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EMINENT DOMAIN General Provisions and Condemnation Procedure: Provide a Comprehensive Revision of Provisions Regarding the Power of Eminent Domain

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EMINENT DOMAIN

General Provisions and Condemnation Procedure: Provide a Comprehensive Revision of Provisions Regarding the Power of Eminent Domain

CODE SECTIONS:	O.C.G.A. §§ 8-3-31.1 (new), 8-4-3 (amended), 22-1-1 (amended), 22-1-2 (amended), 22-1-9 (amended), 22-1-10 (amended), 22-1-10.1 (amended), 22-1-11 (amended), 22-1-12 (amended), 22-1-13 (amended), 22-1-14 (amended), 22-1-9 (amended), 22-2-84.1 (repealed), 22-2-100 (amended), 22-2-102 (amended), 22-2-102.1 (amended), 22-2-102.2 (amended), 22-2-106 (amended), 22-2-110 (amended), 22-2-112 (amended), 22-2-131 (amended), 22-2-132 (amended), 22-3-60 (amended), 22-3-63 (amended), 22-4-3 (amended), 23-3-73 (new), 36-42-8 (amended), 36-42-8.1 (repealed), 36-44-6 (amended), 36-61-3.1 (new), 36-62-6 (amended), 36-82-62 (amended).
BILL NUMBER:	HB 1313
ACT NUMBER:	444
GEORGIA LAWS:	2006 Ga. Laws 39
SUMMARY:	The Act amends the definition of blight, and adds a definition of public use and economic development. The Act amends the process and the powers of eminent domain. The Act increases the procedural requirements of eminent domain, including new notice provisions, additional rights for the condemnee, and new requirements for the condemnor. The Act increases procedural safeguards for property

owners by enhancing notice requirements. The Act takes the power of eminent domain out of the hands of development authorities and gives the power to elected officials.

EFFECTIVE DATE: April 4, 2006[1]

History

Kelo v. City of New London, Connecticut

On June 23, 2005, a divided Supreme Court handed down a decision concerning private property rights and the takings clause of the Fifth Amendment.[2] *Kelo* is arguably one of the hottest cases in history concerning the Takings Clause.[3] The 5-4 decision issued in *Kelo v. City of New London.* has affected the rights of private property owners with regard to state power and the ever-feared concept of "eminent domain."[4] Eminent domain can be defined as "[t]he power of the nation or a sovereign state to take, or to authorize the taking of, private property for a public use without the owner's consent, conditioned upon the payment of a just compensation."[5] Typically, eminent domain occurs when the sovereign transfers private property to a public ownership, for a road or hospital, or when the sovereign transfers private property to a private party, so long as the property is made available for the public's use, such as a railroad or a public utility.[6] *Kelo* focused on whether economic development takings meet the "public use requirement of the Fifth Amendment."[7]

1. *See* 2006 Ga. Laws 39, §§ 25, 26, at 56. The Act became effective upon approval by the Governor. *See id.*

2. *Kelo v. City of New London*, 545 U.S. 496, 125 S.Ct. 2655, 2660 (2005), *reh'g denied,* 126 S.Ct. 24 (2005).

3. *See* Christopher Quinn, *Legislature 2006: Perdue Says Land Grab Issue His Domain*, ATLANTA J. CONST., February 9, 2006, at C1; Christopher Quinn, *Legislature 2006: Eminent Domain Bill OK'd*, ATLANTA J.-CONST., March 25, 2006, at 1E.

4. Christopher Quinn, *Eminent Domain Case Was Like Shot Heard 'round US*, ATLANTA J.-CONST., June 5, 2006, at 1B.

5. BALLANTINE'S LAW DICTIONARY (3d ed. 1969).

6. *Kelo* 125 S.Ct. at 2673 (O'Connor, J., dissenting).

7. *Id* at 2665.

In 2000, the City of New London, Connecticut approved a development plan that was "projected to create in excess of 1,000 jobs, to increase tax and other revenues, and to revitalize an economically distressed city, including its downtown and waterfront areas."[8] The city established the New London Development Corporation (NLDC) to carry out the development plan.[9] Pursuant to state statute,[10] the city council authorized the NLDC to purchase property from willing sellers or, if necessary, to acquire property by exercising eminent domain in the city's name.[11] The NLDC successfully negotiated the purchase of most of the land, with the exception of the nine petitioners in the action.[12] When negotiations with the petitioners, who owned 15 tracts of land within the condemned area, failed, the NLDC initiated condemnation proceedings which led to the litigation.[13]

The Court ultimately found the takings to be constitutional.[14] In finding for the city, Justice Stevens cited to *Berman v. Parker*,[15] where the Court upheld a redevelopment plan targeted at a blighted area of Washington, D.C.[16] Citing to *Berman*, Justice Stevens noted "[i]t is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."[17]

The Court further held that, unlike *Berman*, the City of New London was not confronted with the need to remove blight, but that the city's "determination that the area was sufficiently distressed to justify a program of economic rejuvenation is entitled to our deference."[18] Further, the Court held that "[p]romoting economic

8. *Id.* at 2658.
9. *Id.* at 2659.
10. *Id.* at 2660 (citing CONN. GEN. STAT. § 8-186 *et seq.* 2006).
11. *Id.* at 2660.
12. *Kelo v. City of New London*, 545 U.S. 496, 125 S.Ct. 2655, 2660 (2005), *reh'g denied,* 126 S.Ct. 24 (2005).
13. *Id.*
14. *Id.* at 2665.
15. *Berman v. Parker*, 348 U.S. 26 (1954).
16. *Kelo*, 125 S.Ct. at 2663.
17. *Id.*
18. *Id.* at 2664-65.

development is a traditional and long accepted function of government."[19]

The opinion drew a dissent from Justice O'Connor, wherein she argued that "[u]nder the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded."[20] O'Connor said that the decision's burden would fall on the less powerful and wealthy, claiming that "the government now has license to transfer property from those with fewer resources to those with more."[21]

Public Reaction to Kelo

Members of Congress were quick to express their disagreement with the decision. On June 24, 2005, the House of Representatives passed a resolution finding that the "House of Representatives disagrees with the majority opinion in *Kelo, et al. v. City of New London et al.* and its holdings that effectively negate the public use requirement of the takings clause."[22] The Resolution further stated that "no State nor local government should construe the holdings of *Kelo, et al. v. City of New London et al.* as justification to abuse the power of eminent domain."[23]

The reaction by private property owners immediately following the decision was heated. In newspapers across the country, citizens expressed their displeasure with quotes such as the following: "A man's home is his castle – unless a developer wants to plop down a huge discount store. . .You have to wonder what constitution five U.S. Supreme Court justices were reading. . . last week . . .;"[24] ". . . [t]he rights of Americans were struck a grievous blow last week when the court ruled to uphold an expansive reading of 'public use' in eminent domain proceedings;"[25] "[h]ow will this decision be

19. *Id.* at 2665.
20. *Id.* at 2671 (O'Connor, J., dissenting).
21. *Id.* at 2677 (O'Connor, J. dissenting).
22. H.R. 340, 109th Cong. (2005).
23. *Id.*
24. Editorial, *Eminent Danger for Property Owners,* BIRMINGHAM NEWS, June 28, 2005, at 8A.
25. Editorial, *Eminent Sense; The Court's 'Public Use' Ruling Is Not Radical,* PITTSBURGH POST-GAZETTE, June 28, 2005, at B-6.

applied in metropolitan areas, where public officials might now have the power to clear entire 'disadvantaged,' 'blighted,' or 'crime-riddled' neighborhoods at a substantial discount and then transfer now extremely valuable, cleared property to some commercial enterprise to reap the profits? It may be a lot easier . . . to take this now-legal path rather than more difficult, time-consuming and expensive routes to improve troubled neighborhoods . . .;"[26] "[t]he court will be forced to modify this ruling in time. In the meantime, make way for Wal-Mart."[27]

In Georgia, the reactions were similar, drawing these reactions from citizens: "I am absolutely flabbergasted to learn that the U.S. Supreme Court has seen fit to rule in favor of cities to kick homeowners out of their homes in favor of private developers . . . 'The American Dream' has taken a huge hit;"[28] "[t]he government already took my family property away once, in Cuba. Congrats to the liberal Supreme Court and its supporters for granting more power to our swollen government to take homes away from the poor and elderly."[29]

Reactionary Legislation

Despite the concern of the citizens over the decision in *Kelo*, private property owners are not without hope. While holding that states could take private property, without the owner's consent, for public use or for economic development, the Court also specifically held that this position was not a ceiling of protection for private property owners, but merely a floor, above which the states were free to create stricter standards for the taking of private property within their borders.[30] In the *Kelo* decision, Justice Stevens, writing for the majority, noted the following:

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26. Editorial, *Don't Let Private Gains Cloud Property Ruling*, ALBUQUERQUE TRIBUNE, June 30, 2005, at C2.

27. Howard Troxler, *High Court Takes Fifth, Proceeds to Ruin It*, ST. PETERSBURG TIMES, June 28, at 1B.

28. Editorial, *Readers Write*, ATLANTA J.-CONST., June 24, 2005, at 10A.

29. Editorial, *Readers Write*, ATLANTA J.-CONST., June 27, 2005, at 10A.

30. *Kelo v. City of New London*, 545 U.S. 496, 125 S.Ct. 2655, 2668 (2005), *reh'g denied,* 126 S.Ct. 24 (2005).

