the following general approval criteria have been met:
 - (1) The grant of the special exception will not be detrimental to the public health, safety or welfare of the public or injurious to the property or improvements;
 - (2) The requested special exception does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other similarly situated properties; and
 - (3) The requested special exception is consistent with all relevant purpose and intent statements of this zoning ordinance.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-22.60), 10-14-2013; Ord. No. 2019-07-14, § 1, 7-22-2019)

Sec. 27-422. - Appeals.

- (a) Any person aggrieved by a final ~~variance~~ decision of the zoning board of appeals, including any officer, department, board or agency affected by such decision, may seek review of such decision by petitioning the superior court for a ~~writ of certiorari~~ review, setting forth the alleged errors. The petition must be filed within 30 days of the date that the zoning board of appeals renders its final decision.
- (b) When a petition ~~is for a writ of certiorari for review~~ is filed, the zoning board of appeals must be designated the respondent in ~~certiorari~~ the petition for review and the city the defendant in ~~certiorari~~ the petition for review. The secretary of the zoning board of appeals is authorized to acknowledge service of a copy of the petition ~~and writ for review~~ on behalf of the zoning board of appeals, as respondent. Service upon the city as defendant must be as provided by law.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-22.70), 10-14-2013)

Sec. 27-423. - Transfer of special exceptions.

Approved special exceptions, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-22.80), 10-14-2013)

Sec. 27-424. - Amending conditions of approval.

A request for changes in conditions of approval attached to an approved special exception must be processed as a new special exception application in accordance with the procedures of this division, including the requirements for fees, notices and hearings.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-22.90), 10-14-2013)

Sec. 27-425. - Concurrent special exceptions.

- (a) *Applicability.* This section applies to special exceptions sought simultaneously with a zoning map amendment or with a special land use permit.

- (b) *Authority.* The city council may consider special exceptions that would otherwise require approval under article V, division 6. The planning commission shall also hear and make recommendations on concurrent special exceptions.
- (c) *Public hearing notices.* Public notification for concurrent special exceptions shall follow the standards set in section 27-331 for concurrent special exceptions sought simultaneously with a zoning map amendment or the standards set in section 27-356 for concurrent special exceptions sought simultaneously with a special land use permit.
- (d) *Public hearings and decision.*
 - (1) The planning commission shall make a recommendation to the city council on the requested special exception in addition to its recommendation on the companion map amendment or special land use permit application. When reviewing a map amendment or special land use application in conjunction with a concurrent special exception, the planning commission may move to table an item to the next regularly scheduled meeting up to three times. Should the planning commission fail to make a recommendation at the fourth meeting the item shall be forwarded to the council without a recommendation. All other considerations of section 2-88 apply unchanged.
 - (2) The city council shall take action on the concurrent special exception request by incorporating each concurrent special exception into the motion for action on the companion map amendment or special land use permit application.
- (e) *Review and approval criteria.* In taking action on concurrent special exception requests, the city council shall apply the special exception review and approval criteria of section 27-421. The planning commission's review shall also be based on the special exception review and approval criteria of section 27-421.
- (f) *No duplicative review.* A variance request to the zoning board of appeals may not be considered simultaneously with a concurrent special exception request.

(Ord. No. 2021-09-14, § IX, 9-27-2021)

Secs. 27-426—27-435. - Reserved.

Sec. 27-352. - Authority to file.

Applications for special land use permit approval may be filed by the owner of the subject property or the property owner's authorized agent.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-19.20), 10-14-2013)

Sec. 27-353. - Pre-application conference.

Pre-application conferences with staff are required for all special land use permits (see the pre-application provisions of section 27-305).

(Ord. No. 2013-10-15, § 1(Exh. A § 27-19.30), 10-14-2013)

Sec. 27-354. - Applicant-initiated meeting.

Applicant-initiated meetings are required for all special land use permits (see the applicant-initiated meeting provisions of section 27-306). If there is no residential zoned property within 500 feet of the property under consideration, the applicant is exempt from applicant-initiated meeting requirements.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-19.40), 10-14-2013; Ord. No. 2015-06-11, § 1, 6-8-2015)

Editor's note— Section 1 of Ord. No. 2015-06-11, adopted June 8, 2015, changed the title of § 27-354 from "Neighbor communications summary" to read as herein set out.

Sec. 27-355. - Application filing.

Special land use permit applications must be filed with the community development director.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-19.50), 10-14-2013)

Sec. 27-356. - Public hearing notices.

- (a) *Published notice.* At least ~~15 days before but not more than 45~~30 days before the date of the public hearing to be held by the mayor and city council, notice of the public hearing must be published in a newspaper of general circulation in the city. This required notice must indicate the date, time, place and purpose of the public hearing; the location of the subject property; and the property's existing and proposed zoning and use.
- (b) *Written (mailed) notice.* The community development director is responsible for sending written notice via first class mail to all property owners within 500 feet of the boundaries of the subject property, as those property owners are listed on the tax records of the city. The notices must be mailed at least ~~15 days before the date of the planning commission public hearing and not more than 45~~30 days before the date of the city council public hearing. Written notices must indicate the nature of the proposed use or activity and the date, time, place and purpose of the public hearing.
- (c) *Posted notice.* A public hearing notice sign must be placed in a conspicuous location on the subject property at least ~~15-30~~30 days before the date of the public hearing to be held by the mayor and city council. This notice sign must indicate the date, time, place and purpose of the public hearing.
- (d) *Special requirements for drug treatment and dependency facilities.* When a proposed special land use permit relates to or will allow the location or relocation of a halfway house, drug rehabilitation center, or other facility for treatment of drug dependency, all published and posted notices of the public

hearing to be held by the mayor and city council must include a prominent statement that the proposed special land use permit relates to or will allow the location or relocation of a halfway house, drug rehabilitation center, or other facility for treatment of drug dependency. The published notice must be at least six-column inches in size and may not be located in the classified advertising section of the newspaper.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-19.60), 10-14-2013)

Sec. 27-357. - Planning commission public hearing and recommendation.

The planning commission must hold a public hearing on the special land use permit application. Following the close of the hearing, the planning commission must act by simple majority vote to recommend that the special land use permit be approved, approved with conditions or denied based on the applicable review and approval criteria of section 27-359. Per section 27-311 the planning commission may vote to defer action or continue a hearing in order to receive additional information or deliberate further. The planning commission's recommendation must be transmitted to the city council.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-19.70), 10-14-2013; Ord. No. 2015-01-05, § 1, 1-26-2015)

Sec. 27-358. - City council public hearing and decision.

- (a) Upon receipt of recommendations from the planning commission, the mayor and city council must hold a public hearing on the special land use permit application. Following the close of the public hearing, the mayor and city council must act by simple majority vote to approve the special land use permit, approve the special land use permit with conditions or deny the special land use permit based on the applicable review and approval criteria of section 27-359. The mayor and city council are also authorized to defer action on the special land use permit or allow the applicant to withdraw the special land use permit without prejudice.
- (b) When a proposed special land use permit relates to or will allow the location or relocation of a halfway house, drug rehabilitation center, or other facility for treatment of drug dependency, the mayor and city council public hearing must be held at least six months before and not more than nine months before the date of final action on the application.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-19.80), 10-14-2013)

Sec. 27-359. - Review and approval criteria.

- (a) *General.* Except as otherwise stated in this ordinance, the following review and approval criteria must be used in reviewing and taking action on all special land use permit applications:
 - (1) Whether the proposed use is consistent with the policies of the comprehensive plan;
 - (2) Whether the proposed use complies with the requirements of this zoning ordinance;
 - (3) Whether the proposed site provides adequate land area for the proposed use, including provision of all required open space, off-street parking and all other applicable requirements of the subject zoning district;
 - (4) Whether the proposed use is compatible with adjacent properties and land uses, including consideration of:
 - a. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of noise, smoke, odor, dust or vibration generated by the proposed use;

- b. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the hours of operation of the proposed use;
 - c. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use;
 - d. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the character of vehicles or the volume of traffic generated by the proposed use;
 - e. Whether the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings; and
 - f. Whether the proposed plan will adversely affect historic buildings, sites, districts, or archaeological resources.
- (5) Whether public services, public facilities and utilities—including motorized and nonmotorized transportation facilities—are adequate to serve the proposed use;
 - (6) Whether adequate means of ingress and egress are proposed, with particular reference to nonmotorized and motorized traffic safety and convenience, traffic flow and control and emergency vehicle access;
 - (7) Whether adequate provision has been made for refuse and service areas; and
 - (8) Whether the proposed building as a result of its proposed height will create a negative shadow impact on any adjoining lot or building.
- (b) *Major exceptions to perimeter center regulations.* The general criteria of subsection (a) do not apply to special land use permit requests for major exceptions to Perimeter Center Overlay and Perimeter Center zoning district regulations. In reviewing and taking action on special land use permit requests for major exceptions to Perimeter Center Overlay and Perimeter Center zoning district regulations, review and decision-making bodies must consider the following three criteria:
- (1) Whether the major exception request, if granted, will result in development that is inconsistent with the stated intent of the regulations;
 - (2) Whether the major exception request, if granted, will result in development that is in keeping with the overall character of the surrounding area; and
 - (3) Whether any negative impacts resulting from the granting of the major exception will be mitigated to the maximum practical extent.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-19.90), 10-14-2013; Ord. No. 2017-04-07, § 4, 4-11-2017)

Sec. 27-360. - Successive applications.

If a special land use permit application is denied, an application for a special land use permit affecting all or a portion of the same property may not be resubmitted for 24 months from the date of the denial. The mayor and city council are authorized to waive or reduce this 24-month time interval by resolution, except that the time interval between the date of action to deny the application or the date that the application is withdrawn with prejudice and the date of filing of a subsequent special land use permit application affecting the same property may not be less than six months.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-19.100), 10-14-2013)

Sec. 27-361. - Amending conditions of approval.

- (a) Major changes.

- (1) Without limiting the meaning of the phrase, modification of any of the following conditions, if attached to an approved special land use permit, constitute a "major change" for purposes of interpreting this section:
 - a. The movement of any building or structure adjacent to an exterior boundary line, closer to the boundary line of the property to which it is adjacent;
 - b. Any increase in the number of dwelling units or any increase in the total amount of floor space of any nonresidential building;
 - c. Any decrease in the minimum size of residential units;
 - d. Any reduction in any buffer requirement;
 - e. Any increase in building or structure height; or
 - f. Any change in the proportion of floor space devoted to different authorized uses.
 - (2) Any request for major changes to conditions attached to approved amendments must be processed as a new amendment application in accordance with the procedures of this division, including the requirement for fees, notices and hearings.
- (b) Minor changes.
- (1) Modification of conditions attached to an approved special land use permit that are not classified as a major change pursuant to subsection (a)(1), constitute a "minor change" for purposes of interpreting this section.
 - (2) The community development director is authorized to approve minor changes to approved special land use permits.
 - (3) Any request for minor change of conditions must be made in writing to the community development director. If an approved site plan exists, the request for minor change must be accompanied by copies of the revised site plan.
- (c) A request for changes in conditions of approval attached to an approved special land use permit must be processed as a new special land use permit application in accordance with the procedures of this division, including the requirements for fees, notices and hearings.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-19.120), 10-14-2013; Ord. No. 2015-01-05, § 1, 1-26-2015)

Editor's note— Section 1 of Ord. No. 2015-01-05, adopted Jan. 26, 2015, repealed former § 27-361 which pertained to transfer of special land use permits, and derived from Ord. No. 2013-10-15, § 1(Exh. A § 27-19.110), adopted Oct. 14, 2013. Said ordinance subsequently amended and renumbered former § 27-362 as § 27-361.

Secs. 27-362—27-375. - Reserved.

DIVISION 4. - DESIGN REVIEW

Sec. 27-376. - Applicability.

The procedures of this division apply whenever design review is expressly required by this zoning ordinance.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-20.10), 10-14-2013)

Sec. 27-458. - Application filing.

Decisions by the community development director made pursuant to this division may be appealed to the zoning board of appeals (ZBA) by filing a request with the community development director within 30 days of the community development director's decision. Appeal shall be in accordance with procedures and conditions of this division. If no appeal is made within the 30-day period, the decision of the community development director is final. If an appeal is made to the ZBA, the ZBA must set a hearing date for the appeal within 30 days of the appeal being requested and the decision of the ZBA is final. The 30-day appeal deadline may be waived by the ZBA if the appellant can show evidence that the appeal was filed within 30 days of their actual or constructive notice of the decision.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-24.30), 10-14-2013; Ord. No. 2015-01-05, § 1, 1-26-2015)

Sec. 27-459. - Effect of appeal.

The filing of a complete notice of appeal stays all proceedings in furtherance of the action appealed, unless the official whose decision is being appealed certifies to the zoning board of appeals, after the appeal is filed, that, because of facts stated in the certification, a stay would cause imminent peril to life or property. In such a case, proceedings may be stayed only by a restraining order granted by the superior court on notice to the official whose decision is being appealed and on due cause shown.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-24.40), 10-14-2013)

Sec. 27-460. - Record of decision.

Upon receipt of a complete application of appeal, the community development director or other administrative official whose decision is being appealed must transmit to the zoning board of appeals all papers constituting the record upon which the action appealed is taken.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-24.50), 10-14-2013)

Sec. 27-461. - Public hearing notices.

(a) Written (mailed) notice. Mailed notice of the zoning board of appeals hearing must be provided to the appellant and the owner of the subject property at least 30 days before the date of the zoning board of appeals hearing.

(b) Published notice. At least 15 but not more than 45 days prior to the date of the public hearing to be held by the board of appeals, notice of the public hearing must be published in a newspaper of general circulation in the city. This required notice must indicate the date, time, place and purpose of the public hearing.

