

House Bill 295 (AS PASSED HOUSE AND SENATE)

By: Representatives Gaines of the 120<sup>th</sup>, Leverett of the 123<sup>rd</sup>, Crowe of the 118<sup>th</sup>, Jones of the 47<sup>th</sup>, Anderson of the 10<sup>th</sup>, 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 amend Chapter 80 of Title 36 of the Official Code of Georgia Annotated, relating to general  
11 provisions applicable to counties, municipal corporations, and other governmental entities,  
12 so as to authorize mandamus actions regarding local governments and their officials and  
13 employees for a violation of the prohibition on immigration sanctuary policies; to amend  
14 Code Section 42-1-11.5 of the Official Code of Georgia Annotated, relating to compliance  
15 with immigration detainer notices, so as to authorize mandamus actions; to amend Chapter  
16 18 of Title 50 of the Official Code of Georgia Annotated, relating to state printing and  
17 documents, so as to provide for public disclosure of certain documents; to provide for related  
18 matters; to repeal conflicting laws; and for other purposes.

H. B. 295

- 1 -

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 SECTION 1.

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

24 "36-60-34.

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

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

31 (2) 'Local government' means the governing authority of a county, municipality, or  
32 consolidated government.

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

38 (4) 'Policy, pattern, or practice' means a pervasive, systemic, or organized standard  
39 operating procedure of a generalized nature, but shall not include accidental, isolated, or  
40 sporadic acts.

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

- 45 (1) The local government adopts and enforces a policy, pattern, or practice of:  
46 (A) Failing to comply with Code Section 36-80-23, relating to prohibitions on  
47 immigration sanctuary policies, or Chapter 36 of Title 50, relating to verification of  
48 lawful presence within the Unites States; or  
49 (B) Declining to enforce existing laws, ordinances, or other legislation prohibiting:  
50 (i) Illegal public camping;  
51 (ii) Loitering;  
52 (iii) Obstructing public thoroughfares;  
53 (iv) Panhandling;  
54 (v) Possession or use of controlled substances in violation of Chapter 13 of Title 16;  
55 (vi) Shoplifting; or  
56 (vii) Public intoxication or public urination while trespassing on private property; or  
57 (2) The local government maintains a public nuisance and:  
58 (A) The owner incurs documented expenses to mitigate the effects of such policy,  
59 pattern, practice, or public nuisance on the owner's real property; or  
60 (B) The fair market value of the owner's real property is reduced by such policy,  
61 pattern, practice, or public nuisance.  
62 (c) The amount of compensation to which the owner is entitled pursuant to this Code  
63 section shall be, at the owner's election, equal to:  
64 (1) The documented expenses incurred by the owner that were reasonably necessary, at  
65 the discretion of the owner, to mitigate the effects of the policy, pattern, practice, or  
66 maintenance of a public nuisance to the owner's real property; or  
67 (2) The reduction in fair market value of the property resulting from the local  
68 government's policy, pattern, practice, or maintenance of a public nuisance.  
69 (d)(1) Except as otherwise provided in this Code section, claims for compensation  
70 pursuant to this Code section shall be administered in accordance with Code  
71 Section 48-5-380. A claim made pursuant to this Code section shall be in writing, shall

72 state the measure of compensation being elected by the owner, and shall state the policy,  
73 pattern, practice, or public nuisance which caused:

74 (A) The owner to incur expenses reasonably necessary to mitigate the effects of such  
75 policy, pattern, practice, or public nuisance; or

76 (B) The reduction in fair market value of the property.

77 A claim shall also state and itemize the monetary value of such incurred expenses or  
78 reduction in fair market value and describe the specific consequences of the local  
79 government's policy, pattern, practice, or public nuisance that form the factual basis of  
80 the owner's claim.

81 (2) A claim shall be presented to a local government within the tax year in which the  
82 events occurred upon which the claim is predicated.

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

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

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

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

97 (C) If an action is brought against a local government pursuant to this paragraph, the  
98 local government shall bear the burden of proof in demonstrating that its actions are

99 lawful, that the amount of the claim is unreasonable, or that the local government took  
100 reasonable steps to mitigate the alleged public nuisance.

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

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

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

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

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

110 (2) Not exceed the amount of ad valorem property taxes paid on such owner's parcel and  
111 levied by such local government in the prior tax year.

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

115 (g) An owner may submit a claim pursuant this Code section relating to a particular parcel  
116 of real property once per tax year. If a local government denies a claim for being  
117 administratively incomplete, the owner shall be permitted to revise and resubmit the claim  
118 to ensure the claim is administratively complete.

119 (h) If the policy, pattern, practice, or public nuisance remains in place after an owner  
120 submits a claim pursuant to this Code section, and the owner continues to suffer monetary  
121 damages as a result of such continuance, the owner may file subsequent claims pursuant  
122 to this Code section in subsequent tax years.

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

126 (j) In the event that an owner has filed an unsuccessful administratively complete claim  
127 pursuant to this Code section for the same parcel of property that did not result in the  
128 awarding of any compensation, and such owner files subsequent administratively complete  
129 claims for the same parcel of property, the local government shall recover from such owner  
130 the costs of litigation and reasonable attorney's fees incurred in defending any unsuccessful  
131 claim filed by such owner.

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

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

137 (2) Acts of executive clemency;

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

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

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

144 **SECTION 2.**

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

150 "(f) In the event that a local governing body acts in violation of this Code section, any  
151 individual aggrieved by such violation may petition the superior court for mandamus relief,  
152 and such petition shall receive priority on such court's docket."

153 **SECTION 3.**

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

156 "42-1-11.5.

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

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

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

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

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

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

172 (c) In the event that a custodial authority acts in violation of this Code section, any  
173 individual aggrieved by such violation may petition the superior court for mandamus relief,  
174 and such petition shall receive priority on such court's docket."

175

**SECTION 4.**

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