> We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose "public use" requirements that are stricter than the federal baseline. Some of these requirements have been established as a matter of state constitutional law, while others are expressed in state eminent domain statutes that carefully limit the grounds upon which takings may be exercised.[31]

States all across the country have taken advantage of this language as the concern over the *Kelo* decision rose. According to the National Conference of State Legislatures, since the decision nearly every state considered new laws to restrict the use of eminent domain.[32] On August 3, 2005, Alabama became the first state to enact new protections against local-government seizure of property after the *Kelo* decision.[33] Within weeks of the *Kelo* decision, bills were passed by overwhelming bipartisan margins in Texas and Delaware to limit the rights of local governments to seize property and turn it over to private developers.[34] The Texas statute, signed by Governor Rick Perry on September 1, 2005, prohibits the use of eminent domain to benefit a private party.[35] By August 2005, merely two months after the decision, legislation to ban or restrict the use of eminent domain for private development had been introduced in 16 states: California, Connecticut, Delaware, Florida, Illinois, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Tennessee and Texas.[36] The proposed New Jersey bill would outlaw the use of eminent domain to condemn residential property that is not completely run down and would also require public hearings before any takings of private property to benefit a

31. *Id.*
32. Robert Travis Scott, *Eminent Domain a Hot Issue*, TIMES-PICAYUNE, March 22, 2006, at 2.
33. Donald Lambro, *Alabama Limits Eminent Domain*, THE WASHINGTON TIMES, August 4, 2005, at A01.
34. John M. Broder, *States Curbing Right to Seize Private Homes*, N.Y. TIMES, February 21, 2006, at A1.
35. *Id.* One notable exception to this bill is the exception to allow condemnation of homes to make way for a new stadium for the Dallas Cowboys. *Id.*
36. Lambro, *supra* note 33.

private project.[37] In New York, a bill was proposed that would remove the right to exercise condemnation power from unelected bodies, like an urban redevelopment authority or an industrial development agency. [38] Even the state of Connecticut, from which *Kelo* originated, had bills introduced to impose new restrictions on the use of eminent domain by local governments.[39] In November 2005, the Connecticut General Assembly asked cities to delay using eminent domain while it considered revising state law.[40] Further, Governor M. Jodi Rell demanded that the New London Development Corporation rescind eviction orders delivered to tenants in rental units that belong to homeowners who have refused to give up their property.[41]

In addition to statutory revisions, states are also considering constitutional amendments to secure the private property rights of its citizens. The states of Alabama, California, Florida, Michigan, New Jersey, and Texas have all considered constitutional amendments.[42]

Eminent Domain in Georgia

The power of eminent domain is expressly granted to each county and municipality for any public purpose by the Georgia Constitution.[43] The Constitution further provides that the power of eminent domain cannot be exercised without having paid just and adequate compensation.[44] In 1954, the Constitution was amended to authorize eminent domain to be used for community redevelopment.[45] The Constitution provides that the General Assembly may authorize "any county, municipality, or housing authority to undertake and carry out community redevelopment, which may include . . . property acquired

37. Broder, *supra* note 34.
38. *Id.*
39. *Id.*
40. William Yardley, *After Eminent Domain Victory, Disputed Project Goes Nowhere*, N.Y. TIMES, November 21, 2005, at A1.
41. *Id.*
42. Lambro, *supra* note 33.
43. GA. CONST. art. IX, § 2, para. 5.
44. GA. CONST. art. I, § 3, para. 1.
45. Andy Peters, *Condemnation Backers Face Hard Fight Against Limits*, FULTON CO. DAILY REPORT, January 26, 2006, at News [hereinafter *Condemnation Backers*]. *See generally*, GA. CONST. art. IX, § 2, para. VII (2006).

by eminent domain to private enterprise for private uses."[46] The constitutional amendment is based on case law dating back to the mid-1800's, when a Dahlonega gold mine was given the authority to condemn a water supply.[47]

The case garnering national attention as Georgia's "mini-*Kelo,*" is the fight in Stockbridge, Georgia. South of Atlanta, Stockbridge has nearly doubled its population since 2000.[48] In 2005, the City of Stockbridge planned to redevelop the east side into a 22-acre complex with a new city hall, retail shops and homes.[49] In order to go forward with its plan, the city sent condemnation notices to property owners.[50] While some worked out deals to sell their land to the city, other property owners, like Mark and Regina Meeks, thought the city's offer was too low.[51] In 1983, Regina Meeks opened "Stockbridge Florist & Gifts" on North Henry Boulevard, two blocks from the current city hall.[52] The City condemned the flower shop on eminent domain grounds in order to go forward with its plans to build a strip mall and new city hall on the site.[53] The council decided that it wanted the property to build part of the new city hall, because the property abuts North Henry Boulevard.[54]

The dispute between the Meeks' and the City of Stockbridge reached an impasse which required a decision by the Courts. The trial court found in favor of the Meeks' private property rights. On April 3, 2006, Henry County Superior Court Judge Arch McGarity ruled that the city could not use the eminent domain laws to buy the shop and use the property for a downtown revitalization project.[55] Judge McGarity found that the city had not shown that the shop would be used for public purposes.[56] Shortly after the ruling, the Stockbridge

46. GA. CONST. art. IX, § 2, para. 7(a).
47. *Condemnation Backers*, *supra* note 45.
48. Eric Stirgus, *Eminent Domain: Florist Wins Round in Court; Stockbridge May Fight The Ruling*, ATLANTA J.-CONST., April 5, 2006, at B4 [hereinafter *Florist Wins Round in Court*].
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.*
53. *See* Andy Peters, *Perdue's Eminent-Domain Proposal Spurs Debate*, FULTON CO. DAILY REPORT, February 15, 2006, at News [hereinafter *Perdue's Eminent-Domain Proposal*].
54. Eric Stirgus, *Domain case to Be Appealed*, ATLANTA J.-CONST., April 11, 2006, at C5.
55. *Florist Wins Round in Court*, *supra* note 48.
56. *Id.*

City Council voted unanimously on April 10, 2006, to appeal the ruling.[57]

The situation in the Stockbridge case prompted many Georgia legislators to focus on eminent domain in the 2006 legislative session.[58] According to Representative Rich Golick, one of the sponsors of the bill, while the *Kelo* decision was one of the big motivating factors behind the push for new legislation in Georgia, even if *Kelo* had never been decided, the events in Stockbridge may have induced the bill.[59]

Following the trend across the country, Georgia legislators began drafting legislation and constitutional amendments to fight the effects of *Kelo* almost immediately after the decision. As of January 6, 2006, the General Assembly had introduced four eminent domain related resolutions, including House Resolutions 1036 and 1037, House Bill 943, and Senate Bill 86.[60] However, HB 1313 was not introduced until February 9, 2006.[61]

Senator Emanuel Jones introduced four more bills on January 26, 2006.[62] A bill introduced by Representative Thomas P. Knox of Cumming was considered a blanket prohibition of eminent domain.[63] Knox's legislation would restrict the use of condemnation only for roads and electric power lines.[64] School boards and water and sewer utilities would all be prohibited from using condemnation.[65]

The prior bills submitted by the various legislators slowed as Georgia Governor Sonny Perdue announced his plans, on February 8, 2006, to push changes to the eminent domain laws.[66] Although the governor often stays out of legislative affairs until the bills reach his desk, his aides said that the governor intended to "lead on this

57. *Florist Wins Round in Court*, *supra* note 48.
58. *Perdue's Eminent-Domain Proposal*, *supra* note 53.
59. *See* Interview with Rep. Rich Golick, House Dist. No. 34 (Apr. 7, 2006) [hereinafter Golick Interview].
60. Joel V. Sherlock, *Aftermath of Kelo*, STATE BAR OF GEORGIA, EMINENT DOMAIN SECTION NEWSLETTER, Winter 2006, *available at* http://www.gabar.org/public/pdf/sections/emdomain/edwinter06news.pdf.
61. Christopher Quinn, *Legislature 2006: Perdue Says Land grab Issue his domain*, ATLANTA J.-CONST., February 9, 2006, at C1.
62. Georgia General Assembly, http://www.legis.ga.gov/legis/2005_06/mbrs/jonesemanuel10th.htm.
63. *Perdue's Eminent-Domain Proposal*, *supra* note 53.
64. *Id.*
65. *Id.*
66. Quinn, *supra* note 61.

issue."[67] The governor announced House Bill 1313 and House Resolution 1306 which proposed a constitutional amendment which would give the new legislation protection.[68]

Bill tracking of HB 1313

Bill Tracking with Respect to Definitional Changes

Consideration and Passage by the House

Representatives Golick, Willard, Richardson, Roberts, Smith, and Davis, of the 34th, 49th 19th, 154th, 129th, and 109th districts, respectively, sponsored HB 1313.[69] On February 9, 2006, the House first read HB 1313 and the Speaker of the House, Glenn Richardson, assigned it to the House Judiciary Committee.[70] The House Judiciary Committee favorably reported the bill by substitute to the House floor on March 8, 2006.[71] The House Judiciary Committee substantially amended HB 1313.[72] Among other things, the House Committee substitute added the remedy of blight to the definition of public use[73] and explicitly stated that the remediation of blight did not constitute economic development under the bill's definition of that term.[74] These amendments to the bill were made to strengthen the definition of public use such that government would know it could exercise its eminent domain power to remedy blight.[75] Moreover, these changes were made to convey the idea that not every exercise of the eminent domain power that implicates economic development is outside of the definition of public use.[76]

