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FINAL REPORT OF
THE SENATE INVERSE CONDEMNATION STUDY COMMITTEE

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Honorable Robert Brown
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Honorable Michael Meyer von Bremen
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Honorable Chip Rogers
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Honorable John Wiles
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INTRODUCTION

The Senate Inverse Condemnation Study Committee (Study Committee) was created by Senate Resolution 457 during the 2005 Legislative Session of the Georgia General Assembly. The Study Committee was charged with studying the current eminent domain practices to determine whether additional general law regulation of inverse condemnation and eminent domain is needed to protect private property rights.

The Study Committee was composed of seven members of the Senate: Senator Chip Pearson, serving as Chairman, and Senator Don Balfour, Senator Robert Brown, Senator Michael Meyer von Bremen, Senator Chip Rogers, Senator Mitch Seabaugh, and Senator John Wiles.

The Study Committee held three public meetings. One meeting was held in Atlanta on June 28, 2005. During this meeting, the Study Committee heard testimony from the following individuals: Ms. Valerie Fernandez, Esq., Pacific Legal Foundation; and, Ms. Shannon Goessling, Esq., Southeastern Legal Foundation. The second meeting was held in Savannah on August 25, 2005. During this meeting, the Study Committee heard testimony from the following individuals: Mr. Jim Grubiak, Association County Commissioners of Georgia; Mayor Tom Ratcliffe, City of Hinesville, Georgia Municipal Association; Mr. Tim Kibler, Georgia Association of Realtors; Mr. Steve Ruth, Esq., Georgia Power; Mr. Chuck Scarborough, Vice-President, Georgia Transmission Corporation; Ms. Shannon Goessling, Esq., Southeastern Legal Foundation; and Congressman Lynn Westmoreland. The final meeting was held in Dahlonega on October 6, 2005. During this meeting, the Study Committee heard testimony from the following individuals: Mr. David Hunnicutt, Esq., Executive Director, Oregonians in Action; Ms. Pat Stevens, Chief of Environmental Planning, Atlanta Regional Commission and Chief Planner, Metropolitan North Georgia Water Planning District; Mr. Steve Gooch, Chair of Lumpkin County Commission; Former State Senator Guy Middleton; and, Mr. Charles Ruffin, Esq., Gambrell & Stolz.

LEGAL BACKGROUND

The Fifth Amendment of the United States Constitution and Article 1, Section 3, Paragraph 1(a) of the Georgia Constitution, guarantee that private property shall not be taken for public use without just compensation. Government agencies are authorized under Georgia law to exercise the power of eminent domain to condemn or "take" private property for public use. Property owners are entitled to just and adequate compensation from the government agency before condemnation can occur. However, a government agency may also over-regulate a piece of property to the point that it has no practical use, essentially condemning the entire property. This is referred to as "inverse condemnation" or a "regulatory taking" and is defined as the inadvertent physical taking of an individual's real property by a government agency.

Current law allows an aggrieved property owner to file a legal action in eminent domain against the government agency. However, federal and state law relating to such legal actions is very complex, thereby hindering the timeliness of the process and resulting in significant legal costs. The most complex issue for courts in deciding a suit based on the premise of inverse condemnation is determining if a government agency has actually "taken" property without just compensation. On the federal level, the United States Supreme Court defined this type of regulatory taking in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992) as one in which the "regulation denies all economically beneficial or productive use of land."

The court eschews any "set formula" and instead proceeds on an ad hoc basis, reviewing a variety of factors:[1] the economic impact of the regulation, its interference with investment-backed expectations, and the purposes the regulation serves.[2] On the state level, property owners have a cause of action under Georgia law against a government agency based upon the premise that the owner's property has been taken or injured without any offer or proceeding for compensation; or that the physical taking went beyond the bounds authorized by the proceeding. State courts have also struggled with determining the extent of the property "taken." Legislation considered by states, including Georgia, sought to simplify the process for filing such legal actions and provide property owners relief from excessive regulation which denies such owners use of their property.

LEGISLATIVE BACKGROUND

Georgia

Senate Bill 30, introduced during the 2005 Legislative Session of the General Assembly, was the impetus for the creation of the Senate Inverse Condemnation Study Committee and sought to simplify condemnation proceedings by providing a separate procedure for inverse condemnation proceedings before a special master, the remedy available to the condemnee, and a process for measuring damages.

