

10-1-1992

## AVIATION Airport Development: Provide for Georgia Airport Development Authority and Condemnation Only Upon Consent

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### Recommended Citation

Holly N. Winter, *AVIATION Airport Development: Provide for Georgia Airport Development Authority and Condemnation Only Upon Consent*, 9 GA. ST. U. L. REV. (1992).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol9/iss1/11>

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## AVIATION

### *Airport Development: Provide for Georgia Airport Development Authority and Condemnation Only upon Consent*

CODE SECTIONS:	O.C.G.A. §§ 6-3-22 (amended), 6-4-1 to -16 (new)
BILL NUMBERS:	HB 1106, SB 173
ACT NUMBERS:	1072, 1029
SUMMARY:	HB 1106, known as the "Georgia Airport Development Authority Law," creates the Georgia Airport Development Authority, which is responsible for studying the location, funding, and development of any new airport within the State of Georgia which is planned to accommodate large aircraft. SB 173 prohibits any city, county, or municipality from condemning private property in a neighboring city, county, or municipality for a new airport or for an airport expansion without obtaining permission of the neighboring local government. The Act provides for appeal to the General Assembly for approval upon denial by the city, county, or municipality in which such proposed project is to be located.
EFFECTIVE DATES:	July 1, 1992, O.C.G.A. § 6-3-22; upon completion of the "State Airport System Plan," O.C.G.A. §§ 6-4-1 to -16

### *History*

Recent trends regarding air travel in the State of Georgia have shown that, contrary to the general public's opinion, the State of Georgia currently has no competitive advantage over its neighbors with respect to air travel.<sup>1</sup> The neighboring states of Alabama, Florida, North Carolina, and Tennessee have all moved ahead with airport expansion while the State of Georgia has made no real progress towards expansion.<sup>2</sup> The Federal Aviation Administration (FAA) has suggested that there is a need for a second airport in the State of Georgia and that it could take approximately twenty years to locate and build another airport.<sup>3</sup>

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1. Telephone Interview with Rep. Dick Lane, House District No. 27 (Apr. 1, 1992) [hereinafter Lane Interview]. Rep. Lane was one of the sponsors of HB 1106.

2. *Id.*

3. *Id.*

Prior to the 1992 session of the General Assembly, the Atlanta Regional Commission performed its own investigation of a possible site for location of a second airport.<sup>4</sup> After hearings on proposed locations, citizens from counties where the second airport might be located expressed concerns about the possibility that another government authority could actually condemn their property without any local government consent.<sup>5</sup> Thus, legislation was sought which would prohibit such condemnation without some type of review and consent by the governing authority of the location in question.<sup>6</sup>

### *HB 1106*

The Act amends title 6 of the Official Code of Georgia Annotated by adding a chapter 4.<sup>7</sup> This chapter contains provisions regarding the scope of the Georgia Airport Development Authority (GADA), defines specific terms, and sets forth all of the powers of the GADA.<sup>8</sup> The GADA was created for the purposes of "determination of location, construction, financing, acquisition of property, operation, and development of any new airports that are planned to accommodate aircraft operating under the provisions of 14 C.F.R. Part 121 within and outside the State of Georgia."<sup>9</sup>

The primary purpose for adopting the Act was to set up the GADA and to begin the process of locating a second airport for operation of large aircraft in the State of Georgia.<sup>10</sup> The creation of the GADA will allow plans for the second airport to move forward and will circumvent disputes between cities regarding site selection.<sup>11</sup> The Act specifically addresses new rather than existing airports in the State of Georgia.<sup>12</sup> Under the Act, the GADA has the power to acquire land by "purchase,

4. Telephone Interview with Sen. Nathan Deal, Senate District No. 49 (Apr. 1, 1992) [hereinafter Deal Interview]. Sen. Deal was one of the sponsors of SB 173.

5. *Id.* The sites proposed by the Atlanta Regional Commission were in the Forsyth, Dawson, Hall, and Jackson county areas. *Id.*

6. *Id.*

7. O.C.G.A. §§ 6-4-1 to -16 (Supp. 1992).

8. *Id.*

9. *Id.* § 6-4-2 (Supp. 1992).

10. Lane Interview, *supra* note 1.

11. David Beasley & Gary Hendricks, *Bill Strips Atlanta's Airport Power—Lawmakers Would Have Ultimate Say Over Construction Of Fifth Runway*, ATLANTA J. & CONST., Jan. 25, 1992, at B3. Rep. Lane stated that HB 1106 provides "a mechanism for resolving a bitter standoff between Atlanta and other jurisdictions," and characterized the bill as a "method of progressing." *Id.*

12. O.C.G.A. § 6-4-2 (Supp. 1992). Rep. Lane, addressing concerns regarding Atlanta Hartsfield International Airport, remarked, "[HB 1106] has nothing at all to do with any existing airport." *Lawmakers '92* (WGTV television broadcast, Feb. 24, 1992) (videotape on file at Georgia State University College of Law Library).

lease, condemnation, or otherwise.”<sup>13</sup> However, any condemnation must be done in accordance with “any and all existing laws applicable to the condemnation of property for public use.”<sup>14</sup> Thus, such condemnation would have to be carried out as set forth in SB 173.<sup>15</sup>

The Act underwent several substantive changes prior to its passage. The original version of HB 1106 provided that any project of the GADA would be submitted to the General Assembly for approval.<sup>16</sup> However, this language was deleted by the House in a floor amendment.<sup>17</sup> Several changes were also made in the Senate. Language allowing the GADA to review the denial of consent for extraterritorial condemnation of property, which was added by the House floor amendment,<sup>18</sup> was deleted on the floor of the Senate.<sup>19</sup> The Senate, in a floor amendment, increased the number of GADA members to be appointed by the Governor from three to five.<sup>20</sup> In addition, the Senate added language requiring GADA members to disclose any interest in any contract to which the GADA is or is about to become a party.<sup>21</sup> This language, as well as the language denoting the change in the number of members to be appointed by the Governor, remained through the passage of the Act.<sup>22</sup>

### SB 173

This Act prohibits extraterritorial condemnation of property for an airport or landing field or for the expansion of an airport or landing field by a municipality, county, or other political subdivision without

13. O.C.G.A. § 6-4-7(5) (Supp. 1992).

14. *Id.* § 6-4-7(6) (Supp. 1992).