~~Hearing notice.~~

~~Mailed notice of the zoning board of appeals hearing must be provided to the appellant at least 30 days before the date of the zoning board of appeals hearing.~~

(Ord. No. 2013-10-15, § 1(Exh. A § 27-24.60), 10-14-2013)

Sec. 27-462. - Hearing and decision.

- (a) The zoning board of appeals must hold a hearing to consider all appeals of administrative decisions.
- (b) Following the close of the hearing and consideration of all testimony, documentary evidence and matters of record, the zoning board of appeals must make a decision. The decision must be made within a reasonable period of time but in no event more than 60 days from the date of the close of the hearing. Final action on an appeal requires a simple majority vote of the board of appeals members present and voting.
- (c) In exercising its powers, the zoning board of appeal may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from. To that end the board of appeals has all the powers of the administrative official from whom the appeal was taken and may issue or direct the issuance of a permit provided all requirements imposed by all other applicable laws are met.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-24.70), 10-14-2013)

Sec. 27-463. - Review and approval criteria.

An appeal shall be sustained only upon a finding by the zoning board of appeals that the administrative official's action was based on an erroneous finding of a material fact or that the administrative official acted in an arbitrary manner.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-24.80), 10-14-2013)

Sec. 27-464. - Appeals.

- (a) Any person or entity authorized by section 27-457 may seek review of such decision by petitioning the superior court for a writ of certiorari review, setting forth the alleged errors. The petition must be filed within 30 days of the date that the zoning board of appeals renders its final decision.
- (b) When a petition ~~is for a writ of certiorari for review~~ is filed, the zoning board of appeals must be designated the respondent in certiorari the petition for review and the city the defendant in certiorari the petition for review. The secretary of the zoning board of appeals is authorized to acknowledge service of a copy of the petition ~~and writ for review~~ on behalf of the zoning board of appeals, as respondent. Service upon the city as defendant must be as provided by law.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-24.90), 10-14-2013; Ord. No. 2015-01-05, § 1, 1-26-2015)

Secs. 27-465—27-475. - Reserved.

DIVISION 9. - DEVELOPMENT PERMITS

Sec. 27-476. - Applicability.

Development permits are required in order to ensure compliance with all provisions of this zoning ordinance and all other city ordinances and regulations. Unless otherwise expressly exempted under this zoning ordinance, a development permit must be obtained for any proposed use of land or buildings before any building permit is issued or any improvement, grading or alteration of land or buildings commences.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-25.10), 10-14-2013)

Sec. 27-477. - Applications.

All applications for development permits must be filed with the community development director.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-25.20), 10-14-2013)

House Bill 1405 (AS PASSED HOUSE AND SENATE)

By: Representatives Roberts of the 52nd, Washburn of the 141st, Crowe of the 110th, Dreyer of the 59th, Paris of the 142nd, 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 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 "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
65 rezone 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.

House Bill 916 (AS PASSED HOUSE AND SENATE)

By: Representatives Leverett of the 33rd and Wilensky of the 79th

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, so
2 as to provide for a unified procedure for appealing decisions of a lower judicatory to a
3 superior or state court; to provide for a short title; to provide for legislative findings and
4 intent; to provide for definitions; to provide for superior and state court appellate jurisdiction
5 and related exceptions; to provide for the preemption of certain laws; to provide for a
6 uniform appellate procedure to superior and state courts; to clarify the standard of review;
7 to provide for appeals to a jury; to provide for the permissibility of equitable practices and
8 procedures not prescribed; to provide for standardized general procedures for appeals to
9 superior and state court; to provide for petitions for review, responses, replies, and
10 amendments thereto; to provide for the management of court proceedings and other related
11 matters; to provide for service of process; to provide for deadline extensions; to provide for
12 limited grounds for dismissal; to provide for transfer when venue or jurisdiction is improper;
13 to provide for the record on appeal; to provide for transmission of the record; to provide for
14 notice of a petitioner confined to jail; to provide for remand; to provide for the payment of
15 costs and related exceptions; to provide for bonds and related security; to provide for
16 procedures after review; to provide for dismissal or withdrawal and the effects thereof; to
17 provide for damages for frivolous appeals and defenses in civil cases; to provide for the
18 recovery of costs; to repeal and reserve Chapter 4 of said title, relating to certiorari to

H. B. 916

- 1 -

19 superior court; to amend various titles of the Official Code of Georgia Annotated, so as to
 20 provide for conforming changes; to correct cross-references and remove obsolete or improper
 21 references; to provide for related matters; to provide for an effective date and applicability;
 22 to repeal conflicting laws; and for other purposes.

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

24 **PART I.**
 25 **SECTION 1-1.**

26 Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, is amended
 27 by repealing in its entirety Chapter 3, relating to appeals to superior or state court, and
 28 enacting a new Chapter 3 to read as follows:

29 "CHAPTER 3

30 5-3-1.

31 This chapter shall be known and may be cited as the 'Superior and State Court Appellate
 32 Practice Act.'

33 5-3-2.

34 (a) The General Assembly finds that many appeals from a lower judicatory to a superior
 35 or state court result in dismissal on complex procedural grounds and not a decision on the
 36 merits.

37 (b) It is the intent of the General Assembly in enacting this chapter to:

38 (1) Provide a single, modern, and uniform procedure called a 'petition for review' for
39 appealing a decision made by a lower judicatory to a superior or state court, as authorized
40 by the laws and the Constitution of this state;

41 (2) Increase access to justice through the greater resolution of appeals on the basis of
42 substantive issues rather than on complex procedural grounds; and

43 (3) Retain the limited appellate jurisdiction of state courts prescribed in the Constitution
44 of Georgia and Code sections outside of this chapter.

45 (c) Consistent with the laws and the Constitutions of Georgia and the United States, the
46 courts shall:

47 (1) Construe the provisions of this chapter broadly so as to render decisions based on the
48 merits of each case and avoid dismissal of any case or refusal to consider any points
49 raised therein unless such dismissal or refusal is expressly required by statute;

50 (2) Construe any petition for review filed under this chapter according to its substance,
51 merit, and function and not merely its style, form, or title; and

52 (3) Not construe this chapter to expand the limited appellate jurisdiction of state courts
53 prescribed in the Constitution of Georgia and Code sections outside of this chapter.

54 5-3-3.

55 As used in this chapter, the term:

56 (1) 'Article 6 probate court' means a probate court with expanded jurisdiction as provided
57 in Article 6 of Chapter 9 of Title 15.

58 (2) 'Clerk' means a clerk of court or an individual who acts as the functional equivalent
59 of a clerk of court if a lower judicatory does not have an official clerk of court.

60 (3) 'Decision' means any formal or informal adjudication, decision, determination,
61 judgment, order, ruling, or other act of a judicatory that is judicial or quasi-judicial in
62 nature.

63 (4) 'Final judgment' means a decision of a lower judicatory in a case that is no longer
64 pending in a lower judicatory in which a petitioner has:

65 (A) Exhausted all appeals or administrative remedies available in the lower judicatory;
66 and

67 (B) Satisfied all conditions precedent to appeal provided by law, including, but not
68 limited to, the conditions provided for in Code Section 33-2-26.

69 (5) 'Judicatory' means any court, official, board, tribunal, commission, municipal or
70 county authority, council, or similar body exercising judicial or quasi-judicial powers
71 authorized by law. The term 'judicatory' shall include an arbitrator, administrative law
72 judge, mediator, or similar adjudicator authorized by law to act on behalf or at the request
73 of any public official or body.

74 (6) 'Lower judicatory' means any judicatory:

75 (A) Inferior in authority to the superior and state courts; and

76 (B) Subject to the appellate jurisdiction of the superior or state courts as provided by
77 the laws and the Constitution of this state.

78 (7) 'Perfect' or 'perfected' means to take all legal steps needed to complete service of
79 process.

80 (8) 'Person' means an individual, corporation, association, partnership, other
81 organization, or other entity.

82 (9) 'Petition for review' means any request for review of a final judgment filed in a
83 reviewing court by a petitioner, including, but not limited to, any request for review
84 formerly titled as a petition for writ of certiorari, petition for writ of mandamus, petition
85 for writ of prohibition, or notice of appeal.

86 (10) 'Reporting' shall have the same meaning as the term 'court reporting' as defined in
87 paragraph (4) of Code Section 15-14-22.

88 (11) 'Respondent' means a person who is adverse to the petitioner and a party to the
89 dispute underlying the final judgment rendered by the lower judicatory. Except for

90 reasons other than having rendered the final judgment under review, the term 'respondent'
 91 shall not include any judge, official, or member of the lower judiciary that rendered the
 92 final judgment under review. If there is no party adverse to the petitioner, the respondent
 93 shall be:

94 (A) For quasi-judicial decisions rendered by a state official, board, tribunal,
 95 commission, authority, council, or similar body, the respondent shall be the State of
 96 Georgia;

97 (B) For quasi-judicial decisions rendered by a municipal official, board, tribunal,
 98 commission, authority, council, or similar body, the respondent shall be the
 99 corresponding municipality; and

100 (C) For quasi-judicial decisions rendered by a county or local school system official,
 101 board, tribunal, commission, authority, council, or similar body, the respondent shall
 102 be the corresponding county or local school system.

103 (12) 'Reviewing court' means a superior or state court reviewing a final judgment
 104 pursuant to this chapter.

105 5-3-4.

106 (a) Except as provided in subsection (b) of this Code section, the superior and state courts
 107 shall have appellate jurisdiction pursuant to this chapter over a final judgment of a lower
 108 judiciary.

109 (b) The superior courts shall not have appellate jurisdiction pursuant to this chapter over
 110 any state court. The state courts shall not have appellate jurisdiction pursuant to this
 111 chapter over any superior court. In addition, neither a superior court nor a state court shall
 112 have appellate jurisdiction pursuant to this chapter over the following courts or matters:

113 (1) Juvenile courts;

114 (2) The Municipal Court of Columbus;

115 (3) The Civil Court of Macon-Bibb County;

- 116 (4) The Civil Court of Richmond County;
- 117 (5) The Georgia State-wide Business Court;
- 118 (6) A civil case in an Article 6 probate court;
- 119 (7) An order appointing a temporary administrator; and
- 120 (8) Any other court from which an appeal directly to the Court of Appeals or the
- 121 Supreme Court is authorized.

122 (c) Except as provided in subsection (g) of Code Section 5-3-17, this chapter shall preempt
 123 any local law or any locally enacted law, ordinance, regulation, rule, or procedure in
 124 conflict with this chapter governing an appeal of a final judgment to a reviewing court.

125 5-3-5.

126 (a) Except as provided in subsection (b) of this Code section or otherwise provided by law,
 127 a reviewing court shall:

- 128 (1) Review only matters raised in the record of the proceeding in the lower judiciary;
- 129 (2) Accept the findings of fact and credibility of the lower judiciary unless they are
- 130 clearly erroneous;
- 131 (3) Accept a decision regarding an issue within the sound discretion of the lower
- 132 judiciary unless such a decision was an abuse of discretion;
- 133 (4) Determine whether the final judgment was sustained by sufficient evidence; and
- 134 (5) Review questions of law de novo.

135 (b) A reviewing court shall conduct a de novo proceeding under this chapter if a de novo
 136 proceeding is specified by law. Cases reviewed under this subsection shall be heard by the
 137 reviewing court without a jury unless a jury trial is ordered by the reviewing court and
 138 authorized by law.

139 (c) A demand for a jury trial under this chapter shall be filed in the reviewing court
 140 within 30 days after filing a petition for review.

141 5-3-6.

142 (a) A petitioner invokes the appellate jurisdiction of a reviewing court under this chapter
143 by filing a petition for review with the clerk of the reviewing court.

144 (b) The consent of the lower judicatory shall not be required for the filing of a petition for
145 review.

146 5-3-7.

147 (a) Except as otherwise prescribed by law, superior and state court appellate practices and
148 procedures not prescribed in this chapter shall be governed by the applicable superior or
149 state court rules and orders of the reviewing court not in conflict with this chapter.

150 (b) Except as otherwise provided in paragraph (2) of subsection (g) of Code
151 Section 48-5-311, a petitioner shall file a petition for review with the clerk of the reviewing
152 court within 30 days after the final judgment of the lower judicatory is:

153 (1) Signed and notice of the final judgment has been provided to all parties, if the lower
154 judicatory does not have a clerk; or

155 (2) Filed or recorded, whichever first occurs, if the lower judicatory has a clerk.

156 (c) Except as provided in subsection (d) of this Code section, all parties to the proceedings
157 in the lower judicatory are parties in the reviewing court.

158 (d) Except for reasons other than having rendered the final judgment under review, any
159 judge, official, or member of a lower judicatory that rendered the final judgment under
160 review shall not be a party, defendant, or respondent in a petition for review. To correct
161 such error, the reviewing court shall:

162 (1) Require a petitioner to amend the petition for review; or

163 (2) Upon the reviewing court's own motion, order the erroneously named judge, official,
164 or member of a lower judicatory dismissed.