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67. *Id.*
68. *See id.*
69. *See* HB 1313, as introduced, 2006 Ga. Gen. Assembly; HB 1313 summary *available at* www.legis.state.ga.us/legis/2005_06/sum/hb1313.htm
70. *See* State of Georgia Final Composite Status Sheet, HB 1313, Feb. 9, 2006 (Mar. 30, 2006).
71. *See* State of Georgia Final Composite Status Sheet, HB 1313, Mar. 8, 2006 (Mar. 30, 2006).
72. *Compare,* HB 1313, as introduced, 2006 Ga. Gen. Assem. *with* HB 1313 (HCS), 2006 Ga. Gen. Assem.
73. *See* HB 1313 (HCS), § 6, 2006 Ga. Gen. Assem.
74. *Id.*
75. *See* Golick Interview, *supra* note 59.
76. *Id.*

On March 6, 2006, the House Judiciary Committee substitute to HB 1313 was withdrawn, and Speaker of the House Glenn Richardson reassigned it to the House Judiciary Committee.[77] Two days later, on March 8, 2006, without any substantive changes, the House Judiciary Committee again favorably reported the Bill by substitute to the House floor.[78] The Rules Committee introduced its substitute to the House floor.[79] The Rules Committee substitute was substantially similar to the House Judiciary Committee's withdrawn version of HB 1313.[80] Specifically, the Rules Committee substitute embraced both the Judiciary Committee's addition of the remedy of blight to the definition of public use[81] and the Judiciary Committee's suggested language to the effect that the remediation of blight did not constitute economic development under the bill's definition of that term.[82] The House adopted the Rules Committee substitute and passed HB 1313 by a vote of 173-1 on March 9, 2006.[83]

Consideration and Passage by the Senate

The Senate read the bill for the first time on March 13, 2006 and the presiding officer in the Senate assigned it to the Senate Judiciary Committee.[84] The Senate Judiciary Committee favorably reported the bill by substitute to the Senate floor on March 22, 2006.[85] The Senate Judiciary Committee substitute removed language from the bill that required government-maintained statistics or other studies to be shown in order for a property to meet the definition of blight, but added language suggesting that such studies could be so used.[86] It also added a definition of condemnor or condemning authority to the bill.[87] The Senate Judiciary Committee substitute did not exempt the

77. *See* State of Georgia Final Composite Status Sheet, HB 1313, Mar. 6, 2006 (Mar. 30, 2006).
78. *See* State of Georgia Final Composite Status Sheet, HB 1313, Mar. 8, 2006 (Mar. 30, 2006).
79. *See* HB 1313 (RCS), 2006 Ga. Gen. Assem.
80. *Compare,* HB 1313 (HCS) 2006 Ga. Gen. Assem.*with* HB 1313 (RCS), 2006 Ga. Gen. Assem.
81. *See* HB 1313 (RCS), § 7, 2006 Ga. Gen. Assem.
82. *See id.*
83. Georgia House of Representatives Voting Record, HB 1313 (Mar. 9, 2006); State of Georgia Final Composite Status Sheet, HB 1313, Mar. 9, 2006 (Mar. 30, 2006).
84. *See* State of Georgia Final Composite Status Sheet, HB 1313, Mar. 13, 2006 (Mar. 30, 2006).
85. *See* State of Georgia Final Composite Status Sheet, HB 1313, Mar. 22, 2006 (Mar. 30, 2006).
86. *See* HB 1313 (SCS), § 6, 2006 Ga. Gen. Assem.
87. *See* HB 1313 (SCS), § 9, 2006 Ga. Gen. Assem.

transfer of property to a private entity when eminent domain would remove a threat to public health or safety from being classified as economic development.[88] Finally, the bill defined the acquisition of property where persons with an interest in the property remained unknown and where everyone with a legal claim to the property had been identified and found, and consented to such acquisition as public use [89] By a vote of 53 to 0, the Senate adopted the Committee substitute and passed HB 1313 on March 24, 2006.[90] Because there were significant differences between the House and Senate versions of the bill, members of each house met in Conference Committee to compile a compromised version of the Bill. The bill, as passed, embodies this compromise. [91]

Bill Tracking with Respect to Procedural Changes

Consideration and Passage by the House

The House Judiciary Committee made a number of changes to the bill pertaining to the procedural requirements of eminent domain. As originally introduced, the bill created a five-year reversionary interest in condemned property in section 22-1-2.[92] This was changed to 12 years by the Committee.[93] Additionally, a number of revisions were made regarding the re-purchase price under the reversionary interest.[94] Further, the House Judiciary Committee made minor changes to the notice requirements prior to the approval of a condemnation in section 22-1-11.[95] Section 22-1-14 was also added to address the valuation of the condemned property and to allow the determination to be made by lay or expert testimony and the court to determine the admissibility of such testimony.[96] In addition, Code

88. *Id.*
89. *Id.*
90. Georgia Senate Voting Record, HB 1313 (Mar. 24, 2006); State of Georgia Final Composite Status Sheet, HB 1313, Mar. 24, 2006 (Mar. 30, 2006).
91. *See* discussion *supra* The Act.
92. HB 1313 § 7, as introduced, 2006 Ga. Gen. Assem.
93. HB 1313 § 7 (HCS), 2006 Ga. Gen. Assem.
94. *Id.*
95. HB 1313 § 9 (HCS), 2006 Ga. Gen. Assem.
96. *Id.*

section 22-1-15 was added by the House Judiciary Committee, giving the condemnee the right to a trial on any issue.[97] The Committee also changed section 22-2-106, regarding the compensation structure for the special master such that it would be left to the discretion of the court and would "not exceed a reasonable hourly rate consistent with local standards . . . ."[98] Further, provisions were added to section 22-2-112 to provide the condemnee with a right to a jury trial on the issue of just and adequate compensation.[99] The Committee also added the provision in section 22-2-132 to give the condemnee the ability to waive the hearing if they submit an affidavit; and the number of days to hold the hearing increased from 14 to 20 days.[100] Amendments were also added to section 22-3-63, requiring nongovernmental entities to obtain the consent of the governing authority of the county or municipality before condemning property.[101] Finally, the House Judiciary Committee added section 23-3-73 to give standing to housing authorities, in addition to municipalities and counties.[102]

The Rules Committee then made only minor amendments to this version of the bill.[103] In relation to the appeals procedure following a special master's award, the Rules Committee relaxed the time limit from simply ten days from the entry of the award, to ten days from either the entry of the award or the mailing of the award to the parties, whichever occurs last.[104]

Consideration and Passage by the Senate

The Senate Judiciary Committee made substantial changes to provisions of the Act dealing with eminent domain procedures. The Senate Judiciary Committee drastically changed section 22-1-11 such that it pertained to the condemnee's right to object at any time to the condemnation and required the court presiding over the petition to determine whether the exercise of eminent domain is for a public use

97. *Id.*
98. HB 1313 § 15 (HCS), 2006 Ga. Gen. Assem.
99. HB 1313 § 17 (HCS), 2006 Ga. Gen. Assem.
100. HB 1313 § 19 (HCS), 2006 Ga. Gen. Assem.
101. HB 1313 § 21 (HCS), 2006 Ga. Gen. Assem.
102. HB 1313 § 23 (HCS), 2006 Ga. Gen. Assem.
103. *Compare,* HB 1313 (HCS) 2006 Ga. Gen. Assem. *with* HB 1313 (RCS), 2006 Ga. Gen. Assem.
104. HB 1313 § 18 (RCS), 2006 Ga. Gen. Assem.

and whether the condemning authority has the legal authority to exercise it.[105] The Senate Judiciary Committee also added the provision to section 22-2-102 that if the property is situated in multiple jurisdictions, the condemnee shall have the option to transfer the action to any other venue with in rem jurisdiction.[106] The Senate Judiciary Committee also added the requirement in section 22-2-110 that the award shall be "served upon all the parties."[107]

Additionally, the Senate introduced six floor amendments, only one of which appears in the final version as passed.[108] This amendment allows the condemnor to provide alternative site property as full or partial compensation.[109] According to Senator Jones of the 10th District, this already happens in current eminent domain proceedings.[110] The failed amendments included: compensating landowners for loss of good will after relocating their business;[111] protecting victims of natural disaster from eminent domain if the victim had taken positive steps to protect his or her property within one year of the disaster[112]; changing the definition of public use to include "and enjoyment" instead of "or enjoyment;"[113] and other minor language changes.[114]

Consideration by the Conference Committee

Because there were substantial differences between the versions passed by the House and Senate, representatives from both houses met in Conference Committee to compile a compromised version of the bill and the Act, as passed, incorporates these changes.[115] Section 22-1-2 included the new requirement that the condemned property

