

STORAGE NAME: h0655a.ca

DATE: February 22, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 655

RELATING TO: Eminent Domain/Municipalities

SPONSOR(S): Representative Heyman

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REAL PROPERTY & PROBATE (CJC) YEAS 7 NAYS 0
 - (2) COMMUNITY AFFAIRS (PRC) YEAS 10 NAYS 0
 - (3) EDUCATION APPROPRIATIONS (FRC)
 - (4)
 - (5)
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I. SUMMARY:

This bill provides that a municipality may obtain lands by eminent domain to be conveyed by the municipality to the school board of the school district for the county within which the municipality is located. The school board must request, in writing, that the municipality obtain such lands for conveyance to the school board and must promise to use its best efforts to establish a public school thereon.

This bill does not appear to have a fiscal impact on local or state government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Eminent domain is the power of a governmental entity to force the sale of private property to the governmental entity for public purposes. The Florida Constitution provides:

No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.¹

The general statutory framework for the eminent domain process is found at Chapter 73, F.S. In general, the governmental entity must first engage in presuit negotiation in an attempt to effectuate a voluntary sale of the property at an agreeable price.² If a settlement is not reached, the governmental entity may file a petition with the circuit court.³ The circuit court is to give preference in scheduling trials on the issue of eminent domain, and the trial is conducted before a 12 person jury.⁴ The owner of the property is entitled to the value of the property, and, in certain cases, damages for loss of business.⁵ The owner may also be entitled to reimbursement of attorney's fees and costs.⁶

School boards are given the power of eminent domain by s. 235.05, F.S. Municipalities are given the power of eminent domain by s. 166.401, F.S. The specific purposes for which a municipality may use the power of eminent domain are listed at s. 166.411, F.S. "The only constitutional limitation placed on municipalities' authority is that such powers be exercised

¹ Fla.Const. Article X, Section 6. Payment to the owner of the property is required by the Fifth Amendment to the United States Constitution, which states in pertinent part that private property shall not be taken for public use "without just compensation."

² Section 73.015, F.S., effective July 1, 2000.

³ Section 73.021, F.S.

⁴ Section 73.071(1), F.S.

⁵ Section 73.071(3), F.S.

⁶ Section 73.092, F.S.

for valid ‘municipal purposes’⁷, but the use of eminent domain authority “is one of the most harsh proceedings known to the law, consequently when the sovereign delegates the power to a political unit or agency a strict construction will be given against the agency asserting the power.”⁸ Municipalities are not specifically authorized to use the power of eminent domain to acquire property for use by a local school board, nor are they specifically prohibited from doing so by statute or case law.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 166.411, F.S., to provide an additional permitted ground upon which a municipality may use the power of eminent domain. This bill provides that a municipality may obtain lands to be conveyed by the municipality to the school board of the school district for the county within which the municipality is located. The school board must request, in writing, that the municipality obtain such lands for conveyance to the school board and promise to use its best efforts to establish a public school thereon.

This bill further provides that obtaining land by eminent domain to be conveyed by the municipality to the local school board constitutes a valid municipal public purpose.

Although currently both municipalities and school boards have the power of eminent domain, this bill allows a municipality to use the power of eminent domain to acquire land and then convey the land to the school board. In a circumstance where a city has the budget and the willingness to use its power of eminent domain and the school board either does not want to exercise its power of eminent domain or does not have the budget, this bill authorizes the municipality to act.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Grants municipalities the authority to exercise the power of eminent domain for obtaining lands to be conveyed by the municipality to the school board if the school board requests, in writing, that the land be obtained for the purpose of establishing a public school on such land; declares that obtaining land for this purpose constitutes a valid municipal public purpose.

Section 2: Provides effective date of becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

⁷ City of Ocala v. Nye, 608 So.2d 15, 17 (Fla. 1992).

⁸ Peavy-Wilson Lumber Co. v. Brevard County, 31 So.2d 483, 485 (Fla. 1947).

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2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

Whatever costs are associated with an eminent domain proceeding and the compensation to the landowner. It isn't clear from the bill if upon conveyance to the school board, the municipality will be reimbursed for any costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

This bill may assist school boards with alternative means of acquiring and financing real property for school purposes in cooperation with municipalities. It may also assist municipalities in encouraging school construction.

This bill does not effect eminent domain procedures. The amount a property owner receives from an eminent domain proceeding is the same whether the condemning authority is a municipality or a school board.

A bill proponent claims that, while this bill was proposed to meet the needs of one particular municipality, this bill will further the state goal of improving education. The proponent further noted that a local bill for this particular municipality would not be authorized.⁹

The League of Cities support this bill.

The Florida United Businesses Association, Inc. opposes this bill as drafted. Although this bill does not cause any direct cost to businesses, there is an indirect impact caused by expanding the authority of municipalities to exercise its eminent domain authority. The Association would like to require municipalities to pay business relocation expenses just as the State is required to pay¹⁰. By requiring the municipalities to pay these expenses, business owners will be able to receive expenses that they are required to incur when the property they are located on is involved in eminent domain proceedings. In addition, the Association has a concern regarding the requirement that the school board must exercise its "best efforts" to establish a school on the property. It feels that this language needs to be better defined.

⁹ The Metropolitan Dade County Home Rule Charter provisions, recognized at Article VIII, Section 5(e), of the Florida Constitution, would prohibit a local bill that would effectuate the purposes of this bill. Comments by Ron Book, on behalf of the City of Adventura, at the meeting of the Committee on Real Property and Probate, on February 7, 2000.

¹⁰ Relocation assistance is a federal program that is administered by the State pursuant to section 339.09, Florida Statutes. If the State project is a federally funded project, the State is required to pay or offer to pay relocation expenses. According to the State Department of Transportation (DOT), relocation expenses include all actual, reasonable, and necessary expenses. There is no limitation on the total amount of relocation expenses allowed. Under section 339.09(3), the State is authorized to adopt rules to allow for the payment of relocation expenses on non-federally funded projects. By rule (Florida Administrative Code rule ch.14-66), it is the policy of DOT to always offer relocation expenses, even if it is not a federal-funded project. The reasoning behind this is that if the State does not offer relocation assistance, and at some future time the State receives federal money for the project, the State can not use the money on that project. In addition, section 339.09(3), provides that the authority to use transportation tax revenues does not extend to the power of eminent domain.

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The Florida School Board Association was contacted regarding this bill. However, at the time of publication of this analysis, no comments had been received.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its February 22, 2000 meeting, the Committee on Community Affairs adopted an amendment, offered by Representative Heyman, that clarifies that the school board must promise to use the land to establish a public school rather than promising to use "*its best efforts*" to establish a public school on the property.

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Laura L. Jacobs, Esq.

Joan Highsmith-Smith