


# Eminent Domain Section

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## Changes in Condemnation Laws Enacted

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On April 4, Gov. Sonny Perdue signed into law a conference committee substitute for House Bill 1313 that was adopted by both the House and the Senate on the last day of the 2006 session of the Georgia General Assembly. The legislation (officially known as “The Landowner’s Bill of Rights and Private Property Protection Act”) makes significant changes in Title 22 of the Official Code of Georgia Annotated (O.C.G.A.) that will affect condemnation proceedings throughout the State. This article summarizes the key provisions of the legislation.

### General Provisions of Title 22

House Bill 1313 modifies some of the general provisions set forth in Chapter 1 of Title 22 and adds several new provisions. The general provisions that are modified or added by the legislation are as follows:

**O.C.G.A. § 22-1-1:** This existing Code section has been expanded by adding definitions of various terms that appear in new provisions added elsewhere to restrict condemnations for economic development in response to *Kelo v. City of New London*, 125 S. Ct. 2655 (2005). Among the new defined terms contained in § 22-1-1 are the following: “blighted property,” “condemnor,” “economic development,” “public use,” and “public utility.” The new defined terms apply to condemnations under Title 22 that are filed on or after Feb. 9, 2006 (the date on which House Bill 1313 was introduced).

**O.C.G.A. § 22-1-2:** This existing Code section has been amended to prohibit the use of eminent domain “unless it is for public use” and to provide that “[p]ublic use is a matter of law to be determined by the court and the condemnor bears the burden of proof.” In addition, a new subsection (b) states, “All condemnations shall not be converted to any use other than a public use for 20 years from the initial condemnation.” A new subsection (c) requires, with some exceptions, that if property acquired through eminent domain is not put to a public use within five years, the former property owner may apply to the condemnor “for

reconveyance or quitclaim of the property . . . or for additional compensation for such property”; and the new subsection specifies procedures for such applications.

**O.C.G.A. § 22-1-9:** This new Code section sets forth “policies and practices” that are intended, in part, to encourage acquisition of real property by agreements with owners and to avoid litigation. The policies and practices listed in this new section are substantially the same as those currently contained in O.C.G.A. § 22-4-9, which deals with public works projects financed with federal funds. Some of the policies and practices in the new section apply to all condemnations and potential condemnations “to the greatest extent practicable,” while others apply only to situations where the condemnor seeks to obtain a fee simple interest in real property.

**O.C.G.A. § 22-1-10:** This new Code section imposes certain procedural requirements on condemning authorities in exercising the power of eminent domain. Subsection (a) of the new section applies to a “governmental condemnor” and requires, among other things, that the condemnor attempt to serve the condemnee personally with prior notice of the meeting at which a resolution authorizing condemnation is to be considered. Subsection (b) applies to a “nongovernmental condemnor” and has a similar pre-condemnation notice requirement. Subsection (d) requires that these pre-condemnation notices include “a written statement of the rights that the condemnee possesses” and calls for the Georgia Department of Community Affairs to promulgate, no later than Jan. 1, 2007, written notice of rights forms to be used for purposes of this subsection. Subsection (e), however, contains an exemption from these requirements for certain types of condemnations, including “condemnations for the purposes of constructing or expanding one or more electric transmission lines” and condemnations under Title 32.

**O.C.G.A. § 22-1-10.1:** This new Code section restricts the filing of a condemnation action until at least thirty days after a condemnation has been approved as provided in

new § 22-1-10. The restriction does not apply to acquisitions to deal with emergency conditions or acquisitions for which consent is obtained from “each person with a legal claim that has been identified or found.”

**O.C.G.A. § 22-1-11:** This new Code section, which applies to condemnations filed on or after Feb. 9, 2006, requires that before title vests in the condemner, the court must determine “whether the exercise of the power of eminent domain is for a public use and whether the condemning authority has the legal authority to exercise the power of eminent domain.” The new section allows the condemnee to raise the issue by way of a motion or, within ten days after the filing of the special master’s award, by “entry of exception to the case.”

**O.C.G.A. § 22-1-12:** This new Code section, which also applies to condemnations filed on or after Feb. 9, 2006, requires the court to award to the owner of the real property involved “such sum as will in the opinion of the court reimburse such owner for his or her reasonable costs and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceeding” if (1) the final judgment is that the condemner cannot acquire the property by condemnation or (2) the proceeding is abandoned by the condemner.

**O.C.G.A. § 22-1-13:** This new Code section, which also applies to condemnations filed on or after Feb. 9, 2006, allows any condemnee that is displaced as a result of a condemnation to recover the following: (1) actual reasonable expenses in moving himself or herself, his or her family, business, farm operation, or other personal property within a reasonable distance from the property condemned; (2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation; and (3) such other relocation expenses as are authorized by law. The new section further states that with the condemnee’s consent, the condemner may provide “alternative site property as full or partial compensation.”

