

House Bill 311

By: Representatives Welch of the 110th, Powell of the 171st, Efstoration of the 104th, McLaurin of the 51st, and Oliver of the 82nd

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 against the state, a state governmental entity, or an officer or employee that
 95 contains a claim challenging a state statute on the basis that it violates the Constitution of
 96 Georgia shall be commenced, and the courts of this state shall not have jurisdiction thereof,
 97 until 30 days after the date that a written notice is mailed to the Attorney General by
 98 certified mail, return receipt requested, sent to the Attorney General by statutory overnight
 99 delivery, or delivered personally to the Attorney General's designee in the State Law
 100 Department and obtaining a receipt for such delivery. Such notice shall identify the
 101 specific state statute being challenged and the nature of the relief being sought.

102 50-21-56.

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

108 **PART II**

109 **SECTION 2-1.**

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

113 "36-80-29.

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

115 (1) 'Governmental entity' shall have the same meaning as set forth in Code Section
 116 50-21-50.

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

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

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

122 (b) Sovereign immunity of a political subdivision is hereby waived as to any claim that is
 123 brought by an aggrieved person in the courts of this state against a political subdivision

124 seeking declaratory or injunctive relief to remedy an injury in fact caused to such person,
 125 including an imminent threat of injury to such person, by a political subdivision acting
 126 without lawful authority, beyond the scope of its official power, or in violation of the
 127 Constitution of Georgia, the Constitution of the United States, a state statute, a rule or
 128 regulation adopted by a state governmental entity, or a local ordinance.

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

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

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

134 (3) Seeking declaratory or injunctive relief related to a contract between a third party and
 135 a political subdivision;

136 (4) Alleging a violation of federal law; or

137 (5) Brought in a court of the United States.

138 (d) This Code section shall not:

139 (1) Create, imply, or provide a private right of action not otherwise provided by this
 140 Code section;

141 (2) Alter or amend any other waiver of sovereign immunity provided by state statute;

142 (3) Toll or extend any applicable period of limitations; or

143 (4) Alter or amend any other legal requirement for filing a suit or obtaining relief,
 144 including, but not limited to, jurisdiction, standing, exhaustion of administrative or other
 145 remedies, notice requirements, and defenses to or limitations on the exercise of equitable
 146 jurisdiction.

147 (e) Sovereign immunity is waived as to any action ex contractu for the breach of any
 148 written contract existing on the effective date of this subsection or thereafter entered into
 149 by a political subdivision.

150 (f) No suit against a political subdivision shall be commenced for any claim or action
 151 under this Code section, and the courts of this state shall not have jurisdiction thereof, until
 152 30 days after the date that a written notice is mailed to the sole county commissioner or
 153 chairperson of the county commission, as the case may be, in the case of a county; to the
 154 mayor or chairperson of the city council or city commission, as the case may be, in the case
 155 of a municipal corporation or consolidated government; to the chairperson of the school
 156 board in the case of a school district by certified mail, return receipt requested, or by
 157 statutory overnight delivery. Such notice shall identify the action being challenged
 158 pursuant to subsection (b) of this Code section and the nature of the relief being sought."

159 **SECTION 2-2.**

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

163 "(c) Sovereign immunity of a municipal corporation shall be waived as provided in Code
 164 Section 36-80-29."

165 **PART III**

166 **SECTION 3-1.**

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

170 "23-3-41.

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

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

178 **SECTION 3-2.**

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

180 "23-3-45.

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

187 23-3-46.

188 Notwithstanding any law to the contrary, a proceeding under this part involving title to
 189 property or an instrument held by the state or any department, agency, commission, board,
 190 authority, or entity thereof shall also be served on the Attorney General. When the

191 Attorney General does not file a responsive pleading to an action filed pursuant to this part,
192 the court shall accept this state's acquiescence to the petitioner's claim for relief."

193 **PART IV**
194 **SECTION 4-1.**

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

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

206 **PART V**
207 **SECTION 5-1.**

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

210 **SECTION 5-2.**
211 All laws and parts of laws in conflict with this Act are repealed.