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LOCAL GOVERNMENT

Counties/Municipalities: Zoning Power

CODE SECTIONS:	O.C.G.A. §§ 36-66-1 — 36-66-5 (new) and 36-67-1 — 36-67-6 (new)
BILL NUMBER:	HB 51 and HB 325
ACT NUMBER:	662 and 666
EFFECTIVE DATES:	HB 51 - January 1, 1986 and HB 325 - July 1, 1985
SUMMARY:	The Acts establish procedural requirements for the enactment of local zoning laws. HB 51 applies statewide and HB 325 applies to the city of Atlanta, Fulton County and DeKalb County.

History

The Georgia Constitution of 1976 granted self-executing home rule powers to local governing bodies. The effect of granting home rule to local governments was abrogation of the Legislature's power to enact local planning and zoning laws for unincorporated areas.[1] The Georgia Constitution of 1983 returned power to the General Assembly to enact procedural requirements.[2] These bills are the first enactments under the newly granted power.

HB 51

HB 1000 was introduced in the 1984 session of the General Assembly. The bill resulted from the work of a committee of interested associations.[3] The committee recommended minimal due process requirements which would give the local government as much control over its own zoning procedures as possible.

HB 1000 failed to pass the House in spite of the "do pass" recommendation of the Committee on State Planning and Community Affairs. The House, however, reconsidered its decision and recommended the bill to the Committee for further study. It also passed a resolution calling for an Interim Study Committee.

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1. 1977 Op. Att'y Gen. No. 77-5.
2. Ga. Const. of 1983, art. IX, § 2 para. 4.
3. The Committee included representatives from the Georgia Bar Association, the Georgia chapter of the American Planning Association, the Georgia Municipal Association and the Association of County Commissioners of Georgia.

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The Interim Study Committee held public hearings throughout the State and recommended substantially the same bill as was defeated in 1984. The bill was introduced in the 1985 session as HB 51. It had six parts:

(1) All local governments that use zoning are required to enact procedures and to publish them and make them available to the public.

(2) A published notice and the posting of a sign on the property telling of the application to rezone are required at least fifteen days in advance of the hearing.

(3) In addition to the standards in (1) above, local governments must adopt standards which balance the "public health, safety, morality, or general welfare against the right to the unrestricted use of property."

(4) Appeal by writ of certiorari is allowed at the election of the local government. A local government so electing would have to make a record of all its decisions. Appeals on the record would allow no new evidence at the court hearing. This would require applicants to put all their evidence before the local body. This section, however, is not in the Act as passed.

(5) Rehearing of denied applications is prohibited for a period of six months following a denial.

(6) Finally, public hearings must be held for input into the standards of (1) and (3) prior to their adoption.[4]

The intent of the legislature is to introduce objectivity into zoning decision making by establishing procedures for the exercise of zoning power.[5] The Committee felt that objective decision making would encourage the courts to test a given decision for fairness and compliance with the local procedures, rather than reach the substantive correctness of the decision. The bill passed the Planning and Community Affairs Committee and the House without substantial change.

The Senate, however, objected to (4) which contained few detailed requirements for the hearing before the local government. The concerns expressed were that a local body might grant only ten minutes to present evidence or act otherwise in an unfair manner and that each applicant would have to prepare as if for trial in court or risk being unable to present the evidence later. The lack of detailed requirements prompted opposition from the Georgia Association of Realtors and the Georgia Builders Association.[6]

A compromise was reached by striking the provisions for appeal by certiorari from the bill. Removal satisfied the opponents who supported it as passed.

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4. HB 51, 1985 Ga. Gen. Assem. § 1.

5. O.C.G.A. § 36-66-2 (Supp. 1985).

6. Interview with Paul Bolster, Representative for House District 30 in Atlanta (March 15, 1985).

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HB 325

HB 325 affects counties and municipalities with populations greater than 400,000 people. Thus, it applies in Fulton and DeKalb Counties, as well as the City of Atlanta. Under the Act, a planning department or commission is required to "make a written record of its investigation and recommendations"[7] and to make the records available to the public.

The planning department must consider such factors as the suitability of a proposed use, impact on surrounding property owners, present economic use and burden on the city's physical capacities, conformity with any land use plan and existing or changing conditions which support the proposal.[8] These factors call into consideration the various property interests that are at stake in a zoning decision.

The General Assembly found that the procedures would help assure that decisions made by local governments are made "on the record" and that the record would be available to the courts.[9] The Acts do not address questions of whether the governing body may, without comment, disregard the planning department's findings or whether it would have to make findings of its own to substitute for those of the planning department.[10] Another unanswered question is whether the Legislature under the procedural powers granted may require that the local body must make findings based on specific factors.

7. O.C.G.A. § 36-67-3 (Supp. 1985).
8. O.C.G.A. § 36-67-3(1) — (6) (Supp. 1985).
9. O.C.G.A. § 36-67-2 (Supp. 1985).
10. *See Moore v. Maloney*, 253 Ga. 504, 321 S.E.2d 335 (1984). (The City of Atlanta passed a rezoning application without finding the change was in accord with the comprehensive plan, as required by ordinance. The planning department had explicitly found it was not in accord. The Georgia Supreme Court held that the trial court erred by failing to return the case to the city council to decide according to its zoning procedures.)

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