15. *Id.* § 6-3-22 (Supp. 1992); *see infra* notes 23-40 and accompanying text.

16. HB 1106, as introduced, 1992 Ga. Gen. Assem.

17. HB 1106 (HFSFA), 1992 Ga. Gen. Assem. This deletion was not made without opposition. Senators Langford and Egan expressed concerns during the Senate floor debate over the fact that the GADA “would not be accountable to anyone for its decisions.” *Lawmakers '92* (WGTV television broadcast, Mar. 23, 1992) (videotape on file at Georgia State University College of Law Library). Both senators saw the need to have the GADA’s decisions reviewed and approved by elected representatives who would be “accountable to the people,” and characterized HB 1106 as “far reaching.” *Id.*

18. HB 1106 (HFSFA), 1992 Ga. Gen. Assem.

19. HB 1106 (SCSFA), 1992 Ga. Gen. Assem. Rep. Lane stated that this condemnation language was deleted due to opposition. Lane Interview, *supra* note 1. This opposition spurred the revival of SB 173, which was originally introduced in 1991, but dealt primarily with extraterritorial condemnation.

20. HB 1106 (SCSFA), 1992 Ga. Gen. Assem. Rep. Lane stated this number was changed to keep the GADA in line with other authorities that have a substantial percentage of members appointed by the Governor. Lane Interview, *supra* note 1.

21. HB 1106 (SCSFA), 1992 Ga. Gen. Assem.

22. *See* O.C.G.A. §§ 6-4-5(a)(1), -6(b) (Supp. 1992).

first obtaining the consent of either the county or municipality where the airport is to be located or of the General Assembly.<sup>23</sup> Code section 6-3-22, as amended, repeals a 1933 law<sup>24</sup> which provided that if a county, municipality, or other political subdivision which proposes to acquire property for an airport is unable to agree with the owners of the property on the terms of the acquisition, such property may be acquired by condemnation.<sup>25</sup> The Act provides that the governing authority of the county, municipality, or other political subdivision wherein the property is to be located shall express its consent either by adopting a resolution granting consent to the condemnation or by failure to adopt a resolution denying its consent within sixty days from receiving the request for condemnation.<sup>26</sup> Furthermore, upon such denial of consent, the General Assembly may enact a resolution granting its consent to the proposed condemnation.<sup>27</sup>

The original version of SB 173 was introduced in 1991,<sup>28</sup> but final action was not taken on the bill until the 1992 legislative session, due to lack of support and the desire to wait for the completion of an airport study which was already in progress.<sup>29</sup> However, a moratorium was passed in 1991<sup>30</sup> which was to be a "stop-gap" measure until the same legislation could be further examined and developed in the 1992 legislative session.<sup>31</sup>

Several provisions were added to the legislation before it was finally adopted. The Senate Transportation Committee amended SB 173<sup>32</sup> by adding language allowing the General Assembly to review and grant its consent to such condemnation by resolution if the local governing authority where the property is to be condemned refuses its consent to the condemnation.<sup>33</sup> The House of Representatives further amended SB 173<sup>34</sup> by adding a provision whereby if the proposed airport or airport expansion is by a city into a county in which the city is located, or by a county into a city which is located in that county, the decision of the governing authority of the city or county into which the proposed airport or airport expansion is to be located shall be final.<sup>35</sup> This

23. *Id.* § 6-3-22 (Supp. 1992).

24. 1933 Ga. Laws 102 (formerly found at O.C.G.A. § 6-3-22 (1981)).

25. *Id.*

26. O.C.G.A. § 6-3-22 (Supp. 1992).

27. *Id.*

28. SB 173, as introduced, 1991 Ga. Gen. Assem.

29. Deal Interview, *supra* note 4.

30. 1991 Ga. Laws 953 (formerly found at O.C.G.A. § 6-3-22.1 (Supp. 1991)). This legislation also provided for the repeal of this Code section effective July 1, 1992.

31. Deal Interview, *supra* note 4.

32. SB 173 (SCS), 1992 Ga. Gen. Assem.

33. O.C.G.A. § 6-3-22 (Supp. 1992).

34. SB 173 (HCSFA), 1992 Ga. Gen. Assem.

35. O.C.G.A. § 6-3-22 (Supp. 1992).

provision, which does not allow the General Assembly to be the final arbiter, was added so that the city and county in such a situation can resolve the dispute among themselves.<sup>36</sup>

During the early part of the 1992 legislative session there was some discussion of having a state airport authority become involved in condemnation disputes prior to the disputes reaching the General Assembly.<sup>37</sup> However, it was decided that it would be more favorable to have an elected body such as the General Assembly be the final arbiter rather than to have the involvement of a non-elected body such as a state airport authority.<sup>38</sup> Furthermore, the legislation regarding the proposed airport authority had not been fully developed at that time.<sup>39</sup>

Together, HB 1106 and SB 173 provide the means for Georgia to become competitive in the area of air travel while allowing local governments some voice in the process.<sup>40</sup>

*Holly Nelms Winter*

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36. Deal Interview, *supra* note 4.

37. *Id.*

38. *Id.*

39. *Id.*

40. Lane Interview, *supra* note 1.