

House Bill 434

By: Representatives Willard of the 51st, Smyre of the 135th, Stephens of the 164th, Beskin of the 54th, and Fleming of the 121st

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 22 of the Official Code of Georgia Annotated, relating to
2 general provisions relative to eminent domain, so as to provide for an exception to the
3 requirement that condemnations not be converted to any use other than a public use for 20
4 years from the initial condemnation; to provide for definitions; to provide for procedure; to
5 provide for related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 1 of Title 22 of the Official Code of Georgia Annotated, relating to general
9 provisions relative to eminent domain, is amended by revising Code Section 22-1-2, relating
10 to nature of right of eminent domain, as follows:

11 "22-1-2.

12 (a) The right of eminent domain is the right of ~~the~~ this state, through its regular
13 organization, to reassert, either temporarily or permanently, its dominion over any portion
14 of the soil of ~~the~~ this state on account of public exigency and for the public good. Thus,
15 in time of war or insurrection the proper authorities may possess and hold any part of the
16 territory of ~~the~~ this state for the common safety. Notwithstanding any other provisions of
17 law, except as provided in Code Section 22-1-15, neither this state nor any political
18 subdivision thereof nor any other condemning authority shall use eminent domain unless
19 it is for public use. Public use is a matter of law to be determined by the court and the
20 condemnor bears the burden of proof.

21 (b) Except as provided in Code Section 22-1-15, no condemnation shall ~~All~~
22 ~~condemnations shall not~~ be converted to any use other than a public use for 20 years from
23 the initial condemnation.

24 (c)(1) Except as provided in Code Section 22-1-15, if ~~If~~ property acquired through the
25 power of eminent domain from an owner fails to be put to a public use within five years,
26 the former property owner may apply to the condemnor or its successor or assign for

27 reconveyance or quitclaim of the property to the former property owner or for additional
 28 compensation for such property. For purposes of this subsection, property shall be
 29 considered to have been put to a public use at the point in time when substantial good
 30 faith effort has been expended on a project to put the property to public use,
 31 notwithstanding the fact that the project may not have been completed. The application
 32 shall be in writing, and the condemnor or its successor or assign shall act on the
 33 application within 60 days by:

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

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

41 (2) If the condemnor fails to take either action within 60 days, the former property owner
 42 may, within the next 90 days following, initiate an action in the superior court in the
 43 county in which the property is located to reacquire the property or receive additional
 44 compensation.

45 (3) The condemnor shall provide notice to each former owner of the property prior to
 46 acquisition if the condemnor fails to put such property to a public use within five years.
 47 The condemnee shall have one year from the date notice is received to bring an
 48 application under this subsection.

49 (d) ~~When~~ In the case that property is acquired from more than one owner for the same
 50 public use and reconveyance or additional compensation to a single owner is impracticable,
 51 any party to the original condemnation or each person with a legal claim in such
 52 condemnation may file an action in the superior court in the county in which the property
 53 is located for an equitable resolution.

54 (e) This Code section shall not apply to condemnations subject to Code Section 22-3-162
 55 or Title 32."

56 SECTION 2.

57 Said chapter is further amended by adding a new Code section to read as follows:

58 "22-1-15.

59 (a) As used in this Code section, the term:

60 (1) 'Condemnor' means a county, municipality, or consolidated government of this state.

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

64 (A) Transfer of land to public ownership;

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

66 (C) Lease of property to private entities that occupy an incidental area within a public
 67 project.

68 (3) 'Public use' means the remedy of blight when economic development is a secondary
 69 or ancillary public benefit of condemnation.

70 (b) A condemnor seeking to condemn property for public use under this Code section shall
 71 first petition the superior court of the county having jurisdiction for a judgment in rem
 72 against such property seeking a determination as to whether the property complained of in
 73 the petition is blighted property.

74 (c) The petition described in subsection (b) of this Code section shall set forth:

75 (1) The facts showing the right to condemn;

76 (2) The property or interest to be taken;

77 (3) The names and residences of the persons whose property or interests are to be taken
 78 or otherwise affected, so far as known;

79 (4) A description of any unknown persons or classes of unknown persons whose rights
 80 in the property or interest are to be affected;

81 (5) A description of the appearance of the property and any structures thereon;

82 (6) Such other facts as are necessary for a full understanding of the cause;

83 (7) A statement setting forth the need of the court to review the evidence and determine
 84 whether such property meets the definition of blight;

85 (8) A prayer for an order to be issued by the court as may be proper and desired; and

86 (9) Whether any of the persons referred to in this subsection are minors or disabled.

87 (d)(1) Upon presentation of the petition set forth in subsection (c) of this Code section,
 88 the court shall issue an order requiring all parties of interest to appear at a time and place
 89 named in the order and make known their objections if any as to the question of whether
 90 the property shall be deemed blighted.

91 (2) The date of the hearing shall be no less than 30 days from the date such petition is
 92 filed.

93 (3) The order described in paragraph (1) of this subsection shall give directions for
 94 providing notice of the hearing and the service of such notices.

95 (4) It shall not be necessary to attach any other process to the petition except the order
 96 referred to in paragraph (1) of this subsection, and the cause shall proceed as in rem.

97 (e) All persons entitled to notice under the facts stated in the petition shall be personally
98 served with a copy of the petition and order issued pursuant to subsection (d) of this Code
99 section as in other causes at law, unless such service is waived in writing. All other service
100 shall be made by the method as provided in Part 2 of Article 1 of Chapter 2 of this title, and
101 all persons so served shall be deemed parties to the cause.

102 (f) In any cases where it seems to the court to be in the interest of justice and of more
103 effective notice to cause additional notice or service to be given, it shall be within the
104 court's discretion to so order. In such cases, such additional notice and service shall be
105 made as ordered before the cause proceeds to final hearing. In cases where any taxes are
106 alleged to be due or unpaid, the order shall direct that a separate notice to that effect be
107 given the proper tax collector or tax commissioner.

108 (g) On the day named in the order made pursuant to subsection (d) of this Code section,
109 or at any other time to which the hearing may be continued, the court, having first passed
110 on and adjudged all questions touching service and notice, shall, after hearing from all
111 persons responding and desiring to be heard, make such order as is appropriate based on
112 the evidence as to whether or not the property shall be deemed blighted.

113 (h) Any property deemed blighted shall be described in the order adjudging such
114 determination and contain a statement of the then current approved land use of the
115 property, or in the case of vacant property, the last lawful use for which the property was
116 occupied, and such property's future use shall be restricted to the same land use as stated
117 in the order for a period of five years from the date of the order.

118 (i) A condemnor which has obtained an order under subsection (h) of this Code section
119 declaring a property to be blighted shall within 60 days from such order, or in the event of
120 an appeal, 60 days from the date when the remittitur of the appellate court is made the
121 judgment of the court, file an action to condemn the property pursuant to the procedures
122 set forth in Article 3 of Chapter 2 of this title. When a condemnor proceeds as set forth in
123 Article 3 of Chapter 2 of this title, it shall attach a copy of the order issued under subsection
124 (h) of this Code section."

125 **SECTION 3.**

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