

STORAGE NAME: h0655a.rpp

DATE: February 7, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY & PROBATE
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 YEAS 7 NAYS 0
 - (2) COMMUNITY AFFAIRS
 - (3) EDUCATION APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

Eminent domain is the power of a governmental entity to force the sale of private property to the governmental entity for public purposes. 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, if the school board requests, in writing, that the municipality obtain such lands for conveyance to the school board and promises 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 of 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

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.

exercised 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, if the school board requests, in writing, that the municipality obtain such lands for conveyance to the school board and promises 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.

This bill takes effect upon becoming a law.

D. SECTION-BY-SECTION ANALYSIS:

See “Present Situation” and “Effect of Proposed Changes”

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

none

2. Expenditures:

none

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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).

2. Expenditures:

None, unless a local government elects to utilize the provisions of this bill.

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.

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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

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

none

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

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

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.