

House Bill 59 (AS PASSED HOUSE AND SENATE)

By: Representatives Willard of the 51st, Efstoration of the 104th, Powell of the 171st, Atwood of the 179th, Pak of the 108th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 21 of Title 50, Part 1 of Article 3 of Chapter 3 of Title 23, and Code
2 Section 36-33-1 of the Official Code of Georgia Annotated, relating to waiver of sovereign
3 immunity as to actions ex contractu and state tort claims, conventional quia timet, and a
4 municipal corporation's immunity from liability for damages and the waiver of immunity by
5 the purchase of liability insurance, respectively, so as to provide for waiver of sovereign
6 immunity for declaratory judgment or injunctive relief under certain circumstances; to
7 provide for related matters; to provide for an effective date and applicability; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

SECTION 1-1.

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

"ARTICLE 3

50-21-50.

17 (a) The defense of sovereign immunity is waived as to any claim, counterclaim,
18 cross-claim, or third-party claim brought in the courts of this state by an aggrieved person
19 seeking a declaratory judgment or injunctive relief against the state or any political
20 subdivision thereof to remedy an injury in fact caused by the state or any political
21 subdivision thereof acting without lawful authority and beyond the scope of official power
22 in violation of a provision of the Georgia Constitution, a state law, or a local ordinance;
23 provided, however, that sovereign immunity is not waived:

- 24 (1) When a state law explicitly prohibits such waiver;
 25 (2) As to any claim for monetary relief, attorney's fees, or expenses of litigation that are
 26 included in or related to such claim, counterclaim, cross-claim, or third-party claim;
 27 (3) As to any claim, counterclaim, cross-claim, or third-party claim seeking a declaratory
 28 judgment or injunctive relief related to a contract between a third party and the state or
 29 any political subdivision thereof; or
 30 (4) As to any claim, counterclaim, cross-claim, or third-party claim brought by, or on
 31 behalf of, an individual in a penal institution as such term is defined in Code Section
 32 42-1-5 or individual in a state mental health facility as such term is defined in Code
 33 Section 37-1-1.
- 34 (b) This Code section shall not:
- 35 (1) Be construed to alter or amend any other waiver of sovereign immunity provided by
 36 law; or
 37 (2) Apply to any claim, counterclaim, cross-claim, or third-party claim brought in the
 38 courts of the United States."

39 **PART II**

40 **SECTION 2-1.**

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

44 "23-3-41.

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

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

52 **SECTION 2-2.**

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

54 "23-3-45.

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

58 immunity is not waived as to any claim for monetary relief, attorney's fees, or expenses of
 59 litigation that are included in or related to such claim, counterclaim, cross-claim, or
 60 third-party claim.

61 23-3-46.

62 Notwithstanding any law to the contrary, a proceeding under this part involving title to
 63 property or an instrument held by the state or any department, agency, commission, board,
 64 authority, or entity thereof shall also be served on the Attorney General. The Attorney
 65 General's failure to file a responsive pleading to an action filed pursuant to this part shall
 66 be recognized by the court as this state's acquiescence to the petitioner's claim for relief."

67 **PART III**

68 **SECTION 3-1.**

69 Code Section 36-33-1 of the Official Code of Georgia Annotated, relating to a municipal
 70 corporation's immunity from liability for damages and the waiver of immunity by the
 71 purchase of liability insurance, is amended by adding a new subsection to read as follows:

72 "(c) The defense of sovereign immunity of a municipal corporation shall be waived as
 73 provided in Code Section 50-21-50."

74 **PART IV**

75 **SECTION 4-1.**

76 This Act shall become effective upon its approval by the Governor or upon its becoming law
 77 without such approval and shall apply to all claims arising on or after such date.

78 **SECTION 4-2.**

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