To determine the amount of compensation for a taking, the condemnee must file a petition in the appropriate superior court. The judge will then order the parties with rights in the property to appear before a special master for a hearing to determine value. The hearing must take place not less than ten nor more than 15 days after service of the order. The order must give appropriate directions for notice and service, and in a manner as to effectively provide an opportunity for all parties with an interest to be heard. All inverse condemnation proceedings before a special master will be conducted in substantially the same manner as condemnation proceedings.

The legislation entitles the condemnee to recover the fair market value of the property taken and any consequential damage to the remainder of the condemnee's property caused by the taking. The measure of damages will be the actual depreciation in market value and the effect upon the property so that the property owner may recover for the injury that has already occurred to the property. In determining market value as of the date of the taking, relevant factors include, but are not limited to, the general environmental condition of the condemned property and the need for remediation.

Oregon

Oregon's Measure 37 requires a state, city, county, or metropolitan service district enacting or enforcing a land use regulation that restricts use of private real property, to pay the property owner the reduction in fair market value of the affected property interest, or forgo enforcement. Such government entities may repeal, change, or not apply restrictions in lieu of payment; or, if compensation is not timely paid, the property owner is not subject to such restrictions. The measure does not apply to commonly and historically recognized public nuisances, public health and safety regulations, regulations required to comply with federal law, and regulations restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Additionally, compensation is due if the regulation remains in force 180 days after the owner makes written demand for compensation. After that time, the present owner may file an action in the circuit court in the county in which the property is located. Furthermore, the present owner is entitled to reasonable attorney fees, expenses, costs and

[1] *Lucas*, 505 U.S. at 1015 (quoting *Penn Central Transportation Co. v. New York City*, 483 U.S. at 124).
[2] *Penn Central*, 483 U.S. 104.

other disbursements reasonably incurred to collect compensation. However, Measure 37 does not provide any new revenue source for payments, if any, required under this measure.

Florida

The Bert J. Harris, Jr. Private Property Protection Act was enacted in 1995 to afford Florida's property owners protection against excessive government intrusion. The Harris Act is not intended to alter the state of takings jurisprudence. Instead, it creates a remedy separate and distinct from all other causes of action that exist, and does not supplant any other lawfully available administrative or judicial relief. The most notable feature of the Harris Act is the standard used to review government regulations. A government agency's action runs afoul of the Harris Act if it "inordinately burdens" private property. The Harris Act defines "inordinately burden" to apply where an agency action has "directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property . . . as a whole." The definition also includes any action which imposes on a property owner "a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large."

Of similar significance, as the standard employed by the Harris Act, is the procedural benefit it affords aggrieved property owners. The property owner is required to provide the government agency with notice of a claim and a bona fide, valid appraisal to support the claim 180 days before a suit is brought. The purpose of the appraisal is to set a baseline against which can be measured the claim that the government regulation negatively impacted the subject property. During the 180-day period, the agency must make a written settlement to the landowner ranging from payment of compensation to no change in the agency's position. Also during this period, the agency must deliver a written "ripeness decision" stating what uses can and cannot be made of the property. If the claim does not settle during this period, the property owner can proceed directly to court.

COMMITTEE FINDINGS

Shannon Goessling – Executive Director of the Southeastern Legal Foundation

Ms. Shannon Goessling described how an inverse condemnation proceeding would unfold under Senate Bill 30, the remedy available to the condemnee, and the process for measuring damages. Ms. Goessling also testified that the administrative remedy of Senate Bill 30 benefits property owners and Georgia citizens in several ways by:

- Providing the inverse condemnee a right of action against the local government;
- Streamlining and simplifying the system;
- Motivating both parties toward a settlement;
- Discouraging bad faith negotiations; and
- Freeing up the court system.

Ms. Goessling cautioned that one unintended consequence of Senate Bill 30 would be to unfairly burden power companies. Since this industry is already heavily regulated, affected by eminent domain, and that establishing power lines is influenced by demand, science, and engineering, inverse condemnation should not apply to power companies.

Valerie A. Fernandez – Managing Attorney for the Pacific Legal Foundation

Ms. Valerie A Fernandez gave a detailed presentation on the Bert J. Harris, Jr. Private Property Protection Act (Act). Enacted in 1995, she explained that support for the Harris Act was broad and bipartisan and was passed by the Legislature with only one dissenting vote, and signed into

law by Governor Lawton Chiles. Florida's enactment of the Harris Act is best viewed in the context of a nationwide sentiment that governments were going too far in burdening property owners' use of their lands.