165 (e) Except as otherwise required by law, a petition for review shall contain in substantially
166 similar form the following:

- 167 (1) A caption stating the name of the petitioner and the name of the respondent, if any;
- 168 (2) The title 'PETITION FOR REVIEW TO SUPERIOR COURT' or 'PETITION FOR
- 169 REVIEW TO STATE COURT' below the caption;
- 170 (3) A body that includes the following:
 - 171 (A) The statement: '(name of petitioner), the petitioner named above, petitions the
 - 172 (Superior or State) Court of (name of county) for review of the final judgment rendered
 - 173 by (name of lower judicatory) on (date) with the following case number designated by
 - 174 the lower judicatory: (lower judicatory case number).';
 - 175 (B) A concise statement of the final judgment being appealed;
 - 176 (C) A brief statement describing any existing recording, transcript, or other record of
 - 177 evidence in the lower judicatory; and
 - 178 (D) If the case before the lower judicatory is a criminal case, then a brief statement of
 - 179 the offense and sentence prescribed by the lower judicatory, if any, including whether
 - 180 the petitioner is confined in jail or otherwise incarcerated pending the appeal; and
- 181 (4) The name, mailing address, telephone number, and email address, if any, of:
 - 182 (A) The attorney for the petitioner; or
 - 183 (B) The petitioner, if the petitioner is not represented by an attorney.
- 184 (f) Failure to provide the information required by subsection (e) of this Code section shall
- 185 be an amendable defect, and such defect shall be cured as directed by the reviewing court.
- 186 (g) The petitioner shall serve a copy of the petition for review on all parties within five
- 187 days after filing the petition for review in the reviewing court.
- 188 (h) The petitioner shall serve the lower judicatory with a copy of the filed petition for
- 189 review within five days after filing the petition for review in the reviewing court. The copy
- 190 of the petition for review served on the lower judicatory shall contain the case number
- 191 assigned by the reviewing court. If the lower judicatory has a clerk, the copy of the petition
- 192 for review shall be deemed served on the lower judicatory by service of a copy of the
- 193 petition for review on the clerk.

194 5-3-8.

195 (a) The respondent shall file a response to a petition for review with the reviewing court
196 within 30 days after being served with a copy of the petition for review. If a de novo
197 proceeding is required as specified in subsection (b) of Code Section 5-3-5, the response
198 shall include any counterclaim, cross appeal, defense, or third-party claim asserted by the
199 respondent.

200 (b) A cross appeal or counterclaim shall not require a response, unless one is required by
201 order of the court, and shall automatically stand denied.

202 (c) A reply, if any, shall be filed by the petitioner within 30 days after being served with
203 a copy of the respondent's response. If a de novo proceeding is required as provided in
204 subsection (b) of Code Section 5-3-5, the petitioner's reply shall include any counterclaim,
205 cross appeal, defense, or third-party claim asserted by the petitioner.

206 (d) A party may amend a petition for review, response, or reply under this chapter as a
207 matter of course and without leave of the reviewing court at any time before the entry of
208 a pretrial order or before a hearing on the merits is held by the reviewing court, whichever
209 shall first occur. Thereafter, a party may amend a petition for review, response, or reply
210 only by leave of the reviewing court or by written consent of each adverse party. Such
211 leave shall be freely given by the reviewing court if justice so requires.

212 (e) A party shall serve a copy of any pleading filed with the reviewing court on all parties
213 to the proceeding.

214 5-3-9.

215 (a) The reviewing court may issue such orders and writs as may be necessary to aid in its
216 jurisdiction and manage court proceedings under this chapter.

217 (b) The reviewing court shall grant continuances and enter such other orders as may be
218 necessary to permit a just and expeditious review of a petition for review.

219 (c) After a petition for review is filed in the reviewing court, the reviewing court shall:

220 (1) Establish filing deadlines for any necessary documents; and

221 (2) Schedule any necessary proceedings or hearings.

222 (d) If there is more than one party plaintiff or party defendant in the case before the lower
223 judicatory, any one or more of such parties may file a petition for review pursuant to this
224 chapter regardless of whether other parties join in or consent to such petition for review;
225 provided, however, that upon appeal, all parties in the case before the lower judicatory shall
226 be bound by the final decision of the reviewing court; and provided, further, that, if
227 damages are awarded upon such appeal, the damages shall only be recovered against the
228 party appealing and the appealing party's security, if any, and not against a party failing or
229 refusing to appeal.

230 (e) The monetary limitation provided for in paragraph (5) of subsection (a) of Code
231 Section 15-10-2 shall not apply to any decision rendered by the reviewing court under this
232 chapter.

233 5-3-10.

234 (a) Except as otherwise provided by law, service of process under this chapter shall be
235 made in the following manner:

236 (1) A party's attorney or agent authorized to receive service shall be served with any
237 document, unless:

238 (A) Direct service on a party is ordered by the reviewing court; or

239 (B) A specific manner of service is otherwise required by law;

240 (2) Service of any document shall be made in person, by mail, or electronically if consent
241 to electronic service is given as provided in subsection (b) of this Code section;

242 (3) Proof of service shall be shown by:

243 (A) Acknowledgment of the attorney or party served; or

244 (B) A certificate of service from the attorney, party, or other person perfecting service;

245 (4) The certificate of service provided for in this subsection shall:

- 246 (A) Be attached to the original of the document to be served;
- 247 (B) Be taken as prima-facie proof of service; and
- 248 (C) Read substantially as follows: 'I do certify that (number of copies) of the attached
- 249 document(s) have been furnished to (name of party served) by (delivery, mail, or email)
- 250 on (date delivered, mailed, or emailed)';
- 251 (5) Service of any document may be perfected either before or after filing such service
- 252 with the clerk. If service is made by mail, it shall be deemed perfected on the day it was
- 253 deposited in the mail. If service is perfected by mail, three days shall be added to any
- 254 deadline required for a response, to allow for mailing;
- 255 (6) If the address of any party is unknown and the party is not represented by an attorney
- 256 of record, service may be perfected on the party by mail directed to the last known
- 257 address of the party; and
- 258 (7) Service may be waived or acknowledged either before or after filing.
- 259 (b) A person may consent to being served with pleadings electronically in a petition for
- 260 review as provided for in subsection (f) of Code Section 9-11-5.

- 261 5-3-11.
- 262 (a) Any party requesting a filing deadline extension from the reviewing court shall do so
- 263 before the expiration of the existing filing period in effect, whether prescribed or extended.
- 264 (b) The reviewing court shall only grant one filing deadline extension not to exceed 30
- 265 days for the filing of a petition for review under subsection (b) of Code Section 5-3-7. The
- 266 reviewing court may grant such filing deadline extensions for other documents as may be
- 267 necessary to permit a just and expeditious review of a petition for review.
- 268 (c) The clerk of the reviewing court shall promptly serve all parties and the clerk of the
- 269 lower judicatory with a copy of:
- 270 (1) Any extension granted under this Code section; and
- 271 (2) The corresponding motion filed to request such extension.

272 5-3-12.

273 (a) Except for a final decision on the merits, a reviewing court shall not dismiss a petition
274 for review unless the reviewing court finds one or more of the following:

275 (1) The petition for review was not filed within the time prescribed or extended;

276 (2) The reviewing court lacks jurisdiction;

277 (3) The question presented by the petitioner is moot;

278 (4) The absence of a justiciable controversy;

279 (5) The failure of a petitioner to prosecute; or

280 (6) The failure of a petitioner to comply with the provisions of this chapter or any court
281 rule or order.

282 (b) The reviewing court shall not immediately dismiss a petition for review because of any
283 defect in the petition for review, bond, or affidavit of indigence, or because of the failure
284 of the lower judicatory to transmit any document.

285 (c) The reviewing court shall give the petitioner a reasonable opportunity to amend a
286 petition for review, bond, or affidavit of indigence for the purpose of curing any defect.
287 The reviewing court may impose such filing deadlines for amendments under this
288 subsection as may be necessary to permit a just and expeditious review of a petition for
289 review.

290 (d) The reviewing court shall not immediately dismiss a petition for review for failure to
291 perfect service on any party if the party obligated to perfect service shows due diligence
292 in attempting to timely perfect service.

293 5-3-13.

294 (a) A petitioner shall file a petition for review in the superior or state court where venue
295 and jurisdiction are proper as prescribed by the laws and the Constitution of this state.

296 (b) Upon a finding by a lower judicatory, a reviewing court, the Court of Appeals, or the
297 Supreme Court that venue is improper or jurisdiction is lacking for any petition for review,

298 the clerk of the applicable court shall promptly transfer a petition for review to a court
 299 where venue and jurisdiction are proper in accordance with the rules and procedures
 300 applicable to the transferring court.

301 5-3-14.

302 (a) In civil cases and misdemeanor criminal cases, a lower judiciary may require the
 303 audio or video recording, reporting, or transcribing of the evidence and proceedings in the
 304 lower judiciary on terms prescribed by the lower judiciary.

305 (b) Except as provided in subsection (c) of this Code section, in civil cases where a
 306 transcript of the evidence and proceedings in the lower judiciary has not been prepared
 307 and a transcript is necessary to conduct a review under this chapter, the petitioner shall
 308 prepare a transcript at the petitioner's expense from recollection or otherwise only if the
 309 petitioner is financially able to pay the costs of transcribing.

310 (c) In civil cases, a lower judiciary may require the parties to share the cost of reporting
 311 or transcribing the evidence and proceedings in the lower judiciary; provided, however,
 312 that a lower judiciary shall not require a party to share such costs if that party is
 313 financially unable to pay. If the lower judiciary determines that any or all of the parties
 314 are financially unable to pay such costs, the lower judiciary, in its discretion, may
 315 authorize the trial of the case to go unreported.

316 (d) Any party shall have the right to have any criminal or civil case in a lower judiciary
 317 reported or transcribed at the party's own expense.

318 (e) If a proceeding in a lower judiciary is reported, the court reporter shall report and
 319 transcribe all:

- 320 (1) Motions;
- 321 (2) Colloquies;
- 322 (3) Objections;
- 323 (4) Rulings;

324 (5) Evidence, whether admitted or stricken on objection or otherwise;

325 (6) Copies or summaries of all documentary evidence;

326 (7) The charge of the court; and

327 (8) Other proceedings before the court.

328 (f) If a proceeding in a lower judicatory is reported, the lower judicatory shall ensure that
329 all matters listed in subsection (e) of this Code section are included in any transcript or
330 record transferred to the reviewing court.

331 (g) If matters in a lower judicatory are not reported, such as objections to oral argument,
332 misconduct of the jury, or other like instances, and a party requests a transcript of such
333 matters, the lower judicatory shall order a transcript be prepared from recollection or
334 otherwise and included as a part of the record transferred to the reviewing court.

335 (h) A transcript of the proceedings in a lower judicatory shall not be reduced to narrative
336 form unless all parties agree; but if the transcript of the evidence and proceedings is not
337 available and the transcript is prepared from recollection, such a transcript may be prepared
338 in narrative form.

339 (i) If a court reporter transcribes the evidence and proceedings in the lower judicatory, the
340 court reporter shall complete the transcript and file the original and one copy of the
341 transcript with the clerk of the lower judicatory along with the court reporter's certificate
342 attesting to its correctness. Upon filing of the transcript by the court reporter, the transcript
343 shall become part of the record.

344 (j) The clerk of the lower judicatory shall ensure that a true copy of the transcript of the
345 evidence and proceedings in the lower judicatory is included in the record transmitted to
346 the reviewing court under this chapter.

347 (k) If the parties cannot agree regarding whether the transcript or record truly or fully
348 discloses what transpired in the proceedings in the lower judicatory, the lower judicatory
349 shall schedule a hearing with notice to all parties to resolve the dispute and conform the
350 record to the truth.

351 (l) A transcript of evidence and proceedings that is prepared from recollection with an
 352 attached statement that all parties agree to its contents shall carry the same authority as a
 353 transcript prepared by a court reporter; but if the parties cannot agree regarding the
 354 correctness of a transcript prepared from recollection, the lower judicatory shall decide
 355 whether it is correct. If the lower judicatory is unable to recall what transpired in the case
 356 under review, the lower judicatory shall issue a decision stating that fact. The lower
 357 judicatory's decision under this subsection is final and not subject to review.

358 (m) If anything material to any party is omitted from or misstated in the record under
 359 review, the parties may stipulate, or the lower judicatory may direct, that the omission or
 360 misstatement be corrected before or after the record is transmitted to the reviewing court.
 361 The clerk of the lower judicatory shall promptly transmit to the reviewing court any
 362 correction of the record made after the record is transmitted to the reviewing court.

363 (n) The lower judicatory may transmit a supplemental record to the reviewing court.

364 (o) The lower judicatory or the reviewing court may order the clerk of the lower judicatory
 365 to send up any original documents, exhibits, or other items in the case under review. The
 366 reviewing court shall return such original documents, exhibits, or other items to the lower
 367 judicatory after the final disposition of the case under review.

368 (p) If a lower judicatory does not allow a party to file a document for inclusion in the
 369 record for a petition for review, such party may file the document in the reviewing court
 370 with an attached notation of the lower judicatory's disallowance. In such case, the
 371 document shall become part of the record under review.

372 (q) If all parties agree, in lieu of a transcript of the evidence and proceedings in the lower
 373 judicatory, they may file in the lower judicatory a stipulation of the case showing how the
 374 question under review arose and was decided along with a statement of facts. In such
 375 cases, the parties shall provide sufficient information in the stipulation and statement of
 376 facts to enable the reviewing court to conduct a review. Such stipulation and statement of

377 facts must be approved by the lower judiciary prior to transmission to the reviewing court
378 as part of the record.

379 5-3-15.

380 (a) Upon being served with a copy of the petition for review and unless otherwise ordered
381 by the reviewing court, the clerk of the lower judiciary shall retain the original of the
382 corresponding record and transmit a true copy of the record to the reviewing court
383 within 30 days, or within fewer days if otherwise required by law, after the copy of the
384 petition for review is served on the clerk of the lower judiciary.

385 (b) If known or reasonably believed to be the case, the clerk in the lower judiciary shall
386 notify the reviewing court if a petitioner in a criminal case is confined in jail or otherwise
387 incarcerated at the time the record is transmitted from the lower judiciary. Such notice
388 shall accompany the record transmitted from the lower judiciary.

