

The Senate Judiciary Committee offered the following substitute to HB 1313:

A BILL TO BE ENTITLED

AN ACT

1 To amend Titles 8, 22, 23, and 36 of the Official Code of Georgia Annotated, relating to  
2 buildings and housing, eminent domain, equity, and local government, respectively, so as to  
3 provide for the comprehensive revision of provisions regarding the power of eminent  
4 domain; to provide for a short title; to change certain provisions regarding a housing  
5 authority's power of eminent domain; to change certain provisions regarding the acquisition  
6 powers of housing authorities; to change certain provisions relating to legislative findings  
7 regarding blighted properties; to provide for a new definition of blighted properties; to  
8 provide for other definitions; to provide for a public use requirement for exercising the power  
9 of eminent domain; to change certain provisions relating to the power of eminent domain and  
10 the presumption of a public use; to provide for attorney fees in certain cases challenging the  
11 use of eminent domain; to provide certain exemptions to the applicability of the power of  
12 eminent domain to public utilities; to provide for certain changes regarding eminent domain  
13 to require a public use; to change certain provisions regarding when the use of eminent  
14 domain is allowed; to provide guidelines for the use of condemnation; to provide for practice  
15 and procedure relative to condemnation; to provide for testimony relative to the value of  
16 condemned property; to provide for expedited hearings; to provide that the Department of  
17 Community Affairs produce a standard notice of rights form; to repeal provisions relating  
18 to certain appeals from assessor's awards; to change compensation for special masters; to  
19 change provisions relating to the right of appealing the award of the special master in  
20 condemnation proceedings; to change provisions relating to the use of condemnation for  
21 waterworks; to grant standing to municipalities, counties, and housing authorities to seek  
22 certain equitable remedies and proceedings; to provide for certain notification requirements;  
23 to provide for certain restrictions regarding the use of eminent domain under or in connection  
24 with a redevelopment plan and urban redevelopment; to change certain provisions regarding  
25 who must conduct public hearings relating to redevelopment plans; to provide for  
26 reconveyance of condemned property under certain circumstances; to provide for  
27 reimbursement of reasonable costs and expenses incurred because of condemnation  
28 proceedings; to provide for certain exemptions; to provide for revisions for purposes of

1 conformity; to provide for related matters; to provide for an effective date and for  
 2 applicability; to repeal conflicting laws; and for other purposes.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

4 **SECTION 1.**

5 This Act shall be known and may be cited as "The Landowner's Bill of Rights and Private  
 6 Property Protection Act."

7 **SECTION 2.**

8 Title 8 of the Official Code of Georgia Annotated, relating to buildings and housing, is  
 9 amended by striking Code Section 8-3-10, relating to vesting of fee simple title upon a  
 10 housing authority's exercise of power of eminent domain, and inserting in its place a new  
 11 Code section to read as follows:

12 "8-3-10.

13 Whenever a housing authority is or has been created under the terms of this article, and  
 14 whenever it is determined by the commissioners or other governing body of such authority  
 15 to be necessary or advisable to exercise the power of eminent domain by condemning  
 16 property, and whenever the governing authority of the city or county has approved by  
 17 resolution such exercise of eminent domain authority, and whenever such condemnation  
 18 proceedings are instituted and carried on under Chapter 2 of Title 22 ~~or through any other~~  
 19 ~~method of condemnation provided by law~~, then upon the payment by such authority  
 20 seeking condemnation of the amount of the award, or the amount of the final judgment on  
 21 appeal, such authority shall become vested with a fee simple indefeasible title to the  
 22 property to which such condemnation proceedings relate. It is declared to be necessary in  
 23 order to enable such authorities to exercise their franchise that, upon such condemnation  
 24 proceedings being had, such housing authorities shall become vested with fee simple  
 25 indefeasible title to the property involved in such proceedings."

26 **SECTION 3.**

27 Said title is further amended in Code Section 8-3-30, relating to general powers of housing  
 28 authorities, by striking paragraph (4) of subsection (a) and inserting in its place a new  
 29 paragraph (4) to read as follows:

30 "(4) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures,  
 31 or facilities embraced in any housing project and, subject to the limitations contained in  
 32 this article, to establish and revise the rents or charges therefor; to own, hold, and  
 33 improve real or personal property; to purchase, lease, obtain options upon, or acquire by

1 gift, grant, bequest, devise, or otherwise any real or personal property or any interest  
 2 therein; to acquire by the exercise of the power of eminent domain upon approval by  
 3 resolution of the governing authority of the city or county any real property that is  
 4 deemed blighted in accordance with Chapter 4 of this title; to sell, lease, exchange,  
 5 transfer, assign, pledge, or dispose of any real or personal property or any interest therein;  
 6 to insure or provide for the insurance of any real or personal property or operations of the  
 7 authority against any risks or hazards; to procure insurance or guarantees from the federal  
 8 government of the payment of any debts or parts thereof, whether or not incurred by said  
 9 authority, secured by mortgages on any property included in any of its housing projects;"

#### 10 SECTION 4.

11 Said title is further amended by striking Code Section 8-3-31, relating to the eminent domain  
 12 power of a housing authority, and inserting in its place a new Code section to read as follows:

13 "8-3-31.

14 An authority shall have the right to acquire by the exercise of the power of eminent domain  
 15 any real property which is blighted property and is deemed ~~which it may deem~~ necessary  
 16 for its purposes under this article ~~after the adoption by it of a resolution declaring that the~~  
 17 ~~acquisition of the real property described therein is necessary for such purposes~~ upon  
 18 approval by resolution of the governing authority of the city or county within which the  
 19 property is located and in accordance with Chapter 4 of this title. ~~An authority may~~  
 20 ~~exercise the power of eminent domain in the manner provided in Title 22; or it may~~  
 21 ~~exercise the power of eminent domain in the manner provided by any other applicable~~  
 22 ~~statutory provisions for the exercise of the power of eminent domain.~~ Property already  
 23 devoted to a public use may be acquired, except that no real property belonging to the city,  
 24 the county, the state, or any political subdivision thereof may be acquired without the  
 25 consent of such city, county, state, or other political subdivision."

#### 26 SECTION 5.

27 Said title is further amended by striking Code Section 8-4-2, relating to legislative findings  
 28 regarding blighted areas, and inserting a new Code section to read as follows:

29 "8-4-2.

