

PROPERTY RIGHTS

“The *Kelo* case also demonstrates that local government can be as tyrannical as centralized government. Decentralized power is always preferable, of course, since it’s easier to fight city hall than Congress. But government power is ever and always dangerous, and must be zealously guarded against. Most people in New London, Connecticut, like most people in America, would rather not involve themselves in politics. The reality is that politics involves itself with us whether we like it or not.”

— U.S. Rep. Ron Paul (R-TX)

It would be an illusion to believe private property rights are safe in 21st century America. The recent federal mortgage bailout — which takes tax dollars and future savings from everyone to save the homes of a select few — is an example of how property rights are undergoing a slow, steady assault. Fortunately, direct takings of property for a “public purpose” remain relatively rare — even after the Supreme Court’s *Kelo v. New London* (2005) decision. What is more common is increased taxation and regulations that diminish the productive use of property.

Here in South Carolina, the most significant property-related legislation that passed the General Assembly pertained to the creation of the S.C. Housing Commission as well as a federally mandated program to license (for a fee of \$1,000) and register mortgage lenders. The legislation that garnered the most attention, however, was a bill capping the point of sale property tax at 15 percent for retrofitted homes. Among the worst bills to be considered this session was a state-imposed moratorium on residential foreclosures.

BEST IDEAS OF 2009

✓ Protecting private property from government takings

S 91: Eminent Domain

Status: Referred to Judiciary Committee

This bill would have limited county use of eminent domain for slum clearance and redevelopment and specified circumstances that do not justify condemnation or public taking.

► **Our take:** Current state law (§ 4-9-30) permits counties to “undertake and carry out slum clearance and redevelopment work ... and [engage in] the sale or other disposition of such areas to private enterprise for private uses or to public bodies for public uses.” That being said, the S.C. Supreme Court has traditionally adopted a very narrow interpretation of “public use” — to the benefit of property owners. Likewise, S.C. voters approved a constitutional amendment (§ I.13) in 2006 that provides specific protection against taking private property for economic development. Still, the law’s definition of blight (§ 31-10-20) is so broad that additional clarification and protection is welcome. Accordingly, this bill clarifies that enhancing tax revenue or facilitating private/public-private development is not a legitimate reason to take blighted property for a public use. Also see S 85, H 3477

✓ Promoting transparent annexation practices

H 3253: Annexation Reform

Status: Referred to Judiciary Committee



Proposed legislation would clarify the definition of blight under state law and give more property rights protection to citizens.

✓ More good bills that didn't pass:

S 581: Exempts from *ad valorem* (i.e., property and other) taxation a home left by one spouse to another.

H 3008: Permits public access to conservation easements and riverbank property held under the S.C. Conservation Bank Trust.

H 3298: Permits a handgun to be stowed under the seat of a vehicle.

Other bills that passed:

S 278: Permits counties to waive penalties related to the payment of real property taxes if full payment is made by April 15 of the applicable tax year (signed by governor).

S 453: Restricts the permit appeal process for livestock and poultry facilities by limiting appeals to property owners who live within a two-mile radius of such facilities (governor's veto overridden).

S 673: As required by Title V of the Housing and Economic Recovery Act of 2008, requires mortgage lenders be licensed and registered as part of the Nationwide Mortgage Licensing System and Registry (became law without governor's signature).

H 3018: Provides a property tax exemption for a newly constructed detached single family home (governor's veto overridden). This law provides a \$1.5 million property tax break for builders and other real estate investors.

This bill would have enacted several reforms aimed at making the annexation process more transparent, including requiring a plan of services and a 30-day public notice before acting on an annexation petition.

► **Our take:** Annexation refers to the practice of incorporating a smaller community into a larger municipality. The benefits of annexation can be greater access to municipal services; the drawbacks often include higher taxes and increased regulations. In worst-case scenarios, annexation is a tool used by cash-strapped cities to expand their tax base, with locally provided services only coming years after the taxes are collected. For this reason, it is important to have a transparent annexation process that provides a clear plan for providing local services and enables potential residents to understand the pros and cons of annexation. Also see S 246, S 247

✓ Reducing property taxes

H 3272: Point of Sale Tax

Status: Passed the House; favorable committee report in the Senate; set for special order on Senate calendar

This legislation would cap the point of sale property tax assessment at 15 percent on real property sold to a new owner. The bill is retroactive to 2007. Also see S 435, H 3007, H 3130, H 3154, H 3293, H 3480, H 3481

► **Our take:** This legislation would reduce statewide local property taxes by \$44 million annually. Technically, though, the bill permits lost revenue to be shifted to other classes of property, as allowed by millage caps. Still, the S.C. Association of Counties opposes this bill because it may result in cuts to existing services. From our perspective, however, cutting taxes is one of the best means of reducing the size of government. Moreover, realtors argue South Carolina's current method of calculating property

taxes (passed in 2006 as Act 388 and approved by voters) is costing sales, especially on commercial properties. Thus this bill provides welcome tax relief, but what is also needed is comprehensive reform.

H 3304: Over-65 Homestead Exemption

Status: Referred to Ways & Means Committee

This bill would exempt from property tax increases owner-occupied homes for persons aged 65 and over and for the disabled. Also see H 3019

► **Our take:** Any bill that lowers taxes is a good thing. That being said, this legislation provides a targeted tax cut that also undercuts the kind of broad-based support that could fuel demands for a lower property tax for everyone. Currently, seniors already receive a \$50,000 exemption, regardless of income.

WORST IDEAS OF 2009

✘ Continuing to meddle in the housing market

H 3919: Housing Commission

Status: Governor's veto overridden

This law establishes the S.C. Housing Commission "to ensure and foster the availability of safe, sound, and affordable housing and workforce housing for every South Carolinian."

