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EMINENT DOMAIN Nature of Right of Eminent Domain: Change Certain Provisions Relating to the Nature of the Right of Eminent Domain; Provide for the Limitation of Public Purposes for Which Eminent Domain May be Exercised; Provide for Statutory Construction; Provide for Legislative Intent; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

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EMINENT DOMAIN

Nature of Right of Eminent Domain: Change Certain Provisions Relating to the Nature of the Right of Eminent Domain; Provide for the Limitation of Public Purposes for Which Eminent Domain May be Exercised; Provide for Statutory Construction; Provide for Legislative Intent; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

BILL NUMBER:

SB 86

SUMMARY:

The bill would have limited the state's ability to take private property under the eminent domain power of the state. In times of peace, the bill would have allowed the General Assembly to authorize proper authorities to take any land for the following public purposes: construction of roads, defenses, channels for trade or travel, and other public purposes. The General Assembly would determine other public purposes, but the General Assembly could not define a public purpose as either increasing the tax base or economic development. Specifically, the bill would have prohibited the condemnation of private property when the proposed developmental purpose of a private developer or corporation was to increase the tax revenue, property values, or for economic development. Ultimately, the bill sought to make it difficult for private developers and corporations to obtain private property via eminent domain. Furthermore, the bill would have limited the power of

eminent domain for community redevelopment projects.

History

Senator Jeff Chapman of the 3rd district introduced SB 86 to prevent the government from abusing the eminent domain power to remove Georgia citizens from their homes or businesses.¹ Concern over other state governments using eminent domain to provide private developers the opportunity to build larger, more expensive houses and office complexes, which can pay more in property taxes, prompted Senator Chapman to sponsor SB 86.² The bill would have prevented the public purpose element of the eminent domain power from including takings based “solely or primarily for the purpose of improving the tax base or the purpose of economic development.”³ Opponents of SB 86 stated that the primary purpose for its introduction was the public backlash over SB 5’s introduction earlier in the legislative session.⁴ SB 5 would have allowed private developers to initiate condemnation proceedings in the process of eminent domain.⁵ While Senator Chapman stated that Georgians had already indicated their position on the proper uses of eminent domain, he did not claim SB 86 had any relationship to the previously introduced SB 5.⁶ Further, Senator Chapman drafted SB 86 prior to the uproar over SB 5.⁷ Senator Chapman’s purpose in introducing SB 86 was to protect Georgia citizens’ wealth and property—the value of their home.⁸

1. See Audio Recording of Senate Proceedings, Mar. 10, 2005 (remarks by Sen. Jeff Chapman), http://www.georgia.gov/00/article/0,2086,4802_6107103_33091490,00.html [hereinafter Senate Audio].

2. See *id.*; Telephone Interview with Sen. Jeff Chapman, Senate District No. 3, (July 15, 2005) [hereinafter Chapman Interview].

3. SB 86, as introduced, 2005 Ga. Gen. Assem.; see Senate Audio, *supra* note 1 (remarks by Sen. Jeff Chapman).

4. See Telephone Interview with Sen. Curt Thompson, Senate District No. 5 (May 2, 2005) [hereinafter Thompson Interview].

5. SB 5, as introduced, 2005 Ga. Gen. Assem.

6. See Senate Audio, *supra* note 1 (remarks by Sen. Jeff Chapman).

7. See Chapman Interview, *supra* note 2.

8. See Senate Audio, *supra* note 1 (remarks by Sen. Jeff Chapman).

*Bill Tracking of SB 86**Consideration by the Senate*

Senators Jeff Chapman, Tommie Williams, Greg Goggans, Jim Whitehead, Sr., and Chip Pearson of the 3rd, 19th, 7th, 24th, and 51st districts, respectively, sponsored SB 86.⁹ The Senate first read the bill on January 28, 2005, and the Senate Judiciary Committee favorably reported the bill on February 7, 2005.¹⁰

The Bill, as Introduced

Current law allows the Georgia General Assembly, in times of peace, to authorize the appropriation of any portion of land within the state for public purposes, including “the opening of roads, construction of defenses, or providing channels for trade or travel.”¹¹ SB 86 limited the purposes for which the government could exercise its eminent domain power to seize private land.¹² According to the Georgia Constitution, the General Assembly may decide what is a public purpose regarding eminent domain.¹³ As introduced, the bill limited the definition of “public purpose” by stating:

A public purpose shall be as defined by general law as provided by this Code, but in no event shall a public purpose be construed to include the exercise of eminent domain solely or primarily for the purpose of improving the tax base or the purpose of economic development. This shall include condemning property for the purpose of transferring such property to a private developer, corporation, or other entity solely or primarily to attempt to expand the tax base, increase the taxable value of the property, or promote economic development.¹⁴

9. See SB 86, as introduced, 2005 Ga. Gen. Assem.

10. See State of Georgia Final Composite Status Sheet, SB 86, Jan. 28, 2005 (May 11, 2005); State of Georgia Final Composite Status Sheet, SB 86, Feb. 7, 2005 (May 11, 2005).