105. HB 1313 § 11 (SCS), 2006 Ga. Gen. Assem.
106. HB 1313 § 14 (SCS), 2006 Ga. Gen. Assem.
107. HB 1313 § 18 (SCS), 2006 Ga. Gen. Assem.
108. *See* HB 1313 Bill Summary, http://www.legis.state.ga.us/legis/2005_06/sum/hb1313.htm.
109. *See* Senate Floor Amendment to HB 1313, introduced by Senator Emmanuel Jones, March 24, 2006.
110. *See* Audio Recording of Senate Proceedings, Mar. 24, 2006 (remarks by Sen. Jones), http://www.georgia.gov/00/article/0,2086,4802_6107103_47120055,00.html [hereinafter Senate Audio];
111. *See* Failed Senate Floor Amendment to HB 1313, introduced by Senator Emmanuel Jones.
112. *See* Failed Senate Floor Amendment to HB 1313, introduced by Senators Casey Cagle and Jeff Chapman.
113. *See id.*
114. *See* Failed Senate Floor Amendment to HB 1313, introduced by Senator Preston Smith.
115. HB 1313, as passed, 2006 Ga. Gen. Assem.

must be used for public use for at least 20 years from the initial condemnation.[116] In addition, the bill clarified what constitutes property being put to public use as when a "substantial good faith effort has been expended on a project to put the property to public use. . . ."[117] Section 22-1-13 included the provision that the condemnor, with the consent of the condemnee, provide "alternative site property as full or partial compensation."[118] Further, section 22-1-15 was determined to be redundant and was removed from the Act as passed.[119]

Bill Tracking with Respect to the Shift in Power of Eminent Domain to Elected Officials and New Notice Requirements

Consideration and Passage by the House

O.C.G.A. § 8-4-4 defines the housing authorities' powers, maintaining that they shall have the rights, powers, privileges, and immunities that such authority has under Article 1, Chapter 3 of Title 8 and any other provisions of law relating to blight clearance and housing projects for low income property.[120] The bill as introduced amended this section, stating that housing authorities no longer have the power of eminent domain.[121] Rather, each exercise of eminent domain under this chapter must be by resolution by the governing authority of the city or county within which the property is located.[122] Further, the governing authority shall adhere to specific notice requirements when considering any resolution to take private property.[123]

116. *Id.*
117. HB 1313 § 4, as passed, 2006 Ga. Gen. Assem.
118. HB 1313 § 5, as passed, 2006 Ga. Gen. Assem.
119. HB 1313 § 11 (SCS), 2006 Ga. Gen. Assem. The deleted section provided that an entity authorized to exercise eminent domain must provide the property owner with a written copy of their rights and that the Department of Community Affairs shall promulgate forms that shall be used in such circumstances. *Id.*
120. O.C.G.A. § 8-4-4 (2005).
121. *See* HB 1313 § 5, as introduced, 2006 Ga. Gen. Assem.
122. *Id.*
123. *Id.*

Changes to eminent domain procedures, found in Title 22 of the Georgia Code, included alteration of Code section 22-2-100.[124] This section was initially amended by removing the housing authorities from the definition of "condemning body" and "condemnor" altogether.[125] Further, section 22-2-100 adds that all public utilities and corporations regulated by the Public Service Commission possess the power of eminent domain.[126] This same provision, in the House Committee Substitute, amended the section by allowing utility companies to condemn with "few restrictions."[127]

Code section 36-42-8, relating to downtown development authorities, was explicitly amended in the as introduced version of the bill to remove the power of eminent domain from downtown development authorities.[128] Code section 36-42-8.1 relating to the use of the power of eminent domain by a municipality or downtown development authority was repealed.[129]

Further, the bill as introduced repealed Code section 36-44-6 subsection (c), which gave downtown development authorities the power of eminent domain when it was delegated by a redevelopment authority.[130] Likewise, Code section 36-62-6, relating to the general powers of urban redevelopment authorities now includes subsection (b), which explicitly states that these authorities do not have the power of eminent domain.[131]

The bill as introduced also amended Code section 36-61-9 by allowing the exercise of eminent domain for the purposes of remedying blight only, which was only to be exercised by the municipality or county.[132]

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124. *See* HB 1313, as passed, § 13, 2006 Ga. Gen. Assem.
125. *See* HB 1313, as introduced, § 11, 2006 Ga. Gen. Assem.
126. *See id.*
127. Christopher Quinn, *Legislature 2006: House OKs Land Seizure Legislation; Perdue Bill Headed to Senate*, ATLANTA J.-CONST., March 10, 2006, at 10D.
128. *See* HB1313, as introduced, § 22, 2006 Ga. Gen. Assem.
129. *Id.* at § 23.
130. *Id.* at § 24.
131. *Id.* at § 27.
132. *See* HB 1313, as introduced, § 26, Ga. Gen. Assem; *see also* Audio Recording of House Proceedings, Mar. 9, 2006 (remarks by Rep Rich Golick) [hereinafter House Audio].

New and significant conditions were added to the municipality or county's power of eminent domain.[133] With respect to the resolution, the municipality or county is required to approve, before exercising the power of eminent domain, the governing body must adhere to new notice requirements.[134] The amendments included providing the property owner 60 days, rather than 30 days, to notify the municipality or county of his or her intent to rehabilitate and maintain the property in accordance with the urban redevelopment plan.[135]

The bill as introduced included further amendments to add provisions that relate to notice of the proposed condemnations under a redevelopment plan.[136] Notice must be placed in a conspicuous location on the site of the property involved at least 15 days prior to the condemnation hearing; it must be mailed with return receipt requested to the property owner's address, and it must be placed in a newspaper of general circulation.[137]

The bill as introduced amended O.C.G.A. § 36-82-62 by requiring any exercise of eminent domain under this chapter be approved by resolution of the governing authority of the city or county where the property is located.[138] Further, notice must be given to the property owner pursuant to O.C.G.A. § 36-82-86.[139]

Consideration and Passage by the Senate

The Senate Committee Substitute amended Code section 8-4-4 to provide that a resolution by the governing authority "shall specifically and conspicuously delineate each parcel to be affected."[140] Further, with regard to notice of the proposed resolution, the Senate added that the governing authority of the city shall serve the condemnee personally by sheriff or deputy with notice of the meeting, unless service is acknowledge or waived by the

133. *See* HB 1313, as introduced, § 26, Ga. Gen. Assem.; House Audio, *supra* note 132 (remarks of Rep. Golick).
134. *See* HB 1313, as introduced, § 26, Ga. Gen. Assem.
135. *Id.*
136. *Id.*
137. *Id.*
138. *See* HB 1313 § 28, as introduced, 2006 Ga. Gen. Assem.
139. *Id.*
140. *See* HB 1313 § 7 (SCS), 2006 Ga. Gen Assem.

condemnee.[141] Only if all efforts to personally serve notice are unsuccessful will service of notice by mail or overnight delivery be acceptable.[142] These added provisions were voted on and adopted as part of the version as passed by the Senate.[143]

The Senate Committee Substitute amended subsection (1) of section 22-2-100 to include any department, board, commission, agency or authority of the executive branch of the government within the definition of condemnor, and this change was included in the final version of the bill.[144]

While these changes appear to be significant and in line with the general theme of the bill, which provides greater benefits and protections to property owners, they were not included in the final version of the bill in Title 36.[145]

The Senate Committee Substitute further included the same notice provision under Title 36 takings as well. This portion of the bill also requires personal service to the condemnee by a sheriff or deputy with notice at least 15 days before any meeting.[146] Again, only if all efforts to personally serve the condemnee were unsuccessful would service by mail be sufficient,[147] and any resolution must specifically and conspicuously delineate each parcel to be affected.[148] The Senate Committee Substitute added that each resolution must specifically and conspicuously delineate each parcel to be affected.[149]

Consideration by the Conference Committee

The Conference Committee added new Code section 22-1-10, which details the new notice requirements.[150] The section provides for personal service of notice regarding the resolution, a prohibition on placing notice in the legal notices section of a newspaper, and a

141. *Id.*
142. *Id.*
143. *See* HB 1313, as passed, 2006 Ga. Gen. Assem.
144. *See* HB 1313 § 13 (SCS), 2006 Ga. Gen. Assem.; HB 1313, as passed, 2006 Ga. Gen. Assem.
145. *See* HB 131, as passed, 2006 Ga. Gen. Assem.
146. *See* HB 1313 § 31 (SCS), 2006 Ga. Gen. Assem.
147. *Id.*
148. *Id.*
149. *See* HB 1313 § 33 (SCS), 2006 Ga. Gen. Assem; HB 1313 (RCS), 2006 Ga. Gen. Assem.
150. O.C.G.A. § 22-1-10 (Supp. 2006).

requirement that the meeting discussing the resolution take place after 6:00 p.m., among other protections for property owners.[151] Thus, while changes to the notice procedures were not explicitly included in Title 36 of the Code, these changes were included by reference to Title 22 in Code section 36-61-3.1.[152]

However, the final version of the bill did include new section 36-61-3.1, which provides that any exercise of eminent domain must be for a public use and must be approved by resolution of the governing body of the municipality or county in conformity with the procedures specified in section 22-1-10.[153]

The Act

Definitional Changes — Blight, Public Use, and Economic Development

The Act amends Code section 22-1-1 relating to eminent domain definitions.[154] First, the definition of blighted area is replaced by "blighted property," "blighted," or "blight," which restricts the exercise of eminent domain to a property-by-property basis.[155] In addition, the definition applies to only "urbanized or developed property,"[156] which implies that rural property cannot be taken by eminent domain. The property in question must present two or more of the following conditions in order to fall within the definition of blight:[157] (1) it must comprise "uninhabitable, unsafe, or abandoned structures;" (2) it must provide "inadequate provisions for ventilation, light, air, or sanitation;" (3) it must provide "an imminent harm to life or other property caused by . . . [various] natural catastrophe[s] . . . provided . . . this division shall not apply to property unless the relevant public agency has given notice in writing to the property owner regarding specific harm caused by the property and the owner

