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South Carolina House of Representatives

# Legislative Update & Research Reports

Ramon Schwartz, Jr., Speaker of the House

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# Legislative Update

## More Bills Filed

### Government Operations

Martin Luther King Birthday (H.3392). Presently, celebration of the birthday of Martin Luther King is optional—state employees may choose January 15 from among a number of holidays, including Robert E. Lee's birthday and Confederate Memorial Day. This bill would make the third Monday in January a legal state holiday, not an optional one.

Appropriation of State Funds to Private Sector (H.3393). This measure proposes an amendment to the state Constitution to allow the General Assembly to appropriate public funds to any "individual, company, association, corporation, or any religious or other private education institution." There would be a restriction: the appropriation could not be part of an on-going obligation on the part of the state.

Public Lands and Taxes (H.3394). Another Constitutional amendment proposed, this one to exempt public lands from taxation if the person using the lands pays a fee in lieu of the taxes.

Disposition of Public Lands (H.3395). Once again, a proposed Constitutional amendment, this one regarding disposition of public lands. If the lands are not going to be for public use, then the state must receive a fair value for them. If the lands will be used for some public purpose, then the state can reclaim the property if it is not used as intended.

Industrial Commission Renamed (H.3403). Quick: what's the major duty of the S.C. Industrial Commission? That's right, settling workers' compensation claims. This legislation would change the name to the S.C. Workers' Compensation Commission, making life easier for everyone, including those workers who want to file a claim.

Taxes and Revenues

Agricultural Land (H.3411). Land in South Carolina is taxed according to its use, with agricultural land being low on the scale. This measure amends existing law to set up certain requirements to meet the definition of "agricultural" for land, which would include timber and crops.

Timber land would have to be five acres or more to qualify; tracts of land less than five acres, but adjoining a five acre tract could be counted as part of that tract, and therefore be eligible.

Crop land would have to be ten acres or more, or have an agricultural income of at least \$1,000 per year for three of the previous five years before filing.

Tenant and leasing farmers would be able to apply for the agricultural rate.

Filing for Property Tax Exemption (H.3412). According to present law, the time period to file for exemptions on property tax runs from January 1 to the end of February. This bill would extend that time, causing it to run from January 1 to April 15. It would be possible to ask for an exemption for any property owned as of December 31 of the previous year.

Judicial Operations

"Wrongful Birth" Suits Prohibited (H.3397). This measure would prohibit the bringing of a "wrongful birth" suit. In such suits it is alleged by the plaintiff that, under a certain situation, a child should not have been born, and that the defendant either took the wrong action or took no action to prevent that birth.

Under a "wrongful birth" suit, the plaintiffs argue that there has been a blunder or mistake—usually by a medical doctor—with some procedure such as a genetic test, a sterilization operation, or so forth. This mistake led to an unwanted pregnancy. Such suits generally seek compensation for both emotional distress for the parents and funds necessary to care for the child.

An example is the case of parents who had already had two daughters born with a disfiguring hereditary disease. Frank, the husband, went to an urologist and had a vasectomy; a little while later, his wife still got pregnant. Later she gave birth to their third daughter, who had severe neurological problems and was also diagnosed as mentally retarded.

In such a situation, many people would argue that the suit is really just another malpractice case. Others, however, see serious philosophical implications for the right to life of individuals.

"Wrongful birth" suits need to be distinguished from "wrongful life" suits. In a wrongful life suit the lawyers for the plaintiff make the claim that their clients should never have been conceived at all. In essence, the argument is made that life can be so miserable—for any number of reasons—that it would be better not to have been born.

This sort of case was first brought by children born out of wedlock, claiming that their social/psychological damages were so great they suffered from "wrongful life." Courts consistently refused these claims, pointing out that under such criteria, just about everyone would sooner or later have a cause for suit. Recently, however, courts have been more likely to hear cases where severe medical problems and handicaps.

Children's Testimony: Out-of-Court (H.3413). This measure deals with the testimony of children in certain cases: criminal sexual conduct, lewd behavior, assault, battery, and kidnapping. In some instances the out-of-court testimony of a child would be permitted. Reasons that a child might not testify in open court could include death, absence from the jurisdiction, disability, extreme fear, or likelihood of an emotional trauma resulting.

