

House Bill 311 (COMMITTEE SUBSTITUTE)

By: Representatives Welch of the 110th, Powell of the 171st, Efstoration of the 104th, McLaurin of the 51st, and Oliver of the 82nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 21 of Title 50, Title 36, Part 1 of Article 3 of Chapter 3 of Title 23, and
2 Code Section 5-6-34 of the Official Code of Georgia Annotated, relating to waiver of
3 sovereign immunity as to actions ex contractu and state tort claims, local government,
4 conventional quia timet, and judgments and rulings deemed directly appealable, procedure
5 for review of judgments, orders, or decisions not subject to direct appeal, scope of review,
6 hearings in criminal cases involving a capital offense for which death penalty is sought, and
7 appeals involving nonmonetary judgments in child custody cases, respectively, so as to
8 provide for a limited waiver of sovereign immunity for declaratory or injunctive relief under
9 certain circumstances; to provide for definitions; to provide for exceptions; to provide for
10 immunity of state and local officers and employees in their individual capacity; to provide
11 for a waiver of sovereign immunity as to actions ex contractu for breach of written contract
12 to which a municipal corporation is a party; to provide for appeals; to provide for related
13 matters; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **PART I**
16 **SECTION 1-1.**

17 Chapter 21 of Title 50 of the Official Code of Georgia Annotated, relating to waiver of
18 sovereign immunity as to actions ex contractu and state tort claims, is amended by adding
19 a new article to read as follows:

20 "ARTICLE 3

21 50-21-50.

22 As used in this article, the term:

- 23 (1) 'Governmental entity' means a department, agency, division, bureau, board,
 24 commission, authority, office, or committee.
- 25 (2)(A) 'Officer or employee' means, whether with or without compensation, any natural
 26 person who is:
- 27 (i) Elected to a state office;
 28 (ii) Appointed to a state governmental entity; or
 29 (iii) Employed by the state or a state governmental entity.
- 30 (B) Such term shall not include an independent contractor doing business with this
 31 state or a state governmental entity.
- 32 (3) 'Penal institution' shall have the same meaning as set forth in Code Section 42-1-5.
- 33 (4) 'Person' means an individual, corporation, partnership, firm, business trust,
 34 joint-stock company, association, syndicate, group, pool, joint venture, an unincorporated
 35 association or group, a county, municipal corporation, consolidated government, and
 36 school system, but such term shall not include a hospital authority, housing or other local
 37 authority, or any other unit of local government.
- 38 (5) 'State' means the State of Georgia, but such term shall not include a county,
 39 municipal corporation, consolidated government, school system, hospital authority,
 40 housing or other local authority, or any other unit of local government.
- 41 (6) 'State mental health facility' shall have the same meaning as set forth in Code Section
 42 37-1-1.
- 43 (7) 'State statute' means a title, chapter, article, part, subpart, Code section, or part thereof
 44 that is codified in the Official Code of Georgia Annotated or has become law.
- 45 (8) 'Suit' means a civil lawsuit or legal proceeding that contains one or more claims.
- 46 50-21-51.
- 47 (a) Sovereign immunity is waived as to any claim that is brought by an aggrieved person
 48 in the courts of this state against this state, a state governmental entity, or an officer or
 49 employee in his or her official capacity and that seeks declaratory or injunctive relief to
 50 remedy an injury in fact caused to such aggrieved person, including, but not limited to, an
 51 imminent threat of injury to such aggrieved person, by this state, a state governmental
 52 entity, or an officer or employee in his or her official capacity in violation of state law, the
 53 Constitution of Georgia, or the Constitution of the United States. This waiver extends to
 54 any claim seeking declaratory or injunctive relief from the enforcement of a state statute
 55 on the basis that the statute, on its face or as applied, violates the Constitution of Georgia
 56 or the Constitution of the United States.

57 (b) This Code section shall not waive sovereign immunity of this state, a state
 58 governmental entity, or an officer or employee in his or her official capacity as to any
 59 claim:

60 (1) For which a state statute explicitly prohibits such waiver;

61 (2) For monetary relief, attorney's fees, or expenses of litigation except as provided in
 62 Code Section 9-15-14;

63 (3) Alleging a violation of federal law, other than the United States Constitution;

64 (4) Brought in a court of the United States; or

65 (5) Brought by, or on behalf of, an individual in a penal institution or a state mental
 66 health facility.

67 50-21-52.