30 It is found and declared:

- 31 (1) That there exist in many communities within this state blighted ~~areas~~ properties, as  
 32 defined in Code Section 8-4-3, or ~~areas~~ properties in the process of becoming blighted;  
 33 (2) That ~~such areas impair economic values and tax revenues; that such areas~~ properties  
 34 cause an increase in and spread of disease ~~and~~ or crime and constitute a menace to the  
 35 health, safety, morals, and welfare of the residents of the state; that these conditions

1 necessitate excessive and disproportionate expenditures of public funds for crime  
 2 prevention and punishment, public health and safety, fire and accident protection, and  
 3 other public services and facilities;

4 (3) That the clearance, replanning, and preparation for rebuilding of these ~~areas~~  
 5 properties and the prevention of the reduction of blight and its causes are public uses and  
 6 purposes for which public money may be spent and private property acquired and are  
 7 governmental functions of state concern;

8 (4) That ~~there are also certain areas where the condition of the title, the diverse~~  
 9 ~~ownership of the land to be assembled, the street or lot layouts, or other conditions~~  
 10 ~~prevent a proper development of the land~~ which cloud title prevent the free transfer of  
 11 property; that it is in the public interest that ~~such areas, as well as~~ blighted areas,  
 12 properties be acquired by eminent domain and made available for sound and wholesome  
 13 development in accordance with a redevelopment plan; and that the exercise of the power  
 14 of eminent domain by the governing authorities of cities and counties and the financing  
 15 of the acquisition and preparation of land by a public agency for such redevelopment is  
 16 likewise a public use and purpose;

17 (5) That redevelopment activities will stimulate residential construction which is closely  
 18 correlated with general economic activity; and that such undertakings authorized by this  
 19 chapter will aid the production of better housing and more desirable neighborhood and  
 20 community development at lower costs and will make possible a more stable and larger  
 21 volume of residential construction, which will assist materially in achieving and  
 22 maintaining full employment;

23 (6) That there exists an emergency housing shortage of decent, safe, and sanitary  
 24 dwellings for families of low income; and

25 (7) That it is in the public interest that advance preparation for such projects and  
 26 activities be made now; and that the necessity in the public interest for the provisions  
 27 enacted by this chapter is declared as a matter of legislative determination."

## 28 SECTION 6.

29 Said title is further amended by striking Code Section 8-4-3, relating to definitions regarding  
 30 blighted areas, and inserting in its place a new Code section to read as follows:

31 "8-4-3.

32 As used in this chapter, the term:

33 (1) 'Blighted areas' means:

34 (A) ~~Areas in which there is a predominance of buildings or improvements, or which~~  
 35 ~~are predominantly residential in character, and which, by reason of:~~

36 (i) ~~Dilapidation, deterioration, age, or obsolescence;~~

1 ~~(ii) Inadequate provision for ventilation, light, air, sanitation, or open spaces;~~  
 2 ~~(iii) High density of population and overcrowding;~~  
 3 ~~(iv) The existence of conditions which endanger life or property by fire and other~~  
 4 ~~causes; or~~  
 5 ~~(v) Any combination of such factors;~~  
 6 ~~are conducive to ill health, transmission of disease, infant mortality, juvenile~~  
 7 ~~delinquency, and crime and are detrimental to the public health, safety, morals, or~~  
 8 ~~welfare; and~~

9 ~~(B) Areas which, by reason of:~~

- 10 ~~(i) The predominance of defective or inadequate street layout;~~  
 11 ~~(ii) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;~~  
 12 ~~(iii) Insanitary or unsafe conditions;~~  
 13 ~~(iv) Deterioration of site improvements;~~  
 14 ~~(v) Diversity of ownership;~~  
 15 ~~(vi) Tax or special assessment delinquency exceeding the fair value of the land;~~  
 16 ~~(vii) Defective or unusual conditions of title;~~  
 17 ~~(viii) Improper subdivision or obsolete platting;~~  
 18 ~~(ix) The existence of conditions which endanger life or property by fire or other~~  
 19 ~~causes; or~~  
 20 ~~(x) Any combination of such factors;~~

21 ~~substantially impair or arrest the sound growth of the community, retard the provision of~~  
 22 ~~housing accommodations, or constitute an economic or social liability and are a menace~~  
 23 ~~to the public health, safety, morals, or welfare in their the area's present condition and~~  
 24 ~~use.~~

25 (1) 'Blighted property,' 'blighted,' or 'blight' means any urbanized or developed property  
 26 which:

27 (A) Presents two or more of the following conditions:

- 28 (i) Uninhabitable, unsafe, or abandoned structures;  
 29 (ii) Inadequate provisions for ventilation, light, air, or sanitation;  
 30 (iii) An imminent harm to life or other property caused by fire, flood, hurricane,  
 31 tornado, earthquake, storm, or other natural catastrophe respecting which the  
 32 Governor has declared a state of emergency under state law or has certified the need  
 33 for disaster assistance under federal law;  
 34 (iv) A site identified by the federal Environmental Protection Agency as a Superfund  
 35 site pursuant to 42 U.S.C. Section 9601, et seq., or environmental contamination to  
 36 an extent that requires remedial investigation or a feasibility study;  
 37 (v) Repeated illegal use of individual properties; or



1 "8-4-4.

2 (a) Any housing authority established pursuant to Article 1 of Chapter 3 of this title, the  
3 'Housing Authorities Law,' is authorized to prepare or cause to be prepared redevelopment  
4 plans and to undertake redevelopment projects within its area of operation, in accordance  
5 with this chapter. In undertaking such redevelopment projects, a housing authority shall  
6 have all the rights, powers, privileges, and immunities that such authority has under Article  
7 1 of Chapter 3 of this title, the 'Housing Authorities Law,' and any other provision of law  
8 relating to ~~slum~~ blight clearance and housing projects for persons of low income, including,  
9 without limiting the generality of the foregoing, the power to make and execute contracts,  
10 to issue bonds and other obligations and give security therefor, to acquire real property by  
11 purchase or by eminent domain ~~or purchase~~ after the governing authority of the city or  
12 county within which the property is located has approved the acquisition by resolution  
13 pursuant to subsection (b) and provided notice pursuant to subsection (c) of this Code  
14 section, and to do any and all things necessary to carry out projects in the same manner as  
15 though all of the provisions of law applicable to ~~slum~~ blight clearance and housing projects  
16 were applicable to redevelopment projects undertaken under this chapter, provided that  
17 nothing contained in Code Sections 8-3-11 and 8-3-12 shall be construed as limiting the  
18 power of an authority, in the event of a default by a purchaser or lessee of land in a  
19 redevelopment plan, to acquire property and operate it free from the restrictions contained  
20 in said Code sections.