**O.C.G.A. § 22-1-14:** This new Code section, which also applies to condemnations filed on or after Feb. 9, 2006, deals with evidence to prove the value of the condemned property. Subsection (a) states that the value “may be determined through lay or expert testimony and its admissibility shall be addressed to the sound discretion of the court.” Subsection (b) provides that O.C.G.A. § 24-9-67.1 (containing evidentiary rules regarding expert witnesses that are based on *Daubert* and were adopted in 2005) no longer applies where a party in a condemnation proceeding seeks to introduce expert testimony on the issue of just and adequate compensation.

### Changes Affecting Special Master Proceedings

House Bill 1313 modifies several provisions of the Special Master Act, as amended (O.C.G.A. § 22-2-100 et

seq.). The most significant changes appear in the following provisions:

**O.C.G.A. § 22-2-102:** Amendments to this existing Code section require that with respect to petitions for condemnation filed on or after April 4, 2006, unless waived by the parties, the superior court judge must have “a hearing in court, in chambers, or by telephone with the parties” to appoint a special master and that such hearing must occur “not less than ten days nor more than 30 days from the filing of the petition.” After such hearing, the judge then must enter an order setting the time and place for a hearing before the special master; and the hearing before the special master “shall take place not less than 30 days nor more than 60 days after the date of the entry of the order appointing the special master.”

**O.C.G.A. § 22-2-102.2:** Under this existing Code section, as amended, petitions for condemnation filed on or after April 4, 2006, must include “[a] statement setting forth the necessity to condemn the private property and describing the public use for which the condemner seeks the property.”

**O.C.G.A. § 22-2-106:** Subsection (a) of this existing Code section has been modified to provide that the amount of compensation for the special master “shall be left to the discretion of the court and shall not exceed a reasonable hourly rate consistent with local standards unless otherwise agreed upon by the parties with consent of the court.”

**O.C.G.A. § 22-2-110:** This existing Code section, as amended, requires that in condemnations filed on or after Feb. 9, 2006, the special master (or the special master panel, if one exists) must mail the special master’s award to the condemner and any condemnees on the date that the award is filed and must provide a certificate of service showing that the award has been mailed. In addition, the form of the award set forth in subsection (c) has been modified to include an amount for “the value of any associated moving costs,” which reflects the new general provision in § 22-1-13 for recovery of moving costs.

**O.C.G.A. § 22-2-112:** This existing Code section has been modified to extend the time period for filing an appeal to a jury from the amount of the special master’s award in any condemnation filed on or after Feb. 9, 2006. In such case, the appeal must be filed “within ten calendar days from the service of the award, plus three additional calendar days for mailing of the award.” New subsection (b) gives the condemnee “the right to a jury trial on the issue of just and adequate compensation . . . during the next term of court following the vesting of title in the condemner” but allows the condemnee to waive such right.

### Other Significant Changes

House Bill 1313 includes changes to several other con-

demnation-related provisions in the Code. Among the provisions affected are the following:

**O.C.G.A. § 22-2-84.1:** This Code section, which was enacted in 1998, allows for the recovery of reasonable expenses (including, but not limited to, attorneys' fees) in certain cases involving appeals to a jury from an assessors' award or a special master's award. Under the existing Code section, the condemnor is liable for the condemnee's reasonable expenses related to the appeal if the condemnor appeals to a jury and the amount of compensation determined by the jury is not at least 20 percent less than the amount awarded by the assessors or the special master. Similarly, the condemnee is liable for the condemnor's reasonable expenses related to the appeal if the condemnee appeals to a jury and the amount of compensation determined by the jury is not at least 20 percent greater than the amount awarded by the assessors or the special master. The Code section has been repealed with respect to condemnations filed on or after Feb. 9, 2006.

**O.C.G.A. § 8-3-31.1:** This new Code section requires that any condemnation filed by a housing authority on or after Feb. 9, 2006, must be for a "public use" as defined in § 22-1-1 and must be approved by a resolution adopted in conformity with § 22-1-10.

**Title 36 of O.C.G.A.:** As a result of a change to § 36-42-8 and the repeal of §§ 36-42-8.1 and 36-44-6(c), no downtown development authority may exercise the power of

eminent domain after April 4, 2006. Under new § 36-61-3.1, any condemnation filed on or after Feb. 9, 2006, in connection with an urban redevelopment project must be for a "public use" as defined in § 22-1-1 and must be approved by a resolution adopted in conformity with § 22-1-10. A new subsection added to § 36-62-6 prohibits a local development authority from exercising the power of eminent domain after April 4, 2006.

