

The House Committee on Public Safety and Homeland Security offers the following substitute to HB 295:

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 style="text-align:center">**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:

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 the governing authority of a county, municipality, or  
24 consolidated government.

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

30 (4) 'Policy, pattern, or practice' means a pervasive, systemic, or organized standard  
31 operation procedure of a generalized nature, but shall not include accidental, isolated, or  
32 sporadic acts.

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

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

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

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

42 (i) Illegal public camping;

43 (ii) Loitering;

- 44 (iii) Obstructing public thoroughfares;  
 45 (iv) Panhandling;  
 46 (v) Possession or use of controlled substances in violation of Chapter 13 of Title 16;  
 47 (vi) Shoplifting; or  
 48 (vii) Public intoxication or public urination while trespassing on private property; or  
 49 (2) The local government maintains a public nuisance, and:  
 50 (A) The owner incurs documented expenses to mitigate the effects of such policy,  
 51 pattern, practice, or public nuisance on the owner's real property; or  
 52 (B) The fair market value of the owner's real property is reduced by such policy,  
 53 pattern, practice, or public nuisance.  
 54 (c) The amount of compensation to which the owner is entitled pursuant to this Code  
 55 section shall be, at the owner's election, equal to:  
 56 (1) The documented expenses incurred by the owner that were reasonably necessary, at  
 57 the discretion of the owner, to mitigate the effects of the policy, pattern, practice, or  
 58 maintenance of a public nuisance to the owner's real property; or  
 59 (2) The reduction in fair market value of the property resulting from the local  
 60 government's policy, pattern, practice, or maintenance of a public nuisance.  
 61 (d)(1) Except as otherwise provided in this Code section, claims for compensation  
 62 pursuant to this Code section shall be administered in accordance with Code Section  
 63 48-5-380. A claim made pursuant to this Code section shall be in writing, shall state the  
 64 measure of compensation being elected by the owner, and shall state the policy, pattern,  
 65 practice, or public nuisance which caused:  
 66 (A) The owner to incur expenses reasonably necessary to mitigate the effects of such  
 67 policy, pattern, practice, or public nuisance; or  
 68 (B) The reduction in fair market value of the property.  
 69 A claim shall also state and itemize the monetary value of such incurred expenses or  
 70 reduction in fair market value and describe the specific consequences of the local

71 government's policy, pattern, practice, or public nuisance that form the factual basis of  
72 the owner's claim.

73 (2) A claim shall be presented to a local government within 24 months of the happening  
74 of an event upon which the claim is predicated.

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

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

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

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

89 (C) If an action is brought against a local government pursuant to this paragraph, the  
90 local government shall bear the burden of proof in demonstrating that its actions are  
91 lawful, that the amount of the claim is unreasonable, or that the local government took  
92 reasonable steps to mitigate the alleged nuisance.

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

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

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

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

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

102 (2) Not exceed the amount of ad valorem property taxes levied by such local  
103 government, and shall in no event include any ad valorem property taxes for educational  
104 purposes paid by the owner in the two tax years immediately prior to the filing of the  
105 claim on the real property that is the subject of such claim.

106 (f) The running of any applicable statute of limitations shall be suspended during the time  
107 that a claim presented pursuant to this Code section is pending before such local  
108 government without action on their part.

109 (g) An owner may submit a claim pursuant this Code section relating to a particular parcel  
110 of real property once per tax year.

111 (h) If the policy, pattern, practice, or public nuisance remains in place after an owner  
112 submits a claim pursuant to this Code section, and the owner continues to suffer injury as  
113 a result of such continuance, the owner may file subsequent claims pursuant to this Code  
114 section in subsequent tax years.

115 (i) Nothing in this Code section shall prohibit a local government and an owner from  
116 entering into a settlement agreement for an amount less than the compensation otherwise  
117 requested by a claim filed pursuant to this Code section.

118 (j) In the event that an owner has filed two unsuccessful claims pursuant to this Code  
119 section for the same parcel of property that did not result in the awarding of any  
120 compensation, and such owner files subsequent claims for the same parcel of property, the  
121 local government shall recover from such owner the costs of litigation and reasonable  
122 attorney's fees incurred in defending any subsequent unsuccessful claims filed by such  
123 owner.

124 (k) This Code section shall not apply to:

125 (1) Decisions by local government officials exercising prosecutorial discretion to not  
126 prosecute alleged offenders if such discretion is exercised on a case-by-case basis and the  
127 justification for each such decision are published on a monthly basis by the local  
128 government;

129 (2) Acts of executive clemency;

130 (3) Acts or omission mandated by federal or state law; and

131 (4) Actions taken by district attorneys, solicitors-general, or other elected county officers  
132 not subject to the control of the governing authority of a local government or the  
133 employees of such officers.

134 (l) The General Assembly hereby waives the sovereign immunity of local government to  
135 the extent necessary to effectuate this Code section."

136 **SECTION 2.**

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