Constitutional takings law is a notoriously complex and sometimes fractured body of jurisprudence. Even so, Florida's lawmakers recognize that owners whose property was taken had at least some recourse under the United States and Florida Constitutions. What they sought was a law that protected property owners whose rights were restricted in a manner that fell short of a taking as defined by federal law interpreting the federal Constitution.

In short, the intent of the statute is to provide relief, including the payment of compensation, in those instances where a law, regulation, or ordinance adopted after the effective date of the Act on May 11, 1995, unfairly affects real property. The Harris Act is limited to recovery only in applied cases; facial challenges to statutes, ordinances, and regulations may not be prosecuted under the Act. While compensation is likely to be the chief remedy sought under the Harris Act, the Act leaves open the possibility that equitable or other relief may be awarded.

The framework established to carry out the aims of the Harris Act has distinguished it as among the strongest and most innovative private property acts in the nation. The most notable feature of the Harris Act is the standard used to review government regulations. Essentially, an agency action runs afoul of the Harris Act if it "inordinately burdens" private property. The Act defines "inordinately burden" to apply where an agency action has "directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property . . . as a whole."[3] The definition also includes any action which imposes on a property owner "a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large."

This language tracks very closely United States Supreme Court decisions on what constitutes a taking of private property. Yet the Harris Act is clear that it is not intended to alter the state of takings jurisprudence. It creates a remedy separate and distinct from all other causes of action that exist, and does not supplant any other lawfully available administrative or judicial relief. The Harris Act also does not apply to actions of the federal government, to temporary takings of property, or in instances where one government entity alleges a property rights violation committed by another government entity.

Of similar significance, as the standard employed by the Harris Act, is the procedural benefit it affords aggrieved property owners. The Act responds to a major frustration of property owners – the inability to have their cases heard in court. In the usual lawsuit, one simply files a complaint and the case proceeds on its merits. In land use litigation, however, cases must be "ripened;" that is, the landowner must establish through state or local agency permitting processes the uses allowable for the property. Otherwise, a court cannot determine whether the government has in fact taken anything from the property owner. While it makes good theoretical sense, the practical effect of the doctrine is frequently to impede the resolution of claims while landowners keep going back to the well for another "no, but try again" response from a government agency.

Thus, the Harris Act clearly affords a great deal of protection to Florida's landowners. It is not, however, without provisions protecting government agencies. The Act provides that the merits of the settlement offer and ripeness decision are to be considered by the court in determining whether the government action has inordinately burdened the property and, if such a burden is

[3] Fla. Stat. § 70.001(3)(e).

found, what damages should be awarded.[4] If the court does not find an inordinate burden, and if the rejected settlement offer leading to the suit is found to be bona fide in nature, then the government agency is entitled to attorneys' fees and court costs.[5] This is a strong protection against the initiation of frivolous claims under the Act, and helps guarantee that judicial resources will be spent on those cases involving actual government imposition on the rights of landowners.

Ms. Fernandez clarified that although the Harris Act has been a valuable tool for the protection of property rights, fears of a litigation explosion, expressed by some at the time of its passing, have been entirely unrealized. In fact, the dearth of case law has vexed those who seek guidance from the courts on the contours of the Act. The primary effect of the Act has been to facilitate settlement between government entities and property owners before the initiation of a suit. There have been a few challenges to the constitutionality of the Harris Act, but to date, all have been rebuffed and the Act is still in full force in Florida.

David Hunnicutt – Executive Director for the Oregonians in Action

Mr. David Hunnicutt, the Executive Director of Oregonians in Action, discussed the significant provisions of Oregon's Measure 37. Prior to the passage of Measure 37, the Oregon Constitution required a government to pay property owners "just compensation" when condemning private property or taking it by other action, including laws precluding all substantial beneficial or economically viable use. As explained earlier in this report, Measure 37 entitles the owner of private real property to receive just compensation when a land use regulation restricts the use of the property and reduces its fair market value. If a property owner proves that a land use regulation restricts the use of the owner's property and reduces its value, then the government responsible for the regulation will have a choice: pay the owner of the property an amount equal to the reduction in value, modify the regulation, or not apply the regulation to the owner's property.

The measure specifies that compensation is due if the regulation remains in force 180 days after the owner makes written demand for compensation. After that time, the present owner may file an action in the circuit court in the county in which the property is located. The measure also specifies that the present owner is entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect compensation.