In order for the testimony to be allowed, the court would have to be assured that it has "guarantees of trustworthiness." These guarantees cover a number of points, including the child's personal knowledge of the alleged event; the child's capability to recall the event accurately; the character of the child, and whether the child might have a motive to lie in the particular case; whether the statement was heard by more than one person, and whether the child's statement was spontaneous or came as a result of questioning.

Children's Testimony: Videotaping (H.3414). This bill would permit the prosecution to ask the court to allow videotaping of a child's testimony in sexual offense cases. The child would have to be under sixteen years, and there must be a reason why the child would not testify in open court.

At the videotaping, only the following persons could be present: the child, the solicitor, the defendant, the defendant's attorney, a person to care for the child, and the judge. The state's rules on evidence and other procedures would be followed to preserve the rights of the defendant.

Impact of Tourism on South Carolina

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Background

How big of an impact did travel and tourism have on South Carolina during 1984-1985? The Department of Parks, Recreation and Tourism wanted to find out, so they conducted a study.

The study, according to its project director, is the "most in-depth measurement of the South Carolina Travel and Tourism Industry ever produced." Titled *Travel and Tourism TRENDS* the report is a comprehensive survey of the industry. PRT plans to produce *TRENDS* on an annual basis.

"Significant Part"

The study says that travel and tourism played "a significant part" in the State's economy for 1984-85. Travelers and tourists spent \$2,896,333,057 in the state during the period studied. Of that almost \$2.9 billion, \$586,249,997 went into payrolls, and \$171,915,441 state and local tax revenues were generated.

During the year, 16,421 new hotel, motel and other lodging units were added; there are now more than 138,000 in South Carolina. There were more than 10,000 restaurants in the state during 1984; Charleston led with over 1,000.

The Travel Dollar--Where Did It Go?

According to PRT, every dollar of travel money spent in South Carolina produced 21 cents in wage and salary income from August, 1984 through September, 1985. Amount of payroll directly generated from the industry: \$586,249,997. A total of 77,138 jobs were directly supported by tourism--about 6 percent of total non-agricultural employment.

Tax receipts from travelers amounted to \$156,401,982 for the state, with the Accommodations Tax bringing in \$10,630,624, and local taxes amounting to \$15,513,459. All in all, \$171,915,441 in tax revenues from travel and tourism for the period.

How did individual counties fare? The table on the next page breaks down the figures by county to answer that question.

Travel Impact on South Carolina Counties

<u>County</u>	<u>Jobs</u>	<u>Payroll</u>	<u>State Tax</u>	<u>Local Tax</u>	<u>Accommodations Tax</u>
Abbeville	38	360,692	145,353	8,075	1,157
Aiken	490	3,828,025	1,129,581	83,673	24,063
Allendale	72	498,303	144,669	10,716	3,899
Anderson	558	4,331,407	1,336,548	99,004	18,209
Bamberg	61	478,421	150,202	11,126	1,942
Barnwell	81	614,040	191,666	14,197	1,609
Beaufort	8,094	58,475,532	15,709,844	1,454,615	579,430
Berkeley	483	3,597,815	1,027,947	76,144	18,430
Calhoun	9	98,433	43,569	1,614	117
Charleston	9,788	82,789,260	21,807,902	2,019,250	568,542
Cherokee	178	1,308,921	401,601	37,185	5,741
Chester	65	495,761	166,280	12,317	2,991
Chesterfield	88	637,426	216,484	16,036	4,365
Clarendon	407	2,923,496	862,671	63,902	19,967
Colleton	1,452	10,755,836	2,889,628	267,558	53,878
Darlington	204	1,580,164	468,840	43,411	6,639
Dillon	604	4,381,900	1,189,058	110,098	30,505
Dorchester	480	4,174,524	1,156,022	107,039	20,653
Edgefield	48	438,834	169,265	9,404	391
Fairfield	33	252,465	90,286	5,016	764
Florence	2,877	20,905,319	5,701,451	527,912	80,003
Georgetown	1,699	12,723,768	3,487,733	322,938	127,795
Greenville	5,013	38,519,358	10,097,307	1,121,923	143,964
Greenwood	256	2,233,918	638,262	59,098	13,512
Hampton	24	188,291	75,316	4,184	1,568
Horry	30,870	219,771,701	57,891,081	6,432,342	2,309,294
Jasper	1,040	7,911,469	2,104,529	198,864	36,554
Kershaw	322	2,470,811	717,332	53,136	7,076
Lancaster	155	1,167,298	368,620	27,305	6,028
Laurens	252	2,064,256	626,235	46,388	8,687
Lee	20	200,691	68,159	3,787	190
Lexington	2,316	18,158,660	4,319,681	399,970	72,632
McCormick	119	302,387	100,177	7,421	4,849
Marion	103	817,998	249,559	18,486	2,849
Marlboro	91	713,987	217,827	16,135	2,916

