

The Senate Committee on Judiciary offered the following substitute to HB 531:

**MOOT**

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 33 of Title 36 of the Official Code of Georgia Annotated, relating to  
2 liability of municipal corporations for acts or omissions, so as to provide that when a  
3 municipal corporation is participating in a joint undertaking and another local government  
4 participating in such joint undertaking acquires liability insurance the sovereign immunity  
5 of the other participating local government is not waived; to extend the period of the notice  
6 for a cause of action against a municipality; to provide that tort and nuisance liability of any  
7 consolidated government shall follow the law and rules of tort liability applicable to counties;  
8 to provide limitations on the amounts and types of damages and interest recoverable; to  
9 provide a short title; to revise provisions relating to waiver of immunity by purchase of  
10 liability insurance; to amend Chapter 80 of Title 36 of the Official Code of Georgia  
11 Annotated, relating to general provisions applicable to counties, municipal corporations, and  
12 other governmental entities, so as to waive sovereign and governmental immunities for local  
13 governments and their officials and employees for a violation of the prohibition on  
14 immigration sanctuary policies; to amend Code Section 42-1-11.5 of the Official Code of  
15 Georgia Annotated, relating to compliance with immigration detainer notices, so as to  
16 provide for immunity waivers; to provide for related matters; to provide for an effective date;  
17 to repeal conflicting laws; and for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 **PART I**

20 **SECTION 1-1.**

21 This part shall be known and may be cited as the "Municipal Sovereign Immunity Act."

22 **SECTION 1-2.**

23 Chapter 33 of Title 36 of the Official Code of Georgia Annotated, relating to liability of  
24 municipal corporations for acts or omissions, is amended by revising subsection (b) of Code  
25 Section 36-33-5, relating to written demand prerequisite to action for injury to person or  
26 property, time for presenting claim and for consideration by governing authority, suspension  
27 of limitations, statement of specific amount of monetary damages sought, and service of  
28 claim on city officials, as follows:

29 "(b) Within ~~six~~ 12 months of the happening of the event upon which a claim against a  
30 municipal corporation is predicated, the person, firm, or corporation having the claim shall  
31 present the claim in writing to the governing authority of the municipal corporation for  
32 adjustment, stating the time, place, and extent of the injury, as nearly as practicable, and  
33 the negligence which caused the injury. No action shall be entertained by the courts  
34 against the municipal corporation until the cause of action therein has first been presented  
35 to the governing authority for adjustment."

36 **SECTION 1-3.**

37 Said chapter is further amended by adding a new Code section to read as follows:

38 "36-33-7.

39 (a) It is the specific intent of the General Assembly that municipal tort claims shall be  
40 subject to the limitations provided in this Code section. In any civil action or claim for

41 damages brought under the provisions of this chapter, no claimant shall recover a sum  
 42 exceeding \$3 million from any single municipality because of loss arising from a single  
 43 occurrence; and any single municipality's aggregate liability per occurrence shall not  
 44 exceed \$5 million. The existence of these caps on liability shall not be disclosed or  
 45 suggested to the jury during the trial of any action brought under this chapter.

46 (b) No award for damages under this chapter shall include punitive or exemplary damages.

47 (c) Trial of tort claims against the municipality under this chapter shall be conducted by  
 48 a judge with a jury; provided, however, that the parties may agree that the same be tried by  
 49 a judge without a jury.

50 (d) This Code section shall not be construed as a new waiver of immunity as required by  
 51 Article IX, Section II, Paragraph IX of the Constitution of the State of Georgia. Any such  
 52 new waiver must be pled and proven by the claimant as provided by law."

53

### SECTION 1-3A.

54 Said chapter is further amended by revising Code Section 36-33-1, relating to immunity from  
 55 liability for damages, waiver of immunity by purchase of liability insurance, and liability for  
 56 acts or omissions generally, as follows:

57 "36-33-1.

