

House Bill 295 (COMMITTEE SUBSTITUTE)

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
8 suspend 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:

H. B. 295 (SUB)

16 "36-60-34.

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 operating 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
63 Section 48-5-380. A claim made pursuant to this Code section shall be in writing, shall
64 state the measure of compensation being elected by the owner, and shall state the policy,
65 pattern, 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 the tax year in which the
74 events occurred 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 the
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 public 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 paid on such owner's parcel and
- 103 levied by such local government in the prior tax year.
- 104 (f) The running of any applicable statute of limitations shall be suspended during the time
- 105 that a claim presented pursuant to this Code section is pending before such local
- 106 government without action on their part.
- 107 (g) An owner may submit a claim pursuant this Code section relating to a particular parcel
- 108 of real property once per tax year. If a local government denies a claim for being
- 109 administratively incomplete, the owner shall be permitted to revise and resubmit the claim
- 110 to ensure the claim is administratively complete.
- 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 monetary
- 113 damages as a result of such continuance, the owner may file subsequent claims pursuant
- 114 to this Code 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 an unsuccessful claim pursuant to this Code section
- 119 for the same parcel of property that did not result in the awarding of any compensation, and
- 120 such owner files subsequent claims for the same parcel of property, the local government
- 121 shall recover from such owner the costs of litigation and reasonable attorney's fees incurred
- 122 in defending any unsuccessful claim filed by such owner.

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

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

128 (2) Acts of executive clemency;

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

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

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

135

SECTION 2.

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