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Glen R. Fagan

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EMINENT DOMAIN

Condemnation Procedure Generally: Provide for Award of Reasonable Expenses in Condemnation Cases; Provide for Substantial Revision of Provisions Relating to Special Masters in Condemnation Cases; Provide for Special Master Panels; Provide for Powers, Duties, and Procedures; Change Provisions Relating to Notices and Advertisements Regarding Acquisition of Property for Transportation Purposes; Change Provisions Relating to Interlocutory Hearings Regarding Adequate Compensation

CODE SECTIONS:	O.C.G.A. §§ 22-2-40, -84 (amended), -84.1 (new), -108 (amended), -108.1 (new), -109 to -114, 32-3-5, -9, -15 (amended)
BILL NUMBER:	HB 155
ACT NUMBER:	979
GEORGIA LAWS:	1998 Ga. Laws 1539
SUMMARY:	The Act impacts the three statutorily defined methods of condemnation proceedings previously established by Georgia law. The three condemnation methods are: (1) the three assessor method; (2) the special master method; and (3) the declaration of taking method.[1] In condemnation proceedings over which assessors preside, the Act establishes minimal qualifications for assessors, limits the assessors' costs, and allows reasonable expenses to be awarded on appeal under certain circumstances. In condemnation proceedings before special masters, the Act provides for special master panels and allows reasonable expenses to be awarded on appeal under certain circumstances. The Act also provides for advertising procedures in connection with the condemnation of property for public transportation purposes. Finally, the Act

1. *See* CHARLES N. PURSLEY, JR., PURSLEY'S GEORGIA EMINENT DOMAIN § 2-1 (Daniel F. Hinkel ed., 1993).

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changes the provisions relating to interlocutory hearings in proceedings regarding condemnation of property for public transportation purposes.

EFFECTIVE DATE: July 1, 1998

History

The Georgia Constitution, echoing the United States Constitution, states that "private property shall not be taken or damaged for public purposes without just and adequate compensation being first paid."[2] In the United States, the right of eminent domain is a universally accepted principle.[3] Georgia Code section 22-1-2 defines eminent domain as "the right of the state, through its regular organization, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the state on account of public exigency and for the public good."[4]

In *Williams v. City of La Grange*,[5] the Georgia Supreme Court held that because taking private property can result in extreme hardships on the property owner, only public necessity can justify taking private property.[6] The condemnor not only decides what property shall be taken, but also how much property is needed.[7] Legislation gives broad discretion to the condemnor in deciding what constitutes public necessity.[8] Because the power to take private property for public necessity affects the right of the property owner, the Georgia Supreme Court has held that condemnation statutes must be strictly construed.[9] The right to acquire private property for public necessity is a right that the State may, and does, confer upon private corporate bodies.[10]

Representative Denny M. Dobbs sponsored HB 155 out of a concern that private property owners were being "low balled" by condemning

2. GA. CONST. art. I, § 3, ¶ 1; *see also* U.S. CONST. amend. V.
3. *See* PURSLEY, *supra* note 1, § 1-1.
4. O.C.G.A. § 22-1-2 (1982).
5. 213 Ga. 241, 98 S.E.2d 617 (1957).
6. *See id.* at 243, 98 S.E.2d at 620.
7. *See* PURSLEY, *supra* note 1, § 3-4.
8. *See id.*
9. *See* Botts v. Southeastern Pipe-Line Co., 190 Ga. 689, 693, 10 S.E.2d 375, 378 (1940). *See generally* John Whitehead Nesbitt, *Eminent Domain—Statutory Construction—Pipe Lines vs. Railroads*, 3 GA. B.J. 49 (1941).
10. *See* O.C.G.A. § 22-1-4 (1992). *See generally* Tift v. Atlantic Coast Line R.R. Co., 161 Ga. 432, 131 S.E. 46 (1925) (granting eminent domain power to power plants and railroads).

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parties, especially the Department of Transportation.[11] For example, one of Representative Dobbs' constituents was negotiating with the Atlanta Committee for the Olympic Games (ACOG) when it decided to cease negotiations and condemn the constituent's property using the special master method of condemnation.[12] This resulted in the constituent initially being awarded an amount much less than ACOG had previously offered during the negotiations.[13]

HB 155

Introduction

Representative Dobbs introduced HB 155 during the 1997 legislative session; however, the General Assembly did not address the bill during that session because the House Judiciary Committee decided to put the bill into a study committee for the summer.[14] Therefore, the bill was carried over to the 1998 session. As introduced, the bill sought to eliminate the three assessor method, one of the three previously established statutorily defined methods of condemning property.[15] However, upon passage, the Act retains all three condemning methods, but with some noticeable changes.[16]

In February 1998, the General Assembly referred HB 155 to the House Judiciary Committee.[17] The Committee passed a substitute version of the bill, choosing not to strike Article 2 of Chapter 2 of Title 22, relating to proceedings before a special master; the Committee instead changed the bill to include a three person special master panel.[18] Representative Dobbs believed there were several flaws in the special master method as defined in the statute.[19] Thus, he initially proposed eliminating the special master method.[20] However, many lawmakers objected to the elimination of the special master method;

