

The House Committee on Judiciary offers the following substitute to HB 791:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 21 of Title 50, Title 36, Part 1 of Article 3 of Chapter 3 of Title 23, and
2 Code Section 5-6-34 of the Official Code of Georgia Annotated, relating to waiver of
3 sovereign immunity as to actions ex contractu and state tort claims, provisions applicable to
4 counties, municipal corporations, and other governmental entities, conventional quia timet,
5 and judgments and rulings deemed directly appealable, procedure for review of judgments,
6 orders, or decisions not subject to direct appeal, scope of review, hearings in criminal cases
7 involving a capital offense for which death penalty is sought, and appeals involving
8 nonmonetary judgments in child custody cases, respectively, so as to provide for a limited
9 waiver of sovereign immunity for declaratory or injunctive relief under certain
10 circumstances; to provide for definitions; to provide for exceptions; to provide for immunity
11 of state officers and employees in their individual capacity; to provide for a waiver of
12 sovereign immunity as to actions ex contractu for breach of written contract to which a
13 municipal corporation is a party; to provide for appeals; to provide for related matters; to
14 provide for an effective date and applicability; to repeal conflicting laws; and for other
15 purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **PART I**
18 **SECTION 1-1.**

19 Chapter 21 of Title 50 of the Official Code of Georgia Annotated, relating to waiver of
20 sovereign immunity as to actions ex contractu and state tort claims, is amended by adding
21 a new article to read as follows:

22 "ARTICLE 3

23 50-21-50.

24 As used in this article, the term:

25 (1) 'Governmental entity' means a department, agency, division, bureau, board,
 26 commission, authority, office, association, or committee.

27 (2)(A) 'Officer or employee' means, whether with or without compensation, any natural
 28 person who is:

29 (i) Elected to a state office;

30 (ii) Appointed to a state governmental entity; or

31 (iii) Pursuant to a written or oral contract, employed by the state or a state
 32 governmental entity.

33 (B) Such term shall not include an independent contractor doing business with this
 34 state or a state governmental entity.

35 (3) 'Penal institution' shall have the same meaning as set forth in Code Section 42-1-5.

36 (4) 'Person' means an individual, corporation, partnership, firm, business trust,
 37 joint-stock company, association, syndicate, group, pool, joint venture, an unincorporated
 38 association or group, a county, municipal corporation, consolidated government, and
 39 school district, but such term shall not include a hospital authority, housing or other local
 40 authority, or any other unit of local government.

41 (5) 'State' means the State of Georgia, but such term shall not include a county,
 42 municipal corporation, consolidated government, school district, hospital authority,
 43 housing or other local authority, or any other unit of local government.

44 (6) 'State mental health facility' shall have the same meaning as set forth in Code Section
 45 37-1-1.

46 (7) 'State statute' means a title, chapter, article, part, subpart, Code section, or part thereof
 47 that is codified in this Code or has become law and will be codified in this Code.

48 (8) 'Suit' means a civil lawsuit or legal proceeding that contains one or more claims.

49 50-21-51.

50 (a) Sovereign immunity of this state is hereby waived as to any claim that:

51 (1) Is brought by a person in the courts of this state against this state, a state
 52 governmental entity, or an officer or employee in his or her official capacity; and

53 (2) Seeks declaratory or injunctive relief from the enforcement of a state statute on the
 54 basis that it violates the Constitution of Georgia or the Constitution of the United States.

55 (b) This Code section shall not waive sovereign immunity of this state as to any claim:

56 (1) For which a state statute explicitly prohibits such waiver;

- 57 (2) For monetary relief, attorney's fees, or expenses of litigation except as provided in
 58 Code Section 9-15-14;
 59 (3) Seeking declaratory or injunctive relief related to a contract to which this state, a state
 60 governmental entity, or an officer or employee in his or her official capacity is a party;
 61 (4) Alleging a violation of federal law;
 62 (5) Brought in a court of the United States; or
 63 (6) Brought by, or on behalf of, an individual in a penal institution or a state mental
 64 health facility.