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<u>County</u>	<u>Jobs</u>	<u>Payroll</u>	<u>State Tax</u>	<u>Local Tax</u>	<u>Accommodations Tax</u>
Newberry	158	1,141,025	358,229	26,535	6,805
Oconee	183	1,360,551	380,672	35,247	8,133
Orangeburg	1,034	7,641,904	2,595,364	192,249	51,102
Pickens	620	5,044,986	1,404,275	130,025	24,500
Richland	3,479	32,856,937	8,252,440	764,114	151,172
Saluda	11	99,422	41,298	2,294	257
Spartanburg	1,454	12,329,625	3,533,332	327,160	67,669
Sumter	607	4,513,812	1,296,520	120,048	22,585
Union	41	341,123	122,804	6,822	1,534
Williamsburg	104	764,715	256,488	18,999	2,517
York	1,102	7,984,732	2,199,875	203,692	91,878
TOTALS	77,183	586,249,997	156,401,982	15,513,459	4,610,361

Source: *Travel and Tourism Trends for South Carolina*  
S.C. Department of Parks, Recreation and Tourism.

State Songs

All but three states have official state songs; some, like South Carolina, have more than one. Most of the songs contain the name of the state. A few songs are famous in their own rights, but most state songs seem to have been written and composed as state songs, which might account for some of their obscurity.

Eight states have songs named simply after them: Alabama, Arkansas, Illinois, Montana, Oklahoma, Rhode Island, Tennessee and Wyoming. We all know *Oklahoma*, but how many of us can hum a few bars of *Wyoming*?

Some state songs address their states, such as *I Love You, California*, and *Utah, We Love Thee*. Then we have the hailstorm: *All Hail to Massachusetts; Hail! Minnesota; Hail, South Dakota; and Hail, Vermont!* Apparently all hail has broken loose.

Three states don't have songs: New Jersey, New York and Pennsylvania. New Jersey should pick something by native son Bruce Springsteen and see if they can get the royalty rights to help balance the budget. The legislature in New York probably can't agree on which song to pick.

A number of states have songs which are well known. Connecticut picked *Yankee Doodle*, while our neighbor to the south has *Georgia on My Mind*. *My Old Kentucky Home*, *The Tennessee Waltz* and *Carry Me Back to Old Virginia* were obvious choices. Out west, the legislature probably had little choice when it selected *On, Wisconsin!* as the official state tune.

The flat fields of Kansas are appropriately saluted in *Home on the Range*. Indiana chose *On the Banks of the Wabash, Far Away*. Louisiana has two songs, *Give Me Louisiana* and *You Are My Sunshine*, the second of which was written by one of its governors. (Not Huey Long, although he was a prolific song writer himself, including fight songs for LSU.)

*Maryland, My Maryland* seems to have become popular enough to inspire imitation from *Michigan, My Michigan* and *Oregon, My Oregon*.

Several states have more than one song, and a couple of them got carried away: Tennessee has four official songs and West Virginia has three. The Volunteer State has *When It's Iris Time in Tennessee*, *The Tennessee Waltz*, *My Homeland, Tennessee*, and *Tennessee*. West Virginia has selected *West Virginia, My Home Sweet Home*, *The West Virginia Hills*, and *This is My West Virginia*. Since *County Roads* has a line about "almost heaven, West Virginia," it's only a question of time before that ditty gets added to the roster.