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11. Telephone Interview with Rep. Denny M. Dobbs, House District No. 92 (May 21, 1998) [hereinafter Dobbs Interview].
12. *See id.*; Supplemental Telephone Interview with David Meshberger, State Right-of-Way Administrator (Feb. 1, 1999).
13. *See* Dobbs Interview, *supra* note 11.
14. *See id.*
15. *See* HB 155, as introduced, 1997 Ga. Gen. Assem.
16. *See* O.C.G.A. §§ 22-2-40, -84, -84.1, -108, -108.1, -109 to -114, 32-3-5, -9, -15 (Supp. 1998).
17. *See* HB 155 (HCS), 1998 Ga. Gen. Assem.
18. *See id.*
19. *See* Dobbs Interview, *supra* note 11.
20. *See id.*

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therefore, lawmakers sought, and ultimately reached, a compromise.[21] The special master method survived HB 155, but the condemnee has the option of choosing a special master panel.[22]

On the House floor, lawmakers amended HB 155 prior to transferring the bill to the Senate.[23] The Senate referred the bill to the Senate Finance and Public Utilities Committee, which passed the bill unchanged.[24] On the Senate floor, lawmakers again amended HB 155 and then referred it back to the House by a vote of 49 to 1.[25] The Senate amendment added to Code section 22-2-40 two new subsections, which state that assessors have no authority to decide questions of law but may refer questions of law to the appropriate superior court before rendering an award.[26] The Senate also added an advertising requirement for condemnations initiated to obtain property for public roads or other transportation purposes.[27] The House concurred with the Senate's amendments and the bill passed the House by a vote of 141 to 0, with 38 House members not voting.[28]

Three Assessor Method

The Act amends Code section 22-2-40, dealing with selection of assessors, by adding language describing the minimum qualifications for assessors.[29] Previously, both the condemnor and the condemnee could select anyone as an assessor.[30] However, the Act dictates that an assessor must now be a "real estate appraiser who has an appraiser classification of certified general appraiser" pursuant to the Real Estate Appraiser and Classification Act.[31]

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21. *See* HB 155 (HCS), 1998 Ga. Gen. Assem.; Telephone Interview with Ed Holcombe, Manager of State Legislative Affairs, Legislative Affairs Department of Georgia Power (June 1, 1998) [hereinafter Holcombe Interview].
22. *See* O.C.G.A. § 22-2-40 (Supp. 1998); Telephone Interview with David Meshberger, State Right-of-Way Administrator (July 8, 1998) [hereinafter Meshberger Interview].
23. *See* HB 155 (CSFA), 1998 Ga. Gen. Assem.
24. *See* State of Georgia Final Composite Status Sheet, Mar. 19, 1998; 1997 Ga. H.B. 155, Mar. 18, 1998, *available in* WESTLAW, GA-BILLS Database.
25. *See* HB 155 (CSFA), 1998 Ga. Gen. Assem.; Georgia Senate Voting Record, HB 155 (Mar. 18, 1998).
26. *See* HB 155 (CSFA), § 1, 1998 Ga. Gen. Assem.
27. *See id.* § 10.
28. *See* Georgia House of Representatives Voting Record, HB 155 (Mar. 19, 1998).
29. *See* O.C.G.A. § 22-2-40 (Supp. 1998).
30. *See id.* § 22-2-40 (1983).
31. *Id.* § 22-2-40 (Supp. 1998).

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The Act also sets the combined total costs of all three assessors at not more than $500 per day.[32] The condemnor, under prior law, paid assessors ten dollars for each day, or any fraction thereof, for cases in counties with populations less than 500,000[33] or twenty-five dollars per day, or any fraction thereof, for cases in counties with populations of 500,000 or more.[34] The change attempts to provide reasonable compensation for assessors.[35] However, some legislators question the rate of compensation and believe that it is inadequate.[36]

A major change brought about by the Act concerns awarding costs when the assessors' award is appealed in superior court.[37] This change was made in hopes that frivolous appeals could be avoided and as an incentive for both sides to strive for a fair compensation price.[38] Code section 22-2-84.1 allows either side to recover costs if two conditions are met: (1) the opposing side appeals; and (2) the superior court's judgment is not twenty percent more or twenty percent less, depending on which side appeals, than the assessors' award.[39] If the condemnor appeals, and the court's judgment is not at least twenty percent less than the assessors' award, the condemnor is liable for the condemnee's reasonable expenses.[40] If the condemnee appeals, and the court's judgment is not at least twenty percent greater than the assessors' award, the condemnee is liable for the condemnor's reasonable expenses.[41] If both the condemnor and the condemnee appeal the assessors' award, then neither are liable for the other side's reasonable expenses, regardless of the court's judgment.[42] The Act includes attorneys' fees as reasonable expenses.[43]