65 50-21-52.

66 This article shall not:

- 67 (1) Create, imply, or provide a private right of action not otherwise provided by this
 68 article;
 69 (2) Alter or amend any other waiver of sovereign immunity provided by state statute;
 70 (3) Toll or extend any applicable period of limitations; or
 71 (4) Alter or amend any other legal requirement for filing a suit or obtaining relief,
 72 including, but not limited to, jurisdiction, standing, exhaustion of administrative or other
 73 remedies, notice requirements, and defenses to or limitations on the exercise of equitable
 74 jurisdiction.

75 50-21-53.

76 (a) An officer or employee shall not be subject to a suit in his or her individual capacity
 77 for performance or nonperformance of his or her official duties.

78 (b) The immunity conferred by subsection (a) of this Code section shall:

- 79 (1) Extend to any suit, including, but not limited to, suits seeking monetary, declaratory,
 80 or injunctive relief, unless such suit against such officer or employee in his or her
 81 individual capacity is expressly authorized by state statute or federal law; and
 82 (2) Apply notwithstanding an allegation in a suit that an officer's or employee's conduct
 83 was ultra vires, unconstitutional, or illegal.

84 50-21-54.

85 Any suit containing a claim that challenges a state statute on the basis that it violates the
 86 Constitution of Georgia or the Constitution of the United States shall name only the state,
 87 a state governmental entity that is charged with enforcing such statute, an officer or
 88 employee in his or her official capacity who is charged with enforcing such statute, or a
 89 combination thereof. If an officer or employee is named in such suit in his or her
 90 individual capacity, upon proper motion, the court shall dismiss him or her as the party

91 defendant and, if appropriate, order such officer or employee in his or her official capacity
 92 be joined as a party defendant.

93 50-21-55.

94 No suit containing a claim that challenges a state statute on the basis that it violates the
 95 Constitution of Georgia or the Constitution of the United States shall proceed in the courts
 96 of this state until the plaintiff provides the court with proof of service upon the Attorney
 97 General or his or her designee and the state governmental entity that is charged with
 98 enforcing the state statute being challenged."

99 **PART II**

100 **SECTION 2-1.**

101 Title 36 of the Official Code of Georgia Annotated, relating to provisions applicable to
 102 counties, municipal corporations, and other governmental entities, is amended by adding a
 103 new Code section to read as follows:

104 "36-80-26.

105 (a) As used in this Code section, the term:

106 (1) 'Governmental entity' shall have the same meaning as set forth in Code Section
 107 50-21-50.

108 (2) 'Political subdivision' means a county, municipal corporation, consolidated
 109 government, or school district of this state.

110 (3) 'State statute' means a title, chapter, article, part, subpart, Code section, or part thereof
 111 that is codified in this Code or has become law and will be codified in this Code.

112 (4) 'Suit' means a civil lawsuit or legal proceeding that contains one or more claims.

113 (b) Sovereign immunity of a political subdivision is hereby waived as to any claim that is
 114 brought by an aggrieved person in the courts of this state against a political subdivision
 115 seeking declaratory or injunctive relief to remedy an injury in fact caused to such person,
 116 including an imminent threat of injury to such person, by a political subdivision acting
 117 without lawful authority, beyond the scope of its official power, or in violation of the
 118 Constitution of Georgia, the Constitution of the United States, a state statute, a rule or
 119 regulation adopted by a state governmental entity, or a local ordinance.