11. See O.C.G.A. § 22-1-2 (Supp. 2005).

12. Compare SB 86, as introduced, 2005 Ga. Gen. Assem., with O.C.G.A. § 22-1-2 (Supp. 2005).

13. See GA. CONST. art. I, § III, ¶. I.

14. See SB 86, as introduced, 2005 Ga. Gen. Assem.

Floor Debate and Amendment

Four senators spoke in support of the bill during the floor debate, and three senators spoke in opposition.¹⁵ After Senator Jeff Chapman introduced the bill, only one other senator, John J. Wiles of the 37th district, came to the well in full support of the bill.¹⁶ Senator Wiles's main concern with the bill was the government using the power of land condemnation to threaten people.¹⁷ Senator Wiles felt that passage of this bill would "go a step towards saying, 'no, you can't threaten people.'"¹⁸ Senator Wiles discussed a situation in his district where the Cobb County School Board threatened to take an elderly couple's land to build a new high school.¹⁹ Senator Wiles stated that he introduced a bill that could limit school boards' authority to seize land in this manner, but his bill could do nothing to prevent a county government from seizing land for an economic development like a Wal-Mart.²⁰ Therefore, Senator Wiles supported this bill because it limited the government's power to threaten citizens with land condemnation to build a new store or other economic development.²¹

Senators Regina Thomas of the 2nd district and Robert Brown of the 26th district rose to support the bill, but they both cautioned members of the Senate to pay careful attention when the bill reached the House to ensure the House did not inappropriately amend the bill.²² After speaking with various civic leaders and concerned property owners in her district, Senator Thomas concluded the bill would protect private property owners' rights.²³ Further, she agreed that simply slowing down the process of eminent domain would protect citizens' property rights.²⁴ Senator Brown expressed concern that the House would significantly change the bill if it passed the Senate.²⁵ He poked fun at what could happen if the House

15. See Senate Audio, *supra* note 1.

16. See *id.* (remarks by Sen. John J. Wiles).

17. See *id.*

18. See *id.*

19. See *id.*

20. See *id.*

21. See Senate Audio, *supra* note 1 (remarks by Sen. John J. Wiles).

22. See *id.* (remarks by Sens. Regina Thomas and Robert Brown).

23. See *id.* (remarks by Sen. Regina Thomas).

24. See *id.*

25. See *id.* (remarks by Sen. Robert Brown).

implemented unnecessary changes by stating that the “bill could come back with some spandex, lipstick, and would be totally different than what it [was when] it left here.”²⁶

Speaking in opposition were Senators Curt Thompson of the 5th district, Doug Stoner of the 6th district, and Vincent D. Fort of the 39th district.²⁷ Senator Thompson stated his concern that the bill threatened the ability of local governments to redevelop older neighborhoods.²⁸ Highlighting the specific “solely and primarily” language in the bill, he argued that it would “be a better and tighter bill if it simply said ‘solely for the purpose of increasing the tax register.’”²⁹ According to Senator Thompson, the word “solely”—without “primarily”—would limit the legal claims brought based on the bill.³⁰ He reasoned that any type of economic redevelopment will naturally increase the tax base, so any property owner whose land the government may take for that purpose could go to court and claim the primary purpose for the taking was to increase the tax revenue.³¹ In conclusion, Senator Thompson reaffirmed his belief that the government must use eminent domain to save older towns and cities throughout the state.³²

Senators Stoner and Fort echoed Senator Thompson’s dissatisfaction with the bill.³³ Senator Stoner spoke about his experiences on the Smyrna Downtown Development Authority.³⁴ He pointed out that without the threat of condemnation, property owners will refuse to negotiate with local governments wishing to use eminent domain.³⁵ Further, Senator Stoner pointed out that if property owners ever decide to negotiate, local governments might extort taxpayers, given the government’s limited ability to condemn property under this bill.³⁶ In response to questions about purported improper taking of citizen’s property in Alabama, Senator Stoner

26. *See id.*

27. *See Senate Audio, supra* note 1 (remarks by Sens. Curt Thompson, Doug Stoner, and Vincent D. Fort).

28. *See id.* (remarks by Sen. Curt Thompson).

29. *See id.*

30. *See id.*

31. *See id.*

32. *See id.*

33. *See Senate Audio, supra* note 1 (remarks by Sens. Doug Stoner and Vincent D. Fort).