68 This article shall be narrowly construed and shall not:

69 (1) Toll or extend any applicable period of limitations;

70 (2) Alter or amend any other waiver of sovereign immunity provided by state statute;

71 (3) Be construed to waive other immunities provided by state statute or recognized by
 72 the courts of this state, including, but not limited to, grand juror immunity, judicial
 73 immunity, legislative immunity, official immunity, or qualified immunity; or

74 (4) Except as expressly waived by this article, alter or amend any other legal requirement
 75 for filing a suit or obtaining relief, including, but not limited to, jurisdiction, standing,
 76 exhaustion of administrative or other remedies, notice requirements, and defenses to or
 77 limitations on the exercise of equitable jurisdiction.

78 50-21-53.

79 (a) An officer or employee shall not be subject to a suit under this article in his or her
 80 individual capacity for performance or nonperformance of his or her official duties.

81 (b) The immunity conferred by subsection (a) of this Code section shall:

82 (1) Extend to any suit, including, but not limited to, suits seeking monetary, declaratory,
 83 or injunctive relief, unless such suit against such officer or employee in his or her
 84 individual capacity is expressly authorized by state statute; and

85 (2) Apply notwithstanding an allegation in a suit that an officer's or employee's conduct
 86 was ultra vires, unconstitutional, or illegal.

87 50-21-54.

88 A suit for which sovereign immunity is waived under this article shall name only the state,
 89 a state governmental entity, an officer or employee in his or her official capacity, or a
 90 combination thereof. If an officer or employee is named in such suit in his or her

91 individual capacity, upon proper motion, the court shall dismiss him or her as the party
 92 defendant and, if appropriate, order such officer or employee in his or her official capacity
 93 be joined as a party defendant.

94 50-21-55.

95 (a) No suit for which sovereign immunity is waived under this article shall be commenced,
 96 and the court shall not have jurisdiction thereof, until 30 days after the date that a written
 97 notice is sent to the state governmental entity or officer or employee to be named as a party
 98 defendant and the Attorney General by certified mail, return receipt requested, by statutory
 99 overnight delivery, or delivered personally to such entity and persons and obtaining a
 100 receipt for such delivery. Such notice shall identify the specific law or action being
 101 challenged and the nature of the relief being sought.

102 (b) No suit for which sovereign immunity is waived under this article shall proceed until
 103 the plaintiff provides the court with proof of service upon the Attorney General or his or
 104 her designee and the state governmental entity that is charged with enforcing the state
 105 statute being challenged.

106 (c) A suit for which notice has been provided in accordance with this Code section shall
 107 be filed no later than 90 days after such notice has been provided."

108 **PART II**

109 **SECTION 2-1.**

110 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
 111 in Code Section 36-33-1, relating to a municipal corporation's immunity from liability for
 112 damages and the waiver of immunity by the purchase of liability insurance, by adding a new
 113 subsection to read as follows:

114 "(c) Sovereign immunity of a municipal corporation shall be waived as provided in
 115 Article 2 of Chapter 80 of this title."

116 **SECTION 2-2.**

117 Said title is further amended in Chapter 80, relating to general provisions regarding
 118 provisions applicable to counties, municipal corporations, and other governmental entities,
 119 by designating the existing Code sections as Article 1 and adding a new article to read as
 120 follows:

121 "ARTICLE 2

122 36-80-50.

123 As used in this article, the term:

124 (1) 'Governmental entity' means a department, agency, division, bureau, board,
 125 commission, authority, office, or committee formed or established by a political
 126 subdivision.

127 (2)(A) 'Officer or employee' means, whether with or without compensation, any natural
 128 person who is:

129 (i) Elected to a political subdivision office;

130 (ii) Appointed to a political subdivision governmental entity; or

131 (iii) Employed by a political subdivision or a political subdivision governmental
 132 entity.

133 (B) Such term shall not include an independent contractor doing business with this
 134 state, a political subdivision, a state governmental entity, or a political subdivision
 135 governmental entity.

136 (3) 'Penal institution' shall have the same meaning as set forth in Code Section 42-1-5.

137 (4) 'Person' shall have the same meaning as set forth in Code Section 50-21-50.

138 (5) 'Political subdivision' means a county, municipal corporation, or consolidated
 139 government.

140 (6) 'Rule or regulation' shall have the same meaning as set forth in paragraph (6) of Code
 141 Section 50-13-2.

142 (7) 'State' shall have the same meaning as set forth in Code Section 50-21-50.

143 (8) 'State mental health facility' shall have the same meaning as set forth in Code
 144 Section 37-1-1.

145 (9) 'State statute' means a title, chapter, article, part, subpart, Code section, or part thereof
 146 that is codified in the Official Code of Georgia Annotated or has become law.