389 (c) If no record is available for transmission to the reviewing court, the clerk of the lower
390 judiciary shall notify the lower judiciary accordingly so that further action may be taken
391 pursuant to this chapter.

392 (d) If the clerk of the lower judiciary does not transmit the record to the reviewing court
393 within 30 days after being served with a copy of the petition for review, the petitioner shall
394 notify the reviewing court, which then shall order the clerk of the lower judiciary to
395 promptly transmit the record or state the reason for the delay.

396 5-3-16.

397 (a) The payment of all costs accrued in a lower judiciary shall not be required in order
398 to file a petition for review under this chapter.

399 (b) Except to the extent prohibited by law, no petition for review shall be heard in a
400 reviewing court unless the petitioner:

401 (1) Pays all unpaid costs owed to the lower judicatory within 30 days after receiving
402 notice of such costs; or

403 (2) Files an affidavit of indigence with the reviewing court stating that the petitioner is
404 unable to pay the costs owed to the lower judicatory because of indigence.

405 (c) No appeal shall be dismissed by a reviewing court because of nonpayment of the costs
406 owed to a lower judicatory unless the petitioner has been ordered by the reviewing court
407 to pay such costs and has failed to comply with such order.

408 (d) An executor, administrator of an estate, or other trustee, when defending an action in
409 such capacity or when solely defending an estate's title, may file a petition for review
410 without paying costs as required by this Code section and without giving a bond and
411 security as provided in Code Section 5-3-17; provided, however, that, if a judgment is
412 obtained against an executor, administrator of an estate, or other trustee and not the assets
413 of the estate, then the executor, administrator of an estate, or other trustee shall pay such
414 costs as required by this Code section and give security if required under Code
415 Section 5-3-17.

416 (e) Unless the petitioner in a civil case files an affidavit of indigence with the reviewing
417 court stating that the petitioner is unable to pay the costs owed to the lower judicatory
418 because of indigence, the petitioner in a civil case shall obtain and file with the reviewing
419 court a certificate of payment of costs from the lower judicatory certifying that the
420 petitioner has paid all costs owed to the lower judicatory. Such certificate shall be:

421 (1) Filed in the reviewing court within five days after issuance by the lower judicatory;
422 and

423 (2) Signed by a judge, clerk, official, member, or other designated representative of the
424 lower judicatory.

425 5-3-17.

426 (a) Except to the extent prohibited by law, the filing of a petition for review under this
427 chapter shall act as supersedeas and shall suspend but not vacate a final judgment of a
428 lower judicatory.

429 (b) Except as provided in subsection (c) of this Code section, a supersedeas bond need not
430 be given by a petitioner under this chapter.

431 (c)(1) Except as provided in subsection (d) of Code Section 5-3-16 or otherwise
432 prohibited by law, the reviewing court may require that a supersedeas bond be given with
433 good security while a petition for review is under review.

434 (2) In criminal cases where a bond is required pursuant to paragraph (1) of this
435 subsection, the lower judicatory shall order that the petitioner be released from custody
436 upon the giving of a bond by the petitioner.

437 (d) If a petitioner fails to give a bond when a bond is required, the supersedeas provided
438 for in subsection (a) of this Code section shall cease unless the petitioner files with the
439 reviewing court an affidavit stating that because of indigence the petitioner is unable to
440 give a bond.

441 (e) A bond set pursuant to this chapter shall not exceed the total amount of damages, fines,
442 fees, penalties, and surcharges imposed by the lower judicatory in the case under review.

443 (f) Bonds given pursuant to this chapter are subject to the following requirements:

444 (1) If a person has been convicted of any criminal or quasi-criminal offense or a violation
445 of any ordinance, bond shall be payable to the state unless such conviction is in a
446 municipal court, in which case it shall be payable to the municipality under which such
447 court exists. This paragraph shall not apply to constitutional city courts or state courts;

448 (2) In civil cases, the petitioner shall make a bond payable to the respondent;

449 (3) The petitioner must agree under oath to personally appear and abide by the final
450 judgment, decision, order, or sentence in the case;

451 (4) If a secured bond is required, the person providing security shall swear under oath
452 that he or she can fulfill the bond obligation; and

453 (5) The giving of a bond shall be consistent with the Constitution of the United States
454 and the laws and the Constitution of this state, including, but not limited to,
455 Code Section 17-6-1.

456 (g) A bond may be forfeited in the same manner as any other bond in any court having
457 jurisdiction, except that a bond payable to a municipality may be forfeited as prescribed in
458 a municipal ordinance of such municipality.

459 (h) A supersedeas provided for in this Code section shall suspend the final judgment of the
460 lower judicatory until the petition for review is decided or dismissed by the reviewing court
461 or by an appellate court upon appeal, provided that the petitioner applies for and procures
462 the necessary writs for reviewing the decision complained of within the time prescribed.

463 (i) If a petition for review is filed by a petitioner's attorney, the petitioner's attorney shall
464 be authorized to sign the name of the petitioner to the supersedeas bond. In such cases, the
465 petitioner shall be bound by the supersedeas bond as though the petitioner had personally
466 signed it.

467 (j) An action may be brought on the bond given under this chapter in any court having
468 jurisdiction.

469 (k) A valid bond may replace or be amended to replace a void bond or no bond at all at any
470 time under this Code section.

471 (l) A petitioner's surety, if any, shall be bound by the judgment in a petition for review.
472 A surety compelled to pay off a debt or damages for which judgment is entered under this
473 chapter shall only have recourse against the surety's principal.

474 (m) When several partners or joint contractors bring or defend a claim, any one of the
475 partners or joint contractors may file a petition for review in the name of the firm or joint
476 contractors and sign the name of the firm or joint contractors to a bond if a bond is required

477 by the reviewing court. Such petition for review and bond shall be binding on the firm and
478 the joint contractors as though they had signed it themselves.

479 5-3-18.

480 (a)(1) After a petition for review is reviewed under this chapter, the reviewing court shall
481 render a final decision:

482 (A) Entering a judgment upon the petition for review;

483 (B) Ordering dismissal of the petition for review;

484 (C) Remanding a petition for review back to the lower judicatory with instructions; or

485 (D) A combination thereof.

486 (2) If the final decision rendered pursuant to this Code section is a judgment upon the
487 petition for review, it shall be in writing and specify whether the reviewing court is
488 affirming, reversing, or vacating the final judgment of the lower judicatory.

489 (3) If the final decision rendered pursuant to this Code section remands the petition for
490 review back to the lower judicatory, it shall provide instructions to the lower judicatory
491 for further proceedings.

492 (b) The clerk of the reviewing court shall serve a copy of the reviewing court's final
493 decision regarding a petition for review on the clerk of the lower judicatory and on all
494 parties named in the petition for review within five days after the date such decision was
495 rendered. The clerk of the lower judicatory shall promptly notify each judge, official, or
496 member of the lower judicatory who rendered the final judgment appealed of any final
497 decision served on the clerk of the lower judicatory. If the lower judicatory does not have
498 a clerk, then the clerk of the reviewing court shall serve a copy of the reviewing court's
499 final decision on each judge, official, or member of the lower judicatory who rendered the
500 final judgment appealed.

501 (c) A final decision by the reviewing court under this chapter may be appealed to the
502 appropriate appellate court as prescribed by law.

503 5-3-19.

504 (a) If a petition for review is dismissed or withdrawn pursuant to this chapter, the rights
505 of all parties shall be the same as if no appeal had been filed. Notwithstanding any other
506 provision of law, the dismissal or withdrawal of a petition for review under this chapter
507 shall:

508 (1) Dismiss the petition for review;

509 (2) Not dismiss the petitioner's underlying case from the lower judicatory or vacate the
510 final judgment of the lower judicatory; and

511 (3) Reinstate the final judgment of the lower judicatory as if the petition for review had
512 not been filed.

513 (b) This Code section shall apply to all cases appealed under this chapter regardless of the
514 standard of review applied under Code Section 5-3-5.

515 5-3-20.

516 Reasonable and necessary attorney's fees and expenses of litigation may be assessed for
517 frivolous actions or defenses in a petition for review as provided in Code Section 9-15-14.

518 5-3-21.

519 (a) If a petition for review is sustained and a final decision regarding the case is made by
520 the reviewing court, the petitioner may have judgment entered for the sum recovered by
521 the petitioner in the lower judicatory, the costs paid to obtain the petition for review, and
522 the costs in the reviewing court.

523 (b) If a petition for review is returned to the lower judicatory for a new hearing, the
524 petitioner shall have judgment entered for the costs in the reviewing court only, leaving the
525 costs paid to obtain the petition for review to be awarded upon the final judgment of the
526 lower judicatory after the new hearing.

527 (c) If a petition for review is dismissed and a final decision regarding the case is made by
 528 the reviewing court, the respondent in a petition for review may have judgment entered in
 529 the reviewing court against the petitioner and the petitioner's security for the sum recovered
 530 by the respondent, together with the costs in the reviewing court.

531 (d) If a petition for review is returned to the lower judiciary and the lower judiciary
 532 decides the case in favor of the respondent, then the security on the petition for review
 533 bond shall be included in the lower judiciary's final judgment."

534 **SECTION 1-2.**

535 Said title is further amended by repealing in its entirety Chapter 4, relating to certiorari to
 536 superior court, and designating said chapter as reserved.

537 **PART II.**

538 **SECTION 2-1.**

539 Code Section 3-2-35 of the Official Code of Georgia Annotated, relating to seizure of
 540 contraband by commissioner and agents regarding alcoholic beverages, proceedings upon
 541 seizure, hearing on entitlement to seized items, appeals, and disposition of items upon which
 542 taxes have been paid, is amended by revising subsection (e) as follows:

543 "(e) An appeal from the commissioner's order may be taken to the Superior Court of Fulton
 544 County by filing with the commissioner, within 15 days from the date of the decision, a
 545 ~~notice of appeal to~~ copy of the petition for review filed in the Superior Court of Fulton
 546 County. The proceedings on the petition for review shall be governed by Chapter 3 of
 547 Title 5 except as provided otherwise in this Code section. The appeal shall be based upon
 548 the record made before the commissioner, ~~and the commissioner, upon the filing of a~~
 549 ~~notice of appeal,~~ The commissioner shall transmit the record and appropriate documents
 550 to the superior court within 30 days from ~~after~~ the date of the filing of notice of appeal ~~the~~

551 petition for review is received. The superior court shall review the record for errors of law,
 552 violation of constitutional or statutory provisions, violation of the statutory authority of the
 553 agency, lawfulness of the procedure, lack of any evidence to support the decision, and
 554 arbitrariness and abuse of discretion. However, the court shall not substitute its judgment
 555 for that of the hearing officer as to the weight of evidence on questions of fact."

556 **SECTION 2-2.**

557 Code Section 4-8-23 of the Official Code of Georgia Annotated, relating to investigations
 558 by dog control officer, notice to owner, hearings, determinations by hearing authority, and
 559 judicial review, is amended by revising subsection (f) as follows:

560 "(f) Judicial review of the authority's final decision may be had in accordance with Code
 561 Section 15-9-30.9. Judicial review of a probate court's final decision shall be in
 562 accordance with Code Section ~~5-3-2~~ 5-3-4 and costs shall be paid as provided in Code
 563 Section ~~5-3-22~~ 5-3-16."

564 **SECTION 2-3.**

565 Code Section 10-1-787 of the Official Code of Georgia Annotated, relating to finality of
 566 arbitrator's decision under the 'Georgia Lemon Law,' appeals by manufacturers, and time for
 567 compliance with arbitrator's decision, is amended by revising subsection (a) as follows:

568 "(a) The decision of the arbitrator or arbitrators is final unless a party to the arbitration,
 569 within 30 days of entry of the decision, appeals the decision to the superior court. A party
 570 who appeals a decision shall follow the procedures set forth in ~~Article 2~~ of Chapter 3 of
 571 Title 5, and any appeal shall be de novo; however, the decision of the arbitrator or
 572 arbitrators shall be admissible in evidence."

573 **SECTION 2-4.**

574 Code Section 10-14-22 of the Official Code of Georgia Annotated, relating to judicial appeal
575 of order of Secretary of State regarding cemetery and funeral services, is amended by
576 revising subsections (a) and (b) as follows:

577 "(a)(1) An appeal may be taken from any order of the Secretary of State resulting from
578 a hearing held in accordance with the provisions of Code Section 10-14-23 by any person
579 adversely affected thereby to the Superior Court of Fulton County, Georgia, by serving
580 on the Secretary of State, within 20 days after the date of entry of such order, a ~~written~~
581 ~~notice of appeal~~ copy of the petition for review filed in the Superior Court of Fulton
582 County and signed by the petitioner, signed by the appellant, stating:

- 583 (1)(A) The order from which the appeal is taken;
- 584 (2)(B) The ground upon which a reversal or modification of such order is sought; and
- 585 (3)(C) A demand for a certified transcript of the record of such order.

586 (2) The proceedings on the petition for review shall be governed by Chapter 3 of Title 5
587 except as provided in this Code section.

588 (b) Upon receipt of such ~~notice of appeal~~ petition for review, the Secretary of State shall,
589 within ten days thereafter, make, certify, and deliver to the ~~appellant~~ clerk of the Superior
590 Court of Fulton County a transcript of the record of the order from which the appeal is
591 taken, provided that the ~~appellant~~ petitioner shall pay the reasonable costs of such
592 transcript. ~~The appellant shall, within five days after receipt of such transcript, file such~~
593 ~~transcript and a copy of the notice of appeal with the clerk of the court. Said notice of~~
594 ~~appeal~~ petition for review and transcript of the record shall constitute ~~appellant's~~
595 petitioner's complaint. Said complaint shall thereupon be entered on the trial calendar of
596 the court in accordance with the court's normal procedures."

