DEPARTMENT OF AUDITS AND ACCOUNTS

270 Washington St., S.W., Suite 1-156
Atlanta, Georgia 30334-8400

Greg S. Griffin
STATE AUDITOR
(404) 656-2174

February 15, 2021

Honorable Shaw Blackmon
Chairman, House Ways and Means
133 State Capitol
Atlanta, Georgia 30334

SUBJECT: Fiscal Note
House Bill 137 (LC 43 1758)

Dear Chairman Blackmon:

The bill would exclude from state income taxation any payments from a government agency made to a Georgia taxpayer as compensation for the condemnation of real property subject to ad valorem tax in the state.

Under federal tax code, compensation provided to the former owner of condemned property is treated the same as if the property was sold voluntarily, with any gain included in the taxpayer's adjusted gross income at both the federal and state levels. The bill would exempt this income from taxation in Georgia, resulting in a reduction in state income tax collections.

Georgia State University's Fiscal Research Center reported that "insufficient data on government condemnations are available from which to estimate the fiscal impact of such an exclusion at this time. The attached appendix provides some information about how such payments are treated under federal tax code, and discusses condemnations in Georgia and in other states where data are more readily available, in order to provide some insight into the potential revenue impact for the state."

Impact on State Expenditures
The Department of Revenue (DOR) would implement the provisions of the bill with existing resources.

Sincerely,

Greg S. Griffin
State Auditor

Kelly Farr

Kelly Farr, Director
Office of Planning and Budget

GSG/KF/mt

Analysis by the Fiscal Research Center

Under the federal tax code, only a portion of real property sales are treated as income subject to income taxes. Internal Revenue Service Publication 544 lays out in detail how to calculate the taxable gain on a sale, but generally, it is the difference between the amount realized from the sale and the property's adjusted basis, the owners original cost plus the cost of certain improvements and minus depreciation or casualty loss deductions taken previously on the property. For tax purposes, the IRS treats condemned property the same as property sold voluntarily.

If the property is the owner's primary residence, up to $250,000 of the gain (or up to $500,000 if married and filing jointly) is excludable from federal income taxes. In effect, this makes most home sales exempt from income taxes, because the gain is smaller than the $250,000/$500,000 capital gain exclusion. This limits the number of condemnations that would be affected by the bill.

It is not clear how many condemnations for public takings occur each year or how many would involve non-homestead property that would result in taxable income. A November 2006 report from the U.S. Government Accountability Office notes that there is "no centralized or aggregate national or state data" on the use of eminent domain. It is also uncertain what portion of such public takings are settled through a condemnation proceeding as opposed to negotiation of the sales price.

In Georgia, while condemnation case filings are technically public, the databases are dispersed across 159 county superior courts and not searchable except by parameters specific to the cases themselves, such as the parties' names or the case number. Some states, however, do track condemnations to some extent. The Colorado Judicial Branch issues annual statistical reports that tabulate the number of condemnation filings by state and local governments each year. It is not clear from the data how many were resolved in the government's favor, but anywhere from 48 to 123 were filed annually between 2016 and 2020. As another example, the Texas State Comptroller tracked 217 cases in 2020.

Because eminent domain powers, infrastructure needs, and community development strategies differ from state to state, it is not clear to what extent these totals might be comparable to Georgia's use of the tool. At least two state agencies – the Georgia Department of Transportation and the Georgia Department of Community Affairs – engage is condemnation proceedings, as do local government entities across the state.

In summary, it is clear that the proposed bill would result in a reduction of taxable income and thus state tax revenues in the event of condemnations for eminent domain purposes, particularly in takings of non-homestead property, and that the cost to the state budget could be material, particularly for larger projects or if smaller takings are numerous. However, insufficient data are available to enable estimation of the likely cost.