Special Master Method

The special master method of condemnation was originally enacted "to provide a simpler and more effective method of condemnation"

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32. *See id.* § 22-2-40(a).
33. *See* 1955 Ga. Laws 651 (formerly found at O.C.G.A. § 22-2-84 (1982)).
34. *See id.*
35. *See* Dobbs Interview, *supra* note 11.
36. *See* Meshberger Interview, *supra* note 22.
37. *See* O.C.G.A. § 22-2-84.1(a) (Supp. 1998).
38. *See* Dobbs Interview, *supra* note 11.
39. *See id.*; O.C.G.A. § 22-2-84.1(a) (Supp. 1998).
40. *See* O.C.G.A. § 22-2-84.1(a) (Supp. 1998).
41. *See id.*
42. *See id.*
43. *See id.* § 22-2-84.1(b).

when the condemning authority has a "need for a quick determination of just and adequate compensation."[44] HB 155, as introduced, eliminated the special master method of condemning property, located in Article 2 of Chapter 2 of Title 22.[45] The reason for this was to prevent condemnees not familiar with the condemnation process from being awarded amounts much less than their property was worth.[46] However, after several lobbyists voiced their opposition to eliminating the special master method of condemnation,[47] the House Judiciary Committee substituted a version of the bill that included the special master method.[48] The Committee's substitute bill added Code section 22-2-108.1, which gives the condemnee the option of selecting an assessor to hear and decide value issues at the special master hearing.[49] If the condemnee chooses to select an assessor, then the condemnor must also select an assessor.[50] The two assessors and the court-appointed special master then make up the special master panel.[51] Lawmakers, by creating the special master panel, intend to give condemnees a better opportunity to have representation at the special master hearing.[52]

Further, the Act amends Code section 22-2-112, dealing with appeals relating to the amount of the award.[53] Code section 22-2-84.1 will apply not only to appeals taken under the three assessor method of condemnation, but also to appeals taken under the special master condemnation method.[54]

Declaration of Taking Method

The Act also changes the third method of condemnation, the declaration of taking method.[55] The declaration of taking method

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44. PURSLEY, *supra* note 1, § 2-3.
45. *See* HB 155, as introduced, 1998 Ga. Gen. Assem.
46. *See* Dobbs Interview, *supra* note 11.
47. *See* Holcombe Interview, *supra* note 21; HB 155 (HCS), 1998 Ga. Gen. Assem.
48. *See* HB 155 (HCS), 1998 Ga. Gen. Assem.
49. *See id.*; O.C.G.A. § 22-2-108.1 (Supp. 1998).
50. *See* O.C.G.A. § 22-2-108.1(a) (Supp. 1998).
51. *See id.* § 22-2-108.1(c).
52. *See* Dobbs Interview, *supra* note 11.
53. *See* O.C.G.A. § 22-2-112 (Supp. 1998).
54. *See id.*
55. *Compare id.* § 32-3-15 (Supp. 1998), *with* 1973 Ga. Laws 947, § 1, at 1009 (formerly found at O.C.G.A. § 32-3-5 (1996)), *and* 1973 Ga. Laws 947, § 5, at 1013-14 (formerly found at O.C.G.A. § 32-3-9 (1996)), *and* 1991 Ga. Laws 332, § 1, at 332-33 (formerly found at O.C.G.A. § 32-3-15 (1996)).

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allows a state agency or a county municipality to obtain property for "present or future public road or other transportation purposes."[56] Prior to the Act's amendment of Code section 32-3-15, all declaration of taking condemnation procedures, other than those for public road and transportation purposes,[57] proceeded under the special master method, as provided for in Article 2 of Chapter 2 of Title 22.[58]

However, the Act eliminates the possibility of a state agency or county municipality proceeding before a special master when the declaration of taking method is selected by the condemning agency.[59] Now, the condemnation must proceed under the three assessor method.[60] Again, lawmakers made this change to give the condemnee a fair initial assessment value and to prohibit the possibility that the condemnee will be "low balled" through use of the special master method.[61]

The Act also amends Code section 32-3-5 to require the condemning authority to advertise the location of a highway within thirty days from the date of the original approval and designation of its location.[62]

Glen R. Fagan

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56. 1973 Ga. Laws 947, § 1, at 1006-07 (formerly found at O.C.G.A. § 32-3-1 (1996)).
57. *See* O.C.G.A. §§ 32-3-1 to -20 (Supp. 1998) (providing independent method of condemnation via declaration of taking when the property or interest is acquired for public road or other transportation purposes).
58. *See* 1991 Ga. Laws 332, § 1, at 332-33 (formerly found at O.C.G.A. § 32-3-15 (1996)).
59. *See* O.C.G.A. § 32-3-15(b) (Supp. 1998).
60. *See id.*
61. Dobbs Interview, *supra* note 11.
62. *See* O.C.G.A. § 32-3-5(c) (Supp. 1998).

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