151. *Id.*
152. *Id.*
153. O.C.G.A. § 36-61-3.1 (Supp. 2006).
154. *See* O.C.G.A. § 22-1-1 (Supp. 2006).
155. *See id.*
156. O.C.G.A. § 22-1-1(1) (Supp. 2006).
157. O.C.G.A. § 22-1-1(1)(A) (Supp. 2006).

has failed to take reasonable measures to remedy the harm;" (4) it is a Superfund site pursuant to federal law or contains an "environmental contamination to an extent that requires remedial investigation or a feasibility study;" (5) has been subject to "repeated illegal activity . . . of which the property owner knew or should have known;" or (6) is maintained below state, county or municipal codes for at least one year after notice of such code violations.[158] In addition to meeting two or more of the above conditions, to fall under the definition of blighted property, blighted, or blight, the property must be "conducive to ill health, transmission of disease, infant mortality, or crime in the immediate proximity of the property."[159] Finally, "property shall not be deemed blighted solely because of esthetic conditions."[160]

The Act defines "economic development" as "any economic activity to increase tax revenue, tax base or employment or improve general economic health, when the activity does not result in" certain enumerated activities.[161] These activities include: transfer of land to public ownership or to a private entity that is a public utility, lease of property to private entities that occupy an incidental area within a public project, or the remedy of blight.[162]

The Act also defines "public use"[163] to mean the following: (1) the possession, occupation, or use of the land by the general public or governmental entities; (2) the use of land for the creation or function of public utilities; (3) the opening of roads, construction of defenses, or provision of channels of trade or travel; (4) acquisition of property whose title is clouded because all owners of the property are unidentifiable or unable to be located or when unanimous consent has been received from each person who has a legal claim on the title who has been identified and found; or (5) the remedy of blight.[164]

158. *Id.*
159. O.C.G.A. § 22-1-1(1)(B) (Supp. 2006).
160. *Id.*
161. O.C.G.A. § 22-1-1(4) (Supp. 2006).
162. *Id.*
163. O.C.G.A. § 22-1-1(9) (Supp. 2006).
164. *Id.*

Finally, the Act amends the definition of public use to exclude "public benefit of economic development."[165]

The Act also amends Code section 22-1-2, relating to the nature of eminent domain.[166] This section makes clear that no condemning entity shall "use eminent domain unless it is for public use."[167]

Eminent Domain Procedures

The Act adds significant procedural safeguards for property owners.[168] The Act adds section 8-3-31.1 relating to buildings and housing and powers of housing authorities generally.[169] This section requires that any exercise of eminent domain must "be approved by resolution of the governing body of the municipality or county in conformity with the procedures specified in Code section 22-1-10."[170]

The Act amends Code section 22-1-2 relating to the nature of eminent domain and creates a reversionary interest in the condemned property for five years.[171] This section is further amended to create a reversionary interest in the condemned property, by stating that, if the owner of a condemned property "fails to . . . put to a public use within five years, the former property owner may apply to the condemnor or its successor or assign for reconveyance . . . ."[172] This section also adds the requirement that "all condemnations shall not be converted to any use other than a public use for 20 years from the initial condemnation."[173]

The Act adds section 22-1-9 relating to policies and practices to guide all condemnations and potential condemnations.[174] This section is added to "encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion

165. O.C.G.A. § 22-1-1(9)(B) (Supp. 2006).
166. *See* O.C.G.A. § 22-1-2 (Supp. 2006).
167. O.C.G.A. § 22-1-2(a) (Supp. 2006).
168. House Audio, *supra* note 132 (remarks by Rep. Golick).
169. *See* O.C.G.A. § 8-3-31 (Supp. 2006).
170. O.C.G.A. § 22-1-10(b)(2) (Supp. 2006).
171. *See* O.C.G.A. § 22-1-2 (Supp. 2006).
172. O.C.G.A. § 22-1-2(c)(1) (Supp. 2006).
173. O.C.G.A. § 22-1-2(b) (Supp. 2006).
174. O.C.G.A. § 22-1-9 (Supp. 2006).

in the courts, to assure consistent treatment for property owners, and to promote public confidence in land acquisition practices."[175] This section includes guidelines to be followed "to the greatest extent practicable" and includes: making reasonable efforts to obtain the property by negotiation; appraising the property prior to negotiations; requiring the condemnor to establish an amount they believe to be just compensation; not requiring the owner to surrender the property before the condemnor pays the agreed price or deposits that amount with the court; not requiring the condemnee to move from the property without at least 90 days written notice; requiring that the rental amount shall not exceed the fair rental value in the event that the property owner or tenant occupies the property short term; not allowing condemnor to advance the time of condemnation or defer negotiations or condemnation and the deposit of funds in the court for use by the owner, or take any bad faith action to compel an agreement on the property price; requiring the condemnor to initiate formal proceedings in the event eminent domain is exercised; and allowing the condemnee to donate their property or any part thereof.[176]

The Act also adds Code section 22-1-10 relating to the institution of formal proceedings to increase due process and notice for property owners.[177] This section is added to institute the following requirements prior to exercising eminent domain:[178] posting of a sign near the property not less than 15 days before any meeting at which a resolution approving the use of eminent domain is to be considered; serving the condemnee personally with notice of the meeting; ensuring that any notice be published in the county legal organ; and ensuring that any meeting at which such resolution will be considered not commence before 6:00 p.m.[179] This section also adds similar requirements in the event there is a nongovernmental condemnor, including a procedure for designating who is authorized to approve the exercise of the power of eminent domain.[180]

175. *Id.*
176. *Id.*
177. O.C.G.A. § 22-1-10 (Supp. 2006).
178. *Id.*
179. *Id.*
180. *Id.*

The Act adds Code section 22-1-11 relating to the determination of whether the exercise of the power of eminent domain is for public use.[181] This section allows *the court* to determine whether the exercise of eminent domain is for a public use and whether the condemning authority has the legal authority to exercise that power.[182] The condemning authority bears the burden of proof.[183]

The Act adds Code section 22-1-12 to provide that the condemnee is entitled to attorney's fees if the court determines that the condemnor cannot acquire the property through eminent domain or if the condemning authority abandons the proceeding.[184] This new section increases the property owner's protection as before, the condemnee was only awarded attorney's fees in the event they were successful in proving the fair market value given for the property was 20% too low.[185]

The Act adds Code section 22-1-13 to provide that a condemnee is entitled to moving expenses for themselves, their family, business, farm operation, or other personal property; direct losses of tangibles as a result of moving; any other relocation expenses as authorized by law; and the option that the condemnor may provide alternative property as full or partial compensation.[186]

The Act adds Code section 22-1-14 to address the valuation of the condemned property and allows the determination to be made by lay or expert testimony and the admissibility of such testimony is determined by the court.[187]

The Act repealed Code section 22-2-84.1 relating to appeals to superior court from assessor's award, reasonable expenses, and liability of cost relating to issues of law.[188]

The Act amends Code section 22-2-102 relating to filing a petition of condemnation and other requirements.[189] This section is amended to require the judge to have a hearing between 10 and 30 days from

181. O.C.G.A. § 22-1-11 (Supp. 2006).
182. *Id.*
183. *Id.*
184. O.C.G.A. § 22-1-12 (Supp. 2006).
185. *Id.*; *see also* O.C.G.A. § 22-2-84.1 (2005).
186. O.C.G.A. § 22-1-13 (Supp. 2006).
187. O.C.G.A. § 22-1-14 (Supp. 2006).
188. O.C.G.A. § 22-2-84.1 (Supp. 2006).
189. O.C.G.A. § 22-2-102 (Supp. 2006).

the filing of a petition to appoint a special master.[190] The special master then conducts a hearing between 30 and 60 days from the date the special master is appointed.[191]

The Act amends Code section 22-2-102.2 relating to the contents of a petition to superior court for judgment in rem in cases of eminent domain.[192] This section requires the condemning body to make a statement regarding the necessity to condemn the property and to describe the public use in addition to the other requirements it needs to set forth in its petition.[193]

The Act amends Code section 22-2-106 relating to compensation for special masters.[194] This section changes the compensation structure for the special master such that it will now be left to the discretion of the court and "shall not exceed a reasonable hourly rate consistent with local standards. . . ."[195]

The Act amends Code section 22-2-110 relating to the award of the special master in a condemnation hearing and the form used therein.[196] This section modifies the special master's award form to allow a section for moving expenses.[197] In addition, it adds service requirements that are consistent with Code section 9-11-5 and requires the special master to mail the award to the condemnor and condemnees.[198]

The Act amends Code section 22-2-112 relating to the right of appealing the award of the special master in condemnation proceedings.[199] This section, which requires either the condemnee or condemnor to file an appeal in superior court within 10 days if either is dissatisfied with the award, and also grants the condemnee the right to a jury trial on the issue of just and adequate compensation.[200]