Measure 37 Overturned

Senator Pearson pointed out in a subsequent Study Committee meeting, not attended by Mr. Hunnicutt, that although Measure 37 was struck down in October 2005 by an Oregon circuit judge for violating provisions of the Oregon Constitution, the decision is being appealed. Moreover, Senator Pearson believes that Measure 37 and the court decision still provide the General Assembly with a road map for crafting its own legislation that will defend the rights of property owners and which will withstand the scrutiny of Georgia courts.

Railroad Industry

The railroad industry expressed support for the concept advanced by Senate Bill 30 as it relates to the traditional inverse condemnation scenario involving condemnation by a governmental agency. However, the industry, with its power of condemnation, is concerned that it would suffer some undesirable consequences should the legislation pass in its current form.

The railroad industry concedes that there are common recurring problems from adjoining property owners with respect to neighboring railroad lines. Noise, dirt, and unsightliness are a few examples of routine complaints that the railroad receives from adjoining property owners.

[4] Fla. Stat. § 70.001(6)(a).
[5] Fla. Stat. § 70.001(6)(c).

Senate Bill 30 may give a plaintiff's lawyer a new vehicle to prosecute claims against railroads for what has traditionally been categorized as a "nuisance." The negative impact to property value due to its proximity to a railroad might be categorized as an inverse condemnation. The railroad would clearly fall within the purview of Senate Bill 30 because it is an entity possessing the right or power of eminent domain. Under such circumstances, every property owner who dislikes either the noise or general unsightliness of the railroad may claim that an inverse condemnation has occurred to their property by virtue of being next to a railroad. Therefore, although the railroad industry supports Senate Bill 30, it feels that language should be inserted exempting the industry from inverse condemnation proceedings as envisioned under the legislation.

Georgia Power

Georgia Power discussed the utility's approach to planning, siting, and acquiring easements to deliver electrical power. The power of eminent domain, which it occasionally utilizes in its business, is radically different from the issue of inverse condemnation. However, Georgia Power expressed concerns that what Senate Bill 30 intends and what it propagates may be radically different.

Although the legislation certainly creates a forum for inverse condemnation questions, the forum may be inappropriate. Condemnation litigation under the special master proceedings outlined in Title 22 operates under legal guidelines in which a taking of property occurs only when all or part of the fee simple interest in property is acquired. Inverse condemnations proceed under the premise that a taking does not have to include a physical acquisition of all or part of a fee simple interest in property; a taking in these instances may be simply an interference with rights of ownership, use, or enjoyment of property.

Because eminent domain actions and inverse condemnations are different legal concepts, Georgia Power believes that the legislation combines the two concepts and mixes proverbial apples with oranges – and the difficult regulatory taking questions of "has a taking occurred" become blended with the clearly defined "a taking has occurred" questions of eminent domain. The settled issues of what a taking means in terms of construction of power lines, gas lines, roads, or sewers are no longer settled under Senate Bill 30. Georgia Power expressed concern that the legislation may spawn a great deal of litigation.

Finally, Georgia Power suggested that Senate Bill 30 is too broad for its intended purpose. Citizens are well protected under eminent domain proceedings by a statutory special master procedure which has been in place since 1957 in Georgia. If the need arises for the acquisition of all or part of a fee simple interest, the taking is defined by the condemning body and a condemnation petition is filed. A property owner has access to due process and the payment of just and adequate compensation. Entities with the power of eminent domain are conscientious about protocols for property acquisitions. It is rare for an entity initially to fail to acquire property rights necessary for any given project. It is even rarer for an entity to fail to address mistakes in acquisitions, thereby, prompting inverse condemnation claims. A current tort remedy exists in a separate forum for inverse condemnations and in these separate suits, property owners have access to adjudications of whether or not a taking has occurred and if so, a process for establishing just and adequate compensation as required by the Constitution. Merging the two independent legal processes under one statutory roof will blur clear legal lines existing in current eminent domain litigation and quite possibly fail to speed or clarify regulatory takings of inverse condemnation claims.

Pat Stevens – Chief Planner for the Metropolitan North Georgia Water Planning District

Ms. Pat Stevens of the Metropolitan North Georgia Water Planning District (District) testified that legislation broadening inverse condemnation will impede local governments' ability to protect the health, welfare, and safety of its citizens through appropriate environmental controls. The

District believes that the current environmental controls – Stream Buffers and Floodplain Management – are appropriate, and if it is somehow determined that they are not, then they should be specifically reevaluated and addressed instead of creating an additional statutory inverse condemnation process.

The District is concerned that the attempt to achieve broad and far-reaching changes in Georgia's zoning, land use planning, and state local environmental requirements will produce several unintended consequences, including:

- Environmental regulations would become too expensive to enforce and may be abandoned with dire consequences to Georgia's quality of life and environment.

