

The Senate Committee on Public Safety offered the following substitute to HB 301:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 80 of Title 36 of the Official Code of Georgia Annotated, relating to
2 general provisions applicable to counties, municipal corporations, and other governmental
3 entities, so as to provide legislative findings; to provide procedures for residents to seek
4 declaratory judgments when a local governing body has violated the prohibition on
5 immigration sanctuary policies; to provide for actions in the superior court; to provide for
6 notification and publication of such judgments; to provide that governing bodies found to be
7 in violation of such prohibition shall lose their eligibility for certain state and federal funds;
8 to authorize the removal of such judgments and penalties when a local governing body
9 rescinds prohibited sanctuary policies; to waive sovereign and governmental immunities for
10 local governments and their officials and employees for violating the prohibition on
11 immigration sanctuary policies; to provide for the removal of members of local governing
12 authorities under certain circumstances; to provide for hearings and procedures regarding
13 such removals; to provide for reinstatement in certain circumstances; to prohibit the use of
14 government funds related to such removal procedures; to provide for reimbursement of costs
15 in certain circumstances; to provide for related matters; to repeal conflicting laws; and for
16 other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18

SECTION 1.

19 Chapter 80 of Title 36 of the Official Code of Georgia Annotated, relating to general
20 provisions applicable to counties, municipal corporations, and other governmental entities,
21 is amended by revising Code Section 36-80-23, relating to prohibition on immigration
22 sanctuary policies by local governmental entities and certification of compliance, as follows:
23 "36-80-23.

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

25 (1) 'Federal officials or law enforcement officers' means any person employed by the
26 United States government for the purpose of enforcing or regulating federal immigration
27 laws and any peace officer certified by the Georgia Peace Officer Standards and Training
28 Council where such federal official or peace officer is acting within the scope of his or
29 her employment for the purpose of enforcing federal immigration laws or preserving
30 homeland security.

31 (2) 'Immigration status' means the legality or illegality of an individual's presence in the
32 United States as determined by federal law.

33 (3) 'Immigration status information' means any information, not including any
34 information required by law to be kept confidential but otherwise including but not
35 limited to any statement, document, computer generated data, recording, or photograph,
36 which is relevant to immigration status or the identity or location of an individual who
37 is reasonably believed to be illegally residing within the United States or who is
38 reasonably believed to be involved in domestic terrorism as that term is defined in Code
39 Section 16-11-220 or a terroristic act as that term is defined by Code Section 35-3-62.

40 (4) 'Local governing body' means any political subdivision of this state, including any
41 county, consolidated government, municipality, authority, school district, commission,
42 board, or any other local public body corporate, governmental unit, or political
43 subdivision.

44 (5) 'Local official or employee' means any elected or appointed official, supervisor or
45 managerial employee, contractor, agent, or certified peace officer acting on behalf of or
46 in conjunction with a local governing body.

47 (6) 'Sanctuary policy' means any regulation, rule, policy, or practice adopted by a local
48 governing body which prohibits or restricts local officials or employees from
49 communicating or cooperating with federal officials or law enforcement officers with
50 regard to reporting immigration status information while such local official or employee
51 is acting within the scope of his or her official duties.

52 (b) No local governing body, whether acting through its governing body or by an initiative,
53 referendum, or any other process, shall enact, adopt, implement, or enforce any sanctuary
54 policy.

55 (c) Any local governing body that acts in violation of this Code section shall be subject to
56 the withholding of state funding or state administered federal funding other than funds to
57 provide services specified in subsection (d) of Code Section 50-36-1.

58 (d) As a condition of funding, the Department of Community Affairs, the Department of
59 Transportation, or any other state agency that provides funding to local governing bodies
60 shall require certification pursuant to Code Section 50-36-4 as proof of compliance with
61 this Code section.

62 (e)(1) The General Assembly finds that the prohibition in this Code section is a matter
63 of state-wide concern and that any resident of this state is a stakeholder when a local
64 governing body fails to comply with the law and has a public right in the enforcement of
65 such prohibition.

66 (2) In addition to any other remedies provided by law, in any case in which a local
67 governing body violates subsection (b) of this Code section, any resident of this state may
68 bring an action for declaratory judgment seeking a declaration that the local governing
69 body is in violation of subsection (b) of this Code section. Any such action shall be
70 brought in the superior court of the county wherein the legal situs of the local governing
71 body is located.

72 (3) If a judgment is entered pursuant to paragraph (2) of this subsection declaring a local
73 governing body in violation of subsection (b) of this Code section, the clerk of the
74 superior court shall file a certified copy of the judgment with the Secretary of State, the
75 Office of Planning and Budget, and the legislative counsel. A local governing body
76 declared to be in violation of subsection (b) of this Code section shall have all state
77 funding and all state administered federal funding, other than funds to provide services
78 specified in subsection (d) of Code Section 50-36-1, withheld by the state from the date
79 of such judgment.

80 (4) If a judgment is entered pursuant to paragraph (2) of this subsection declaring a local
81 governing body in violation of subsection (b) of this Code section and the local governing
82 body repeals, retracts, or withdraws its sanctuary policy, such local governing body may
83 petition the superior court for relief from any declaration entered under this subsection.
84 Following a determination that the local governing body has in fact repealed, retracted,
85 or withdrawn its sanctuary policy, the superior court shall enter a judgment relieving the
86 local governing body from any declaration entered under this subsection and shall enter
87 a permanent injunction barring the local governing body from enacting, adopting,
88 implementing, or enforcing any new sanctuary policy. Following entry of such judgment,
89 the clerk of the superior court shall file a certified copy of the judgment issued pursuant
90 to this paragraph with the Secretary of State, the Office of Planning and Budget, and the
91 legislative counsel. Following the entry of a judgment pursuant to this paragraph, the
92 local governing body shall become eligible to receive state funding and state administered
93 federal funding; provided, however, that such local governing body shall not be eligible
94 to receive any state funding or state administered federal funding withheld during the
95 period in which a declaration issued pursuant to paragraph (2) of this subsection was in
96 effect.