147 (10) 'Suit' means a civil lawsuit or legal proceeding that contains one or more claims.

148 36-80-51.

149 (a) Sovereign immunity is waived as to any claim that is brought by an aggrieved person
 150 in the superior courts of this state against a political subdivision, a political subdivision
 151 governmental entity, or an officer or employee in his or her official capacity and that seeks
 152 declaratory or injunctive relief to:

153 (1) Challenge a local ordinance adopted by a political subdivision or a rule or policy
 154 adopted by a political subdivision or a political subdivision governmental entity under the
 155 Constitution of Georgia, the Constitution of the United States, a state statute, or rule or
 156 regulation;

157 (2) Remedy an injury in fact caused to such aggrieved person, including, but not limited
 158 to, an imminent threat of injury to such aggrieved person, by a political subdivision, a
 159 political subdivision governmental entity, or an officer or employee in his or her official
 160 capacity acting without lawful authority, beyond the scope of official power, or in
 161 violation of the Constitution of Georgia, the Constitution of the United States, a state
 162 statute, a rule or regulation, or a local ordinance of a political subdivision except a zoning
 163 ordinance as defined in Code Section 36-66-3; or

164 (3) Remedy an injury when the injury is related to the award of a proposed agreement
 165 with a political subdivision or an officer or employee in his or her official capacity. A
 166 person who bid on such proposed agreement claiming an injury as described in
 167 paragraph (2) of this subsection as to such award shall file suit for declaratory or
 168 injunctive relief no later than ten days from the date that the award is made public. Any
 169 agreement resulting from an award of a bid or proposal shall not be effective until the
 170 expiration of ten days after the award is made public, except for emergencies as defined
 171 in Code Section 36-91-2.

172 (b) This Code section shall not waive sovereign immunity of a political subdivision, a
 173 political subdivision governmental entity, or an officer or employee in his or her official
 174 capacity as to any claim:

175 (1) For which a state statute explicitly prohibits such waiver;

176 (2) For monetary relief, attorney's fees, or expenses of litigation except as provided in
 177 Code Section 9-15-14;

178 (3) Alleging a violation of federal law, other than the United States Constitution;

179 (4) Brought in a court of the United States; or

180 (5) Brought by, or on behalf of, an individual in a penal institution or a state mental
 181 health facility.

182 36-80-52.

183 This article shall be narrowly construed and shall not:

184 (1) Toll or extend any applicable period of limitations;

185 (2) Alter or amend any other waiver of sovereign immunity provided by state statute;

186 (3) Be construed to waive other immunities provided by state statute or recognized by
 187 the courts of this state, including, but not limited to, grand juror immunity, judicial
 188 immunity, legislative immunity, official immunity, or qualified immunity; or

189 (4) Except as expressly waived by this article, alter or amend any other legal requirement
 190 for filing a suit or obtaining relief, including, but not limited to, jurisdiction, standing,
 191 exhaustion of administrative or other remedies, notice requirements, and defenses to or
 192 limitations on the exercise of equitable jurisdiction.

193 36-80-53.

194 (a) An officer or employee shall not be subject to a suit under this article in his or her
 195 individual capacity for performance or nonperformance of his or her official duties.

196 (b) The immunity conferred by subsection (a) of this Code section shall:

197 (1) Extend to any suit, including, but not limited to, suits seeking monetary, declaratory,
 198 or injunctive relief, unless such suit against such officer or employee in his or her
 199 individual capacity is expressly authorized by state statute; and

200 (2) Apply notwithstanding an allegation in a suit that an officer's or employee's conduct
 201 was ultra vires, unconstitutional, or illegal.

202 36-80-54.

203 A suit for which sovereign immunity is waived under this article shall name only the
 204 political subdivision, a political subdivision governmental entity, an officer or employee
 205 in his or her official capacity, or a combination thereof. If an officer or employee is named
 206 in such suit in his or her individual capacity, upon proper motion, the court shall dismiss
 207 him or her as the party defendant and, if appropriate, order such officer or employee in his
 208 or her official capacity be joined as a party defendant.

209 36-80-55.

210 (a) No suit for which sovereign immunity is waived under this article against a political
 211 subdivision, a political subdivision governmental entity, or an officer or employee in his
 212 or her official capacity as provided in Code Section 36-80-51 shall be commenced, and the
 213 courts of this state shall not have jurisdiction thereof, until 30 days after the date that a
 214 written notice is mailed by certified mail, return receipt requested, or by statutory overnight
 215 delivery to:

216 (1) The sole county commissioner or chairperson of the county commission, as the case
 217 may be, in the case of a county; or

218 (2) The mayor or chairperson of the city council or city commission, as the case may be,
 219 in the case of a municipal corporation or consolidated government.