21 (b) For property located within a city, the exercise of eminent domain shall be approved  
22 by resolution by the governing authority of the city. For property located in an  
23 unincorporated area of a county, the exercise of eminent domain shall be approved by  
24 resolution by the governing authority of the county. Any such resolution shall specifically  
25 and conspicuously delineate each parcel to be affected.

26 (c) The governing authority of any city or county acting under this Code section shall:

27 (1) Not less than 15 days before any meeting at which a resolution approving the  
28 exercise of eminent domain is to be considered, post a sign, if possible, in the right of  
29 way adjacent to each property that is subject to the proposed use of the eminent domain  
30 power stating the time, date, and place of such meeting;

31 (2) Serve the condemnee personally by a sheriff or deputy with notice of the meeting not  
32 less than 15 days before any meeting at which such resolution is to be considered, unless  
33 service is acknowledged or waived by the condemnee. If after all efforts made to serve  
34 notice to the condemnee under this paragraph are unsuccessful, service of notice may be  
35 satisfied by mail or statutory overnight delivery to the property owner at the address of  
36 record and, if different from the property owner, to the parties in possession of the  
37 property, return receipt requested;

1 (3) Ensure that any notice that is required by law to be published be placed in a  
 2 newspaper of general circulation, but such notice shall not be published in the legal  
 3 notices section of such newspaper; and

4 (4) Ensure that any meeting at which such resolution is to be considered and voted on  
 5 shall commence after 6:00 P.M.

6 Any such resolution shall specifically and conspicuously delineate each parcel to be  
 7 affected.

8 (d) Compliance with this Code section shall be in addition to and not in place of the  
 9 requirements imposed by Title 22; provided, however, that the requirements set forth in this  
 10 Code section shall satisfy the requirements provided in Code Section 22-1-10."

### 11 SECTION 8.

12 Said title is further amended by striking Code Section 8-4-8, relating to authorities acquiring  
 13 and developing lands not within blighted areas for redevelopment projects, and inserting in  
 14 its place a new Code section to read as follows:

15 "8-4-8.

16 (a) Upon a determination, by resolution, of the governing body of the city in which such  
 17 land is located that the acquisition by purchase and development of undeveloped vacant  
 18 land, not within a blighted area, is essential to the proper clearance or redevelopment of  
 19 blighted areas or a necessary part of the general slum clearance program of the city, the  
 20 acquisition by purchase, planning, preparation for development, or disposal of such land  
 21 shall constitute a redevelopment project which may be undertaken by the authority in the  
 22 manner provided in this chapter. The determination by the governing body shall not be  
 23 made until such body finds that there is a shortage of decent, safe, and sanitary housing in  
 24 the city; that such undeveloped vacant land will be developed for predominantly residential  
 25 uses; and that the provision of decent, safe, and sanitary housing on such undeveloped  
 26 vacant land is necessary to the relocation of families to be displaced from blighted areas  
 27 in the city which are under redevelopment.

28 (b) In the undertaking of redevelopment projects on a regional or unified metropolitan  
 29 basis, which projects involve the acquisition by purchase and development of undeveloped  
 30 vacant land in one city as an adjunct to the redevelopment of blighted areas in another city,  
 31 each determination or finding required in this Code section shall be made by the governing  
 32 body of the city with respect to which the determination or finding relates."

**SECTION 9.**

Title 22 of the Official Code of Georgia Annotated, relating to eminent domain, is amended by striking Code Section 22-1-1, relating to eminent domain definitions, and inserting in its place a new Code section to read as follows:

"22-1-1.

As used in this title, the term:

(1) 'Blight' shall have the same meaning as set forth in Code Section 8-4-3.

(2) 'Common carrier' means any railroad or carrier required by law to convey passengers or freight without refusal if the approved fare or charge is paid.

(3) 'Condemnor' or 'condemning authority' means:

(A) The State of Georgia or any branch or any department, board, commission, agency, or authority of the executive branch of the government of the State of Georgia;

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

(C) Any housing authority with approval of the governing authority of the city or county as provided in Code Section 8-4-4;

(D) Any other political subdivision of the State of Georgia which possesses the power of eminent domain; and

(E) All public utilities that possess the right or power of eminent domain.

(4) 'Economic development' means any economic activity to increase tax revenue, tax base, or employment or improve general economic health, when the activity does not result in:

(A) Transfer of land to public ownership;

(B) Transfer of property to a private entity that is a public utility;

(C) Lease of property to private entities that occupy an incidental area within a public project; or

(D) The remedy of blight.

(5) 'Each person with a legal claim' means the owner of the property or of any remainder, reversion, mortgage, lease, security deed, or other claim in the property.

~~(1)~~(6) 'Interest' means any title or nontitle interest other than fee simple title.

~~(2)~~(7) 'Persons' means individuals, partnerships, associations, and corporations, domestic or foreign.

~~(3)~~(8) 'Property' means fee simple title.

(9)(A) 'Public use' means:

(i) The possession, occupation, or enjoyment of the land by the general public or by state or local governmental entities;

(ii) The use of land for the creation or functioning of public utilities;

1 (iii) The opening of roads, the construction of defenses, or the providing of channels  
 2 of trade or travel;

3 (iv) The acquisition of property where title is clouded due to the inability to identify  
 4 or locate all owners of the property or in such situations and where unanimous  
 5 consent is received from each person with a legal claim that has been identified and  
 6 found; or

7 (v) The remedy of blight.

8 (B) The public benefit of economic development shall not constitute a public use.

9 (10) 'Public utility' means any publicly, privately, or cooperatively owned line, facility,  
 10 or system for producing, transmitting, or distributing communications, power, electricity,  
 11 light, heat, gas, oil products, water, steam, clay, waste, storm water not connected with  
 12 highway drainage, and other similar services and commodities, including publicly owned  
 13 fire and police and traffic signals and street lighting systems, which directly or indirectly  
 14 serve the public. This term also means a person, municipal corporation, county, state  
 15 agency, or public authority which owns or manages a utility as defined in this paragraph.  
 16 This term shall also include common carriers and railroads."