58 (a) Pursuant to Article IX, Section II, Paragraph IX of the Constitution of the State of  
 59 Georgia, the General Assembly, except as provided in this Code section and in Chapter 92  
 60 of this title, declares it is the public policy of the State of Georgia that there is no waiver  
 61 of the sovereign immunity of municipal corporations of the state and such municipal  
 62 corporations shall be immune from liability for damages. ~~A municipal corporation shall~~  
 63 ~~not waive its immunity by the purchase of liability insurance, except as provided in Code~~  
 64 ~~Section 33-24-51 or 36-92-2, or unless the policy of insurance issued covers an occurrence~~  
 65 ~~for which the defense of sovereign immunity is available, and then only to the extent of the~~  
 66 ~~limits of such insurance policy. This subsection shall not be construed to affect any~~

67 ~~litigation pending on July 1, 1986.~~ In addition to the waivers of a municipal corporation's  
68 immunity as provided by Code Sections 33-24-51 and 36-92-2, a municipal corporation  
69 shall waive its immunity by the purchase of liability insurance if the policy of insurance  
70 covers an occurrence and then only to the extent of the limits of the insurance policy. It  
71 shall be against public policy, void, and unenforceable for a contract for liability insurance  
72 to attempt to avoid the effect of this waiver of immunity, or any other waiver of a  
73 municipal corporation's immunity. Among other things, the duty to pay damages on behalf  
74 of a municipality must be determined under the policy of insurance without consideration  
75 of whether immunity would otherwise exist for those damages.  
76 (b) Municipal corporations shall not be liable for failure to perform or for errors in  
77 performing their legislative or judicial powers. For neglect to perform or improper or  
78 unskillful performance of their ministerial duties, they shall be liable."

79

**PART II**

80

**SECTION 2-1.**

81 Chapter 80 of Title 36 of the Official Code of Georgia Annotated, relating to general  
82 provisions applicable to counties, municipal corporations, and other governmental entities,  
83 is amended by adding a new subsection to Code Section 36-80-23, relating to prohibition on  
84 immigration sanctuary policies by local governmental entities, and certification of  
85 compliance, to read as follows:

86 "(f) In the event that a local governing body acts in violation of this Code section, the  
87 sovereign immunity of such local governing body and the governmental immunity of all  
88 local officials and employees of such local governing body is waived in all matters arising  
89 from or resulting in the violation of this Code section."

**SECTION 2-2.**

90

91 Code Section 42-1-11.5 of the Official Code of Georgia Annotated, relating to compliance  
92 with immigration detainer notices, is amended by revising said Code section as follows:

93 "42-1-11.5.

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

95 (1) 'Custodial authority' means the commissioner if a person is in physical custody at a  
96 penal institution, the sheriff if a person is in physical custody at a county jail, the warden  
97 if a person is in physical custody at a county correctional institution, and the chief of  
98 police if a person is in physical custody at a municipal detention facility.

99 (2) 'Immigration detainer notice' means documentation issued by the federal government  
100 requesting that a custodial authority maintain temporary custody of an illegal alien as  
101 such term is defined in Code Section 42-4-14, including a United States Department of  
102 Homeland Security Form I-247 document or a similar successor form.

103 (b) Any custodial authority who has custody of a person who is subject to an immigration  
104 detainer notice shall:

105 (1) Comply with, honor, and fulfill any request made in the immigration detainer notice;  
106 and

107 (2) Inform the person identified in the immigration detainer notice that the person is  
108 being held pursuant to such notice.

109 (c) In the event that a custodial authority acts in violation of this Code section, the  
110 sovereign and other governmental immunities of such custodial authority are waived in all  
111 matters arising from or resulting in the violation of this Code section."

112

**PART III**

113

**SECTION 3-1.**

114 This Act shall become effective upon its approval by the Governor or upon its becoming law  
115 without such approval.

116

**SECTION 3-2.**

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