### Constitutional Amendments

On the same day that Gov. Perdue signed House Bill 1313, he approved House Resolution 1306, which proposes amendments to two provisions of the Georgia Constitution of 1983. The first amendment would modify Article IX, Section II, Paragraph VII to require that any condemnation of private property for redevelopment purposes must be approved by a vote of the governing authority of the city in which the property is located, if any, or otherwise by the governing authority of the county in which the property is located. The amendment would also restrict the exercise of the power of eminent domain for redevelopment purposes except for a public use, as defined by general law. The second amendment would change Article IX, Section II, Paragraph V to require that each exercise of the power of eminent domain by a housing or development authority must first be approved by the governing authority of the city or county in which the property is located. Both of these amendments will appear on the ballot for ratification by the voters in the General Election on Nov. 7, 2006.

## Justice George Carley Receives Pursley Award

At the 2006 meeting of the Eminent Domain Section, Justice George H. Carley of the Georgia Supreme Court received the Pursley Award for outstanding service in the field of eminent domain. Justice Carley obtained his undergraduate degree from the University of Georgia in 1960 and his law degree from the University of Georgia School of Law in 1962. From 1963 until 1979, he engaged in the private practice of law in Decatur and primarily handled litigation matters. During his years as a private practitioner, he represented the Housing Authority of the City of Decatur and the Georgia Department of Transportation in eminent domain cases.

In 1979 Gov. George Busbee appointed Justice Carley to the Georgia Court of Appeals. He served as a member of the Court of Appeals for fourteen years, which included a term as Chief Judge and several terms as a Presiding Judge. Gov. Zell Miller appointed him to the Georgia Supreme Court in 1993.

During his 27 years of service on the appellate courts of Georgia, Justice Carley has written a number of significant opinions involving the law of eminent domain and condemnation-related issues. Many of these decisions are frequently cited by lawyers practicing in the area of eminent domain and applied by courts in dealing with condemnation cases.

Justice Carley received the award from Charles N. Pursley Jr., for whom the award is named, at the annual luncheon meeting of the Eminent Domain Section in Atlanta on Jan. 19, 2006.

# City of Stockbridge v. Meeks

A condemnation proceeding in the Superior Court of Henry County attracted much attention earlier this year during the 2006 session of the Georgia General Assembly. The case involves an attempt by the City of Stockbridge to condemn property that is owned by Regina Meeks and Mark Meeks in connection with a proposed downtown revitalization project. Legislators often cited the case as an example of the need to restrict the exercise of

eminent domain powers for economic redevelopment purposes.

On April 3, 2006, Judge Arch McGarity entered an order dismissing the City's condemnation petition because he could not determine whether the property is to be put to a public use. A copy of the order is reproduced below. Press reports indicate that the City plans to appeal Judge McGarity's order.

## IN THE SUPERIOR COURT OF HENRY COUNTY

### STATE OF GEORGIA

CITY OF STOCKBRIDGE, GEORGIA,  
A Political Subdivision of the State of Georgia,

Condemnor,

vs.

THAT CERTAIN TRACT OF LAND LYING AND BEING IN LAND LOT 61 OF THE 12<sup>TH</sup> DISTRICT, HENRY COUNTY, GEORGIA AND KNOWN AS 4632 North Henry Boulevard, Stockbridge, Georgia; and REGINA M. MEEKS f/k/a/ Regina M. Spear; MARK J. MEEKS; STOCKBRIDGE FLORIST AND GIFTS, INC., a Georgia Corporation; and THE FIRST STATE BANK, a Georgia Banking Corporation,

Condemnees.

CIVIL ACTION FILE NO.:

05-CV-2865-M

### FINAL ORDER

The Court having partially ruled on Condemnees' non-value exceptions on March 22nd, 2006, said order filed on same date and Condemnees' having objected to same and Condemnor having responded to Condemnees' objection, the Court does hereby reconsider its ruling of March 22nd, 2006.

The thrust of Condemnees' objections is that the Court would be committing reversible error should it allow said March 22nd order to stand. The Court entered the most recent order in an effort to avoid protracted litigation of this matter. However, in light of the objections raised by Condemnees, the Court has no choice but to rescind its order of March 22nd, 2006 and by this order the Court does hereby rescind its March 22nd order.

Another review of the record of the Special Master Hearing and the evidence presented does not reveal any additional evidence that has not previously been considered by this Court. In light of the findings of fact in its said order of March 22nd, i.e. "... the Court cannot determine if in fact the use to which the property is to be put is a public use", the Court has no choice but to grant Condemnees' non-value exception set forth in paragraph number five (5) thereof. Having granted Condemnees' non-value exception set forth in paragraph number five (5), it is not necessary for the Court to address the other non-value exceptions.

THEREFORE the Condemnor's Petition to Condemn is hereby dismissed for failure to satisfy O.C.G.A. § 22-2-102.2 sub (1) and (5). The findings in this order do not prevent the Condemnor from filing another petition upon proper grounds.

SO ORDERED this 3rd day of April 2006.

Arch W. McGarity  
Judge  
Superior Court of Henry County