190. O.C.G.A. § 22-2-102(a)(2) (Supp. 2006).
191. O.C.G.A. § 22-2-102(b) (Supp. 2006).
192. O.C.G.A. § 22-2-102.2 (Supp. 2006).
193. *Id.*
194. O.C.G.A. § 22-2-106 (Supp. 2006).
195. *Id.*
196. O.C.G.A. § 22-2-110 (Supp. 2006).
197. *Id.*
198. *Id.*
199. O.C.G.A. § 22-2-112 (Supp. 2006).
200. *Id.*

The Act amends Code section 22-2-131 relating to contents in a petition to the superior court for a judgment in rem.[201] This section requires the condemning body to make a statement "setting forth the necessity to condemn the private property and describ[e] the public use for which the condemnor seeks the property."[202]

The Act amends Code section 22-2-132 relating to requirements of notice and service upon presenting a petition for a judgment in rem.[203] This section mandates that in an in rem proceeding, the superior court judge shall order a hearing to be held to hear all objections from the property owner unless the property owner submits an affidavit stating there is no objection to the proceedings.[204]

The Act amends Code sections 22-3-60 and 22-3-63 relating to persons constructing and operating waterworks and sewerage systems authorized to lease, purchase, or condemn property or interests.[205] Section 22-3-60 requires that nongovernmental utilities, prior to condemning property, must meet the requirements of Code section 22-1-10 before the governing body may give consent by resolution or ordinance.[206] Section 22-3-63 requires nongovernmental entities to obtain the consent of the governing authority of the county or municipality before condemning property.[207]

The Act amends Code section 22-4-3 by stating that the definitions of "interest" and "property" as defined in Code section 22-1-1 do not apply to this chapter.[208]

The Act amends Code section 23-3-73 by giving standing to all municipalities, counties, and housing authorities.[209]

201. O.C.G.A. § 22-2-131 (Supp. 2006).
202. *Id.*
203. O.C.G.A. § 22-2-132 (Supp. 2006).
204. *Id.*
205. O.C.G.A. §§ 22-3-60, 22-3-63 (Supp. 2006).
206. O.C.G.A. § 22-1-10 (Supp. 2006).
207. O.C.G.A. § 22-3-63 (Supp. 2006).
208. O.C.G.A. § 22-1-1 (Supp. 2006).
209. O.C.G.A. § 23-3-73 (Supp. 2006).

Shift of Eminent Domain Power from Appointed Bodies to Elected Officials

The Act also explicitly denies unelected officials the power of eminent domain.[210] Lawmakers believed there was a need for accountability in the condemnation process, which led to numerous changes in Title 36 of the Georgia Code, denying the power of eminent domain when not ratified by those who are publicly accountable.[211]

Analysis

Eminent domain has been a hot topic since last June, "when the U.S. Supreme Court ruled that a Connecticut city has the right to condemn waterfront homes to make way for upscale, tax and job-generating development."[212] Soon after the decision, a similar case of condemnation occurred in Stockbridge, Georgia, bringing the issue closer to home.[213] Governor Perdue promised Georgia citizens action, and this Act demonstrates that he kept his word.[214] The Act is widely accepted by both Republicans and Democrats.[215]

The changes severely restrict the government's use of eminent domain to clear out blighted properties and make it easier for property owners to fight condemnations.[216] Governor Perdue believes this change helps properly balance the rights of property owners and the need for the government to have some power to condemn land.[217]

210. *See* O.C.G.A. 36-42-8 (Supp. 2006).
211. *See* O.C.G.A. §§ 36-42-8, -8.1, 36-44-6, 36-61-3.1, 36-62-6, 36-82-62 (Supp. 2006); Golick Interview, *supra* note 59.
212. Quinn, *supra* note 61.
213. *Id.*
214. James Salzer, *Eminent Domain: Politicians Clamor for Credit on Property Rights*, ATLANTA J.-CONST., April 5, 2006, at 4B.
215. *Id.* House Minority Leader DuBose Porter believes Perdue's legislation was a "reaction to the bad things Republican senators had done to let developers condemn land." *Id.*
216. *Id.*
217. *Perdue's Eminent-Domain Proposal*, *supra* note 53.

Definitional Changes

Economic Development and Public Use

The Act forbids governments from condemning property for economic reasons such as raising the tax base.[218] It does so by making clear that "economic development shall not constitute a public use."[219] Additionally, the Act explicitly defines public use for the first time in Georgia history.[220] According to the Act's supporters, public use used to be in the eye of the beholder.[221] Prior to the Act, if a government entity decided to take property, by definition, it was public use.[222] The Act's new explicit definition of public use gives the public a "very clear idea of what is proper public use for eminent domain purposes,"[223] and includes the remediation of blight.[224]

As Senator Preston Smith, Chairman of the Senate Judiciary Committee, told reporters, "[m]ost everyone agrees that we want to take away the ability for people to condemn property for economic development."[225] This portion of the Act was in direct response to the Supreme Court's 2005 decision in *Kelo v. City of New London*, which held that when government exercises the power of eminent domain for economic development purposes, such activity is proper public use—that is, government may take private property from one private land owner and give it to another.[226] *Kelo* invited states to pass their own eminent domain laws that were stricter than federal law,[227] indeed that's what the Georgia General Assembly intended to do when it passed the Act.[228]

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218. *See* O.C.G.A. § 22-1-1 (Supp. 2006).
219. O.C.G.A. § 22-1-1(4) (Supp. 2006).
220. *See* House Audio, *supra* note 132 (remarks by Rep. Rich Golick).
221. *Id.*
222. *See* Senate Audio, *supra* note 110 (remarks by Sen. Jeff Chapman); Golick Interview, *supra* note 59.
223. *See* House Audio, *supra* note 132 (remarks by Rep. Rich Golick).
224. O.C.G.A. § 22-1-1(9)(A)(vi) (Supp. 2006).
225. Christopher Quinn, *Legislature 2006: Eminent Domain Bill OK'd; Senate Measure Would Limit Private Land Seizure,* ATLANTA J.-CONST., Mar. 25, 2006, at 1E.
226. *Kelo v. City of New London*, 545 U.S. 496, 125 S.Ct. 2655, 2663 (2005), *reh'g denied,* 126 S.Ct. 24 (2005).
227. *Id.* at 2668.
228. *See* House Audio, *supra* note 132 (remarks by Rep. Golick).

Some believe that the Act does not go far enough, in that it does not specifically ban governments from seizing property for private purposes.[229] For example, Senator Chapman of the 3rd district believed that "the ordinary people [of Georgia] want to see legislation that allows the use of eminent domain for historical public uses [such as government construction of] roads, bridges, regulatory business, and utilities only."[230] Instead of limiting the exercise of eminent domain to such uses, the Act "did not end eminent domain abuse . . . [because] developers . . . still have a loophole to seize private property under the 'blight' exception."[231] In other words, the Act does not foreclose the exercise of eminent domain for economic development purposes.[232]

Supporters of the Act maintain that just because the exercise of eminent domain may have incidental economic benefits does not mean that it is not a bona fide public use.[233] Additionally, because the bona fides of public use still have to be demonstrated affirmatively in court by government when it takes private property, the blight exception does not result in any economic development loopholes.[234] Finally, supporters of the Act note that because the definition of blight is so stringent, they are confident that when local government takes private property to remedy that condition, they will act responsibly when they choose to do so and taking private property solely for economic development will no longer be an issue in Georgia.[235]

Blight

The Act redefines blight, and makes the government use of eminent domain to remedy blight permissible.[236] The Act provides tighter provisions on what types of blighted property can be

229. *See* Electronic Mail Interview with Rep. Bobby Franklin, House Dist. No. 49 (Mar. 28, 2006) [hereinafter Franklin Interview].
230. *See* Senate Audio, *supra* note 110 (remarks by Sen. Jeff Chapman).
231. *See* Franklin Interview, *supra* note 229.
232. *Id.*
233. *See* Golick Interview, *supra* note 59.
234. *Id.*
235. *Id.*
236. *See* O.C.G.A. § 22-1-1 (Supp. 2006).

condemned.[237] Now, before condemnation, the property must be shown to threaten public health and meet at least two other criteria for dilapidation, crime, or environmental problems.[238] Under old law, anything deemed a slum could be condemned.[239] Blighted areas used to be defined very broadly to include areas which were dilapidated; deteriorated; inadequately ventilated, lit, or sanitized; highly populated such that ill health, transmission of disease, infant mortality, juvenile delinquency, and crime resulted; and detrimental to the public health, safety, morals or welfare.[240] Under the old definition, blight was in the eye of the beholder, which, according to Representative Golick, is "a polite way of saying that [one] could drive a truck through it."[241] Indeed, in some counties, under the old definition of blight, local government authorities would simply threaten blight and subsequently take property.[242]

Supporters of the Act believe that the new definition of blight will prevent many eminent domain abuses – for example, government will no longer be able to take perfectly viable property and use it for another purpose, like a shopping center or factory.[243] According to Representative Golick, eminent domain abuses would be curtailed because the determination of blight would no longer be a subjective process: the Act makes the definition of blight "as objective as humanly possible" by requiring government statistics or other studies to demonstrate that the definition has been met.[244]

Additionally, the new definition of blight strikes a good balance in terms of protecting private property owners without unduly restricting government's eminent domain powers.[245] Specifically, supporters of the Act note that under the new definition, government will be able to condemn truly blighted property.[246] For example, under the new definition of blight, government will be able to

