

STORAGE NAME: h0655z.rpp
DATE: June 20, 2000

****AS PASSED BY THE LEGISLATURE****
****VETOED BY THE GOVERNOR****

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
REAL PROPERTY AND PROBATE
FINAL ANALYSIS**

BILL #: HB 655 (substantially similar provisions passed in CS/SB 1230)

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 YEAS 10 NAYS 0
 - (3) EDUCATION APPROPRIATIONS YEAS 9 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

CS/SB 1230, first engrossed, 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 the land to establish a public school thereon. This section of the bill expires January 1, 2003.

CS/SB 1230, first engrossed, further allows a certain hospital district to take possession and title to real property prior to entry of a final judgment in any eminent domain action. This section of the bill expires July 1, 2003.

CS/SB 1230, first engrossed, does not appear to have a fiscal impact on local or state government.

On April 28, 2000, CS/SB 1230 was substituted for HB 655, which was laid on the table. CS/SB 1230 was amended by the House, and passed; the Senate concurred in the amendment. CS/SB 1230, first engrossed, was vetoed by the Governor June 7, 2000.

In the veto message, the Governor objected to the portion of this bill which effectively allows the North Broward Hospital District to take title and possession of real property prior to entry of a final judgment in the eminent domain action, stating: "The use of eminent domain authority is one of the most harsh proceedings known therefore the justification for expanding the scope of existing eminent domain authority must be proven to be essential, not just convenient or economical."

This analysis, with certain exceptions, is of CS/SB 1230, first engrossed; the exceptions are those sections that address the House bill, which are clearly identified.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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:

North Broward Hospital District's eminent domain authority is broadened to include the right to take possession and title to property in advance of the entry of a final judgment for a specific situation -- the expansion of Broward General Hospital.

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

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.

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 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.

Regular eminent domain procedures provide that the condemning authority cannot take title and possession to the real property until after the entry of a final judgment in the eminent domain action. Certain governmental entities are, however, allowed to take title and possession of the real property prior to the entry of a final judgment in the eminent domain action.⁹

C. EFFECT OF PROPOSED CHANGES:

CS/SB 1230, first engrossed, amends s. 166.411, F.S., to provide an additional 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 must promise to establish a public school thereon.

CS/SB 1230, first engrossed, 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, CS/SB 1230, first engrossed, allows a municipality to use the power of eminent domain to acquire land and then convey the land to the school board. Thus, for example, when a city may have 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, the municipality could use its power of eminent domain to obtain the land for conveyance to the school board.

Effective January 1, 2003, subsection (11) of s. 166.411, created by CS/SB 1230, first engrossed, is repealed; although an eminent domain action filed pursuant to that section prior to January 1, 2003, will not be affected by the repeal.

CS/SB 1230, first engrossed, further provides that a hospital district created by special act of the Legislature approved in 1951 that is located in a county with a population in excess of 1 million may take possession and title to real property prior to entry of a final judgment

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).

⁹ Section 74.011, F.S. The procedure is sometimes referred to as "quick-take".

in any eminent domain action. The North Broward Hospital District, created by Chapter 27438, Laws of Florida, appears to be the only hospital district that is affected by this provision. This section of CS/SB 1230, first engrossed, expires July 1, 2003.

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

2. Expenditures:

Costs incurred will be those associated with an eminent domain proceeding and the compensation to the landowner. However, the bill does not affect such costs. It is not evident 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:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 22, 2000, the House Committee on Community Affairs adopted one amendment to HB 655, which provides 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.

On April 5, 2000, the House Committee on Education Appropriations adopted one amendment to HB 655, which provides for repeal on January 1, 2003.

On March 15, 2000, the Senate Committee on Comprehensive Planning, Local and Military Affairs adopted amendments to SB 1230 by which both of the above amendments were incorporated into the bill. SB 1230 was reported favorably as a committee substitute.

On April 28, 2000, the House, after substituting CS/SB 1230 for HB 655, adopted one amendment, which provides that a hospital district created by special act of the Legislature approved in 1951 that is located in a county with a population in excess of 1 million¹⁰ may take possession and title to real property prior to entry of a final judgment in any eminent domain action. This section of CS/SB 1230, first engrossed, expires July 1, 2003. On May 5, 2000, the Senate concurred in the amendment.

¹⁰ The North Broward Hospital District appears to be the only hospital district that is affected by this amendment.

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VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

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