597 **SECTION 2-5.**

598 Code Section 12-3-194.1 of the Official Code of Georgia Annotated, relating to police and
599 legislative powers of the Stone Mountain Memorial Association, appointment of peace
600 officers, jurisdiction and venue of park offenses, and sale of confederate memorabilia, is
601 amended by revising subsection (c) as follows:

602 "(c) For purposes of this Code section, the Magistrate Court of DeKalb County shall have
603 jurisdiction and authority to hear and try those offenses occurring within the limits of Stone
604 Mountain Park which violate the ordinances of the association and to punish violations of
605 such ordinances, all in the manner and to the extent prescribed in Article 4 of Chapter 10
606 of Title 15. The State Court of DeKalb County shall have jurisdiction and authority to hear
607 and try all cases removed from the Magistrate Court of DeKalb County for jury trial by any
608 defendant charged with one or more violations of the ordinances of the association. The
609 Superior Court of DeKalb County shall have jurisdiction to review all convictions by
610 certiorari petition for review to the superior court. The proceedings on such petitions for
611 review shall be governed by Chapter 3 of Title 5. The jurisdiction and authority of the
612 courts of DeKalb County provided for in this Code section shall be in addition to and not
613 in limitation of the jurisdiction and authority of such courts as may be now or hereafter
614 provided."

615 **SECTION 2-6.**

616 Code Section 12-3-236.1 of the Official Code of Georgia Annotated, relating to adoption and
617 enforcement of ordinances and resolutions of the Jekyll Island State Park Authority, is
618 amended by revising subsection (b) as follows:

619 "(b) For purposes of this Code section, the Magistrate Court of Glynn County shall have
620 jurisdiction and authority to hear and try those cases occurring within the limits of Jekyll
621 Island in which a person is charged with violating an ordinance of the authority and to
622 punish violations of such ordinances, all in the manner and to the extent prescribed in

623 Article 4 of Chapter 10 of Title 15. The State Court of Glynn County shall have
 624 jurisdiction and authority to hear and try all cases removed from the Magistrate Court of
 625 Glynn County for jury trial by any defendant charged with one or more violations of the
 626 ordinances of the authority. The Superior Court of Glynn County shall have jurisdiction
 627 to review all convictions by ~~certiorari~~ petition for review to the superior court. The
 628 proceedings on such petitions for review shall be governed by Chapter 3 of Title 5. The
 629 jurisdiction and authority of the courts of Glynn County provided for in this Code section
 630 shall be in addition to and not in limitation of the jurisdiction and authority of such courts
 631 as may be now or hereafter provided."

SECTION 2-7.

632
 633 Code Section 15-6-9 of the Official Code of Georgia Annotated, relating to authority of
 634 superior court judges generally, is amended by revising paragraph (1) as follows:

635 "(1) To grant for their respective circuits writs of ~~certiorari~~, supersedeas, quo warranto,
 636 mandamus, habeas corpus, and bail in actions ex delicto;"

SECTION 2-8.

637
 638 Code Section 15-9-120 of the Official Code of Georgia Annotated, relating to definitions
 639 regarding probate court jury trials and appeals, is amended by revising paragraph (1) as
 640 follows:

641 "(1) 'Civil case' means those civil matters:

- 642 (A) Over which the judge of the probate court exercises judicial powers;
- 643 (B) Within the original, exclusive, or general subject matter jurisdiction of the
 644 probate court; and
- 645 (C) Which, if not for this article and Code Section 5-6-33, could be appealed to
 646 superior court for a de novo investigation with the right to a jury trial under Code
 647 Sections ~~5-3-2~~ 5-3-4 and ~~5-3-29~~ 5-3-5."

648 **SECTION 2-9.**

649 Code Section 15-10-41 of the Official Code of Georgia Annotated, relating to no jury trials
650 in magistrate courts and appeal from magistrate courts, is amended by revising subsection (b)
651 as follows:

652 "(b)(1) Except as otherwise provided in this subsection, appeals may be had from
653 judgments returned in the magistrate court to the state court of the county or to the
654 superior court of the county and the same provisions now provided for by general law for
655 appeals contained in ~~Article 2~~ of Chapter 3 of Title 5 shall be applicable to appeals from
656 the magistrate court, the same to be a de novo appeal. The provisions of ~~said Article 2~~
657 of Chapter 3 of Title 5 shall also apply to appeals to state court.

658 (2) No appeal shall lie from a default judgment or from a dismissal for want of
659 prosecution after a nonappearance of a plaintiff for trial. Any voluntary dismissal by the
660 plaintiff or by order of the court for want of prosecution shall be without prejudice except
661 that the filing of a second such dismissal shall operate as an adjudication upon the merits.
662 Review, including review of a denial of a postjudgment motion to vacate a judgment,
663 shall be by certiorari petition for review to the state court of that county or to the superior
664 court of that county."

665 **SECTION 2-10.**

666 Article 4 of Chapter 10 of Title 15 of the Official Code of Georgia Annotated, relating to
667 violation of ordinances of counties and state authorities, is amended by revising Code
668 Section 15-10-65, relating to certiorari to superior court from magistrate court, as follows:

669 "15-10-65.

670 Review of convictions shall be by certiorari petition for review to the superior court."

671 **SECTION 2-11.**

672 Code Section 15-14-7 of the Official Code of Georgia Annotated, relating to destruction of
673 court reporter notes, how authorized, petition, grounds, notice, and order, is amended by
674 revising subsection (c) as follows:

675 "(c) The petition shall certify one of the following:

676 (1) That the action is a civil action in which no ~~notice of appeal~~ petition for review has
677 been filed, that the court reporter has not been requested or ordered to transcribe the
678 evidence and other proceedings, and that a period of not less than 37 months has elapsed
679 since the last date upon which a ~~notice of appeal~~ petition for review in the action could
680 have been filed; or

681 (2) That the action is one in which the court reporter has been requested or ordered
682 pursuant to law to transcribe the evidence and other proceedings, that the record has been
683 transcribed, and that a period of not less than 12 months has elapsed from the date upon
684 which the remittitur from the appeal has been docketed in the trial court."

685 **SECTION 2-12.**

686 Code Section 15-21A-6 of the Official Code of Georgia Annotated, relating to additional
687 filing fees, application fee for indigent defense services, and remittance of funds, is amended
688 by revising subsection (a) as follows:

689 "(a) In addition to all other legal costs, there shall be charged to the filing party and
690 collected by the clerk an additional filing fee of \$15.00 in each civil action or case filed in
691 the superior, state, recorder's, mayor's, and magistrate courts except that municipalities,
692 counties, and political subdivisions shall be exempt from such fee. Without limiting the
693 generality of the foregoing, such fee shall apply to all adoptions, ~~certiorari~~ petitions for
694 review, trade name registrations, applications for change of name, and all other proceedings
695 of a civil nature. Any matter which is docketed upon the official dockets of the enumerated

696 courts and to which a number is assigned shall be subject to such fee, whether such matter
697 is contested or not."

SECTION 2-13.

699 Code Section 15-21A-6.1 of the Official Code of Georgia Annotated, relating to judicial
700 operations fund fee and collection and reporting procedure, is amended by revising
701 subsection (a) as follows:

702 "(a) In addition to all other legal costs, there shall be charged to the filing party and
703 collected by the clerk an additional filing fee of \$125.00, to be known as a judicial
704 operations fund fee, in each civil action or case filed in a superior court except that the
705 state, including, but not limited to, its departments, agencies, boards, bureaus,
706 commissions, public corporations, and authorities, municipalities, counties, and political
707 subdivisions shall be exempt from such fee. Without limiting the generality of the
708 foregoing, such fee shall apply to all adoptions, certiorari petitions for review, trade name
709 registrations, applications for change of name, and all other proceedings of a civil nature.
710 Any matter which is docketed upon the official dockets of the superior court and to which
711 a number is assigned shall be subject to such fee, whether such matter is contested or not;
712 provided, however, that the judicial operations fund fee shall not apply to the issuance of
713 certificates of appointment and reappointment of notaries public."

SECTION 2-14.

714 Code Section 17-6-1 of the Official Code of Georgia Annotated, relating to when offenses
715 bailable, procedure, schedule of bails, and appeal bonds, is amended by revising
716 subsection (g) as follows:

718 "(g) No appeal bond shall be granted to any person who has been convicted of murder,
719 rape, aggravated sodomy, armed robbery, home invasion in any degree, aggravated child
720 molestation, child molestation, kidnapping, trafficking in cocaine or marijuana, aggravated

721 stalking, or aircraft hijacking and who has been sentenced to serve a period of incarceration
 722 of five years or more. The granting of an appeal bond to a person who has been convicted
 723 of any other felony offense or of any misdemeanor offense involving an act of family
 724 violence as defined in Code Section 19-13-1, or of any offense delineated as a high and
 725 aggravated misdemeanor or of any offense set forth in Code Section 40-6-391, shall be in
 726 the discretion of the convicting court. Appeal bonds shall terminate when the right of
 727 appeal terminates, and such bonds shall not be effective as to any petition for review or
 728 petition or application for writ of certiorari unless the court in which the petition for review
 729 or petition or application is filed so specifies."

730 **SECTION 2-15.**

731 Part 2 of Article 2 of Chapter 3 of Title 22 of the Official Code of Georgia Annotated,
 732 relating to acquisition of right to flood roads and highways under eminent domain, is
 733 amended by revising Code Section 22-3-44, relating to appeal to superior court, as follows:

734 "22-3-44.

735 Within 30 days after the award of condemnation is made pursuant to Part 4 of Article 1 of
 736 Chapter 2 of this title or pursuant to Article 2 of Chapter 2 of this title, any party may
 737 appeal to the superior court of the county in which the public roads or highways lie by
 738 filing a petition for review with ~~the judge of the probate court of the county~~ a written notice
 739 of appeal. ~~Within ten days after his receipt of the notice, the judge shall transmit the notice~~
 740 ~~to the superior court.~~ The trial on such an appeal shall be de novo. The proceedings on the
 741 petition for review shall be governed by Chapter 3 of Title 5."

742 **SECTION 2-16.**

743 Code Section 31-6-44.1 of the Official Code of Georgia Annotated, relating to judicial
 744 review regarding the certificate of need program under state health planning and
 745 development, is amended by revising subsection (b) as follows:

746 "(b) In the event a party seeks judicial review, the proceedings for such review shall be
747 governed by Chapter 3 of Title 5 except as provided otherwise in this Code section. If a
748 party seeks judicial review, the department shall, within 30 days ~~of the filing of the notice~~
749 ~~of appeal with~~ after being served with a copy of the petition for review filed in the superior
750 court, transmit certified copies of all documents and papers in its file together with a
751 transcript of the testimony taken and its findings of fact and decision to the clerk of the
752 superior court to which the case has been appealed. The case so appealed may then be
753 brought by either party upon ten days' written notice to the other before the superior court
754 for a hearing upon such record, subject to an assignment of the case for hearing by the
755 court; provided, however, that, if the court does not hear the case within 120 days of the
756 date of docketing in the superior court, the decision of the department shall be considered
757 affirmed by operation of law unless a hearing originally scheduled to be heard within the
758 120 days has been continued to a date certain by order of the court. In the event a hearing
759 is held later than 90 days after the date of docketing in the superior court because same has
760 been continued to a date certain by order of the court, the decision of the department shall
761 be considered affirmed by operation of law if no order of the court disposing of the issues
762 on appeal has been entered within 30 days after the date of the continued hearing. If a case
763 is heard within 120 days from the date of docketing in the superior court, the decision of
764 the department shall be considered affirmed by operation of law if no order of the court
765 ~~dispositive~~ disposing of the issues on appeal has been entered within 30 days of the date
766 of the hearing."

SECTION 2-17.

767
768 Article 1 of Chapter 3 of Title 32 of the Official Code of Georgia Annotated, relating to
769 general provisions regarding acquisition of property for transportation purposes, is amended
770 in Code Section 32-3-11, relating to power of judge to set aside, vacate, and annul

771 declaration of taking, issuance and service on condemnor of rule nisi, and hearing, by
772 revising subsection (c) as follows:

773 "(c) If the condemnee desires to raise such questions as are outlined in subsection (b) of
774 this Code section, the same shall be done by proper pleadings, in the form of a petition for
775 review addressed to the judge of the superior court having jurisdiction thereof, filed in the
776 same proceedings not later than 30 days subsequent to the date of service upon the
777 condemnee of the declaration of taking. The presiding judge shall thereupon cause a rule
778 nisi to be issued and served upon the condemnor, requiring him or her to show cause at a
779 time and place designated by the judge why the title acquired by the declaration of taking
780 should not be vacated and set aside in the same way and manner as is now provided for
781 setting aside deeds acquired by fraud. Such hearing shall be had not earlier than 15 days
782 from the time of service of the rule nisi upon the condemnor, nor later than 60 days from
783 the date of filing of the declaration of taking, and with the right of appeal by either party,
784 as in other cases. A petition for review filed pursuant to this subsection shall be governed
785 by the provisions of Chapter 3 of Title 5, except to the extent any such provision is in
786 conflict with any provision of this article."

787 **SECTION 2-18.**

788 Said article is further amended by revising Code Section 32-3-14, relating to filing a notice
789 of appeal, as follows:

790 "32-3-14.

791 If the owner, or any of the owners, or any person having a claim against or interest in the
792 property is dissatisfied with the amount of compensation as estimated in the declaration of
793 taking and deposited in court, as provided for in Code Section 32-3-7, such person or
794 persons, or any of them, shall have the right, at any time subsequent to the filing of the
795 declaration and the deposit of the fund into court, but not later than 30 days following the
796 date of the service as provided for in Code Sections 32-3-8 and 32-3-9, to file with the

797 court a ~~notice of appeal~~ petition for review, the same to be in writing and made a part of
798 the record in the proceedings."

