



Mississippi Forestry Association

Legislative Bulletin

The Voice of Forestry

Volume 2009 Number 6

March 20, 2009

In This Issue:

- MFA Member Action Alert—Private Property Rights
- MFA member question of the week—school trust lands
- Property Rights Coalition Urges Gov. Barbour to Sign HB 803
- Voter ID & Eminent Domain: Will the Ballot Initiative Process Be Used?
- Contact Your Legislator

ACTION ALERT: Immediate action needed concerning eminent domain reform by March 24th.

Action Alert from MFA President Ellen Dabbs and MFA Government Affairs Committee Chair Stephen M. Butler

Mississippi's entire forestry, natural resources, and agricultural communities are needed to urge Governor Barbour to **sign HB 803 and not veto** this strong private property rights legislation.

Property rights are fundamental to a free nation. Our Founders understood this when they restricted government's power to take private property. In 2005, the U.S. Supreme Court issued a ruling in *Kelo v. City of New London* that turned the Founders' intent on its head by saying that a city could take property from private homeowners and give it to another private entity which planned to build an office and retail complex. The Court said this was acceptable because the economic development project would generate more tax revenue than the homeowners were paying.

The only saving grace of this outrageous ruling was an acknowledgment of the right of states to pass their own laws to limit such actions by the government. In the past three legislative sessions, the Mississippi State Senate and House have been unable to reach agreement on the wording of a bill to correct this situation in Mississippi. This year, they finally agreed and sent House Bill 803 to the Governor, where it awaits his signature or veto.

MFA's Mission is leading diverse forestry groups to **promote landowner rights**, environmental stewardship, member prosperity, and community understanding.

Does H.B. 803 Address the Problems with Kelo?

Scott Bullock, the attorney who argued the case before the U.S. Supreme Court on behalf of Suzette Kelo, had this to say about House Bill 803, "H.B. 803 is very solid eminent domain reform legislation. It essentially ends Kelo-style takings for private economic development while also providing very important reforms to Mississippi's urban renewal or "blight" laws. It is very important that this legislation be passed to ensure that Mississippi home and small business owners and farms and churches are protected from abusive eminent domain actions."

Continued on p. 2



Mississippi Forestry Association

The Voice of Forestry

Legislative Bulletin

Volume 2009 Number 6 Page 2

March 20, 2009

MFA Member Question of the Week

Q: It seems that the Legislature considers bills every year that deal with our state's school trust lands. What is MFA's position on these bills?

A: MFA's longstanding position on Mississippi's school trust lands, also commonly known as Sixteenth Section Lands, is that they were set aside in order to financially benefit the school children of Mississippi. It is mandated by law that sixteenth sections be classified to the "highest and best use." MFA supports this concept and encourages county school boards to classify Sixteenth Section Land to forest land when that is the highest and best use. MFA also encourages local County Forestry Associations to become involved and monitor their respective local school board's activities in regard to Sixteenth Section matters. Please visit MFA's website to read [16th Section School Trust Lands: Past, Present, and Future.](#)

YOUR ACTION IS NEEDED BEFORE TUESDAY, MARCH 24!

Contact Governor Haley Barbour, your State Representative, and your State Senator. **Tell them to support HB 803 and protect your private property rights!**

Fax your note or letter of support to:

Governor Barbour – 601-359-3741 or 1-877-405-0733

Your State Senator – 601-359-2129

Your State Representative – 601-359-3728

OR, contact them by telephone (leave a message for delivery if necessary):

Governor Barbour – 601-359-3150

Your State Senator – 601-359-3770

Your State Representative – 601-359-3770

MFA is working in partnership and coalition with the Mississippi Farm Bureau Federation, the National Federation of Independent Business, and other private property rights advocates.

Thank you for your valuable contribution to this vital legislative effort.

For the future of forestry in Mississippi,

Ellen Dabbs
President
Mississippi Forestry Association

Steve Butler
Chair MFA Government
Affairs Committee

Property Rights Coalition Urges Governor to Sign Eminent Domain Bill

The Mississippi Constitution allows for the state government to acquire private property for public uses through a process known as eminent domain. Since the U.S. Supreme Court issued a controversial decision in *Kelo v. City of New London*, many state legislatures have passed eminent domain reform to prohibit this process from applying to land acquisition from unwilling sellers for private economic development purposes. **MFA has been working for several years to support eminent domain legislation that protects private property rights and upholds the Constitutional intent that eminent domain only be used for public uses. The following statement has been issued to Governor Barbour by a coalition of eminent**

Continued on p. 3



Mississippi Forestry Association

Legislative Bulletin

The Voice of Forestry

Volume 2009 Number 6 Page 3

March 19, 2009

Links: MFA Government Affairs

[http://
www.msforestry.net/
governmentaffairs.php](http://www.msforestry.net/governmentaffairs.php)

MFA Online

www.msforestry.net

Contact Us

[E-Mail MFA Government
Affairs](mailto:info@mfa.ms)

601.354.4936

601.354.4937 FAX

620 N. State St.

Suite 201

Jackson, MS 39202

MFA's mission is leading diverse forestry groups to promote landowner rights, environmental stewardship, member prosperity, and community understanding.

domain reform advocates prior to his threatened veto of HB 803, a strong private property rights bill.