## 17 SECTION 10.

18 Said title is further amended by striking Code Section 22-1-2, relating to the nature of  
 19 eminent domain, and inserting in its place a new Code section to read as follows:

20 "22-1-2.

21 (a) The right of eminent domain is the right of the state, through its regular organization,  
 22 to reassert, either temporarily or permanently, its dominion over any portion of the soil of  
 23 the state on account of public exigency and for the public good. Thus, in time of war or  
 24 insurrection the proper authorities may possess and hold any part of the territory of the state  
 25 for the common safety; and in time of peace the General Assembly may authorize the  
 26 appropriation of the same to public purposes, such as the opening of roads, construction of  
 27 defenses, or providing channels for trade or travel. Notwithstanding any other provisions  
 28 of law, neither this state nor any political subdivision thereof nor any other condemning  
 29 authority shall use eminent domain unless it is necessary for public use.

30 (b)(1) If property acquired through the power of eminent domain from an owner fails to  
 31 be put to a stated public use within five years, the former property owner may apply to  
 32 the condemnor or its successor or assign for reconveyance or quitclaim of the property  
 33 to the former property owner or for additional compensation for such property. The  
 34 application shall be in writing, and the condemnor or its successor or assign shall act on  
 35 the application within 60 days by:

1 (A) Executing a reconveyance or quitclaim of the property upon receipt of  
 2 compensation not to exceed the amount of the compensation paid by the condemnor at  
 3 the time of acquisition; or

4 (B) Paying additional compensation to the former owner of the property, such  
 5 compensation to be calculated by subtracting the price paid by the condemnor for the  
 6 property at the time of acquisition from the fair market value of the property at the time  
 7 the application is filed.

8 (2) If the condemnor fails to take either action within 60 days, the former property owner  
 9 may initiate an action in the superior court in the county in which the property is located  
 10 to reacquire the property or receive additional compensation.

11 (3) The condemnor shall provide notice to each former owner of the property prior to  
 12 acquisition if the condemnor fails to put such property to a stated public use within five  
 13 years.

14 (c) In the case that property is acquired from more than one owner for the same public use  
 15 and reconveyance or additional compensation to a single owner is impracticable, any party  
 16 to the original condemnation or each person with a legal claim in such condemnation may  
 17 file an action in the superior court in the county in which the property is located for an  
 18 equitable resolution.

19 (d) This Code section shall not apply to condemnations subject to Code Section 22-3-162  
 20 or to condemnations conducted by the Department of Transportation."

## 21 **SECTION 11.**

22 Said title is further amended by inserting new Code sections to read as follows:

23 "22-1-9.

24 In order to encourage and expedite the acquisition of real property by agreements with  
 25 owners, to avoid litigation and relieve congestion in the courts, to assure consistent  
 26 treatment for property owners, and to promote public confidence in land acquisition  
 27 practices, all condemnations and potential condemnations shall, to the greatest extent and  
 28 practicable, be guided by the following policies and practices:

29 (1) The condemning authority shall make every reasonable effort to acquire  
 30 expeditiously real property by negotiation;

31 (2) Where the condemning authority seeks to obtain a fee simple interest in real property,  
 32 real property shall be appraised before the initiation of negotiations, and the owner or his  
 33 or her designated representatives shall be given an opportunity to accompany the  
 34 appraiser during his or her inspection of the property, except that the condemning  
 35 authority may, by law, rule, regulation, or ordinance, prescribe a procedure to waive the

1 appraisal in cases involving the acquisition by sale or donation of property with a low fair  
2 market value;

3 (3) Before the initiation of negotiations for fee simple interest for real property the  
4 condemning authority shall establish an amount which it believes to be just compensation  
5 and shall make a prompt offer to acquire the property for the full amount so established.

6 In no event shall such amount be less than the condemning authority's independent  
7 appraisal of the fair market value of such property. The condemning authority shall  
8 provide the owner of real property to be acquired with a written statement of, and  
9 summary of the basis for, the amount he or she established as just compensation. Where  
10 appropriate, the just compensation for the real property acquired and for damages to  
11 remaining real property shall be separately stated;

12 (4) No owner shall be required to surrender possession of real property before the  
13 condemning authority pays the agreed purchase price or deposits with the court in  
14 accordance with this title, for the benefit of the owner, an amount not less than the  
15 condemning authority's appraisal of the fair market value of such property or the amount  
16 of the award of compensation in the condemnation proceeding for such property;

17 (5) The construction or development of a project for public use shall be so scheduled  
18 that, to the greatest extent practicable, no person lawfully occupying real property shall  
19 be required to move from a dwelling or to move his or her business or farm operation  
20 without at least 90 days' written notice from the condemning authority of the date by  
21 which such move is required;

22 (6) If the condemning authority permits an owner or tenant to occupy the real property  
23 acquired on a rental basis for a short term or for a period subject to termination by the  
24 condemning authority on short notice, the amount of rent required shall not exceed the  
25 fair rental value of the property to a short-term occupier;

26 (7) In no event shall the condemning authority either advance the time of condemnation  
27 or defer negotiations or condemnation and the deposit of funds in court for the use of the  
28 owner or take any other bad faith action in order to compel an agreement on the price to  
29 be paid for the property;

30 (8) If any legal interest in real property is to be acquired by exercise of the power of  
31 eminent domain, the condemning authority shall institute formal condemnation  
32 proceedings. No condemnor shall intentionally make it necessary for an owner to  
33 institute legal proceedings to prove the fact of the taking of his or her real property; and

34 (9) A person whose real property is being acquired in accordance with this title may,  
35 after the person has been fully informed of his or her right to receive just compensation  
36 for such property, donate such property, any part thereof, any legal interest therein, or any  
37 compensation paid to a condemning authority, as such person shall determine.

1 22-1-10.