Finally, there are some state songs that are interesting just for their titles alone. There's *Alaska's Flag*, and the rousing *Arizona March Song*, and Colorado's more reflective *Where the Columbines Grow*. New Mexico is bilingual with *Asi es Neuvo Mexico*, and *O, Fair New Mexico*, while Hawaii is native with *Hawaii Pono*.

Probably the best title, however, isn't a state song, but that of the territory of Guam: *Stand Ye Guamanians*. That seems appropriate for a place whose slogan is "Where America's Day Begins" and whose official animal is the Iguana.

## Eminent Domain: The Concept, the Proposed Legislation

### Background

Eminent Domain, sometimes known as condemnation, is the power to take private land for public use. It is one of the three "sovereign powers" which every government possesses; the other two are the power to tax and the authority to police. (Some wags have remarked that these are essentially the power to take your property all at once, or bit by bit, and put you in jail if you refuse.)

Eminent domain has a long and varied history in English and United States law. As is often the case, such a history means that the doctrine has become tangled and confused, with laws relating to it scattered throughout the statute books. This has happened in South Carolina, where a proposed bill, S.254, would consolidate the condemnation process into a single body, the "Eminent Domain Procedure Code." This bill has passed the Senate, and is now in the House Judiciary Committee. This research report will briefly examine the concept of eminent domain, and the proposed legislation.

### "Most Invidious" Power?

The power of government to tax often arouses the ire and sometimes the action of the populace. ("Why should the Americans mind a little tax on tea?" George III.) The police power in democratic states is kept under strict control because of the obvious possibilities of abuse. Eminent domain, however, has been singled out by Constitutional law expert Edward Corwin as the "most invidious branch of governmental authority."

"Invidious" perhaps; authority, certainly. Eminent domain is such a traditional power of government that it is impossible to discover a time when government did not claim and use it. The authority of the government to take private lands for the common welfare is well-established in English law. It is recognized in both the United States and the South Carolina Constitutions.

The Fifth Amendment is most often referred to in criminal investigations to protect a person from testifying against himself. (Alleged mobster: "I respectfully decline to answer da question on the grounds dat it might tend to incinerate me.") However, the Fifth Amendment also implicitly recognizes the eminent

domain power of the federal government when it states that "nor shall private property be taken for public use, without just compensation."

The South Carolina Constitution contains similar wording. Section 13 of Article One provides that "private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made therefor."

The questions that return to haunt us: what is public use? what is just compensation?

### The Eminent Domain Tradition

In the United States, the development of eminent domain law has been primarily on the state level. The United States Supreme Court has heard cases on the subject from time to time--the Granger Case of 1877 set the basic "ground rules" on condemnation--but generally the high court has upheld the laws of the various states.

These laws vary considerably. The *Yale Law Journal* reviewed the case law concerning eminent domain and concluded that it was "irreconcilable in its inconsistency, confusing in its detail and defiant of all attempts at classification." Despite this, some broad trends can be discerned in eminent domain laws.

First, the principle was recognized in the colonies, and implicit in the U.S. Constitution, as noted above. Second, the legislatures and courts had settled its three basic principles by the 1820's: it was an inherent part of state sovereignty; it could be used only to transfer lands to public use or for a public purpose; the property owner deserved just or fair compensation.

Second, there has been a decided trend in increasing or expediting the condemnation powers of government. Until fairly recently--around 1910 in many states--property owners could receive compensation only for property actually acquired by the state. Attendant damages were excluded. For example, in one Massachusetts town a road on a hill was graded down, thus exposing and seriously weakening the foundations of houses on either side. Too bad, said the court, people who build houses on hills should realize this could happen when the government improves the roads.

States were also protected in their eminent domain proceedings because the right to a jury trial in such actions was not recognized. In practice this meant that cases moved quickly and judgements were frequently in the state's favor.

Third, the government's powers of eminent domain were next "devolved" on private or semi-private concerns, such as canal companies, railroads, and mines. The rationale behind this was that the activities of these companies were for the "public benefit," and so fell within the purview of eminent domain. Harry Scheiber, writing in the *Journal of Economic History*, says that the latter

part of the 19th century saw private companies use eminent domain almost without restraint. From about 1870 to 1910 was the "heyday of expropriation as public policy," according to Scheiber, when apparently any seizure of land could be justified as being "of great public benefit to the community."

