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LOCAL GOVERNMENT

*Urban Redevelopment: Allow County or Municipality
to Offset Payment in Condemnation Proceedings by Amount
of Existing Municipal or County Tax Liens, Including
Special Assessment Tax Liens*

CODE SECTION: O.C.G.A. § 36-61-9 (amended)
BILL NUMBER: HB 989
ACT NUMBER: 1104
SUMMARY: The Act permits counties and local municipalities to offset the price they would normally pay for property condemned in an eminent domain proceeding by the amount of any existing special assessment tax liens on the property. The purpose of the Act is to encourage urban development by allowing municipal or county tax liens, including special assessment tax liens to be used to reduce the actual amount the county or municipality pays for the property.
EFFECTIVE DATE: July 1, 1994

History

Code section 36-61-9 allows counties and municipalities to acquire real property for urban redevelopment purposes by exercising their power of eminent domain.¹ The exercise of the power of eminent domain under this section may be made only pursuant to the formulation of an urban redevelopment plan which necessitates the acquisition of specific real property to effectuate the plan's purposes.²

This bill was introduced at the request of the City of Atlanta.³ The City had placed various tax liens on a high number of abandoned properties within the city limits.⁴ The City hoped to encourage housing construction on these abandoned property sites by condemning and reselling the sites to developers, thus improving the housing opportunities in the area as well as the area's aesthetics.⁵

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1. O.C.G.A. § 36-61-9 (1993).
 2. *Id.*
 3. Telephone Interview with Rep. Pamela Stanley, House District No. 49 (Mar. 23, 1994) [hereinafter Stanley Interview]. Rep. Stanley was the main sponsor of HB 989. *Id.*; see *infra* note 6.
 4. Stanley Interview, *supra* note 3.
 5. *Id.*

When a property is condemned, the value of the property is determined through an appraisal by a Special Master.⁶ When the City exercised its power of eminent domain, it paid into the court the value of the property out of general funds.⁷ The City sought a way to apply the existing liens on the properties against the price to be paid into the court, thus avoiding the use of general funds for the full amount paid for the condemned properties.⁸

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The Act amends Code section 36-61-9 by striking subsection (b) in its entirety and substituting a new subsection (b).⁹ The bill as introduced in the House allowed a county municipal corporation to use any water or tax liens on behalf of itself or any other condemning authority to offset an award made in condemnation proceedings.¹⁰

Some of the liens on the abandoned properties were "special assessment liens" resulting from expenses incurred by the City, such as boarding or cleaning the property.¹¹ In some municipalities, special assessments can also include items such as garbage collection and sewer fees.¹² The House Special Judiciary Committee substituted "any special assessments tax liens" in lieu of only water or tax liens.¹³ This language, while deleting water liens from being subject to the legislation, expanded other types of liens that can be used to offset the cost of acquiring condemned property for redevelopment.

6. Telephone Interview with Mr. Marvin Toliver, City of Atlanta, Dept. of Planning and Development, Office of the Commissioner (Mar. 25, 1994) [hereinafter Toliver Interview]. Mr. Toliver's office approached Rep. Stanley and asked her to sponsor this bill. *Id.*

7. *Id.*

8. *Id.*

9. Whenever a county or city institutes condemnation proceedings, the new subsection provides:

Such payment may be offset in whole or in part by the amount if any municipal or county tax liens on the condemned property and by any existing special assessments tax liens on the condemned property, including without limitation education or special district taxes collected by the municipality or county; provided, however, that any such setoff shall be subject to any existing tax liens having higher priority pursuant to Code Section 48-2-56 and to the interest in the condemned property of any known beneficiary of a year's support pursuant to Code Section 53-5-2; provided, further, that where the condemned property is subject to a valid deed to secure debt, such setoff shall only be allowed for tax liens which arose as a result of an assessment against such property.

O.C.G.A. § 36-61-9(b) (Supp. 1994).

10. HB 989, as introduced, 1994 Ga. Gen. Assem.

11. Toliver Interview, *supra* note 6.

12. Stanley Interview, *supra* note 3.

13. HB 989 (HCS), 1994 Ga. Gen. Assem.

On the House floor, the Committee substitute was amended to eliminate the language "or any other condemning authority," so that a county or municipality may only cancel tax liens to offset payment on its own behalf.¹⁴ This version passed the House.

The Senate Special Judiciary Committee added "any tax liens or special assessments tax liens" to further clarify the types of liens that could be used for this purpose.¹⁵

The bill as introduced also prohibited setoff when there are existing tax liens having higher priority pursuant to Code section 48-2-56¹⁶ or when there is a known beneficiary of a year's support pursuant to Code section 53-5-2.¹⁷ The version passed the House. The Senate Special Judiciary Committee substituted a version that would allow a setoff, but subject to *any* existing higher priority liens, not just those specified in Code sections 48-2-56 and 53-5-2.¹⁸ Thus, a municipality or county can still reduce its cost to acquire condemned property through a setoff, but these setoffs are now subject to any higher priority tax liens. This version passed the House and Senate.¹⁹

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14. HB 989 (HCSFA), 1994 Ga. Gen. Assem.

15. Stanley Interview, *supra* note 3; *see* HB 989 (SCS), 1994 Ga. Gen. Assem.

16. O.C.G.A. § 48-2-56(b) (Supp. 1994) (outlining the order of priority for tax liens).

17. *Id.* § 53-5-2 (Supp. 1994) (outlining year's support requirement for spouses and minor children in the administration of estates); HB 989, as introduced, 1994 Ga. Gen. Assem.

18. HB 989 (SCS), 1994 Ga. Gen. Assem.

19. *See* O.C.G.A. § 36-61-9 (Supp. 1994).