220 (b) Such notice shall identify the action being challenged pursuant to this article and the
 221 nature of the relief being sought.

222 (c) No suit containing a claim under Code Section 36-80-51 shall proceed in the courts of
 223 this state until the plaintiff provides the court with proof of service upon the appropriate
 224 authority as provided in this Code section.

225 (d) The notice required by this Code section shall not be required for suits brought
 226 pursuant to paragraph (3) of subsection (a) of Code Section 36-80-51.

227 (e) A suit for which notice has been provided in accordance with this Code section shall
 228 be filed no later than 90 days after such notice has been provided.

229 36-80-56.

230 Sovereign immunity of a political subdivision as defined in Code Section 36-80-50, a
 231 political subdivision governmental entity as defined in Code Section 36-80-50, or an officer
 232 or employee as defined in Code Section 36-80-50 in his or her official capacity is hereby
 233 waived as to any claim in ex contractu for the breach of a written agreement with a political
 234 subdivision, a political subdivision governmental entity, or an officer or employee in his
 235 or her official capacity and only as between the parties to such written agreement."

236 **PART III**
 237 **SECTION 3-1.**

238 Part 1 of Article 3 of Chapter 3 of Title 23 of the Official Code of Georgia Annotated,
 239 relating to conventional quia timet, is amended by revising Code Section 23-3-41, relating
 240 to when relief is granted and costs, as follows:

241 "23-3-41.

242 (a) In all proceedings quia timet or proceedings to remove clouds upon titles to real estate,
 243 if a proper case is made, the relief sought shall be granted to any complainant irrespective
 244 of whether the invalidity of the instrument sought to be canceled appears upon the face of
 245 the instrument or whether the invalidity appears or arises solely from facts outside of the
 246 instrument.

247 (b) ~~In~~ Except as provided in Code Section 23-3-45, in such cases the costs shall be taxed
 248 against the litigants in the discretion of the court."

249 **SECTION 3-2.**

250 Said part is further amended by adding two new Code sections to read as follows:

251 "23-3-45.

252 The defense of sovereign immunity is waived as to any claim, counterclaim, cross-claim,
 253 or third-party claim brought in the courts of this state by an aggrieved person seeking a
 254 declaratory judgment or injunctive relief under this part; provided, however, that sovereign

255 immunity is not waived as to any claim for monetary relief, attorney's fees, or expenses of
 256 litigation that are included in or related to such claim, counterclaim, cross-claim, or
 257 third-party claim, except as provided in Code Section 9-15-14.

258 23-3-46.

259 Notwithstanding any law to the contrary, a proceeding under this part involving title to
 260 property or an instrument held by the state or any department, agency, commission, board,
 261 authority, or entity thereof shall also be served on such department, agency, commission,
 262 board, authority, or entity and the Attorney General. When the Attorney General does not
 263 file a responsive pleading to an action filed pursuant to this part, the court shall accept this
 264 state's acquiescence to the petitioner's claim for relief."

265 **PART IV**

266 **SECTION 4-1.**

267 Code Section 5-6-34 of the Official Code of Georgia Annotated, relating to judgments and
 268 rulings deemed directly appealable, procedure for review of judgments, orders, or decisions
 269 not subject to direct appeal, scope of review, hearings in criminal cases involving a capital
 270 offense for which death penalty is sought, and appeals involving nonmonetary judgments in
 271 child custody cases, is amended in subsection (a) by deleting "and" at the end of paragraph
 272 (12), by replacing the period with "; and" at the end of paragraph (13), and by adding a new
 273 paragraph to read as follows:

274 "(14) All judgments, orders, or rulings denying or refusing to grant immunity to one or
 275 more parties based upon sovereign, official, qualified, or any other immunity established
 276 by the United States Constitution or the Constitution, laws, or common law of this state
 277 when such party or parties are the state, state governmental entities, political
 278 subdivisions, political subdivision governmental entities, or officers or employees as such
 279 are defined in Code Section 36-80-50 or 50-21-50, as applicable; provided, however, that
 280 the right of direct appeal under this paragraph shall not be exercised by any one party
 281 more than once in a case. This paragraph shall not preclude taking an appeal pursuant
 282 to any other paragraph in this subsection."

283 **PART V**

284 **SECTION 5-1.**

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