2 Prior to exercising the power of eminent domain, a condemning authority shall:

3 (1) Not less than 15 days before any meeting at which a resolution approving the  
4 exercise of eminent domain is to be considered, post a sign, if possible, in the right of  
5 way adjacent to each property that is subject to the proposed use of the eminent domain  
6 power stating the time, date, and place of such meeting;

7 (2) Serve the condemnee personally by a sheriff or deputy with notice of the meeting not  
8 less than 15 days before any meeting at which such resolution is to be considered, unless  
9 service is acknowledged or waived by the condemnee. If after all efforts made to serve  
10 notice to the condemnee under this paragraph are unsuccessful, service of notice may be  
11 satisfied by mail or statutory overnight delivery to the property owner at the address of  
12 record and, if different from the property owner, to the parties in possession of the  
13 property, return receipt requested;

14 (3) Ensure that any notice that is required by law to be published be placed in a  
15 newspaper of general circulation, but such notice shall not be published in the legal  
16 notices section of such newspaper; and

17 (4) Ensure that any meeting at which such resolution is to be considered and voted on  
18 shall commence after 6:00 P.M.

19 Any such resolution shall specifically and conspicuously delineate each parcel to be  
20 affected.

21 22-1-11.

22 In any condemnation, the condemnee may object at any time to the condemnation by filing  
23 a petition for injunctive relief in the superior court in the county in which the property is  
24 located. The court presiding over the petition shall determine whether the exercise of the  
25 power of eminent domain is for a public use and whether the condemning authority has the  
26 legal authority to exercise the power of eminent domain. The condemning authority shall  
27 bear the burden of proof by the evidence presented that the condemnation is for a public  
28 use as defined in Code Section 22-1-1. In its discretion, the court may award reasonable  
29 attorney fees to a condemnee whose petition for injunctive relief pursuant to this Code  
30 section is granted.

31 22-1-12.

32 In all actions where a condemning authority exercises the power of eminent domain, the  
33 court having jurisdiction of a proceeding instituted by a condemnor to acquire real property  
34 by condemnation shall award the owner of any right or title to or interest in such real  
35 property such sum as will in the opinion of the court reimburse such owner for his or her

1 reasonable costs and expenses, including reasonable attorney, appraisal, and engineering  
2 fees, actually incurred because of the condemnation proceedings, if:

- 3 (1) The final judgment is that the condemning authority cannot acquire the real property  
4 by condemnation; or  
5 (2) The proceeding is abandoned by the condemning authority.

6 22-1-13.

7 In addition to the types of relocation damages permissible under law, any condemnee that  
8 is displaced as a result of the condemnation shall be entitled to:

- 9 (1) Actual reasonable expenses in moving himself or herself, his or her family, business,  
10 farm operation, or other personal property;  
11 (2) Actual direct losses of tangible personal property as a result of moving or  
12 discontinuing a business or farm operation; and  
13 (3) Such other relocation expenses as authorized by law.

14 22-1-14.

15 (a) When property is condemned under this title or any other title of this Code, the value  
16 of the condemned property may be determined through lay or expert testimony and its  
17 admissibility shall be addressed to the sound discretion of the court.

18 (b) If any party to a condemnation proceeding seeks to introduce expert testimony as to  
19 the issue of just and adequate compensation, Code Section 24-9-67.1 shall not apply.

20 22-1-15.

21 (a) When an entity authorized to use the power of eminent domain determines that it  
22 intends to exercise such power to take private property, prior to taking any action regarding  
23 the property it shall provide the owner of the property with a written copy of the rights that  
24 the condemnee possesses including but not limited to the right to notice, damages, hearing,  
25 and appeal of any award entered by the special master as described in this title. Such  
26 notice shall be provided in person; by mailing such notice by certified mail, return receipt  
27 requested; or by statutory overnight delivery.

28 (b) The Department of Community Affairs shall promulgate written notice of rights forms  
29 that shall be used by all entities having the power of eminent domain in this state to advise  
30 the owner of property sought to be condemned of the entire eminent domain process and  
31 the rights of the property owner with regard to such process. The Department of  
32 Community Affairs shall promulgate different notice forms for each of the types of  
33 condemnation proceedings authorized by law."



1 shall make an order requiring the condemnor, the person in possession of the property or  
 2 interest, and ~~any other person known to have any rights in the property~~ each person with  
 3 a legal claim or interest to appear at a hearing before a special master at a time and place  
 4 specified in the order and to make known their rights, if any, in and to the property or  
 5 interest sought to be condemned, their claims as to the value of the property or interest,  
 6 and any other matters material to their respective rights. ~~Except in condemnations for~~  
 7 ~~purposes of constructing or expanding one or more electric transmission lines, the~~  
 8 In the event the property to be condemned lies in multiple jurisdictions, the condemnee  
 9 shall have the option pursuant to Code Section 9-10-31.1 to transfer the action to any other  
 10 venue with in rem jurisdiction.

11 (b) The hearing before the special master shall take place not less than ~~ten~~ 30 days nor  
 12 more than ~~15~~ 60 days after the date of ~~service~~ the entry of the order appointing the special  
 13 master. ~~In condemnations for purposes of constructing or expanding one or more electric~~  
 14 ~~transmission lines, the hearing before the special master shall take place not less than 30~~  
 15 ~~days and not more than 40 days after the date of service of the order.~~

16 (c) The order shall give such directions for notice and the service thereof as are appropriate  
 17 and as are consistent with this article, in such manner as to provide most effectively an  
 18 opportunity to all parties at interest to be heard. In condemnations for purposes of  
 19 constructing or expanding one or more electric transmission lines, in addition to service of  
 20 the order, a copy of the order shall be mailed by certified mail or sent by statutory  
 21 overnight delivery to any person shown by the public ad valorem tax records of the county  
 22 in which the property is located to have an interest in the property and to any other person  
 23 having open and obvious possession of the property. It shall not be necessary to attach any  
 24 other process to the petition except the order so made, and the cause shall proceed as in  
 25 rem."

## 26 SECTION 15.

27 Said title is further amended by striking Code Section 22-2-102.1, relating to petitioning  
 28 superior court for judgment in rem in cases of eminent domain, and inserting in its place a  
 29 new Code section to read as follows:

30 "22-2-102.1.