- Downstream property owners would no longer be able to be protected from pollution generated on land developed by upstream property owners.

- If local governments elect to continue to attempt to protect the environment through local regulations, expanding inverse condemnation may create one of the largest property tax increases that Georgia has ever experienced.

The current system of developing land and environmental regulations works well for Georgia and continues to do so for the vast majority of local governments, developers, builders, and property owners. Regulations can be crafted to protect the environment and preserve the economic value of property. When there is a conflict between a particular development and an environmental regulation, these conflicts are best addressed at the local level.

United States Representative Lynn Westmoreland

United States Representative Lynn Westmoreland testified in support of Senate Bill 30. Representative Westmoreland asserted that private property rights are among the most cherished rights of all Americans, pointing out that when our Founding Fathers drafted the Bill of Rights, they specifically included protections for property rights in the most important document of our nation.

While he served in the state legislature, Representative Westmoreland proposed legislation to deal with a problem witnessed on countless occasions – local governments promulgating regulations that lowered the value of property by preventing it from being used for particular purposes. This was beyond merely traditional zoning – local governments made rules against removing trees from private property or creating large buffers around the perimeter of an individual's land. These are not "takings" under the traditional definition of land use, because the person is still able to use their land, but it is a "taking" to the property owner, because it impairs the use and enjoyment of private property.

His original legislation, which he indicated is now being continued through Senator Pearson's work, allows for individuals to be compensated when their land is reduced in value through a regulatory taking beyond the traditional zoning rules. When a government restricts the use of property beyond the pale of a normal zoning – when it moves into the area of a regulatory taking of the value of the property – then it is the government's responsibility to compensate the property owner. It is important that individuals not be forced to bear a burden by themselves for a decision made by the government that represents all the people.

Commissioner Stephen W. Gooch, Chairman, Lumpkin County Board of Commissioners

Commissioner Stephen W. Gooch of Lumpkin County described the current situation in Lumpkin County regarding stream buffers. Mr. Gooch explained that the Department of Community Affairs (DCA) and the Environmental Protection Division of the Georgia Department of Natural Resources (EPD) have proposed to impose 150-foot stream buffers on either side of certain streams in Lumpkin County. The stream buffers are the first step to receiving a permit to

withdraw water from the Yahoola Creek Reservoir. The county now formally objects to the stream buffers and the imposition and burden they place on property owners.

Mr. Gooch testified that the welfare of the property owners and citizens of Lumpkin County will be negatively affected by the proposed buffers due to devaluation of taxable assets in the county, resulting in both a loss of asset value to the taxpayers and a loss of tax revenue for the county. Moreover, the EPD imposition of stream buffers assumes that the native vegetation in the stream corridor is forest. However, much of the stream buffer area in Lumpkin County is a mix of pasture, cleared land, and residential sites mixed with scattered low growth and trees. The county's terrain is primarily rolling hills and slopes with minimal usable level land except along creeks and streams. The imposition of a 150-foot stream buffer would result in an inverse condemnation of a swath of land over 300 feet wide (150 feet on either side plus the width of the stream), taking from the private citizens over 9,000 acres from over 650 separate tracts of land. Essentially, a 300-foot swath consumes an acre of land for every 145 feet up and down a stream. This is land that cannot be disturbed or developed by private property owners, and amounts to nothing more than regulatory taking by government.

Georgia Association of Realtors

Mr. Tim Kibler of the Georgia Association of Realtors testified in support of Senate Bill 30. Mr. Kibler indicated that there currently is no clear definition for a "regulatory taking" in which an over-burdening government ordinance devalues a homeowner's property. Subsequently, the Georgia Association of Realtors expressed support for homeowner-friendly provisions in Senate Bill 30 that would clearly define a regulatory taking as well as establish a streamlined inverse condemnation proceeding through a special master proceeding instead of requiring the homeowner to file a lengthy and costly suit in Superior Court.

Georgia Municipal Association

The Georgia Municipal Association (GMA) expressed strong opposition to any efforts to broaden the concept of inverse condemnation to include routine regulatory actions. GMA contends that current law adequately protects citizens, whose property is negatively affected by government decisions, indicating that the United States Supreme Court and state law have established standards for physical and regulatory government takings that spell out when local governments must compensate property owners. In addition to traditional condemnation actions, under current law, governments may have to compensate property owners if the government entity physically intrudes or significantly interferes with the use of private property. Property owners may also seek compensation if a regulation or decision of a government deprives a property owner of all economic use of his or her property.