This began to change during the early years of this century. The right of property owners to have a trial by jury was recognized; condemnation powers were returned to the government, and the authority of private concerns to condemn property were restricted. Finally, owners could receive awards for damages incurred as well as for actual loss of property. These changes brought eminent domain procedures into the basic form they have today.

Eminent Domain: "Believe It or Not"

While eminent domain is most often thought of in terms of roads, bridges, electric lines or similar improvements, it is not restricted to such cases.

In 1981, for example, Detroit was seeking to lure General Motors into locating an auto factory in the city. GM said it would come, provided Detroit could provide a suitable site, including a building, railroad access, and a set amount of land.

Detroit had the perfect site—almost. An old, abandoned Chrysler plant was available. The building was right on the railroad. Unfortunately, there wasn't enough land around the site. Using eminent domain powers the city seized land surrounding the plant, moving out the house owners and razing their homes. Home owners took the city to court, claiming that the condemnation proceedings had been for private, not public benefit.

Not so, ruled the Michigan Supreme Court. The city was acting in the best interests of all its citizens by fostering economic growth, and this met the requirements of "public use." The ruling was important because it expanded the concept of "public use" after years of restrictions. The ruling might also be a signal to other municipalities looking to attract industries and business.

A second use of the government's condemnation powers is less serious—unless you live on Martha's Vineyard. That Massachusetts Island is a prime vacation spot off Cape Cod, attracting thousands of visitors during the summer months. Many of those visitors probably wonder why they keep hearing explosions.

The reason is that the United States Navy is bombing Noman's Land, a small, rocky island two miles away. During World War II the government used eminent domain to seize Noman's Land, and has been using it for bombing practice ever since. According to the Navy, the bombs are filled with sand and smoke and cause no damage other than a loud noise. Residents of Martha's Vineyard say the aerial

attacks bother the natives, scare the tourists, start brush fires, and are a permanent nuisance and danger. The Navy has no plans to find another target or stop using Noman's Land. (By the way, local historians say "Noman's" rhymes with "omens" and comes either from an Indian word or a town in England.)

Finally, the city of Baltimore attempted to use eminent domain when the Colts bolted for Indianapolis. The city was seeking either to keep the team in town, or at least seize some of its property to make up for lost revenues (and perhaps, though unstated, for revenge). The attempt failed because the Colts had left town under cover of darkness before the suit was lodged.

#### The Eminent Domain Procedure Code

S.254 attempts to put all South Carolina condemnation procedures into a single, unified whole. The intent of the bill is clearly stated: "to create a uniform procedure for all exercise of eminent domain power in this State." To do this, the bill proposes adding 440 sections to the Code, amending 52 others, and repealing 146 more.

#### The Procedure

All condemnation actions would have to start with a "Notice of Intent to Condemn" to be sent to the property owner by certified mail. This notice tells the landowner to seek counsel to review the matter, and offers the owner "just compensation" for the property. Before any negotiations begin, the condemnor would provide the owner with a written appraisal of the property to prove this "just compensation" amount.

The notice must contain the following information:

1. Name of the condemnor who will get the property.
2. Name of the condemnee (the property owner or owners).
3. A legal description of the property.
4. A statement of the condemnor's right to take the property under eminent domain.
5. A statement telling the purpose of taking the property.
6. The amount of "just compensation" offered.
7. A statement telling the owner of a thirty day period to respond to the notice or be in default.
8. Notice that by defaulting the owner gives up any rights to challenge the condemnation.
9. A statement telling the owner that there is a thirty day period to file an answer, protesting either the amount of compensation offered, the right of the condemnor to take the property or both.
10. A statement that both parties have the right to demand a jury trial on the issue.

The condemnor deposits compensation money with the county Clerk of Court. Property owners would make written application for their share, which would be paid to them after the condemnor took possession of the land. Owners receiving money waive all objections and defenses to the action, except for claims to greater compensation.