31 In addition to the requirements set forth in Chapter 1 of this title, whenever ~~Whenever~~ it  
 32 shall be necessary for such condemning body to take or damage private property, or any  
 33 interest or easement therein, in pursuance of any law so authorizing, for any public ~~purpose~~  
 34 use, and where, by reason of the necessities of the public needs, of which the condemning  
 35 body shall be the exclusive judge, and it shall be desirable for these reasons to have a quick  
 36 and effective adjudication of the just and adequate compensation to be paid the owner or

1 owners of such property before taking the same, and it shall be desirable to have a judicial  
 2 ascertainment and judicial supervision of all questions and proceedings connected with the  
 3 matter, such condemning body may, through any authorized representative, petition the  
 4 superior court of the county having jurisdiction, for a judgment in rem against said  
 5 property, or any easement or other interest in said property, condemning the same in fee  
 6 simple to the use of the petitioner upon payment of just and adequate compensation  
 7 therefor."

#### 8 SECTION 16.

9 Said title is further amended by striking Code Section 22-2-102.2, relating to contents of  
 10 petition to superior court for judgment in rem in cases of eminent domain, and inserting in  
 11 its place a new Code section to read as follows:

12 "22-2-102.2.

13 The petition referred to in Code Section 22-2-102.1 shall set forth:

- 14 (1) The facts showing the right to condemn;  
 15 (2) The property or interest to be taken or damaged;  
 16 (3) The names and residences of the persons whose property or interests are to be taken  
 17 or otherwise affected, so far as known;  
 18 (4) A description of any unknown persons or classes of unknown persons whose rights  
 19 in the property or interest are to be affected; ~~and~~  
 20 (5) A statement setting forth the necessity to condemn the private property and  
 21 describing the public use for which the condemnor seeks the property; and  
 22 ~~(5)~~(6) Such other facts as are necessary for a full understanding of the cause."

#### 23 SECTION 17.

24 Said title is further amended by striking Code Section 22-2-106, relating to compensation for  
 25 special masters, and inserting in its place a new Code section to read as follows:

26 "22-2-106.

- 27 (a) The compensation of the special master shall be provided for by a proper order of the  
 28 judge of the superior court; shall be included in and made a part of the judgment of the  
 29 court condemning the property or any interest therein sought to be taken, such judgment  
 30 to be based on the award of the special master; and shall be paid by the condemning body;  
 31 ~~and shall not be less than 50.00 per day nor more than \$250.00 per day for the time actually~~  
 32 ~~devoted to the hearing and consideration of the matter by the special master. Such~~  
 33 compensation shall be left to the discretion of the court and shall not exceed a reasonable  
 34 hourly rate consistent with local standards unless otherwise agreed upon by the parties with  
 35 consent of the court. The compensation of the special master shall be assessed as court

1 costs and shall be paid prior to the filing of any appeal from the judgment of the court;  
 2 provided, however, that if such compensation has not been determined and assessed at the  
 3 time of filing any such appeal, the same shall be paid within 30 days from the date of  
 4 assessment.

5 (b) The judge may allow the special master a reasonable period of time for personal  
 6 inspection of the premises and may compensate the special master for his or her time spent  
 7 inspecting the premises and for any actual expenses incurred by ~~him~~ the special master in  
 8 connection with the inspection, provided that the special master shall file an affidavit with  
 9 the court showing his or her time spent in inspection and itemizing his or her expenses."

#### 10 SECTION 18.

11 Said title is further amended by striking Code Section 22-2-110, relating to the award of the  
 12 special master in a condemnation hearing and the form used therein, and inserting in its place  
 13 a new Code section to read as follows:

14 "22-2-110.

15 (a) The award of the special master or the special master panel, in the event such a panel  
 16 exists, shall be served upon all the parties and filed with the clerk of the superior court of  
 17 the county where the property or interest is situated within three days after the date on  
 18 which such hearing is completed.

19 (b) The award shall become a part of the record of the proceedings in said matter and shall  
 20 condemn and vest title to the property or other interest in the condemning body upon the  
 21 deposit by that body of the amount of the award into the registry of the court, subject to the  
 22 demand of such condemnee or condemnees, according to their respective interests.

23 (c) The award shall be in the following form:

#### 24 AWARD

25 The special master appointed and chosen by the court to hear evidence and give full  
 26 consideration to all matters touching upon the value of the property or interest sought to  
 27 be condemned, as shown by the description of the property or interest in the case of  
 28 \_\_\_\_\_ (condemning body) versus \_\_\_\_\_  
 29 (acres of land or other described interest in said land) and \_\_\_\_\_  
 30 (condemnee), Civil action file no. \_\_\_\_\_ in superior court, having first taken the oath as  
 31 required by law of the special master, the same having been filed with the clerk of the  
 32 Superior Court of \_\_\_\_\_ County, and the special master panel, in the event such  
 33 a panel exists, having heard evidence under oath and given consideration to the value of

1 such property or interest on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_:\_\_\_\_ .M., as  
2 provided for in the order of the court, do decide and recommend to the court as follows:

3 (1) I/We find and award to \_\_\_\_\_, condemnee, the sum of \$\_\_\_\_\_, as  
4 the actual market value of the property or interest sought to be condemned;

5 (2) I/We find consequential damages to the remaining property or interest in the  
6 amount of \$\_\_\_\_\_;

7 (3) I/We find consequential benefits to the remaining property or interest in the amount  
8 of \$\_\_\_\_\_ (never to exceed the amount of the consequential damages);

9 (4) I/We find and award to \_\_\_\_\_, condemnee, the sum of \$ \_\_\_\_\_, as  
10 the value of any associated moving costs;

11 (4)(5) Balancing the consequential benefits against the consequential damages, I/we  
12 find and award to the condemnee in this case in the total sum of \$\_\_\_\_\_, and I/we  
13 respectfully recommend to the court that the said property or interest be condemned by  
14 a judgment in rem to the use of the condemnor upon the payment of the last stated sum  
15 into the registry of the court, subject to the demands of the condemnee.

16 This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

17 \_\_\_\_\_  
18 Special Master  
19 \_\_\_\_\_  
20 Assessor  
21 \_\_\_\_\_  
22 Assessor

23 (d) In any case where there is an appeal from the award of the special master or the special  
24 master panel, in the event such a panel exists, to a jury in the superior court, such award  
25 shall not be competent evidence. Any such appeal shall be a de novo investigation, and  
26 such award shall be detached from the papers in the case before the same are delivered to  
27 the jury."