237. *Id.*
238. *Id.*
239. *Condemnation Backers*, *supra* note 45.
240. *See* O.C.G.A. § 8-4-3(1) (2004).
241. *See* House Audio, *supra* note 132 (remarks by Rep. Rich Golick).
242. *See* Golick Interview, *supra* note 59.
243. *Perdue's Eminent-Domain Clinic*, *supra* note 53.
244. *See* House Audio, *supra* note 132 (remarks by Rep. Rich Golick).
245. *See* Golick Interview, *supra* note 59.
246. *Id.*

condemn a crack house, as it should be allowed to do, but it will not be able to simply threaten blight and subsequently acquire property, which should be prohibited.[247]

The Atlanta Regional Commission ("ARC") is the regional planning and intergovernmental agency for regional planning for the 10-county metropolitan area.[248] Through its Liveable Centers Initiative, the ARC has given local governments over $90 million in grants to create master plans, rewrite zoning ordinances, and rebuild infrastructure.[249] While the ARC expresses concern over the new eminent domain laws, Dan Reuter, chief of the land-use division, feels confident that in-town revitalization will continue because of the interest of developers and home buyers.[250]

Some interest groups argue that the reform to the eminent domain law is unnecessary or overreaching. The Georgia Municipal Association ("GMA"), is a voluntary, non-profit organization that represents municipal governments in Georgia.[251] The GMA provides legislative advocacy, educational, employee benefit and technical consulting services to its members, which totals over 485 municipal governments in Georgia.[252] The GMA is concerned about the effects of HB 1313 and believes that the new definition of "blight" is too narrow and will allow more protection to "slumlords" and irresponsible landowners rather than to the neighboring properties and the community as a whole.[253] Jim Higdon, Executive Director of the GMA, said "[u]nfortunately for Georgia's cities, the new definition of blight is very narrow and restrictive, vacant property would no longer be considered blight and could not be condemned for that reason, and cities would be limited to condemning specific

247. *Id.*
248. Atlanta Regional Commission, *Planning for a Growing Region*, http://www.atlantaregional.com/cps/rde/xchg/SID-3F57FEE7-FBB4E8CB/arc/hs.xsl/23_ENU_HTML.htm (last visited Nov. 20, 2006).
249. Christopher Quinn, *Cities Build on Eminent Domain*, ATLANTA J.-CONST., February 20, 2006, at B1.
250. *Id.*
251. Georgia Municipal Association, *About GMA—Who We Are*, http://www.gmanet.com/about_gma/ (last visited Nov. 20, 2006).
252. *Id.*
253. Georgia Municipal Association, *Senate Committee Begins Work on Eminent Domain Legislation*, '06 LEGISLATIVE ALERT, March 17, 2006, No. 10, *available at* www.gmanet.com/data/pdf/legalert_2006_10.pdf.

blighted properties only, not blighted areas."[254] Further, "[i]t is our fear that these restrictions will severely restrict cities as they make efforts to redevelop areas in their communities that are in most need of attention."[255]

Phil McLemore, city administrator for the city of Duluth, Georgia, argues that the new laws will make it tougher for governments to condemn for things such as clearing dilapidated housing.[256] Duluth used, or at least threatened to use, eminent domain to get land for new government offices, public squares, and street improvements when it rebuilt and revitalized its downtown.[257]

Finally, the National League of Cities ("NLC") has been a national voice against eminent domain reform.[258] The NLC lobbies Congress to avoid preemption or displacement of state laws that give local governments these powers.[259] The NLC argues that eminent domain can "revitalize local economies, create much-needed jobs, and generate revenue that enables cities to provide essential services."[260]

In October 2005, the NLC issued a compilation of eminent domain examples, showing examples of how eminent domain has been used in various parts of the country.[261] Seven out of the seventeen examples nationwide were from the state of Georgia.[262] According to the NLC, eminent domain was used to fight blighted conditions in Savannah, Valdosta, and Fitzgerald; to clear vacant or abandoned property in Smyrna and Atlanta; to resolve compensation disputes over property in Duluth; and as part of an overall redevelopment plan in Thomson.[263] It is yet to be seen whether the new definition of blight will allow such uses of the eminent domain power.

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254. Georgia Municipal Association, *'06 Legislative Session Comes to a Close*, '06 LEGISLATIVE ALERT, March 31, 2006, No. 12,, *available at* http://www.gmanet.com/data/pdf/legalert_2006_12.pdf.
255. *Id.*
256. *Eminent Domain Bill OK'd*, *supra* note 225.
257. *Id.*
258. National League of Cities, *Issues: Eminent Domain*, http://www.nlc.org/Issues/more_issues/6235.cfm (last visited April 13, 2006).
259. *Id.*
260. National League of Cities, *The Issue: Eminent Domain for Economic Development*, 2005 ADVOCACY ISSUE, http://www.nlc.org/content/Files/PFREminentDomainIssue8-05.pdf (last visited April 13, 2006).
261. National League of Cities, *Eminent Domain Examples*, October 5, 2005, http://www.nlc.org/content/Files/EmDomainCityEx.pdf (last visited April 13, 2006).
262. *Id.*
263. *Id.*

Restricting the Use of Eminent Domain to a Property-by-Property Basis

"Arguably the most significant part of the Act"[264] and a portion of it that "no one [in the Georgia General Assembly] argued with"[265] was the change from previously allowing government to take areas of property to now limiting the use of the eminent domain power to single properties at a time.[266] This change was made to protect consumers and prevent government from raising the predominance argument against them.[267] In other words, government will no longer be able to condemn property just because the area it is in is predominantly blighted.[268] As Representative Golick made clear, if "grandma's house is surrounded by crack houses and it used to be a decent neighborhood; we [the Georgia General Assembly] made the affirmative policy decision that she should not lose her home just for being in the wrong place at the wrong time."[269] Supporters of the Act believe that one's property should not be condemned just because those around them failed at keeping up their area, and the Act prevents this from happening.[270]

Some groups note that eminent domain has also been used in Georgia for many years to improve and revitalize downtown areas.[271] Eminent domain was used in Atlanta for such projects as Centennial Olympic Park, the Georgia World Congress Center, and Georgia Tech's Technology Square in Midtown.[272] Additionally, in 2005, the city of Macon, Georgia was awarded the State Highway Department's "Magnolia Award."[273] The award was given to the city in honor of outstanding work in building affordable housing for the poor and disabled.[274] However, critics of the new legislation argue that without the use of eminent domain, the city would not have been

264. *See* Golick Interview, *supra* note 59.
265. *Id.*
266. O.C.G.A. § 22-1-10 (Supp. 2006).
267. *See* House Audio, *supra* note 132 (remarks by Rep. Rich Golick).
268. *See* Golick Interview, *supra* note 59.
269. *Id.*
270. *Id.*
271. *Condemnation Backers*, *supra* note 45.
272. *Id.*
273. *Id.*
274. *Id.*

able to condemn the numerous vacant single-family homes upon which the government built housing for low-income individuals with physical disabilities.[275] The change in the law to require the exercise of eminent domain on a property-by-property basis could curtail such beneficial development.[276]

Similarly, eminent domain was used by the city of Smyrna in a 15-year project to build a new city hall, library, and community center on a rundown tract of land.[277] Critics of the bill argue Smyrna's development of its once-blighted downtown area could not have succeeded without the power of eminent domain.[278]

Procedural Changes

The Act introduces major procedural changes in the administration of eminent domain, with the intended goal of increasing property owners' rights when faced with a possible condemnation.[279] First, the Act increases the timeline and the required steps in a condemnation proceeding, thereby increasing notice to property owners.[280] Second, the Act removes the presumption that property sought to be condemned is taken for public use, thus requiring courts to scrutinize a proposed condemnation to determine if the land would be put to an actual public used as defined by the Code.[281] Finally, the Act creates a reversionary interest in the condemned land to ensure it is put to public use, and if not, provides a means for reacquisition.[282]

Condemnation Procedures in General

Following the *Kelo* and Stockbridge decisions,[283] it was Governor Perdue's opinion that the condemnation process in Georgia lacked

275. *Id.*
276. *Id.*
277. Mike King, Editorial, *An Eminently Useful Domain; Governments' Land Seizures Can Be for Best*, ATLANTA J.-CONST., March 23, 2006, at A15.
278. *Id.*
279. Golick Interview, *supra* note 59.
280. *See* O.C.G.A. §§ 22-1-9, -10 (Supp. 2006).
281. *See* O.C.G.A. §§ 22-1-1, -2, -11 (Supp. 2006).
282. *See* O.C.G.A. § 22-1-2 (Supp. 2006).
283. *See* discussion, *supra* History.

