

House Bill 295

By: Representatives Gaines of the 120th, Leverett of the 123rd, Crowe of the 118th, Jones of the 47th, Anderson of the 10th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to
2 general provisions applicable to counties and municipal corporations, so as to provide
3 procedures for real property owners to make claims for compensation from local
4 governments for loss of property value or expenses incurred due to the local government's
5 failure to comply with or nonenforcement of certain laws, ordinances, and resolutions or due
6 to the local government maintaining a public nuisance; to provide for definitions; to provide
7 judicial remedies if such claims are rejected or not acted upon by local governments; to toll
8 applicable statutes of limitations while such claims are being considered by local
9 governments; to provide for exceptions and limitations; to waive sovereign immunity; to
10 provide for related matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to general
14 provisions applicable to counties and municipal corporations, is amended by adding a new
15 Code section to read as follows:

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16 "36-60-33.

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

18 (1) 'Fair market value' means the probable sales price that would be agreed upon for a
19 parcel of real property by a buyer and seller on the open market with a reasonable amount
20 of time for the parcel to be listed for sale or otherwise offered for sale on the open
21 market, with the buyer having knowledge of all the uses and purposes to which the parcel
22 is adapted and for which it is capable.

23 (2) 'Local government' means a county, municipality, or consolidated government.

24 (3) 'Owner' means the holder of either fee simple title or a leasehold to a parcel of real
25 property; provided, however, that, in the event that a leaseholder to a particular parcel of
26 property filed a claim pursuant to this Code section, the holder of the underlying fee title
27 in the same parcel shall not also be qualified as an owner of such parcel under this Code
28 section.

29 (b) In addition to any other remedial procedures provided by law, and notwithstanding any
30 provisions of Chapters 11, 33, and 92 of this title or Chapter 21 of Title 50 to the contrary,
31 the owner of a parcel of real property may submit a written claim for compensation to the
32 local government in which such real property is located if:

33 (1) The local government adopts and enforces a policy, pattern, or practice of:

34 (A) Failing to comply with Code Section 36-80-23, relating to prohibitions on
35 immigration sanctuary policies, or Chapter 36 of Title 50, relating to verification of
36 lawful presence within the Unites States; or

37 (B) Declining to enforce existing laws, ordinances, or other legislation prohibiting:

38 (i) Illegal public camping;

39 (ii) Loitering;

40 (iii) Obstructing public thoroughfares;

41 (iv) Panhandling;

42 (v) Possession or use of controlled substances in violation of Chapter 13 of Title 16;

- 43 (vi) Shoplifting; or
- 44 (vii) Public intoxication or public urination while trespassing on private property; or
- 45 (2) The local government maintains a public nuisance, and:
- 46 (A) The owner incurs documented expenses to mitigate the effects of such policy,
- 47 pattern, practice, or public nuisance on the owner's real property; or
- 48 (B) The fair market value of the owner's real property is reduced by such policy,
- 49 pattern, practice, or public nuisance.
- 50 (c) The amount of compensation to which the owner is entitled pursuant to this Code
- 51 section shall be, at the owner's election, equal to:
- 52 (1) The documented expenses incurred by the owner that were reasonably necessary, at
- 53 the discretion of the owner, to mitigate the effects of the policy, pattern, practice, or
- 54 maintenance of a public nuisance to the owner's real property; or
- 55 (2) The reduction in fair market value of the property resulting from the local
- 56 government's policy, pattern, practice, or maintenance of a public nuisance.
- 57 (d)(1) A claim made pursuant to this Code section shall be in writing, shall state the
- 58 measure of compensation being elected by the owner, and shall state the policy, pattern,
- 59 practice, or public nuisance which caused:
- 60 (A) The owner to incur expenses reasonably necessary to mitigate the effects of such
- 61 policy, pattern, practice, or public nuisance; or
- 62 (B) The reduction in fair market value of the property.
- 63 A claim shall also state and itemize the monetary value of such incurred expenses or
- 64 reduction in fair market value and describe the specific consequences of the local
- 65 government's policy, pattern, practice, or public nuisance that form the factual basis of
- 66 the owner's claim.
- 67 (2) A claim shall be presented to a local government within 24 months of the happening
- 68 of an event upon which the claim is predicated.

69 (3) Upon the presentation of a claim pursuant to this Code section, the governing
70 authority of the local government shall consider and act upon the claim within 30 days
71 from the presentation.

72 (4) If the local government accepts the claim, it shall pay the compensation established
73 pursuant to this Code section to the owner within 30 days of accepting the claim and
74 claim shall be satisfied.

75 (5)(A) If the local government rejects or does not respond to the claim within 30 days
76 of its presentation, the owner may bring an action against the local government in the
77 superior court having jurisdiction over such local government.

78 (B) A claim filed pursuant to this Code section that is rejected or not responded to by
79 a local government shall act as a notice of claim or ante litem notice otherwise required
80 by law, and no additional notices provided for by Chapters 11, 33, and 92 of this title
81 or Chapter 21 of Title 50 shall be required, regardless of whether or not the owner
82 pursues remedies pursuant to this Code section or as otherwise authorized by law.

83 (C) If an action is brought against a local government pursuant to this paragraph, the
84 local government shall bear the burden of proof in demonstrating that its actions are
85 lawful or that the amount of the claim is unreasonable.

86 (D) In an action brought pursuant to this paragraph:

87 (i) The owner shall not be liable to the local government for attorney fees or costs;
88 and

89 (ii) A prevailing owner shall be awarded reasonable attorney fees and costs.

90 (e) The compensation paid by a local government pursuant to this Code section shall:

91 (1) Be in lieu of any other claims or causes of action the owner may have for monetary
92 damages from the local government arising from the policy, pattern, practice, or
93 maintenance of a public nuisance giving rise to the claim made pursuant to this Code
94 section that occur prior to the date such compensation is paid; and

- 95 (2) Not exceed the amount of ad valorem property taxes paid by the owner in the two tax
96 years immediately prior to the filing of the claim on the real property that is the subject
97 of such claim.
- 98 (f) The running of any applicable statute of limitations shall be suspended during the time
99 that a claim presented pursuant to this Code section is pending before such local
100 government without action on their part.
- 101 (g) An owner may submit a claim pursuant this Code section relating to a particular parcel
102 of real property once per tax year.
- 103 (h) If the policy, pattern, practice, or public nuisance remains in place after an owner
104 submits a claim pursuant to this Code section, and the owner continues to suffer injury as
105 a result of such continuance, the owner may file subsequent claims pursuant to this Code
106 section in subsequent tax years.
- 107 (i) Nothing in this Code section shall prohibit a local government and an owner from
108 entering into a settlement agreement for an amount less than the compensation otherwise
109 requested by a claim filed pursuant to this Code section.
- 110 (j) This Code section shall not apply to:
- 111 (1) Decisions by local government officials exercising prosecutorial discretion to not
112 prosecute alleged offenders if such discretion is exercised on a case-by-case basis and the
113 justification for each such decision are published on a monthly basis by the local
114 government;
- 115 (2) Acts of executive clemency;
- 116 (3) Acts or omission mandated by federal or state law; and
- 117 (4) Actions taken by district attorneys, solicitors-general, or other elected county officers
118 not subject to the control of the governing authority of a local government.
- 119 (k) The General Assembly hereby waives the sovereign immunity of local government to
120 the extent necessary to effectuate this Code section."

121

SECTION 2.

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