28 **SECTION 19.**

29 Said title is further amended by striking Code Section 22-2-112, relating to the right of  
30 appealing the award of the special master in condemnation proceedings, and inserting in its  
31 place a new Code section to read as follows:

32 "22-2-112.

33 (a) If the condemnor or any condemnee is dissatisfied with the amount of the award, an  
34 appeal shall be filed in the superior court and such appeal shall be filed within ten days  
35 from the service of the award. ~~In case any party is dissatisfied with the amount of the~~

1 ~~award, he or she may, within ten days after the award is filed, enter in writing an appeal~~  
 2 ~~from the award to the superior court of the county where the award is filed. The provisions~~  
 3 ~~of Code Section 22-2-84.1, relating to reasonable expenses incurred on appeal, shall apply~~  
 4 ~~to any appeal under this Code section. At the term succeeding the filing of the appeal, it~~  
 5 shall be the duty of the judge to cause an issue to be made and tried by a jury as to the  
 6 value of the property or interest taken or the amount of damage done, with the same right  
 7 to move for a new trial and file an appeal as in other cases at law. The entering of an  
 8 appeal and the proceedings thereon shall not hinder or delay in any way the condemnor's  
 9 work or the progress thereof.

10 (b) The condemnee shall have the right to a jury trial on the issue of just and adequate  
 11 compensation before the superior court having jurisdiction over the property sought to be  
 12 condemned during the next term of court following the vesting of title in the condemnor.  
 13 This right may be waived by the condemnee."

#### 14 SECTION 20.

15 Said title is further amended by striking Code Section 22-2-131, relating to contents in a  
 16 petition to the superior court for a judgment in rem, and inserting in its place a new Code  
 17 section to read as follows:

18 "22-2-131.

19 (a) The petition referred to in Code Section 22-2-130 shall set forth:

- 20 (1) The facts showing the right to condemn;
- 21 (2) The property or interest to be taken or damaged;
- 22 (3) The names and residences of the persons whose property or interests are to be taken  
 23 or otherwise affected, so far as known;
- 24 (4) A description of any unknown persons or classes of unknown persons whose rights  
 25 in the property or interest are to be affected;
- 26 (5) Such other facts as are necessary for a full understanding of the cause; and
- 27 (6) A statement setting forth the necessity to condemn the private property and  
 28 describing the public use for which the condemnor seeks the property; and
- 29 ~~(6)(7)~~ A prayer for such judgment of condemnation as may be proper and desired.

30 (b) If any of the persons referred to in this Code section are minors or under disability, the  
 31 fact shall be stated."

#### 32 SECTION 21.

33 Said title is further amended by striking Code Section 22-2-132, relating to requirements of  
 34 notice and service upon presenting a petition for a judgment in rem, and inserting in its place  
 35 a new Code section to read as follows:

1 "22-2-132.

2 (a) Upon presentation of the petition, the presiding judge ~~may~~ shall issue an order  
 3 requiring the condemnor, the owner of the property or of any interest therein, and the  
 4 representative of any owner to appear at a time and place named in the order and make  
 5 known their objections if any, rights, or claims as to the value of the property or of their  
 6 interest therein, and any other matters material to their respective rights; provided,  
 7 however, that if the petition includes affidavits from known and located persons with a  
 8 legal claim, stating that such condemnees do not oppose the condemnation, no hearing  
 9 pursuant to this Code section shall be required.

10 (b) The day named in the order shall be as early as may be convenient but shall be no less  
 11 than 20 days from the date of the petition, due regard being given to the necessities of  
 12 notice.

13 (c) The order shall give appropriate directions for notice and the service thereof.

14 (d) It shall not be necessary to attach any other process to the petition except the order  
 15 referred to in subsection (a) of this Code section, and the cause shall proceed as in rem."

## 16 SECTION 22.

17 Said title is further amended by striking Code Section 22-3-60, relating to persons  
 18 constructing and operating waterworks authorized to lease, purchase, or condemn property  
 19 or interests, and inserting in its place a new Code section to read as follows:

20 "22-3-60.

21 Any nongovernmental entity constructing, owning, or operating any waterworks or sanitary  
 22 sewerage system, or both, in this state shall have the right, power, privilege, and authority  
 23 to lease, purchase, or condemn property or any interest therein, including easements, or to  
 24 receive donations or grants of property or any interest therein, including easements, for the  
 25 purpose of constructing and operating a waterworks, a water distribution system, a  
 26 sewerage collection system, or a sewage treatment and disposal system, or any combination  
 27 of such systems or facilities; provided, however, that prior to condemning property in any  
 28 political subdivision, any such entity shall first obtain the consent of the governing  
 29 authority of such political subdivision, ~~which consent may~~ after the requirements of  
 30 Chapter 1 of this title have been satisfied. Consent shall be granted by resolution or  
 31 ordinance."

## 32 SECTION 23.

33 Said title is further amended by striking Code Section 22-4-3, relating to the applicability of  
 34 Code Section 22-1-1, and inserting in its place a new Code section to read as follows:

1 "22-4-3.

2 The definitions contained in paragraphs ~~(1) and (3)~~ (6) and (8) of Code Section 22-1-1 shall  
3 not apply to this chapter."

4 **SECTION 24.**

5 Title 23 of the Official Code of Georgia Annotated, relating to equity, is amended by adding  
6 a new Code section to read as follows:

7 "23-3-73.

8 All municipalities, counties, and housing authorities shall have standing pursuant to this  
9 article."

10 **SECTION 25.**

11 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended  
12 by striking subsection (b) of Code Section 36-42-8, relating to the powers of downtown  
13 development authorities generally, and inserting a new subsection (b) to read as follows:

14 "(b) The powers enumerated in each paragraph of subsection (a) of this Code section are  
15 cumulative of and in addition to those powers enumerated in the other paragraphs of  
16 subsection (a) of this Code section and elsewhere in this chapter; and no such power limits  
17 or restricts any other power of the authority except that, notwithstanding any other  
18 provision of this chapter, no authority described in this chapter shall be granted the power  
19 of eminent domain."

20 **SECTION 26.**

21 Said title is further amended by repealing Code Section 36-42-8.1, relating to the use of the  
22 power of eminent domain by a municipality or downtown development authority.