Dear Governor,

We write to voice our support for H.B. 803, a much-needed eminent domain reform that will effectively protect Mississippi's home, small business, church and farm owners from having their private property taken by force and given to another private party. Mississippi is one of the few states that has yet to pass eminent domain reform in the wake of *Kelo v. City of New London*, one of the most universally reviled U.S. Supreme Court decisions in recent memory. H.B. 803 directly addresses *Kelo* and is long overdue, and we urge you to sign this important legislation.

Economic development occurs every day across the country without the use of eminent domain. There are countless examples of large-scale land aggregation and development projects through private negotiation, not government force. In fact, a recent study, "Doomsday? No Way: Economic Trends and Post-Kelo Eminent Domain Reform," found that eminent domain reform has no negative consequences on economic development.

Using rigorous statistical methods, the study examined indicators closely related to economic development and revealed that post-Kelo reforms have provided greater protection to property owners without sacrificing economic health.

With no ill economic effects—and with the substantial benefits strong reform provides the rightful owners of property and society as a whole—legislators nationwide have been encouraged to pursue safeguards against eminent domain abuse. All told, 43 states have increased their protections against eminent domain abuse in the four years since the *Kelo* decision—but not Mississippi, where citizens are more vulnerable than ever to eminent domain abuse. But private property rights should not depend on where you live or whether your land could produce more tax revenue if put to a different use. Mississippians will not stand for less property protections than their neighbors to the north, east and west, which would indeed be the effect of a veto of H.B. 803.

Five other governors have vetoed eminent domain reform. The results speak for themselves:

The Iowa Legislature passed a bill with overwhelming bipartisan support, and overrode the Governor's veto for the first

Continued on p. 4



Mississippi Forestry Association

Legislative Bulletin

The Voice of Forestry

Volume 2009 Number 6 Page 4

March 20, 2009

time in over 40 years. The Governor of Delaware's veto was not overridden, but her Lieutenant Governor—who supported the veto—could not even win his party's nomination for Governor, losing to now-Gov. Jack Markell, who said he would sign the vetoed bill. Markell's opponent also ran on an anti- eminent domain abuse platform. Texas Governor Rick Perry vetoed a bill that was overwhelmingly passed by both houses. He is now pushing for reform. The Governor of Arizona vetoed a bill in 2006, only to be "overridden" by a citizen initiative with similar language that passed by a substantial margin. New Mexico Governor Bill Richardson vetoed a good reform bill in 2006. The following year, he signed an even stronger piece of legislation into law.

Mississippians disapprove of eminent domain abuse. Every poll taken after Kelo demonstrated that over 80% of the public disapproves of eminent domain for private gain. And the public isn't alone; the courts are rejecting the Kelo decision's rationale, too. The Ohio and Oklahoma Supreme Courts have used their state constitutions to invalidate and prohibit the taking of homes and businesses for private development. A number of other state supreme courts, including Rhode Island, Missouri, Maryland, and New Jersey, have cast doubt on the applicability of Kelo in their jurisdictions, ultimately finding in favor of property owners.

Eminent domain abuse is a problem in Mississippi, and H.B. 803 fixes it. For example, nine years ago, the MMEIA threatened to take the Archie family homestead in Canton as part of the 1400-acre Nissan plant project. Both Nissan and the former head of the MMEIA publicly admitted that the project didn't require the Archies' land, but they went ahead with condemnation anyway. After the case drew national support for the Archies from the likes of Martin Luther King III and the Southern Christian Leadership Conference, and then went to the state Supreme Court, the state stopped its condemnation attempts, allowing the Archies to stay in their homes.

H.B. 803 would not allow this abuse to happen. This bill specifically addresses the question in Kelo about whether private property can be condemned for economic development: under H.B. 803, it cannot.

Governor, you have a historic opportunity to sign into law a bill that will protect the rights of Mississippi's citizens and guarantee that they get to keep what they have worked so hard to own. We ask you to join the other 43 states that have acted to restore the vision of our nation's Founders with regard to private property rights in the wake of the Kelo decision. It is within your power to provide this fundamental protection to the home, small business, church and farm owners across this great state. We urge you to sign H.B.803.