GMA fears that to expand the concept of inverse condemnation to include effects of routine regulatory decisions, such as zoning, quality of life, or environmental ordinances, will make the administration of land use regulations so expensive (in the possible form of higher taxes to pay for the costs of litigation and claims) that land use controls will be abandoned. Local officials will be placed in the awkward position of not being able to prevent, or at least, limit incompatible land uses such as strip clubs, sex shops, liquor stores, land fills, and big-box developments.

Association County Commissioners of Georgia (ACCG)

The Association County Commissioners of Georgia (ACCG) testified that current law on condemnation and inverse condemnation adequately protects citizens whose property is negatively affected by government decisions. The United States Supreme Court and state law have established standards for government takings that spell out when local governments must compensate property owners. In addition to traditional condemnation actions, governments may have to compensate property owners if the government entity physically intrudes on or significantly interferes with the use of private property. An example might be where a county sewer system failure causes a business to shut down. Property owners may also seek

compensation if a regulation or decision of a government deprives a property owner of all economic use of his or her property.

Expanding the concept of condemnation to include the effects of routine regulatory decisions, such as zoning, tree ordinances, historic preservation ordinances, erosion and sedimentation control ordinances, and stream buffers on the potential value of property would limit local government enforcement of land use controls through intimidation via litigation or threats of litigation and/or making the administration of land use regulations so expensive (in the form of higher taxes to pay the costs of litigation and claims), that land use controls will be abandoned.

Another casualty of inverse condemnation may be land use controls in those counties currently without zoning. Only 102 counties in Georgia have zoning ordinances. But, as growth continues, more are expected to enact an ordinance. However, despite the strong support of land use controls by the citizens, there is a good chance that those counties will be unwilling to pursue implementing zoning if it is complicated by threats of claims for regulatory takings.

RECOMMENDATIONS

We hold these truths to be self-evident, that all men are created equal,
that they are endowed by their Creator with certain inalienable Rights,
that among these are Life, Liberty and the Pursuit of Happiness.

- Action of the Second Continental Congress, July 4, 1776
- The unanimous Declaration of the thirteen United States of America

An Inalienable Right is a right that cannot be transferred or surrendered; or a natural right,
such as the right to own property.

- Black's Law Dictionary, Seventh Edition

A Natural Right is a right that is conceived as part of natural law and
that is therefore thought to exist independently of rights created by government or society,
such as the right to life, liberty, and property.

- Black's Law Dictionary, Seventh Edition

No person shall be deprived of life, liberty, or property, without due process of law; nor shall private
property be taken for public use, without just compensation.

- Amendment V of the United States Constitution

Private property shall not be taken or damaged for public purposes
without just and adequate compensation being first paid.

- Article 1, Section 3, Paragraph 1(a) of the Georgia Constitution

Recommendation One

The Study Committee recognizes that the United States Constitution and the Georgia Constitution protect property owners from government seizures without due process and compensation. But what happens when a property owner loses the ability to fully utilize his or her property due to a government regulation? When a government over-regulates a piece of property to the extent that the property becomes virtually useless, the land owner should be provided with a streamlined and expedited process for the purpose of demonstrating that a "regulatory taking" has occurred, the property has lost value from over-regulation, or the property can longer be fully utilized by the owner. Rather than burden the property owner with a complicated and costly court fight, the Study Committee believes that a simplified process that provides a separate procedure for inverse condemnation proceedings before a special master or arbitrator should be enacted. The special master will determine, in a proceeding substantially similar to a traditional condemnation proceeding, if over-regulation has negatively impacted the property owner and, if it has, determine the amount of compensation. The property owner should be entitled to recover the fair market value of the property taken and any consequential damage to the remainder of the condemnee's property caused by the taking.

Recommendation Two

The Committee recognizes the need for environmental regulations to protect water quality in our streams, but believes that certain stream buffer set-back requirements deny property owners their Constitutional right to own and make use of their land, essentially "taking" the land without providing such property owner with just and adequate compensation.

The Committee recommends that the General Assembly recognize the impact of such arbitrary increases in stream buffer requirements on a property owner's use of their land and provide alternatives that allow for the protection of water quality without requiring the property owner to sacrifice his or her Constitutional rights for the benefit of all Georgians.

Respectfully Submitted,

THE SENATE INVERSE CONDEMNATION STUDY COMMITTEE

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Senator, 51st District

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