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PUBLIC PROPERTY Property: Governmental Agencies, Judicial Actions

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PUBLIC PROPERTY

Property: Governmental Agencies, Judicial Actions

CODE SECTION: O.C.G.A. § 50-16-17 (new)
BILL NUMBER: HB 1742
ACT NUMBER: 1221
SUMMARY: The Act empowers any governmental unit or instrumentality in the State to initiate proceedings, bring causes of action or seek judicial relief pertaining to property to the same extent nongovernmental parties may do so.
EFFECTIVE DATE: March 26, 1986

History

The introduction of HB 1742 was prompted by a 1984 holding of the Examiner of the Superior Court of Chatham County.¹ In *Mack v. Wiley*,² the petitioners sought to register title to a tract of land in Chatham County in accordance with O.C.G.A. § 44-2-62. Included in the land claimed were several acres of marshland. The Attorney General objected and cross-petitioned to register title to the marshland in the State of Georgia. The Examiner agreed that the State held fee simple title to the marshland.³ However, he found no provision in the Land Registration Act⁴ authorizing the State of Georgia to register title to land in its name, and concluded “that the State of Georgia is not like any other land owner for these purposes.”⁵

1. Telephone interview with Patricia T. Barmeyer, Senior Assistant Attorney General, Conservation Division, Office of the Attorney General (Apr. 7, 1986).

2. *Mack v. Wiley*, No. 17136-G (Chatham Co. Super. Ct., July 16, 1984) (Final Report of Examiner).

3. The State of Georgia holds fee simple title to the marshlands below mean high tide on navigable waters. *State v. Ashmore*, 236 Ga. 401, 224 S.E.2d 334 (1976), *cert. denied*, 429 U.S. 830 (1976).

4. O.C.G.A. §§ 44-2-40—44-2-253 (1982).

5. *Mack v. Wiley*, No. 17136-G (Chatham Co. Super. Ct., July 16, 1984) (Final Report of Examiner). The Examiner apparently relied upon the language in O.C.G.A. § 44-2-62 which states that a petition for title registration shall be made “by the person, persons, or corporation” claiming the land. O.C.G.A. § 44-2-62 (1982).

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The Act resolves any doubts as to the State's authority to assert its property rights through registration of land ownership or otherwise, by adding a new Code section, O.C.G.A. § 50-16-17. O.C.G.A. § 50-16-17 provides that any governmental unit or instrumentality in Georgia has the same rights as any nongovernmental party "to assert any cause of action, initiate any proceeding, seek any remedy, and request or demand any judicial relief which pertains to property."⁶

As introduced, HB 1742 contained a noninclusive listing of specific instances (including registering title) in which a governmental unit or instrumentality would be authorized to act. The House Committee Substitute, which was enacted,⁷ deleted this enumeration of authorized acts and added the provision, as O.C.G.A. § 50-16-17(b), that "real property" as used in this Code section would have the meaning of "realty" and "real estate" as contained in O.C.G.A. § 44-1-2.

O.C.G.A. § 50-16-17(c) defines "unit or instrumentality of government" to include a broad spectrum of both state and local governmental entities and subdivisions created under state law.⁸

6. O.C.G.A. § 50-16-17 (Supp. 1986).

7. HB 1442, 1986 Ga. Gen. Assem. § 1.

8. O.C.G.A. § 50-16-17 (Supp. 1986).