34. *See id.* (remarks by Sen. Doug Stoner).

35. *See id.*

36. *See id.*

responded that, to his knowledge, no improper takings had occurred in Georgia.³⁷ Moreover, he argued that Georgia's current process of eminent domain was a good and reasonable system.³⁸ Finally, Senator Fort spoke about the Atlanta Land Bank Authority and how this bill might harm its good work in the metro Atlanta community.³⁹ Senator Fort appreciated the spirit of the bill but had problems with its language.⁴⁰ He felt that SB 86 was simply the opposite extreme of SB 5, which failed earlier in the legislative session.⁴¹

Senator Chapman offered the only amendment to the bill prior to its introduction on the floor.⁴² The amendment simply added a couple of words into the proposed new section 9 of Title 22.⁴³ Senator Chapman added the words because "that was something used in the past and so that's why we added that amendment to include leasing."⁴⁴ There was no discussion during the debate of the actual amendment, but it was adopted by a 33 to 2 vote.⁴⁵ Finally, the Senate passed SB 86, as amended, by a vote of 40 to 10.⁴⁶

Consideration by the House

The House first read SB 86 on March 11, 2005 and then read it for a second time on March 12, 2005.⁴⁷ The House assigned the bill to the House Judiciary Committee, but the Committee took no further action.⁴⁸ Senator Jeff Chapman stated that "SB 86 was only tabled in the House Judiciary, and it was only tabled by a 5-4 vote."⁴⁹ According to Senator Curt Thompson, SB 86 did not proceed through the House because it was "a political ploy by the Republicans to save

37. *See id.*

38. *See id.*

39. *See* Senate Audio, *supra* note 1 (remarks by Sen. Vincent D. Fort).

40. *See id.*

41. *See id.*

42. *See* SB 86 (SFA), 2005 Ga. Gen. Assem.; Senate Audio, *supra* note 1 (remarks by Sen. Jeff Chapman).

43. *See* SB 86 (SFA), 2005 Ga. Gen. Assem.

44. *See* Senate Audio, *supra* note 1 (remarks by Sen. Jeff Chapman).

45. *See* Georgia Senate Voting Record, SB 86 (Mar. 10, 2005); Senate Audio, *supra* note 1.

46. *See* Georgia Senate Voting Record, SB 86 (Mar. 10, 2005); Senate Audio, *supra* note 1.

47. State of Georgia Final Composite Status Sheet, SB 86, Mar. 11, 2005 (May 11, 2005); State of Georgia Final Composite Status Sheet, SB 86, Mar. 12, 2005 (May 11, 2005).

48. State of Georgia Final Composite Status Sheet, SB 86 (May 11, 2005).

49. *See* Chapman Interview, *supra* note 2.

face.”⁵⁰ Senator Chapman does not believe SB 86 is “completely dead legislation.”⁵¹

Analysis

Due to the lack of support for SB 86 in the House, SB 86 has an unlikely future in upcoming sessions.⁵² But, Senator Curt Thompson hinted that a hybrid of SB 5 and SB 86 could be introduced in the 2006 session because of statements made by Senate President Pro Tempore, Eric Johnson, during the controversy over SB 5 in the early days of the 2005 session.⁵³ According to Senator Thompson, economic development bills have many details, and since “the devil is in the details,” it is important to pay careful attention to them.⁵⁴ While it will be important to look at creative ways to encourage public-private partnerships in economic development and redevelopment in the future, politicians must be careful not to give too much power to anyone forming these partnerships.⁵⁵

Additionally, the uproar in the wake of the Supreme Court’s decision in *Kelo v. City of New London* will likely serve as the impetus for more discussion of the extent of the state’s eminent domain power in the upcoming legislative session.⁵⁶ The *Kelo* decision, which Senator Jeff Chapman labels “disappointing,” expands the states’ power to use eminent domain.⁵⁷ Senator Chapman believes the potential problems that states may face because of the *Kelo* decision “will be incentive for legislation like SB 86 to pass in the next legislative session.”⁵⁸

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50. See Thompson Interview, *supra* note 4.

51. See Chapman Interview, *supra* note 2.

52. See Thompson Interview, *supra* note 4.

53. See *id.*; Ben Smith & Jim Tharpe, *Legislature 2005: Property Rights Bill Loses Some Support*, ATLANTA J. CONST., Feb. 3, 2005, at D5, available at 2005 WLNR 2911844.

54. See Thompson Interview, *supra* note 4.

55. See *id.*

56. 125 S. Ct. 2655 (2005); Chapman Interview, *supra* note 2.

57. See Chapman Interview, *supra* note 2.

58. See *id.*