23 **SECTION 27.**

24 Said title is further amended by repealing subsection (c) of Code Section 36-44-6, relating  
25 to a redevelopment agency's ability to delegate the power of eminent domain, which reads  
26 as follows:

27 "(c) A downtown development authority which has been designated as a redevelopment  
28 agency pursuant to this chapter may exercise the powers of eminent domain subject to the  
29 procedures established in Chapter 42 of this title."

30 **SECTION 28.**

31 Said title is further amended by adding a new subsection to the end of Code Section 36-44-7,  
32 relating to redevelopment plan proposals by a redevelopment agency, to read as follows:





1 or county; provided, however, that any such setoff shall be subject to any existing tax liens  
 2 having higher priority pursuant to Code Section 48-2-56 and to the interest in the  
 3 condemned property of any known beneficiary of a year's support pursuant to Code  
 4 Section 53-5-2 of the 'Pre-1998 Probate Code,' if applicable, or Code Sections 53-3-1,  
 5 53-3-2, 53-3-4, 53-3-5, and 53-3-7 of the 'Revised Probate Code of 1998'; provided,  
 6 further, that where the condemned property is subject to a valid deed to secure debt, such  
 7 setoff shall only be allowed for tax liens which arose as a result of an assessment against  
 8 such property. It is declared to be necessary, to enable such municipalities and counties  
 9 to exercise their powers under this Code section, that upon the condemnation proceedings  
 10 being had, the municipalities and counties shall become vested with fee simple indefeasible  
 11 title to the property involved in the proceedings.

12 ~~(c) Unless the property is to be acquired for the purpose of devoting it to a public use, a~~  
 13 A municipality or county may not acquire real property through the exercise of the power  
 14 of eminent domain pursuant to subsection (a) of this Code section until the following  
 15 conditions and requirements have been met:

16 (1) The municipality or county which adopted the urban redevelopment plan has  
 17 approved a resolution authorizing the exercise of the power of eminent domain by the  
 18 agency to acquire the property. Prior to approving such a resolution, the governing body  
 19 of the municipality or county shall:

20 (A) Not less than 15 days before any meeting at which such resolution is to be  
 21 considered post a sign, if possible, in the right of way adjacent to each property that is  
 22 subject to the proposed use of the eminent domain power stating the time, date, and  
 23 place of such meeting;

24 (B) Serve the condemnee personally by a sheriff or deputy with notice of the meeting  
 25 not less than 15 days before any meeting at which such resolution is to be considered,  
 26 unless service is acknowledged or waived by the condemnee. If after all efforts made  
 27 to serve notice to the condemnee under this subparagraph are unsuccessful, service of  
 28 notice may be satisfied by mail or statutory overnight delivery to the property owner  
 29 at the address of record and, if different from the property owner, to the parties in  
 30 possession of the property, return receipt requested;

31 (C) Ensure that any notice that is required by law to be published be placed in a  
 32 newspaper of general circulation, but such notice shall not be published in the legal  
 33 notices section of such newspaper; and

34 (D) Ensure that any meeting at which such resolution is to be considered and voted on  
 35 shall commence after 6:00 P.M.

36 Any such resolution shall specifically and conspicuously delineate each parcel to be  
 37 affected;

1 (2) The municipality or county shall, in writing, notify the owner of the real property  
2 proposed to be acquired of the planned rehabilitation of the property as set forth in the  
3 urban redevelopment plan for the urban redevelopment area wherein the property is  
4 located;

5 (3) Within ~~30~~ 60 days after being so notified, the owner of the property shall have the  
6 option of notifying the municipality or county, in writing, of his or her willingness and  
7 intention to rehabilitate and maintain the property in accordance with the urban  
8 redevelopment plan. In the event of multiple ownership of the property, unanimous  
9 agreement by the owners shall be required; and the failure of any one owner to notify the  
10 municipality or county, within the time limitation specified in this paragraph, of his or her  
11 willingness and intention to rehabilitate and maintain the property in accordance with the  
12 urban redevelopment plan shall be deemed to be a failure to exercise the option provided  
13 in this paragraph; and

14 (4) The owner of the property may execute an agreement with the municipality or county  
15 to rehabilitate the property in accordance with the urban redevelopment plan. Any such  
16 agreement shall be as the municipality or county deems necessary and appropriate as to  
17 form and content; in connection therewith, the municipality or county shall have the right  
18 to require sufficient performance, payment, and completion bonds. In the event that any  
19 such owner, at any time, fails to comply with or defaults in the performance of the  
20 provisions of the agreement, such property shall no longer be subject to the agreement,  
21 the option provided by paragraph (3) of this subsection shall no longer apply, and the  
22 property may be acquired by the municipality or county by purchase or through the  
23 exercise of the power of eminent domain. In the alternative, the municipality or county  
24 may either specifically enforce the agreement, exercise any rights under any bonds which  
25 may have been required, and obtain any other legal or equitable relief as may be available  
26 to the municipality or county or, if the owner fails to exercise the option to rehabilitate  
27 the property or defaults on the agreement to rehabilitate the property, the municipality or  
28 county may implement those portions of the urban development plan with respect to such  
29 property to the extent the municipality or county deems necessary and the costs of  
30 implementing such plan shall be a lien against the property enforceable in the same  
31 manner as tax liens.

32 (d) Compliance with this Code section shall be in addition to and not in place of the  
33 requirements imposed by Title 22; provided, however, the requirements set forth in this  
34 Code section shall satisfy the requirements provided in Code Section 22-1-10."



1 service of notice may be satisfied by mail or statutory overnight delivery to the property  
2 owner at the address of record and, if different from the property owner, to the parties in  
3 possession of the property, return receipt requested;

4 (3) Ensure that any notice that is required by law to be published be placed in a  
5 newspaper of general circulation, but such notice shall not be published in the legal  
6 notices section of such newspaper; and

7 (4) Ensure that any meeting at which such resolution is to be considered and voted on  
8 shall commence after 6:00 P.M.

9 Any such resolution shall specifically and conspicuously delineate each parcel to be  
10 affected."

### 11 **SECTION 35.**

12 This Act shall become effective upon its approval by the Governor or upon its becoming law  
13 without such approval. Sections 6, 9, 12, 18, 19, and 29 and Code Sections 22-1-11, 22-1-12,  
14 22-1-13, and 22-1-14 as enacted by Section 11 of this Act shall apply to causes of action  
15 pending on the effective date of this Act.

### 16 **SECTION 36.**

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