97 (5) The Secretary of State shall provide for the publication and distribution of copies of
98 all judgments issued pursuant to paragraphs (2) and (4) of this subsection at least annually

99 in the same manner as provided for in Code Section 36-35-5 for the publication of
100 municipal home rule charter amendments.

101 (6) The sovereign immunity of local governing bodies is waived for actions brought
102 pursuant to this subsection as well as to any judgments, whether declaratory or injunctive,
103 issued by a superior court pursuant to this subsection.

104 (f) In the event that a local governing body enacts, adopts, implements, or enforces any
105 sanctuary policy in violation of this Code section, the sovereign immunity of such local
106 governing body and the governmental immunity of all local officials and employees of
107 such local governing body is waived for any cause of action arising during the period in
108 which any sanctuary policy enacted, adopted, implemented, or enforced by such local
109 governing body is in effect."

110 **SECTION 2.**

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

112 "36-80-23.1.

113 (a)(1) Notwithstanding any other provisions of law to the contrary, if the governing
114 authority of any county, consolidated government, or municipality, through action or
115 inaction, fails to comply with any provision of Code Section 36-60-6 or 36-80-23 or
116 Chapter 36 of Title 50, any resident of this state may file a written complaint with the
117 Board of Community Affairs detailing such failure and the Board of Community Affairs
118 shall conduct a hearing in not less than ten days nor more than 90 days of receiving such
119 complaint. Upon completion of such hearing, the Board of Community Affairs shall
120 recommend to the Governor whether to suspend all eligible members of the governing
121 authority with pay.

122 (2) A majority of the members of a governing authority may petition the Board of
123 Community Affairs to continue any hearing scheduled under this subsection. Upon a
124 showing of good cause, the board may in its sound discretion continue any such hearing.
125 Notwithstanding any other provision of law, deliberations held by the Board of

126 Community Affairs pursuant to this subsection to formulate its recommendation to the
127 Governor shall not be open to the public; provided, however, that testimony shall be
128 taken in an open meeting and a vote on the recommendation shall be taken in an open
129 meeting following the hearing or at the next regularly scheduled meeting. If the Board
130 of Community Affairs makes such recommendation, the Governor may, in his or her
131 discretion, suspend all eligible members of the governing authority with pay and, in
132 consultation with the Board of Community Affairs, appoint temporary replacement
133 members who shall be otherwise qualified to serve as members of such governing
134 authority.

135 (b) Any member of a governing authority suspended under this Code section may petition
136 the Governor for reinstatement no earlier than 30 days following suspension and no later
137 than 60 days following suspension. In the event that a suspended member does not petition
138 for reinstatement within the allotted time period, his or her suspension shall be converted
139 into permanent removal, and the temporary replacement member shall become a permanent
140 member and serve out the remainder of the term of the removed member or until the next
141 general election which is at least six months after the member was permanently removed,
142 whichever is sooner.

143 (c) Upon petition for reinstatement by a suspended member of a governing authority, the
144 Governor or his or her designated agent shall conduct a hearing for the purpose of receiving
145 evidence relative to whether the member's continued service on the governing authority is
146 more likely than not to improve the ability of the county, consolidated government, or
147 municipality to comply with the provisions of Code Section 36-60-6 or 36-80-23 or
148 Chapter 36 of Title 50. The appealing member shall be given at least 30 days' notice prior
149 to such hearing. Such hearing shall be held not later than 90 days after the petition is filed
150 and in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,'
151 except that the individual conducting the hearing shall have the power to call witnesses and
152 request documents on his or her own initiative. For purposes of said chapter and any
153 hearing conducted pursuant to this Code section, the Governor shall be considered the

154 agency, and the Attorney General or his or her designee shall represent the interests of the
155 Governor in the hearing. If it is determined that the member's continued service on the
156 governing authority is more likely than not to improve the ability of the county,
157 consolidated government, or municipality to comply with the provisions of Code Section
158 36-60-6 or 36-80-23 or Chapter 36 of Title 50, the member shall be immediately reinstated;
159 otherwise, the member shall be permanently removed, and the temporary replacement
160 member shall become a permanent member and serve out the remainder of the term of the
161 removed member or until the next general election which is at least six months after the
162 member was permanently removed, whichever is sooner. Judicial review of any such
163 decision shall be in accordance with Chapter 13 of Title 50.

164 (d) For purposes of this Code section, an eligible member of a governing authority of a
165 county, consolidated government, or municipality shall mean a member who was serving
166 on the governing authority at the time of the alleged failure to comply with any provision
167 of Code Section 36-60-6 or 36-80-23 or Chapter 36 of Title 50.

168 (e) A governing authority of a county, consolidated government, or municipality shall not
169 expend any public funds for attorney's fees or expenses of litigation relating to proceedings
170 initiated pursuant to this Code section except to the extent such fees and expenses are
171 incurred prior to and through the recommendation of the Board of Community Affairs as
172 provided for in subsection (a) of this Code section; provided, however, that nothing in this
173 subsection shall be construed to prohibit an insurance provider from covering attorney's
174 fees or expenses of litigation under an insurance policy.

175 (f) Any suspended member of a governing authority who is reinstated by the Governor
176 pursuant to this Code section may be reimbursed by the governing authority for his or her
177 reasonable attorney's fees and related expenses incurred in pursuing such reinstatement."

178 **SECTION 3.**

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