adequate due process for property owners.[284] Condemnations could take place so rapidly as to not give property owners a chance to properly defend their investment.[285] Thus, the procedural changes were implemented to increase due process for property owners and in effect give them a "bill of rights."[286] To increase the procedural due process safeguards, the Act lengthens the timeline of the process, encourages early, fair purchase negotiations to avoid condemnation, and allows the property owner increased monetary recovery in the event of a condemnation proceeding.[287] Further, new Code section 22-1-9 provides guidelines to encourage such fair negotiations, starting with an independent appraisal of the property before the initiation of negotiations.[288] This provision was added to ensure that negotiations start from a fair price.[289] Moreover, the Act allows for the repayment of moving costs in the event of a condemnation and reimbursement of attorney's fees if the property owner is successful in defending the condemnation.[290] Finally, the Act increases the timeline of the process and *requires* a hearing upon the exercise of eminent domain, except for the Department of Transportation and public utilities condemnations.[291] Section 22-2-102 requires a hearing to appoint a Special Master, and that a taking does not take place for at least 30 days thereafter.[292] This allows property owners the ability to contribute to the determination of who the Special Master is, and then have at least 30 days, not 10, from the hearing until the decision of value is made.[293] Supporters of the Act hope that it will ensure that property owners are treated fairly, and on a level playing field.[294]

There is concern, however, that these changes are unnecessary, create a burden on the court system, or lead to increased litigation.[295]

284. *See* House Audio, *supra* note 132 (remarks by Rep. Rich Golick).
285. *See* Golick Interview, *supra* note 59.
286. *See* House Audio, *supra* note 132 (remarks by Rep. Wendell Willard).
287. *Id.*
288. O.C.G.A. § 22-1-9 (Supp. 2006).
289. *See* House Audio, *supra* note 132 (remarks by Rep. Willard).
290. *Id.*
291. *Id.*
292. O.C.G.A. § 22-2-102 (Supp. 2006).
293. *See* House Audio, *supra* note 132 (remarks by Rep. Willard).
294. *Id.*
295. *See* Memorandum from Jim Grubiak, ACCG General Counsel and Matthew Hicks, Associate Legislative Director, to Senate Judicary Committee (Mar. 16, 2006), available at http://www.accg.org/static/eminent_domain_legislation.pdf [hereinafter ACCG Memorandum].

The Association of County Commissioners of Georgia (ACCG) contends that the new policies and procedures set forth as guidelines starting with section 22-1-9 do not apply to general condemnations and are unnecessary.[296] Further, the ACCG contends that the increased hearing requirements create an additional burden on an already overburdened court system and do not solve any identifiable problem.[297] Finally, the ACCG contends that adding a provision to compensate a condemnee for moving costs will lead to added litigation.[298] The increased burden on the court remains an open question.[299]

Thus, the Act adds significant procedural requirements surrounding the condemnation process. The result may be to increase due process for property owners as well as public confidence in the condemnation process. However, the additional requirements may also overcomplicate the condemnation process, leading to substantial hurdles in the redevelopment of blighted property.[300]

Removal of the Presumption of Public Use.

A great deal of controversy followed the Supreme Court's decision in *Kelo v. City of New London* regarding the standard applied in determining public use, and some critics believed that there was not enough scrutiny in the process.[301] The Act attempts to raise the level of scrutiny by giving this decision to the courts, thus removing the presumption that the condemning body was putting the property to a public use.[302] The Act further accomplishes this goal by confining the meaning to the narrowed definition of "public use" as defined by Code section 22-1-1.[303] The provision, set forth explicitly in sections 22-1-2 and 22-1-11, states that public use is a matter of law and the

296. *Id.*
297. *Id.*
298. *Id.*
299. *Id.*
300. *See Our Opinion:Property Owners Count; Perdue's Eminent Domain Plan Rightly Increase Protection for Residents, Retains Crucial Local Powers,* ATLANTA J-CONST., Feb. 10, 2006, at 14A.
301. *See generally,* Trent Christenson, *From Direct "Public Use to Indirect "Public Benefit": Kelo v. New London's Bridge from Rational Basis to Heightened Scrutiny for Eminent Domain Takings,* 2005 BYU L. REV. 1669 (2005).
302. *See* O.C.G.A. § 22-1-2 (Supp. 2006).
303. *See* O.C.G.A. § 22-1-1 (Supp. 2006).

condemning body has the burden of proof that the condemnation is for such a public use.[304] The intended effect of this provision is that courts will look more carefully at the public use determination.[305] Thus, courts may have wide discretion to limit or expand the use of eminent domain, subject to the definition of public use as set forth in section 22-1-1.[306]

Creation of a Reversionary Interest in Condemned Land

The Act encourages timely development of blighted property by creating a five-year reversionary interest in any condemned property.[307] This gives the former property owner the ability to reacquire the land if the condemnor fails to put the property to a public use within five years, qualified by a "substantial good faith effort."[308] This constraint evokes a balance between both the property owners' rights and the condemning bodies' need for time to initiate their public use projects.[309] However, the time limit and the reacquisition price were both hotly contested areas of the Act.[310] Prior versions of the Act contemplated a 12-year time limit and a reacquisition price involving interest payments or fair market value.[311] As passed, the time period is five years and the property is either reacquired at the original price paid, or the condemnor pays the condemnee the difference between the original price paid and the current fair market value, if it is greater.[312] However, if the condemnor does not respond to the condemnee, the provision only provides that the condemnee may initiate an action in the superior court.[313] In reacquisition, the property owner will not be constrained by set interest rates in the Code that do not accurately reflect current

304. O.C.G.A. §§ 22-1-2, -11 (Supp. 2006).
305. Interview with Judson H. Turner, Deputy Executive Counsel for Governor Perdue (April 4, 2006) [hereinafter Turner Interview].
306. *See generally* O.C.G.A. § 22-1-1 (Supp. 2006).
307. O.C.G.A. § 22-1-2 (Supp. 2006).
308. *Id.*
309. *See* Golick Interview, *supra* note 59.
310. *Id.*
311. HB 1313 § 7 (HCS), 2006 Ga. Gen. Assem.; *see also* Golick Interview, *supra* note 59.
312. O.C.G.A. § 22-1-2 (Supp. 2006).
313. *Id.*

economic conditions.[314] Further, there was concern that five years would not be long enough for electric utilities.[315] Finally, this provision may create issues regarding the transfer of property, as the condemnation will no longer be a taking of fee simple interest.[316] As a result, there may be burdensome implications in issuing and underwriting bonds, obtaining title insurance, securing easements, and proceeding on projects.[317] Thus, while this provision attempts to strike a balance between property owners' rights and the condemnors' development needs, whether the correct balance was struck is yet to be seen.[318]

Accountability of Condemnation

One of the key underlying principles of the Act was that, while the government cannot control and remedy all of the problems related to eminent domain, it can ensure that the appropriate parties are held accountable.[319] The Act limits the power of eminent domain to elected officials, which is a significant advance in accountability, as the process previously gave appointed bodies, such as housing authorities, the right to seize private property.[320] Elected officials need to have the final say in condemnation decisions because ultimately they can be held responsible at the ballot box.[321] If the general public does not like what elected officials are doing, they can keep them out of office with their votes.[322]

Before exercising the power of eminent domain, development authorities will be required to get a resolution and a vote from their respective members of the city council.[323] Before this Act, unelected officials often made condemnation decisions off the record, which

314. *See generally,* Golick Interview, *supra* note 59.
315. *See id*; Senate Audio, *supra* note 110
316. *See* ACCG Memorandum, *supra* note 295.
317. *Id.*
318. *See generally,* Golick Interview, *supra* note 59.
319. *See* Turner Interview, *supra* note 305.
320. *Our Opinion, supra* note 300.
321. Turner Interview, *supra* note 305.
322. *See* Senate Audio, *supra* note 110 (remarks by Sen. Don Balfour).
323. House Audio, *supra* note 132 (remarks by Rep. Rich Golick).

many people found simply unacceptable as a policy matter.[324] Now, under the Act, if a party wants to exercise the power of eminent domain, they must first go on the record and obtain the requisite vote.[325]

Downtown redevelopment authorities, such as the Atlanta Regional Commission's Livable Centers Initiative, express concern about the changes but believe that city revitalization will continue because of the strong interest by developers and home buyers.[326]

Enhanced Notice Provisions

The new notice provisions have also been a source of attention.[327] Previously, condemnation proceedings, even outside of the redevelopment arena, had become a foregone conclusion.[328] The property owner had very little time to react, the process was quick, and often property title was taken before the owners even had a chance to blink.[329] This Act aims to even the playing field.[330] The Act amends and adds provisions providing more time and allowing the property owner the opportunity to negotiate with the condemnor.[331]

In line with the goal of enhancing procedural safeguards to property owners, the Act requires that notice must also be in a newspaper of general circulation and cannot be placed in the legal notice section of that newspaper; it must be a "proper advertisement."[332] Another "user friendly" provision provides that the meeting in which any resolution is to be considered must be commenced after 6:00 p.m. so that "real people" have the opportunity to be present and have their opinions heard.[333] The significant notice

324. *See id.* ("No longer will an unelected, unaccountable authority have the authority to exercise eminent domain. Now they have to get an on the record vote from the government they work under. Used to see such authorities exercising eminent domain without having to go on the record."); *see also* Franklin Interview, *supra* note 229.
325. House Audio, *supra* note 132 (remarks by Rep. Rich Golick).
326. Quinn, *supra* note 225.
327. Turner interview, *supra* note 305.
328. *Id.*
329. *Id.*
330. *Id.*
331. *Id.*
332. House Audio, *supra* note 132 (remarks by Rep. Richard Golick).
333. *Id.*

additions have some commentators and legislators concerned that the process of eminent domain will be more difficult in the future, while others believe that these added "burdens" are necessary to ensure due process to property owners.[334]

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334. Senate Audio, *supra* note 132.