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## LOCAL GOVERNMENT Zoning Procedures: Change Definition of Zoning Decision to Include Grant of Special Use Permits

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## LOCAL GOVERNMENT

### *Zoning Procedures: Change Definition of Zoning Decision to Include Grant of Special Use Permits*

CODE SECTION:	O.C.G.A. § 36-66-3 (amended)
BILL NUMBER:	SB 573
ACT NUMBER:	966
GEORGIA LAWS:	1998 Ga. Laws 1391
SUMMARY:	The Act changes the definition of “zoning decision” to include the grant of permits for special use of property.
EFFECTIVE DATE:	July 1, 1998

#### *History*

Under prior law, Georgia counties granted special use permits and rezoning applications pursuant to the same procedures.<sup>1</sup> In both situations, most counties limited the amount of time that proponents and opponents of requests could testify.<sup>2</sup> For example, a Gwinnett County court held that zoning decisions are legislative acts and, therefore, certain due process requirements are not necessary.<sup>3</sup> However, the Gwinnett County courts have also held that special use permit proceedings were quasi-judicial in nature; thus, opponents to a special use zoning request were able to offer evidence against the zoning permit.<sup>4</sup> As a result, a proceeding intended to last twenty minutes could last for two hours.<sup>5</sup> Senator Billy Ray of the 48th District, introduced SB 573 to establish that granting a special use permit, like a zoning decision, is in fact a legislative action and,

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1. See Telephone Interview with Sen. Billy Ray, Senate District No. 48 (July 10, 1998) [hereinafter Ray Interview].

2. *See id.*

3. *See id.*

4. *See id.*; *see also* Jackson v. Spalding County, 265 Ga. 792, 462 S.E.2d 361 (1995) (holding that when a board of zoning appeals considers a property owner's variance application, the proceeding is quasi-judicial in nature).

5. *See* Ray Interview, *supra* note 1. The Association of County Commissioners of Georgia supported the bill because its members knew zoning boards had to be given discretion to limit the time parties spent testifying. *See* Telephone Interview with James Grubiak, Lead Council for Association of County Commissioners of Georgia (July 25, 1998) [hereinafter Grubiak Interview].

therefore, is not subject to the due process requirements of quasi-judicial proceedings.<sup>6</sup>

### *SB 573*

The Act provides that the granting of a special use permit shall be included in the definition of zoning decision and shall constitute "final legislative action."<sup>7</sup> To accomplish this, the Act adds the grant of a special use permit to the definition of zoning decision.<sup>8</sup> Further, the Act explicitly provides that a zoning decision constitutes a final "legislative" action.<sup>9</sup> Under prior law, the word "legislative" was not included in the zoning decision definition.<sup>10</sup>

SB 573, introduced by Senator Ray on February 3, 1998, passed both houses of the Georgia General Assembly in largely the same condition as introduced.<sup>11</sup> The bill, as introduced, passed the Senate without controversy.<sup>12</sup> On March 16, 1998, the House passed the bill with an amendment designed to facilitate actions questioning the constitutionality of a zoning ordinance and seeking a "zoning decision or zoning action."<sup>13</sup> The amendment added section 1A, which provided that any party adversely affected by a zoning decision may bring an action challenging the decision in superior court.<sup>14</sup> The Senate refused to concur with the House amendments on March 18, 1998.<sup>15</sup> Senators opposed to the amendment were concerned that allowing all aggrieved parties to challenge a zoning decision would open the floodgates to the participation of relatively uninterested parties.<sup>16</sup> On March 19, 1998 the House insisted on the amendments.<sup>17</sup> That day, the bill was sent to the

6. See Grubiak Interview, *supra* note 5; see also E-mail Interview with Rep. Warren Massey, House District No. 86 (July 6, 1998) (stating the Act is intended to clarify definitions relating to zoning).

7. O.C.G.A. § 36-66-3(4)(E) (Supp. 1998).

8. See *id.* § 36-66-3.

9. *Id.* § 36-66-3(4).

10. Compare 1985 Ga. Laws 1139, § 1, at 1140-41 (formerly found at O.C.G.A. § 36-66-3(4) (1993)), with O.C.G.A. § 36-66-3(4) (Supp. 1998).

11. See Telephone Interview with Tom Gehl, Senate Research Office (July 25, 1998) [hereinafter Gehl Interview]. Compare SB 573, as introduced, 1998 Ga. Gen. Assem., with O.C.G.A. § 36-66-3 (Supp. 1998).

12. See Gehl Interview, *supra* note 11.

13. SB 573 (HCSFA), 1998 Ga. Gen. Assem.

14. See *id.*

15. See State of Georgia Final Composite Status Sheet, Mar. 19, 1998.

16. See Ray Interview, *supra* note 1.

17. See *id.*

Conference Committee, which issued a report recommending the elimination of section 1A.<sup>18</sup> The House and the Senate adopted the Conference Committee report and, as a result, the Act does not expand upon Georgia's current procedure for allowing aggrieved parties to challenge a zoning decision's constitutionality.<sup>19</sup>

*Joseph A. All*

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18. *See id.*

19. *See* O.C.G.A. § 36-66-3 (Supp. 1998).