► **Our take:** In vetoing this legislation, the governor called it "well intentioned," but duplicative of services already provided by the S.C. State Housing Finance and Development Authority. The Authority has already provided

✘ More bad bills that didn't pass:

S 37: Bans the permitting of industrial facilities within three-and-one-half miles of a residence. (Why regulate when the courts can handle violations on a case-by-case basis?)

H 3585: Prohibits the installation of a secret compartment in a vehicle.

H 3862: Permits municipalities to use inclusionary zoning to force builders to construct affordable housing units in exchange for exceeding density limits.

H 3987: Requires permission (excluding legal defense) from a homeowner's association to discharge a firearm (passed House).

Property Taxes: Reform of the Reform?

In 2006, voters approved a comprehensive property tax reform (Act 388) that caps increases in the assessed value of property at 15 percent every 5 years and also caps millage rate increases at inflation (about 3 percent), plus population growth. The “reform,” though, was really a tax swap that raised the statewide sales tax to 6 percent. A dynamic analysis of Act 388 by the Beacon Hill Institute found that by 2010 the tax swap will have the following negative effects:

- S.C. businesses will pay \$409 million in additional taxes.
- S.C. homeowners’ initial tax cut will be reduced 45 percent.
- The local tax burden will continue to rise, along with the increase in sales tax.
- The state’s economy will lose 6,557 jobs.
- Investment will be \$852 million lower.
- Personal income will decline by \$321 million and real disposable income per capita by \$79.
- Sales taxes will remain high, while overall tax relief will become smaller or non-existent.

As these consequences have come to fruition, the business community, in particular, has pressed for changes and exemptions to the current property tax code. Thus legislators introduced a myriad of property tax legislation this session, suggesting that a reform of the 2006 reform is needed. These include:

S 230: Qualifies single member LLC owning residential real property for special property tax assessment ratio, provided the LLC is not taxed as a corporation.

S 193/S 194/H 3408: Reduces from 6 percent to 4 percent the property tax on homes rented out for no more than 90 days.

H 3018: Provides a property tax exemption for a newly constructed detached single family home (enacted).

H 3019: Exempts homeowners from paying property taxes once they reach age 65.

H 3272: Caps the point of sale property tax at 15 percent, shifting lost revenue to other classes of property (passed House).

H 3284: Gives property owners the ability to count assessments and permitting fees as deductions toward state taxes.

H 3291: Allows churches to obtain a property tax exemption on properties it owns that are used by other religious organizations.

H 3304: Exempts from property tax increases owner-occupied homes for persons over aged 65 and for the disabled.

H 3479: Creates new formula for calculating property tax rollback millage.

H 3528: Grants property tax exemption of 100 percent for one year to active duty personnel deployed to a combat zone. Also see H 3212

H 3748: Requires that the value of owner occupied residential property must be included in the calculation of the index of taxpaying ability. Also see S 181

H 3838: Allows for an additional exemption of 15 percent on property taxes for owner occupied property in the 2009 taxable year.

H 3966: Maintains property tax at 4 percent until end of calendar year for homeowners who have vacated and are currently trying to sell their property.

H 4024: Caps property tax for residential property consisting of three or fewer units at an assessment ratio of 4 percent.

\$1 billion in first-time mortgages to new homebuyers. But that is precisely the type of interventionist thinking — as illustrated by the 1977 Community Reinvestment Act — that caused the subprime mortgage crisis in the first place. A better solution is to let the free market create affordable housing options for everyone, instead of burdening builders and homeowners with increased taxes and regulations.

H 3296: Mortgage Bailout

Status: Referred to Judiciary Committee

This joint resolution would have imposed a one-year moratorium on residential foreclosures on homes financed through the subprime mortgage market. A related bill (H 3952) would have imposed a six-month moratorium (during which interest charges are waived) on all residential foreclosures. If either of these bills had passed, the tradeoff would likely have been H 3454, which sought to create a \$2,000 income tax credit on closing costs on residential and commercial real estate mortgages.

“Our realtors have lost deals because of this issue. People are going to buy in Georgia and North Carolina and Florida instead of here, and they’re doing that when they learn that the current owner is paying one level of taxes, but they find out that they will have to pay far more when they buy.”

**— Kristyne Blake,
Aiken Board of Realtors**

► **Our take:** State attempts at a mortgage bailout, of course, have been eclipsed by the \$275 billion federal bailout plan. The plan, as one pundit described it: “Tells responsible Americans they are suckers. If responsible Americans had been smart, they would have overextended themselves, purchased homes they could not afford, and taken out home equity loans based on the paper value of their property. Then, when the bill came due, they could just pass it to the government.” The real losers: taxpayers and future taxpayers, along with minorities and young people under 35 (whose home ownership rates are much lower than the national average).

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Legislation most likely to come up:

H 3272: The point of sale bill already passed the House. If the economy remains stagnant, there will be additional pressure from realtors and others to pass this legislation. H 3253 may also come up for a vote.

Foreclosure Moratoriums A Bad Deal

Foreclosure moratoriums have proven to only delay the inevitable, often leaving homeowners worse off than they would have been without the moratorium. Consider that a foreclosure moratorium on all Fannie Mae and Freddie Mac properties in Charleston County (combined with an extended holiday moratorium) actually accelerated foreclosures in January.

Foreclosure totals in Charleston from October 2008-March 2009:

October: 316
November: 315
December: 142
January: 515
February: 287
March: 373

Bank Repossessions of Homes (REOs):

October: 56
November: 20
December: 51
January: 215
February: 58
March: 42

The moratorium ended up causing more harm than good because a backlog of cases discouraged foreclosure authorities from working out deals that would have permitted individuals to keep their homes.