The condemnor can take possession of the property when:

1. The owner gives written consent.
2. Payment is to the owner of a mutually agreed compensation.
3. "Just compensation" is deposited with the county Clerk of Court.
4. Payment to the owner of amount awarded by court in a condemnation action.
5. An order of possession is granted by the court.

### Actions in Condemnation

Sometimes property owners agree willingly with condemnation procedures; sometimes, however, they take legal action to block the transfer of property or to raise the compensation. It is estimated by *Changing Times* magazine that 98% of legal cases in eminent domain proceedings are taken to "sweeten the pot" for compensation, rather than keeping the land. For whatever reason owners wish to take action, the proposed "Procedures" give them that opportunity.

If the property owner decides to contest the condemnation, an Answer must be sent to the condemnor within thirty days. In this answer, the owner sets forth his or her position, challenging either the amount of "fair compensation" offered, or the right of the condemnor to take the land through eminent domain.

The condemnor can ask the court to grant it possession of all or part of the property before final judgement is made, if the estimated amount of just compensation has been deposited, and all legal requirements have been waived or satisfied. The date of possession would be determined by the relative merits of the objections; the need of the condemnor to take possession at a particular time; and the extent of additional costs brought on by postponement.

The final decision of the court resolves the right of the condemnor to take the land, states the amount of compensation for each property owner involved, and settles any other questions such as those relating to taxes, rentals, or insurance. Should the court find that the condemnor has no right to take the property, then the landowner can receive reasonable costs and litigation expenses. Likewise, a property owner who disputes the compensation awarded and wins is entitled to recover his legal expenses from the condemnor.

### Appraisal Panels

If a landowner rejects the compensation offered, then an appraisal panel must be set up to judge how valuable the property really is. The condemning authority and the owner each appoint one member, who cannot be a present or past employee, cannot have prior knowledge of the action, and cannot be a professional appraiser. These two then choose a third person to serve as chairman. This third person must have a South Carolina real estate broker's license.

The panel must make its decision on just compensation within twenty days. The condemnor files this decision with the Clerk within ten days, along with any additional money to adjust the amount. The decision also goes to the property owners, with the condemnor stating whether it accepts the amount, or rejects it and plans an appeal. Should the condemnor accept the panel's decision, the property owner has thirty days to take the compensation or appeal.

Appeals of the panel's decision by either party are heard by the court.

### Eminent Domain: Who Has the Power?

The "Procedures" contain a number of specific references to bodies which possess eminent domain powers. Among them are:

*The State Budget and Control Board*, whose right of condemnation is limited to the power "to acquire land necessary for the development of the capitol complex mall in the City of Columbia."

*The South Carolina Coastal Council*, which can use eminent domain to secure rights-of-way and spoil disposal areas "upon, across, or through" land, including submerged lands.

*The governing bodies of all counties* can acquire by condemnation "any real property of historical value by reason of any war in which the United States of America or any section thereof participated or by reason of any other historical event."

*The city council of any city containing more than five thousand inhabitants* can use the Eminent Domain Procedure code to acquire land for sewer and water systems.

*Cities and towns* may use condemnation to secure rights-of-way and property for "aqueducts, dams, canals, buildings, machine shops and other works."

*The boards of commissioners of special purpose districts* have "power of condemnation," as do "all state authorities, commissions, boards, or governing bodies established by the State of South Carolina."

*Telegraph and telephone companies* may use condemnation actions to secure land to construct their lines; *canal companies* may do likewise, and so may *railroad companies*.

*Electric lighting and power companies, and rural electric cooperatives* have authority to obtain land through condemnation actions.

*The trustees of the University of South Carolina* can make use of the Eminent Domain Procedure Code.

*The board of trustees of the Medical University* can do the same, but they have a restriction placed upon them: "Any new construction undertaken ... within the corporate limits of the City of Charleston must be done in compliance with the parking regulations and ordinances of that city to the degree that the number of parking spaces required by the regulations and ordinances must be provided on Medical University Property."

### Conclusion

Eminent domain is a power which seems to adhere naturally to government; it may not always be popular, but it is necessary. The proposed legislation seeks to consolidate the many and varied sections in the Code dealing with condemnation procedures and actions and to create, as the bill states, "a uniform procedure."