Thank you.

*National Federation of Independent Business, Mississippi Center for Public Policy
Mississippi Farm Bureau Federation, Mississippi Forestry Association, Southern Christian
Leadership Conference, National Taxpayers Union, Americans for Tax Reform, Property
Rights Alliance and the Institute for Justice*

Continued on p. 5



Mississippi Forestry Association

Legislative Bulletin

The Voice of Forestry

Volume 2009 Number 6 Page 5

March 20, 2009

Senator Asks Court to Rule on Voter ID Initiative

By Bobby Harrison, *Daily Journal*, Jackson Bureau

Background, by MFA staff: Recent legislative battles over eminent domain and voter fairness/identification have prompted some advocacy groups to consider using the ballot initiative process to circumvent the Mississippi Legislature and present these policy questions directly to Mississippi's voters. If Governor Barbour vetoes HB 803 next week, and both the House and Senate do not override his veto with a minimum two-thirds vote in each chamber, MFA members should expect to see a massive statewide effort to collect petition signatures to place eminent domain reform on a statewide ballot.

Mississippi's initiative process was adopted in the early 1990s as a way for people to bypass the Legislature and place issues on the election ballot. But the process has been rarely used, and now questions have arisen about how it works and even if Mississippians still have the right of initiative.

The questions come from Senate Judiciary A Chairman Joey Fillingane, R-Sumrall, who is the sponsor of a new initiative on voter identification. He has asked the Hinds County Chancery Court for a ruling on how the initiative process works.

Since the process was adopted more than a decade ago, only two initiative proposals have been placed on the ballot. Both failed. This is the second time that a voter identification initiative has been tried.

Mississippi's initiative process is not used often because of its burdensome restrictions, such as requiring the petition-gatherers to be residents of the state. Section 273 of the Mississippi Constitution sets up the initiative process. As part of that process, a person must gather the signatures of 12 percent of the total voters in the last gubernatorial election - somewhere between 90,000 and 100,000 signatures. The only problem is that "the signatures...from any congressional district shall not exceed one-fifth of the total number of signatures."

When the initiative process was placed in the Constitution, Mississippi had five congressional districts. But the state lost a district after the 2000 Census.

The question now: Do initiative supporters have to gather one-fourth of the signatures from each of the current congressional districts or one-fifth from the old districts? Or has the change in congressional districts rendered the initiative process invalid in Mississippi? Fillingane believes the state still has an initiative process, but is not sure whether he should gather signatures based on the five old districts or the four new ones. That is why he is asking a Hinds County chancellor to rule on the issue before he goes to the trouble of gathering signatures. "I don't care which way we do it," Fillingane said. "I just want to know the rules up front."

The Attorney General's Office has issued an official opinion, in response to an inquiry from Secretary of State Delbert Hosemann. It says "signatures must come from the last five-district congressional plan which was in effect prior to the adoption of the current four-district plan. It would be mathematically impossible to satisfy the requirements... using just four districts."

Continued on p. 6



Rep. Tommy Reynolds, D-Water Valley, chair of the House Apportionment and Elections Committee, questions whether the state still has an initiative process. Reynolds said it is not unusual for circumstances to change to make laws obsolete and no longer applicable. "I have read the Constitution," Reynolds said. "...You are bound by what it says. If you are a strict constructionist how can you come out any other way?" He said the Constitution would have to be changed to make the initiative process valid again. Under the current language in the Constitution, he said it is mathematically impossible to successfully complete the process. "The old districts do not exist," he said.

Reynolds and Fillingane have both been involved in the legislative process over voter ID. The issue has been debated for years in the Legislature and has passed the Senate several times, only to die in the House. This year Reynolds had worked to craft a compromise that included not only voter ID, but other election issues, such as early voting. But Fillingane was among a group of Republican senators who killed that compromise effort in the Senate, though Fillingane was later part of an unsuccessful effort to revive that proposed compromise. Fillingane said he opposed part of the compromise, such as a provision allowing early voting.

2009 MFA Forestry Bills Watch List

Note: As of March 19, 2009. Bills will be added and deleted as necessary throughout the Legislative Session

Recommended MFA Positions: M = monitor, S = support, O = oppose

House Bills

HB 503 Beaver control programs; increase amount that counties may expend for.