799 **SECTION 2-19.**

800 Said article is further amended in Code Section 32-3-16, relating to appeal to jury, evidence
801 to be heard on appeal, and subsequent review of issues not brought before jury, by revising
802 subsections (a) and (c) as follows:

803 "(a) After the ~~notice of appeal~~ petition for review has been filed as provided in Code
804 Section 32-3-14, it shall be the duty of the court at the next term thereof, which shall
805 convene not earlier than 30 days subsequent to the date of service, as provided for in Code
806 Sections 32-3-8 and 32-3-9, to cause an issue to be made and tried by a jury as to the value
807 of the property or interest taken and the consequential damages to property or interests not
808 taken, with the same right to move for a new trial and file a ~~notice of appeal~~ petition for
809 review as in other cases at law, provided that an interlocutory award has not become final
810 pursuant to Code Section 32-3-15."

811 "(c) If, for any reason, the issues made by the filing of the ~~notice of appeal~~ petition for
812 review provided for in this Code section are not tried by a jury as to the value of the
813 property or interest taken and the consequential damages to the property or interests not
814 taken, at the next term of the court after the filing of such appeal, such fact shall not be
815 cause for dismissal of the appeal and the issues made by such appeal shall be subject to trial
816 at any future term of the court."

817 **SECTION 2-20.**

818 Said article is further amended by revising Code Section 32-3-17.1, relating to decisions
819 upon questions of law, power of judge to give necessary orders and directions, and jury trial
820 in open court only, as follows:

821 "32-3-17.1.

822 All questions of law arising upon the pleadings or in any other way arising from the cause,
823 subsequent to the filing of the declaration of taking and the deposit of the fund, and
824 subsequent to the filing of ~~notice of appeal~~ a petition for review, if any, shall be passed on
825 by the presiding judge who may, from time to time, make such orders and give such
826 directions as are necessary to speed the cause, and as may be consistent with justice and
827 due process of law; but no jury trial shall be had except in open court."

828 **SECTION 2-21.**

829 Code Section 33-2-27 of the Official Code of Georgia Annotated, relating to pleading and
830 procedure of judicial review and powers of a reviewing court generally, is amended by
831 revising subsections (a) and (c) as follows:

832 "(a) The form of proceeding for judicial review shall be by a petition for review in the
833 Superior Court of Fulton County, a copy of which shall be served upon the Commissioner
834 immediately. The proceedings on the petition for review shall be governed by the
835 provisions of Chapter 3 of Title 5, except to the extent any such provision is in conflict
836 with any provision of this title."

837 "(c) The petition for review or other pleading in which judicial review shall be sought shall
838 plainly specify the action complained of and shall set forth the relief sought and, without
839 excessive detail, the facts and circumstances supporting the petitioner's right to such relief."

840 **SECTION 2-22.**

841 Code Section 33-6-8 of the Official Code of Georgia Annotated, relating to issuance of cease
842 and desist orders, issuance of orders providing for other relief, change in orders, and date on
843 which orders appealable, is amended by revising subsection (b) as follows:

844 "(b) The Commissioner may, at any time before the serving of ~~notice of appeal~~ a copy of
845 the petition for review filed in the Superior Court of Fulton County upon him or her, as

846 provided for in Code Section 33-6-11, or after the expiration of the time allowed by law
 847 for the serving of the notice petition for review, if no notice petition for review has been
 848 thus served, amend or set aside in whole or in part any order issued by him the
 849 Commissioner under this Code section whenever in his the Commissioner's opinion the
 850 facts and circumstances surrounding the case have so changed as to require the action or
 851 if the public interest shall so require. No change of an order in a manner unfavorable to the
 852 person charged or to the parties at interest shall be made except after notice and opportunity
 853 for hearing. The date of the Commissioner's last order shall be the point of time from
 854 which it may be reviewed by appeal."

855 **SECTION 2-23.**

856 Code Section 34-9-105 of the Official Code of Georgia Annotated, relating to when workers'
 857 compensation award deemed final, appeal to superior court, grounds for setting aside
 858 decisions, and appeal to Court of Appeals, is amended by revising subsection (b) as follows:
 859 "(b) Either party to the dispute may, within 20 days from the date of any such final award
 860 or within 20 days from the date of any other final order or judgment of the members of the
 861 board, but not thereafter, appeal from the decision in such final award or from any other
 862 final decision of the board to the superior court of the county in which the injury occurred
 863 or, if the injury occurred outside the state, to the superior court of the county in which the
 864 original hearing was held, in the manner and upon the grounds provided in Chapter 3 of
 865 Title 5, except to the extent any such provision is in conflict with any provision of this
 866 Code section. ~~Said appeal~~ A copy of the petition for review shall be ~~filed with~~ served on
 867 the clerk for the board in writing stating generally the grounds upon which such appeal is
 868 sought. In the event of an appeal, the board shall, within 30 days of the filing such service
 869 of the notice of appeal with the board, transmit certified copies of all documents and papers
 870 in its file together with a transcript of the testimony taken and its findings of fact and
 871 decision to the clerk of the superior court to which the case is appealable, as provided in

872 this subsection. The case so appealed may then be brought by either party upon ten days'
 873 written notice to the other before the superior court for a hearing upon such record, subject
 874 to an assignment of the case for hearing by the court; provided, however, that, if the court
 875 does not hear the case within 60 days of the date of docketing in the superior court, the
 876 decision of the board shall be considered affirmed by operation of law unless a hearing
 877 originally scheduled to be heard within the 60 days has been continued to a date certain by
 878 order of the court. In the event a hearing is held later than 60 days after the date of
 879 docketing in the superior court because same has been continued to a date certain by order
 880 of the court, the decision of the board shall be considered affirmed by operation of law if
 881 no order of the court disposing of the issues on appeal has been entered within 20 days after
 882 the date of the continued hearing. If a case is heard within 60 days from the date of
 883 docketing in the superior court, the decision of the board shall be considered affirmed by
 884 operation of law if no order of the court ~~dispositive~~ disposing of the issues on appeal has
 885 been entered within 20 days of the date of the hearing."

886 **SECTION 2-24.**

887 Code Section 36-15-9 of the Official Code of Georgia Annotated, relating to collection of
 888 additional costs in county court cases, amount, determination of need as prerequisite to
 889 collection, and collection in certain criminal cases, is amended by revising subsection (a) as
 890 follows:

891 "(a) For the purpose of providing funds for those uses specified in Code Section 36-15-7,
 892 a sum not to exceed \$5.00, in addition to all other legal costs, may be charged and collected
 893 in each action or case, either civil or criminal, including, without limiting the generality of
 894 the foregoing, all adoptions, ~~certiorari~~ petitions for review, applications by personal
 895 representatives for leave to sell or reinvest, trade name registrations, applications for
 896 change of name, and all other proceedings of civil or criminal or quasi-criminal nature,
 897 filed in the superior, state, probate, and any other courts of record, except county recorders'

898 courts or municipal courts. The amount of such additional costs to be charged and
 899 collected, if any, in each such case shall be fixed by the chief judge of the superior court
 900 of the circuit in which such county is located. Such additional costs shall not be charged
 901 and collected unless the chief judge first determines that a need exists for a law library in
 902 the county. The clerk of each and every such court in such counties in which such a law
 903 library is established shall collect such fees and remit the same to the treasurer of the board
 904 of trustees of the county law library of the county in which the case was brought, on the
 905 first day of each month. Where fees collected by the treasurer have been allocated for the
 906 purpose of establishing or maintaining the codification of county ordinances, the allocated
 907 amount shall in turn be remitted by the treasurer to the county governing authority for said
 908 purpose on a monthly basis or as otherwise agreed by the treasurer and the county
 909 governing authority. The county ordinance code provided for in subsection (a) of Code
 910 Section 36-15-7 shall be maintained by the county governing authority. When the costs
 911 in criminal cases are not collected, the cost provided in this Code section shall be paid from
 912 the fine and bond forfeiture fund of the court in which the case is filed, before any other
 913 disbursement or distribution of such fines or forfeitures is made."

914 **SECTION 2-25.**

915 Code Section 36-32-2.1 of the Official Code of Georgia Annotated, relating to removal of
 916 municipal judges, is amended by revising subsection (e) as follows:

917 "(e) Removal proceedings shall consist of an open and public hearing held by the
 918 governing authority of the municipal corporation, provided that the judge against whom
 919 such charges have been brought shall be furnished a copy of the charges at least ten days
 920 prior to the hearing. At the conclusion of the hearing, the governing authority of the
 921 municipal corporation shall determine whether or not to remove the judge from office. The
 922 governing authority of the municipal corporation may adopt rules governing the procedures
 923 at such hearings, provided that such hearings comport with due process. The right of

924 ~~certiorari from the~~ to appeal a decision to remove a judge from office shall exist, and such
 925 ~~certiorari shall be obtained under the sanction of a judge of the~~ The decision to remove a
 926 judge from office pursuant to this Code section shall be appealed by filing a petition for
 927 review in the superior court of the circuit in which the governing authority of the municipal
 928 corporation is situated. Such appeals shall be governed by Chapter 3 of Title 5."

929 **SECTION 2-26.**

930 Article 3 of Chapter 74 of Title 36 of the Official Code of Georgia Annotated, relating to
 931 county and municipal enforcement boards created prior to January 1, 2003, is amended by
 932 revising Code Section 36-74-48, relating to appeals to superior court, as follows:

933 "36-74-48.

934 An aggrieved party, including the local governing body, may appeal a final administrative
 935 order of an enforcement board to the superior court of the county in which the subject
 936 property is located. Such an appeal shall be in the form of a ~~writ of certiorari~~ petition for
 937 review governed by Chapter ~~4 3~~ of Title 5 and shall be heard on the record. ~~An appeal~~ A
 938 petition for review shall be filed within 30 days of the execution of the order to be
 939 appealed."

940 **SECTION 2-27.**

941 Chapter 3 of Title 37 of the Official Code of Georgia Annotated, relating to examination,
 942 treatment, etc., for mental illness, is amended by revising Code Section 37-3-150, relating
 943 to right to appeal orders of probate court, juvenile court, or hearing examiner, payment of
 944 costs of appeal, right to subsequent appeal, and right to legal counsel on appeal, as follows:

945 "37-3-150.

946 The patient, the patient's representatives, or the patient's attorney may appeal any order of
 947 the probate court or hearing officer rendered in a proceeding under this chapter to the
 948 superior court of the county in which the proceeding was held, except as otherwise

949 provided in Article 6 of Chapter 9 of Title 15, and may appeal any order of the juvenile
 950 court rendered in a proceeding under this chapter to the Court of Appeals or the Supreme
 951 Court. The appeal to the superior court shall be made in the same manner as appeals from
 952 the probate court to the superior court, except that the appeal shall be heard before the court
 953 sitting without a jury as soon as practicable but not later than 30 days following the date
 954 on which the appeal is filed with the clerk of the superior court. The appeal from the order
 955 of the juvenile court to the Court of Appeals or the Supreme Court shall be as provided by
 956 law but shall be heard as expeditiously as possible. The patient must pay all costs upon
 957 filing any appeal authorized under this Code section or must make an affidavit that he or
 958 she is unable to pay costs. The patient shall retain all rights of review of any order of the
 959 superior court, the Court of Appeals, or the Supreme Court, as provided by law. The
 960 patient shall have a right to counsel or, if unable to afford counsel, shall have counsel
 961 appointed for the patient by the court. The appeal rights provided to the patient, the
 962 patient's representatives, or the patient's attorney in this Code section are in addition to any
 963 other appeal rights which the parties may have, and the provision of the right for the
 964 patient, the patient's representatives, or the patient's attorney to appeal does not deny the
 965 right to the Department of Behavioral Health and Developmental Disabilities to appeal
 966 under the general appeal provisions of Code Sections ~~5-3-2 and 5-3-3~~ Section 5-3-4."

967 **SECTION 2-28.**

968 Chapter 4 of Title 37 of the Official Code of Georgia Annotated, relating to habilitation of
 969 the developmentally disabled generally, is amended by revising Code Section 37-4-110,
 970 relating to appeal rights of clients, their representatives, or attorneys, payment of costs of
 971 appeal, right of client to subsequent appeal and to legal counsel on appeal, as follows:

972 "37-4-110.

973 The client, the client's representatives, or the client's attorney may appeal any order of the
 974 probate court or administrative law judge rendered in a proceeding under this chapter to the

975 superior court of the county in which the proceeding was held, except as otherwise
 976 provided in Article 6 of Chapter 9 of Title 15, and may appeal any order of the juvenile
 977 court rendered in a proceeding under this chapter to the Court of Appeals or the Supreme
 978 Court. The appeal to the superior court shall be made in the same manner as appeals from
 979 the probate court to the superior court, except that the appeal shall be heard before the court
 980 sitting without a jury as soon as practicable but not later than 30 days following the date
 981 on which the appeal is filed with the clerk of the superior court. The appeal from the order
 982 of the juvenile court to the Court of Appeals or the Supreme Court shall be as provided by
 983 law but shall be heard as expeditiously as possible. The client must pay all costs upon
 984 filing any appeal authorized under this Code section or must make an affidavit that he or
 985 she is unable to pay costs. The client shall retain all rights of review of any order of the
 986 superior court, the Court of Appeals, or the Supreme Court as provided by law. The client
 987 shall have a right to counsel or, if unable to afford counsel, shall have counsel appointed
 988 for the client by the court. The appeal rights provided to the client, the client's
 989 representatives, or the client's attorney in this Code section are in addition to any other
 990 appeal rights which the parties may have, and the provision of the right for the client, the
 991 client's representatives, or the client's attorney to appeal does not deny the right to the
 992 Department of Behavioral Health and Developmental Disabilities to appeal under the
 993 general appeal provisions of Code Sections ~~5-3-2 and 5-3-3~~ Section 5-3-4."