120 (c) This Code section shall not waive sovereign immunity of a political subdivision as to
 121 any claim:

122 (1) For which a state statute explicitly prohibits such waiver;

123 (2) For monetary relief, attorney's fees, or expenses of litigation except as provided in
 124 Code Section 9-15-14;

- 125 (3) Seeking declaratory or injunctive relief related to a contract between a third party and
 126 a political subdivision;
 127 (4) Alleging a violation of federal law; or
 128 (5) Brought in a court of the United States.
 129 (d) This Code section shall not:
 130 (1) Create, imply, or provide a private right of action not otherwise provided by this
 131 Code section;
 132 (2) Alter or amend any other waiver of sovereign immunity provided by state statute;
 133 (3) Toll or extend any applicable period of limitations; or
 134 (4) Alter or amend any other legal requirement for filing a suit or obtaining relief,
 135 including, but not limited to, jurisdiction, standing, exhaustion of administrative or other
 136 remedies, notice requirements, and defenses to or limitations on the exercise of equitable
 137 jurisdiction.
 138 (e) Sovereign immunity is waived as to any action ex contractu for the breach of any
 139 written contract existing on the effective date of this subsection or thereafter entered into
 140 by a political subdivision."

141 **SECTION 2-2.**

142 Said title is further amended in Code Section 36-33-1, relating to a municipal corporation's
 143 immunity from liability for damages and the waiver of immunity by the purchase of liability
 144 insurance, by adding a new subsection to read as follows:

145 "(c) Sovereign immunity of a municipal corporation shall be waived as provided in Code
 146 Section 36-80-26."

147 **PART III**

148 **SECTION 3-1.**

149 Part 1 of Article 3 of Chapter 3 of Title 23 of the Official Code of Georgia Annotated,
 150 relating to conventional quia timet, is amended by revising Code Section 23-3-41, relating
 151 to when relief is granted and costs, as follows:

152 "23-3-41.

153 (a) In all proceedings quia timet or proceedings to remove clouds upon titles to real estate,
 154 if a proper case is made, the relief sought shall be granted to any complainant irrespective
 155 of whether the invalidity of the instrument sought to be canceled appears upon the face of
 156 the instrument or whether the invalidity appears or arises solely from facts outside of the
 157 instrument.

158 (b) ~~In~~ Except as provided in Code Section 23-3-45, in such cases the costs shall be taxed
 159 against the litigants in the discretion of the court."

160 **SECTION 3-2.**

161 Said part is further amended by adding two new Code sections to read as follows:

162 "23-3-45.

163 The defense of sovereign immunity is waived as to any claim, counterclaim, cross-claim,
 164 or third-party claim brought in the courts of this state by an aggrieved person seeking a
 165 declaratory judgment or injunctive relief under this part; provided, however, that sovereign
 166 immunity is not waived as to any claim for monetary relief, attorney's fees, or expenses of
 167 litigation that are included in or related to such claim, counterclaim, cross-claim, or
 168 third-party claim.

169 23-3-46.

170 Notwithstanding any law to the contrary, a proceeding under this part involving title to
 171 property or an instrument held by the state or any department, agency, commission, board,
 172 authority, or entity thereof shall also be served on the Attorney General. When the
 173 Attorney General does not file a responsive pleading to an action filed pursuant to this part,
 174 the court shall accept this state's acquiescence to the petitioner's claim for relief."

175 **PART IV**

176 **SECTION 4-1.**

177 Code Section 5-6-34 of the Official Code of Georgia Annotated, relating to judgments and
 178 rulings deemed directly appealable, procedure for review of judgments, orders, or decisions
 179 not subject to direct appeal, scope of review, hearings in criminal cases involving a capital
 180 offense for which death penalty is sought, and appeals involving nonmonetary judgments in
 181 child custody cases, is amended in subsection (a) by deleting "and" at the end of paragraph
 182 (12), by replacing the period with "; and" at the end of paragraph (13), and by adding a new
 183 paragraph to read as follows:

184 "(14) All judgments, orders, or rulings denying or refusing to grant immunity to one or
 185 more parties based upon sovereign, official, qualified, or any other immunity established
 186 by the United States Constitution or the Constitution or laws of this state, when such
 187 party or parties are governmental entities, officials, employees, or agents."

188

PART V

189

SECTION 5-1.

190 This Act shall become effective upon its approval by the Governor or upon its becoming law
191 without such approval and shall apply to all claims arising on or after such date.

192

SECTION 5-2.

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