

SENATE 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 timing when actions may be brought to challenge the
16 abandonment of a public road; to provide for related matters; to repeal conflicting laws; and
17 for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

19

20 Chapter 80 of Title 36 of the Official Code of Georgia Annotated, relating to general
21 provisions applicable to counties, municipal corporations, and other governmental entities,
22 is amended by revising Code Section 36-80-23, relating to prohibition on immigration
23 sanctuary policies by local governmental entities and certification of compliance, as follows:
24 "36-80-23.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

111 **SECTION 2.**

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

113 "36-80-23.1.

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

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

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

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

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

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

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

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

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

179 **SECTION 3.**

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

181 "36-80-32.

182 All actions challenging the validity of the abandonment of any public road or portion of a
183 public road of the state highway system or a county road system or municipal street system
184 or the disposition of such abandoned road shall be brought within two years of the date of
185 certification of such abandonment pursuant to Code Section 32-7-2, or in the absence of
186 such certification, the date by which the abandonment was officially made."

187

SECTION 4.

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