994 **SECTION 2-29.**

995 Chapter 7 of Title 37 of the Official Code of Georgia Annotated, relating to hospitalization
 996 and treatment of alcoholics, drug dependent individuals, and drug abusers, is amended by
 997 revising Code Section 37-7-150, relating to right to appeal orders of probate court, juvenile
 998 court, or hearing examiner, payment of costs of appeal, right of patient to subsequent appeal,
 999 and right of patient to legal counsel on appeal, as follows:

H. B. 916

1000 "37-7-150.

1001 The patient, the patient's representatives, or the patient's attorney may appeal any order of
 1002 the probate court or hearing officer rendered in a proceeding under this chapter to the
 1003 superior court of the county in which the proceeding was held, except as otherwise
 1004 provided in Article 6 of Chapter 9 of Title 15, and may appeal any order of the juvenile
 1005 court rendered in a proceeding under this chapter to the Court of Appeals or the Supreme
 1006 Court. The appeal to the superior court shall be made in the same manner as appeals from
 1007 the probate court to the superior court, except that the appeal shall be heard before the court
 1008 sitting without a jury as soon as practicable but not later than 30 days following the date
 1009 on which the appeal is filed with the clerk of the superior court. The appeal from the order
 1010 of the juvenile court to the Court of Appeals or the Supreme Court shall be as provided by
 1011 law but shall be heard as expeditiously as possible. The patient must pay all costs upon
 1012 filing any appeal authorized under this Code section or must make an affidavit that he or
 1013 she is unable to pay costs. The patient shall retain all rights of review of any order of the
 1014 superior court, the Court of Appeals, or the Supreme Court, as provided by law. The
 1015 patient shall have a right to counsel or, if unable to afford counsel, shall have counsel
 1016 appointed for the patient by the court. The appeal rights provided to the patient, the
 1017 patient's representatives, or the patient's attorney in this Code section are in addition to any
 1018 other appeal rights which the parties may have, and the provision of the right for the
 1019 patient, the patient's representatives, or the patient's attorney to appeal does not deny the
 1020 right to the Department of Behavioral Health and Developmental Disabilities to appeal
 1021 under the general appeal provisions of Code Sections ~~5-3-2 and 5-3-3~~ Section 5-3-4."

SECTION 2-30.

1022
 1023 Code Section 38-3-64 of the Official Code of Georgia Annotated, relating to appeal rights
 1024 of adversely affected parties relative to judicial emergencies and cost of appeal borne by
 1025 state, is amended by revising subsection (b) as follows:

H. B. 916

1026 "(b) A ~~notice of appeal~~ petition for review shall be filed no later than 45 days after the
 1027 expiration of the judicial emergency order, or any modification or extension of a judicial
 1028 emergency order, from which an appeal is sought. A ~~notice of appeal~~ petition for review
 1029 shall be filed with the clerk of a superior court in any jurisdiction affected by the order and
 1030 shall be served upon:

- 1031 (1) The authorized judicial official who issued the order;
- 1032 (2) The parties to any criminal proceeding or civil litigation in which the appellant is
 1033 involved which would be affected by the appeal;
- 1034 (3) The district attorney of the county in which the ~~notice of appeal~~ petition for review
 1035 is filed; and
- 1036 (4) All other parties in any criminal proceeding or civil litigation which would be
 1037 affected by the appeal; provided, however, that service in this regard shall be
 1038 accomplished by publishing notice of the filing of the appeal in the newspaper which is
 1039 the legal organ for the county in which the ~~notice of the appeal~~ petition for review is
 1040 filed."

1041 **SECTION 2-31.**

1042 Article 2 of Chapter 13 of Title 40 of the Official Code of Georgia Annotated, relating to
 1043 arrests, trials, and appeals regarding prosecution of traffic offenses, is amended by revising
 1044 Code Section 40-13-28, relating to appeal to superior court and bond, as follows:

1045 "40-13-28.

1046 Any defendant convicted under this article shall have the right of appeal to the superior
 1047 court. The provisions of ~~Code Sections 5-3-29 and 5-3-30~~ subsections (b) and (c) of Code
 1048 Section 5-3-5 and subsection (e) of Code Section 5-3-9 shall not apply to appeals under this
 1049 Code section. Otherwise, the appeal shall be entered as appeals are entered from the
 1050 probate court to the superior court, provided that the defendant shall be entitled to bail and
 1051 shall be released from custody upon giving the bond as is provided for appearances in

1052 criminal cases in the courts of this state. Such bond shall have the same conditions as
 1053 appearance bonds in criminal cases. The appeal to the superior court shall not be a de novo
 1054 investigation before a jury but shall be on the record of the hearing as certified by the judge
 1055 of that court who presided at the hearing below."

1056 **SECTION 2-32.**

1057 Code Section 41-2-9 of the Official Code of Georgia Annotated, relating to county or
 1058 municipal ordinances relating to unfit buildings or structures, is amended by revising
 1059 subsection (d) as follows:

1060 "(d) Where the abatement action does not commence in the superior court, review of a
 1061 court order requiring the repair, alteration, improvement, or demolition of a dwelling,
 1062 building, or structure shall be ~~by direct appeal to~~ a de novo proceeding in the superior court
 1063 under Code ~~Section 5-3-29~~ Sections 5-3-4 and 5-3-5."

1064 **SECTION 2-33.**

1065 Chapter 17 of Title 43 of the Official Code of Georgia Annotated, relating to the "Georgia
 1066 Charitable Solicitations Act of 1988," is amended in Code Section 43-17-4, relating to
 1067 bonding requirements for registered paid solicitors and deposits in lieu of bond, by revising
 1068 subsections (c) and (d) as follows:

1069 "(c) Such deposits shall be held for the benefit of all persons to whom the applicant is
 1070 liable for damages under this chapter for a period of two years after such applicant's
 1071 registration has expired or been revoked; provided, however, that such deposits shall not
 1072 be released at any time while there is pending against the applicant an action (including any
 1073 direct appeal of such action, ~~or~~ an appeal based on a petition for certiorari jurisdiction, or
 1074 a petition for review), of which the Secretary of State has notice, in a court of competent
 1075 jurisdiction in which it is alleged that the applicant is liable for damages under this chapter.
 1076 Such deposits shall not be released except upon application to and the written order of the

1077 Secretary of State. The Secretary of State shall have no liability for any such release of any
 1078 deposit or part thereof made by him or her in good faith. The Secretary of State may
 1079 designate any regularly constituted state depository having trust powers domiciled in this
 1080 state as a depository to receive and hold any such deposit. Any such deposit so held shall
 1081 be at the expense of the applicant. Such depository shall give to the Secretary of State a
 1082 proper trust and safekeeping receipt upon which the Secretary of State shall give an official
 1083 receipt to the applicant. The State of Georgia shall be responsible for the safekeeping and
 1084 return of all deposits made pursuant to this Code section. So long as the applicant complies
 1085 with this chapter, the applicant may demand, receive, bring an action for, and recover the
 1086 income from the securities deposited or may exchange and substitute for the letter of credit
 1087 or securities deposited or a part thereof, with the approval of the Secretary of State, a letter
 1088 of credit or securities of the kinds specified in subsection (b) of this Code section of
 1089 equivalent or greater value. No judgment creditor or other claimant of the applicant shall
 1090 levy upon any deposit held pursuant to this Code section or upon any part thereof, except
 1091 as specified in this subsection. Whenever any person shall file an action in a court of
 1092 competent jurisdiction in which it is alleged that the applicant is liable for damages under
 1093 this chapter, such person, in order to secure his or her recovery, may give notice to the
 1094 Secretary of State of such alleged liability and of the amount of damages claimed, after
 1095 which notice the Secretary of State shall be bound to retain, subject to the order of the
 1096 Superior Court of Fulton County, as provided in subsection (d) of this Code section, a
 1097 sufficient amount of the deposit to pay the judgment in the action.

1098 (d) In the event that the applicant prevails in such action and in the event that such deposits
 1099 have been held by the Secretary of State for a period of at least two years after the
 1100 applicant's registration has expired or been revoked, then such deposits shall be released
 1101 to the applicant; provided, however, that such deposits shall not be released at any time
 1102 while there is pending against the applicant an action (including any direct appeal of such
 1103 action, ~~or an appeal based on a petition for certiorari jurisdiction,~~ or a petition for review),

1104 of which the Secretary of State has notice, in a court of competent jurisdiction in which it
1105 is alleged that the applicant is liable for damages under this chapter. If a judgment is
1106 rendered in such action by which it is determined that the applicant is liable for damages
1107 under this chapter and the applicant has not paid the judgment within ten days of the date
1108 the judgment became final or if the applicant petitions the Supreme Court of the United
1109 States to take certiorari jurisdiction over such action and the applicant has not paid the
1110 judgment within ten days of the date the Supreme Court of the United States denies
1111 certiorari jurisdiction or within ten days of the date the Supreme Court of the United States
1112 affirms the judgment, then such person may petition the Superior Court of Fulton County
1113 for an order directing the Secretary of State to reduce such deposit or a portion thereof
1114 sufficient to pay the judgment to cash or its equivalent and to pay such judgment to the
1115 extent the judgment may be satisfied with the proceeds of the deposit. If there shall remain
1116 any residue from the deposit and if at least two years have passed since the expiration or
1117 revocation of the applicant's registration, the Secretary of State shall pay such residue to
1118 the applicant, taking his receipt for the residue, which shall be filed and recorded with the
1119 other papers of the case, unless there is pending against the applicant an action (including
1120 any direct appeal of such action, ~~or~~ an appeal based on a petition for certiorari jurisdiction,
1121 or a petition for review), of which the Secretary of State has notice, in a court of competent
1122 jurisdiction in which it is alleged that the applicant is liable for damages under this chapter,
1123 in which case the Secretary of State shall hold or dispose of such residue in accordance
1124 with the provisions of this subsection relating to the holding or disposing of the entire
1125 deposit. If more than one final judgment is rendered against the applicant for violation of
1126 this chapter, the judgment creditors shall be paid in full from such deposit or residue
1127 thereof, to the extent the deposit or residue is sufficient to pay the judgments, in the order
1128 in which the judgment creditors petitioned the Superior Court of Fulton County."

SECTION 2-34.

1129
1130 Said chapter is further amended by revising Code Section 43-17-17, relating to appeals, as
1131 follows:

1132 "43-17-17.

1133 (a) An appeal may be taken from any order of the Secretary of State resulting from a
1134 hearing held in accordance with Code Section 43-17-16 by any person adversely affected
1135 thereby to the Superior Court of Fulton County by serving the Secretary of State, within 20
1136 days after the date of entry of such order, a ~~written notice of appeal~~, copy of the petition
1137 for review filed in the Superior Court of Fulton County and signed by the appellant
1138 petitioner, stating:

- 1139 (1) The order from which the appeal is taken;
- 1140 (2) The ground upon which a reversal or modification of the order is sought; and
- 1141 (3) A demand for a certified transcript of the record of the order.

1142 (b) Upon receipt of the ~~notice of appeal~~ petition for review, the Secretary of State shall,
1143 within ten days thereafter, make, certify, and deliver to the ~~appellant~~ Superior Court of
1144 Fulton County a transcript of the record of the order from which the appeal is taken,
1145 provided that the appellant shall pay the reasonable costs of such transcript. ~~The appellant,~~
1146 ~~within five days after receipt of the transcript, shall file such transcript and a copy of the~~
1147 ~~notice of appeal with the clerk of the court.~~ The ~~notice of appeal~~ petition for review and
1148 transcript of the record shall constitute appellant's complaint. The complaint shall
1149 thereupon be entered on the trial calendar of the court.

1150 (c) If the order of the Secretary of State shall be reversed, the reviewing court shall by its
1151 mandate specifically direct the Secretary of State as to ~~his~~ any further action to be taken by
1152 the Secretary of State in the matter, including the making and entering of an order or orders
1153 in connection therewith and the conditions, limitations, or restrictions to be therein
1154 contained."

SECTION 2-35.

1155
1156 Article 3 of Chapter 7 or Title 44 of the Official Code of Georgia Annotated, relating to
1157 landlord and tenant dispossessory proceedings, is amended by revising Code
1158 Section 44-7-56, relating to appeal and possession and payment of rent pending appeal, as
1159 follows:

1160 "44-7-56.

1161 (a) Any judgment by the trial court shall be appealable pursuant to Chapters 2, 3, 6, and 7
1162 of Title 5, provided that any such appeal shall be filed within seven days of the date such
1163 judgment was entered and provided, further, that, after,

1164 (b) An appeal made pursuant to subsection (a) of this Code section shall proceed as
1165 follows:

1166 (1) A copy of the petition for review filed in the reviewing superior or state court or the
1167 notice of appeal is shall be filed with the clerk of the trial court within seven days after
1168 the date the judgment was entered in the trial court; the

1169 (2) The clerk shall immediately notify the trial judge of the petition for review or notice
1170 of appeal, and the trial judge may, within 15 days after the same is filed in the trial court,
1171 supplement the record with findings of fact and conclusions of law which will be
1172 considered as a part of the order of the judge in that case; and

1173 (3) If the judgment of the trial court is against the tenant and the tenant appeals this
1174 judgment, the tenant shall be required to notify the trial court of his or her appeal and pay
1175 into the registry of the reviewing superior or state court all sums found by the trial court
1176 to be due for rent in order to remain in possession of the premises; and

1177 (4) The tenant shall also be required to pay all future rent as it becomes due into the
1178 registry of the trial reviewing superior or state court pursuant to paragraph (1) of
1179 subsection (a) of Code Section 44-7-54 until the issue has been finally determined on
1180 appeal."