Board Recommendation: **M**, 3/13 (H) Decline to Concur/Invite Conf, 03/17 (H) Conferees Named Eaton, Ward, Weathersby

HB 803 AN ACT TO AMEND SECTION 11-27-1, MISSISSIPPI CODE OF 1972, TO PROHIBIT USE OF THE POWER OF EMINENT DOMAIN EXCEPT FOR A PUBLIC USE; AND FOR RELATED PURPOSES.

Board Recommendation: **S**, 03/11 (H) Concurred in Amend From Senate, 03/17 Due From Governor 03/23/09, http://billstatus.ls.state.ms.us/documents/2009/html/sam/Amendment_Report_for_HB0803.htm

HB 881 AN ACT TO AMEND SECTION 29-3-81, MISSISSIPPI CODE OF 1972, TO GRANT LOCAL SCHOOL BOARDS THE OPTION, DURING THE FINAL YEAR OF ANY ADDITIONAL FIVE-YEAR LEASE ON AGRICULTURAL SIXTEENTH SECTION LANDS THAT THE BOARD INTENDS TO RECLASSIFY, TO AGAIN RE-LEASE THE LAND FOR AN ADDITIONAL FIVE-YEAR TERM OR TO PROCEED WITH THE RECLASSIFICATION; AND FOR RELATED PURPOSES

Board Recommendation: **O**, 3/12 (H) Decline to Concur/Invite Conf, 3/16 (H) Conferees Named Brown, Warren, Holloway, 3/16 (S) Conferees Named Carmichael, Blount, Tollison http://billstatus.ls.state.ms.us/documents/2009/html/sam/Amendment_Report_for_HB0881.htm

HB 1132 Harvest permits; extend repealer on law authorizing and revise maximum weight limit and vehicles for which may be issued. *Continued on p. 7*



Mississippi Forestry Association

Legislative Bulletin

The Voice of Forestry

Volume 2009 Number 6 Page 7

March 20, 2009

Board Recommendation: S, 03/02 (H) Decline to Concur/Invite Conf, 03/11 (H) Confer-ees Named McBride, Walley, Ward, 03/16 (S) Conferees Named King, Yancey, Lee (35th)

HB 1381 Scenic streams; designate a certain portion of the Escatawpa River.

Board Recommendation: S, 03/18 **Approved by Governor**

HB 1733 Sales tax; revise rate on certain sales of tractors, farm implements, logging/pulpwood equipment, repair parts and labor.

Board Recommendation: S, 03/02 (S) Referred To Finance, 03/12 (S) Title Suff Do Pass As Amended, 03/17 (S) **Died On Calendar**

Senate Bills

SB 2230 AN ACT TO AMEND SECTION 11-27-1, MISSISSIPPI CODE OF 1972, TO PROHIBIT USE OF THE POWER OF EMINENT DOMAIN FOR CERTAIN PRIVATE, NONGOVERNMENTAL PURPOSES; TO PROVIDE EXEMPTIONS; AND FOR RELATED PURPOSES.

Board Recommendation: S, 03/04 (H) Returned For Concurrence

http://billstatus.ls.state.ms.us/documents/2009/html/ham/Amendment_Report_for_SB2230.htm

SB 2606 Sales tax; revise rate on sales of farm tractors and certain farm equipment and parts and labor.

Board Recommendation: S, 03/13 (H) Returned For Concurrence, 03/18 (S) Decline to Concur/Invite Conf

SB 2659 State-funded buildings; energy performance regulations shall apply to buildings constructed with CDBG funds.

Board Recommendation: M 03/11 **Approved by Governor**

SB 2947 Sixteenth section forest lands; authorize management services by private forester subject to approval by the Secretary of State and Forestry Commission.

Board Recommendation: M, 03/18 (S) Decline to Concur/Invite Conf, 03/18 (S) Confer-ees Named Carmichael, Blount, Lee (35th)

SB 3278 Taxation; provide certain incentives to facilities that generate electricity through biomass or cogeneration. 03/17 (H) Passed As Amended, 03/18 (H) Returned For Concurrence

How to Contact Your Mississippi Legislators

Telephone: 601.359.3770 for House and Senate Members during the session. If they are not in their offices, the Capitol operator will take a message that will be delivered to them.

Email: Check first with your legislator to determine if they accept email messages.

Fax: Send personally addressed to the House Docket Room at **601.359.3728**; the Senate at **601.359.2129**

Letters: Mail to: The Honorable (Representative or Senator's name), State Capitol, P.O. Box 1018, Jackson, MS 39215-1018

Legislative web page: <http://billstatus.ls.state.ms.us/>

State Sen. info.: http://billstatus.ls.state.ms.us/members/ss_membs.xml

State Rep. info.: http://billstatus.ls.state.ms.us/members/hr_membs.xml