

House Bill 868

By: Representatives Westmoreland of the 86th, Walker of the 115th, Dodson of the 84th, Post 1, and Jamieson of the 22nd

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 2 of Title 22 of the Official Code of Georgia Annotated, relating to proceedings before a special master, so as to provide for inverse condemnation proceedings before a special master; to change certain provisions regarding definitions; to provide for procedures, conditions, and limitations; to provide for damages; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 2 of Title 22 of the Official Code of Georgia Annotated, relating to proceedings before a special master, is amended by striking Code Section 22-2-100, relating to definitions, and inserting in its place a new Code Section 22-2-100 to read as follows:

"22-2-100.

As used in this article, the term:

(1) 'Condemning body' or 'condemnor' means:

~~(1)~~(A) The State of Georgia or any branch of the government of the State of Georgia;

~~(2)~~(B) Any county or municipality of the State of Georgia;

~~(3)~~(C) Any housing authority;

~~(4)~~(D) Any other political subdivision of the State of Georgia which is vested with the power of eminent domain; and

~~(5)~~(E) All other persons possessing the right or power of eminent domain.

(2) 'Inverse condemnor' means any entity referred to in paragraph (1) of this Code section in an inverse condemnation proceeding instituted by a condemnee under this article."

SECTION 2.

Said article is further amended by striking Code Section 22-2-101, relating to applicability of such article to other methods of condemnation, and inserting in its place a new Code Section 22-2-101 to read as follows:

"22-2-101.

This article shall be supplementary to and cumulative of the methods of condemnation described in Articles 1 and 3 of this chapter or methods of inverse condemnation in cases in which the state, or any branch of the government of the state, or any county, municipality, or other political subdivision of the state, or any housing authority, or any other person possessing the power of eminent domain is concerned. This article is intended to provide a simpler and more effective method of condemnation or inverse condemnation in those cases where a judicial supervision of the proceedings is desirable by reason of the necessity for a quick determination of the just and adequate compensation to be paid the owner of the property or interest subject to be condemned or inversely condemned, or by reason of the number of parties at interest or the conflicting interests of such parties, or in cases where there are parties who are non compos mentis or who are not sui juris or who are nonresidents, or in cases where there are conflicting interests or doubtful questions. In all particulars not otherwise specially provided for in this article, the court shall conform its procedure as nearly as possible to Articles 1 and 3 of this chapter."

SECTION 3.

Said article is further amended by adding a new Code section immediately following Code Section 22-2-102.2, to be designated Code Section 22-2-102.3, to read as follows:

"22-2-102.3.

(a) Whenever it is desirable, for any reason, to arrive at a quick and certain determination of the compensation to be paid first to the condemnee for the taking or damaging of private property through inverse condemnation, the condemnee shall file a petition in a superior court having jurisdiction for a judgment in rem against the property or interest therein, in substantially the same manner as provided in Code Section 22-2-130. At or before the filing of the petition, the condemnee shall present a copy of the petition to a judge of the superior court of the county wherein the property or interest alleged to have been inversely condemned is located. Thereupon, the judge shall make an order requiring the condemnor, the person in possession of the property or interest, and any other person known to have any rights in the property or interest to appear at a hearing before a special master at a time and place specified in the order and to make known their rights, if any, in and to the property or interest alleged to have been inversely condemned, their claims as to the value of the property or interest, and any other matters material to their respective rights. The

1 hearing before the special master shall take place not less than ten days nor more than 15
2 days after the date of service of the order. The order shall give such directions for notice
3 and the service thereof as are appropriate and as are consistent with this article, in such
4 manner as to provide most effectively an opportunity to all parties at interest to be heard.
5 It shall not be necessary to attach any other process to the petition except the order so
6 made, and the cause shall proceed as in rem.

7 (b) All such inverse condemnation proceedings before the special master shall be
8 conducted in substantially the same manner as otherwise provided in this article for
9 condemnation proceedings before a special master, except as otherwise provided in this
10 Code section.

11 (c)(1) In an inverse condemnation proceeding under this article, the condemnee shall be
12 entitled to recover the following damages:

13 (A) The fair market value of the property actually taken; and

14 (B) Any consequential damage to the remainder of the condemnee's property caused
15 by the taking.

16 (2) When a condemnor's actions have resulted in an inverse condemnation of the
17 condemnee's property, the measure of damages shall be the actual depreciation in market
18 value of the property resulting from the taking and the effect upon the property so that the
19 property owner may recover for the injury to such property which has already occurred.
20 In determining the market value of the property as of the date of the taking, relevant
21 factors include, but are not limited to, the general environmental condition of the
22 condemned property and the need for remediation. Losses occurring prior to the date of
23 taking shall be considered and are compensable in an inverse condemnation proceeding.
24 In particular, losses resulting from a previous taking with respect to the condemnee's
25 property are recoverable."

26 **SECTION 4.**

27 This Act shall become effective upon its approval by the Governor or upon its becoming law
28 without such approval.

29 **SECTION 5.**

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