SECTION 2-36.

1181

1182 Code Section 44-7-115 of the Official Code of Georgia Annotated, relating to foreclosure of

1183 liens on abandoned or intact mobile homes, is amended by revising paragraph (8) as follows:

1184 "(8) Any order issued by the magistrate court shall be appealable pursuant to ~~Article 2~~

1185 ~~of Chapter 3 of Title 5~~, provided that any such appeal shall be filed within seven days ~~of~~

1186 after the date such order was entered and provided, further, that, after the ~~notice of appeal~~

1187 petition for review is filed with the clerk of the ~~trial~~ reviewing superior or state court, the

1188 clerk of such court shall immediately notify the magistrate court of the ~~notice of appeal~~

1189 petition for review. If the order of the magistrate court is against the responsible party

1190 and the responsible party appeals such order, the responsible party shall be required to

1191 pay into the registry of the reviewing superior or state court all sums found by the

1192 magistrate court to be due in order to remain in possession of the mobile home. The

1193 responsible party shall also be required to pay all future rent into the registry of the

1194 reviewing superior or state court as it becomes due in such amounts specified in

1195 paragraph (2) of this Code section until the issue has been finally determined on appeal."

SECTION 2-37.

1196

1197 Code Section 47-14-51 of the Official Code of Georgia Annotated, relating to payments to

1198 the Superior Court Clerks' Retirement Fund of Georgia from fees collected in certain civil

1199 actions and for recording of instruments pertaining to real estate, records, audit of records,

1200 use of sums remitted, and failure of clerk to remit, is amended by revising subsections (a) and

1201 (e) as follows:

1202 "(a) In addition to all other legal costs, the sum of \$1.00 shall be charged and collected in

1203 each civil suit, action, case, or proceeding filed in the superior courts or in any other court

1204 of this state in which a clerk eligible for membership in this retirement fund is clerk,

1205 including, without limiting the generality of the foregoing, all adoptions, charters, ~~certiorari~~

1206 petitions for review, applications by a personal representative for leave to sell or reinvest,

1207 trade name registrations, applications for change of name, and all other proceedings of a
1208 civil nature, filed in the superior courts or other such courts."

1209 "(e) The sum of \$1.00 shall be paid out of the fees charged and collected pursuant to
1210 Title 15 in each civil suit, action, case, or proceeding filed in the superior courts or in any
1211 other court of this state in which a clerk eligible for membership in this retirement fund is
1212 clerk and shall be remitted to the board as provided in subsection (c) of this Code section.
1213 Such fees shall include, without limiting the generality of the foregoing, all adoptions,
1214 charters, ~~certiorari~~ petitions for review, applications by a personal representative for leave
1215 to sell or reinvest, trade name registrations, applications for change of name, and all other
1216 proceedings of a civil nature filed in the superior courts or other such courts."

1217 **SECTION 2-38.**

1218 Code Section 47-16-61 of the Official Code of Georgia Annotated, relating to payments to
1219 the Sheriffs' Retirement Fund of Georgia from fees collected in civil actions, duty to record
1220 and remit sums collected, and penalties on delinquent amounts, is amended by revising
1221 subsections (a) and (b) as follows:

1222 "(a) In addition to all other legal costs, the sum of \$1.00 shall be charged and collected in
1223 each civil action, case, or proceeding, including, without limiting the generality of the
1224 foregoing, all adoptions, charters, ~~certiorari~~ petitions for review, applications by personal
1225 representative for leave to sell or invest, trade name registrations, applications for change
1226 of name, and all other proceedings of a civil nature filed in the superior courts. The clerks
1227 of the superior courts shall collect such fees, and the fees so collected shall be remitted to
1228 the board quarterly or at such other time as the board may provide. It shall be the duty of
1229 the clerks of the superior courts to keep accurate records of the amounts due the board
1230 under this subsection, and such records may be audited by the board at any time. The sums
1231 remitted to the board under this subsection shall be used only for the purposes provided for
1232 in this chapter.

1233 (b) In addition to all other legal costs, the sum of \$1.00 shall be charged and collected in
 1234 each civil action, case, or proceeding, including, without limiting the generality of the
 1235 foregoing, all adoptions, charters, ~~certiorari~~ petitions for review, applications by personal
 1236 representative for leave to sell or invest, trade name registrations, applications for change
 1237 of name, and all other proceedings of a civil nature filed in the state courts and magistrate
 1238 courts of this state in which the sheriff of the superior court also fulfills the function as
 1239 sheriff of such inferior court. The clerks of such state courts and magistrate courts shall
 1240 collect such fees, and the fees so collected shall be remitted to the board quarterly or at
 1241 such other time as the board may provide. It shall be the duty of the clerks of such state
 1242 courts and magistrate courts to keep accurate records of the amounts due the board under
 1243 this subsection, and such records may be audited by the board at any time. The sums
 1244 remitted to the board under this subsection shall be used only for the purposes provided for
 1245 in this chapter."

1246 **SECTION 2-39.**

1247 Code Section 48-5-311 of the Official Code of Georgia Annotated, relating to creation of
 1248 county boards of equalization, duties, review of assessments, and appeals, is amended by
 1249 revising paragraphs (2), (3), and (4) of subsection (g) as follows:

1250 "(2) An appeal by the taxpayer as provided in paragraph (1) of this subsection shall be
 1251 effected by emailing, if the county board of tax assessors has adopted a written policy
 1252 consenting to electronic service, or by mailing to or filing with the county board of tax
 1253 assessors a written ~~notice of appeal~~ petition for review. An appeal by the county board
 1254 of tax assessors shall be effected by giving ~~notice~~ a petition for review to the taxpayer.
 1255 The ~~notice~~ petition for review given to the taxpayer shall be dated and shall contain the
 1256 name and the last known address of the taxpayer. The ~~notice of appeal~~ petition for
 1257 review shall specifically state the grounds for appeal. The ~~notice~~ petition for review shall
 1258 be mailed or filed within 30 days from the date on which the decision of the county board

1259 of equalization, hearing officer, or arbitrator is delivered pursuant to
1260 subparagraph (e)(6)(D), paragraph (7) of subsection (e.1), or division (f)(3)(C)(ix) of this
1261 Code section. Within 45 days of receipt of a taxpayer's ~~notice of appeal~~ petition for
1262 review and before ~~certification of the appeal to the~~ the petition for review is filed in
1263 superior court, the county board of tax assessors shall send to the taxpayer notice that a
1264 settlement conference, in which the county board of tax assessors and the taxpayer shall
1265 confer in good faith, will be held at a specified date and time which shall be no later than
1266 30 days from the notice of the settlement conference, and notice of the amount of the
1267 filing fee for a petition for review, if any, required by the clerk of the superior court. A
1268 taxpayer may appear for the settlement conference in person, by his or her authorized
1269 agent or representative, or both. The county board of tax assessors, in their discretion and
1270 with the consent of the taxpayer, may alternatively conduct the settlement conference by
1271 audio or video teleconference or any other remote communication medium. The taxpayer
1272 may exercise a one-time option to reschedule the settlement conference to a different date
1273 and time acceptable to the taxpayer during normal business hours. After a settlement
1274 conference has convened, the parties may agree to continue the settlement conference to
1275 a later date. If at the end of the 45 day review period the county board of tax assessors
1276 elects not to hold a settlement conference, then the appeal shall terminate and the
1277 taxpayer's stated value shall be entered in the records of the board of tax assessors as the
1278 fair market value for the year under appeal and the provisions of subsection (c) of Code
1279 Section 48-5-299 shall apply to such value. If the taxpayer chooses not to participate in
1280 the settlement conference, he or she may not seek and shall not be awarded fees and costs
1281 at such time when the ~~appeal is settled~~ petition for review is reviewed in superior court.
1282 If at the conclusion of the settlement conference the parties reach an agreement, the
1283 settlement value shall be entered in the records of the county board of tax assessors as the
1284 fair market value for the tax year under appeal and the provisions of subsection (c) of
1285 Code Section 48-5-299 shall apply to such value. If at the conclusion of the settlement

1286 conference the parties cannot reach an agreement, then written notice shall be provided
1287 to the taxpayer that the filing fees for the superior court must be paid by the taxpayer by
1288 submitting to the county board of tax assessors a check, money order, or any other
1289 instrument payable to the clerk of the superior court within 20 days of the date of the
1290 conference, ~~with a copy of the check delivered to the county board of tax assessors.~~
1291 Notwithstanding any other provision of law to the contrary, the amount of the filing fee
1292 for an appeal under this subsection shall be \$25.00. An appeal under this subsection shall
1293 not be subject to any other fees or additional costs otherwise required under any provision
1294 of Title 15 or under any other provision of law. ~~Immediately following payment of such~~
1295 ~~\$25.00 filing fee by the taxpayer to the clerk of the superior court, the clerk shall remit~~
1296 ~~the proceeds thereof to the governing authority of the county which shall deposit the~~
1297 ~~proceeds into the general fund of the county.~~ Within 30 days of receipt of proof of
1298 payment the taxpayer's payment made out to the clerk of the superior court, or, in the case
1299 of a petition for review filed by the county board of tax assessors, within 30 days of
1300 giving notice of the petition for review to the taxpayer, the county board of tax assessors
1301 shall ~~certify to~~ file with the clerk of the superior court the ~~notice of appeal petition for~~
1302 review and any other papers specified by the person appealing, including, but not limited
1303 to, the staff information from the file used by the county board of tax assessors, the
1304 county board of equalization, the hearing officer, or the arbitrator. Immediately
1305 following payment of such \$25.00 filing fee to the clerk of the superior court, the clerk
1306 shall remit the proceeds thereof to the governing authority of the county which shall
1307 deposit the proceeds into the general fund of the county. All papers and information
1308 ~~certified to~~ filed with the clerk shall become a part of the record on appeal to the superior
1309 court. At the time of ~~certification~~ the filing of the appeal petition for review, the county
1310 board of tax assessors shall serve the taxpayer and his or her attorney of record, if any,
1311 with a copy of the ~~notice of appeal~~ petition for review filed in the superior court and with
1312 the civil action file number assigned to the appeal. Such service shall be effected in

1313 accordance with subsection (b) of Code Section 9-11-5. No discovery, motions, or other
1314 pleadings may be filed by the county board of tax assessors in the appeal until such
1315 service has been made.

1316 (3) The appeal shall constitute a de novo action. The board of tax assessors shall have
1317 the burden of proving its opinions of value and the validity of its proposed assessment by
1318 a preponderance of evidence. Upon a failure of the board of tax assessors to meet such
1319 burden of proof, the court ~~may, upon motion or sua sponte, authorize the finding~~ shall
1320 find that the value asserted by the board of tax assessors is ~~unreasonable~~ incorrect and
1321 authorize the determination of the final value of the property.

1322 (4)(A) The appeal shall be placed on the court's next available jury or bench trial
1323 calendar, at the taxpayer's election, following the filing of the appeal unless continued
1324 by the court. If only questions of law are presented in the appeal, the appeal shall be
1325 heard as soon as practicable before the court sitting without a jury. Each hearing before
1326 the court sitting without a jury at the taxpayer's election shall be held within 30 days
1327 following the date on which the appeal is filed with the clerk of the superior court
1328 unless continued by the court for a period not to exceed 90 days.

1329 (B)(i) The county board of tax assessors shall use the valuation of the county board
1330 of equalization, the hearing officer, or the arbitrator, as applicable, in compiling the
1331 tax digest for the county.

1332 (ii)(I) If the final determination of value on appeal is less than the valuation thus
1333 used, the tax commissioner shall be authorized to adjust the taxpayer's tax bill to
1334 reflect the final value for the year in question.

1335 (II) If the final determination of value on appeal causes a reduction in taxes and
1336 creates a refund that is owed to the taxpayer, it shall be paid by the tax
1337 commissioner to the taxpayer, entity, or transferee who paid the taxes with interest,
1338 as provided in subsection (m) of this Code section.

1339 (III) If the taxpayer appeals to the superior court pursuant to this subsection and the
 1340 final determination of value on appeal is 85 percent or less of the valuation set by
 1341 the county board of equalization, hearing officer, or arbitrator as to any real
 1342 property, the taxpayer, in addition to the interest provided for in subsection (m) of
 1343 this Code section, shall recover costs of litigation and reasonable attorney's fees
 1344 incurred in the action. Any appeal of an award of attorney's fees by the county shall
 1345 be specifically approved by the governing authority of the county.

1346 (IV) If the board of assessors appeals to the superior court pursuant to this
 1347 subsection and the final determination of value on appeal is 85 percent or less of the
 1348 valuation set by the board of assessors as to any real property, the taxpayer, in
 1349 addition to the interest provided for in subsection (m) of this Code section, shall
 1350 recover costs of litigation and reasonable attorney's fees incurred in the action. Any
 1351 appeal of an award of attorney's fees by the county shall be specifically approved
 1352 by the governing authority of the county.

1353 (iii) If the final determination of value on appeal is greater than the valuation set by
 1354 the county board of equalization, hearing officer, or arbitrator, as applicable, causes
 1355 an increase in taxes, and creates an additional billing, it shall be paid to the tax
 1356 commissioner as any other tax due along with interest, as provided in subsection (m)
 1357 of this Code section."

1358 **PART III.**
 1359 **SECTION 3-1.**

1360 This Act shall become effective on July 1, 2023, and shall apply to petitions for review filed
 1361 in superior or state court on or after such date.

1362

SECTION 3-2.

1363 All laws and parts of laws in conflict with this Act are repealed.