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DATE: March 30, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: HB 7

RELATING TO: Eminent Domain

SPONSOR(S): Representatives Heyman and Cantens

TIED BILL(S): None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS YEAS 8 NAYS 0
 - (2) EDUCATION INNOVATION YEAS 15 NAYS 0
 - (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 8 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

This bill authorizes municipalities to utilize eminent domain power to secure land for the purpose of conveying the land to local school boards, following a specified written school board request.

This bill requires a local school board to promise that the land conveyed is to be used to build a public school.

This bill provides for the repeal of this new language on January 1, 2004 and preserves the eminent domain actions filed prior to this date.

This legislation appears to have an insignificant fiscal impact on state funds.

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:

Definitions

Eminent domain is defined as "The power to take private property for public use by the state, municipalities, and private persons or corporations authorized to exercise functions of public character." Blacks Law Dictionary, Sixth Edition, 1990. In other words, eminent domain is the power of a governmental entity to force the sale of private property to the government for a public use.

Constitutional Authority

Both the Federal and the State Constitution limit the power of eminent domain. The Federal Constitution precludes the taking of private property for public use without fair compensation. (Fifth Amendment, U.S. Constitution). 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. (Article X, Section 6, Fla. Const.)

Statutory Authority

Chapter 235, F.S., provides authority regarding educational facilities. School boards are expressly statutorily authorized the power of eminent domain. Following a taking, an absolute fee simple title, or a permanent, unconditional assign, vests with the school board. (s. 235.05(1), F.S.)

Chapter 166, F.S., contains the Municipal Home Rule Powers Act. Municipalities are authorized to use eminent domain for a variety of public purposes (s. 166.401, F.S.), including for drainage, streets, parks, reclamation, nuisance abatement, sewerage, laying of wires, and city buildings. (s. 166.411, F.S.)

Chapter 73, F. S., outlines eminent domain procedure. The governmental or corporate entity is first required to engage in a presuit negotiation, or a good faith attempt to purchase the property from the owner. (s. 73.015, F.S.) If this fails, the condemning authority may file a petition in circuit court. (s. 73.021, F.S.) A twelve member jury decides compensation in an eminent domain action. The presiding jury considers, among other things, the property's value, damages to remaining property

in a partial taking, and relocation expenses when a mobile home is on the property. (s. 73.071, F.S.) The owner's attorney's fees are recoverable, under a specified schedule. (s. 73.091, F.S., and s. 73.092, F.S.) Certain entities, such as school boards and municipalities, may proceed with the actual physical taking prior to the entry of a final judgment, provided specific requirements are met. (s. 74.011, F.S.)

Currently, municipalities are not expressly statutorily 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.

Case Law

The only apparent constitutional restriction placed on municipalities is that eminent domain actions are limited to those used for valid municipal purposes. Gate City Garage v. City of Jacksonville, 66 So.2d 653 (Fla. 1953). However, courts do recognize that eminent domain authority is one of the harshest proceedings provided by law. Peavy Wilson Lumber Co. v. Brevard County, 31 So.2d 483 (Fla. 1947). Therefore, a municipal entity may not arbitrarily and capriciously exercise the power of eminent domain. City of Jacksonville v. Moman, 290 So.2d 105 (Fla. 1974).

Recently, the First District Court of Appeal ruled that a municipality could not use its eminent domain authority to convey condemned land to the state, to construct a state prison. Basic Energy Corporation v. Hamilton County, 652 So.2d 1237 (Fla. 1st DCA 1995). The Court found that a municipality's statutory authority to construct jails did not extend to the construction of state prisons. A valid public purpose, the Court reasoned, can be found in one that is related to health, morals, safety, protection or welfare of the municipality. *Id* at p. 1239.

Currently, municipalities are not expressly 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 under case law precedent.

C. EFFECT OF PROPOSED CHANGES:

This bill authorizes a municipality to exercise the power of eminent domain in order to obtain land that is to be conveyed to a local school board for the purpose of building a public school. Before a municipality exercises the power of eminent domain, the local school board must submit a written request and promise to use the land in order to build a public school. Additionally, the bill specifies that a municipality exercising the power of eminent domain in order to obtain land that is to be conveyed to a local school board for the purpose of building a public school serves a valid municipal public purpose. Lastly, the provisions of the bill stand to be repealed on January 1, 2004, but the bill preserves the eminent domain actions filed prior to this date.

Since this bill requires a local school board to "promise" to use the land to establish a public school, the possibility exists that a local school board could back out of the agreement. However, the possibility that a local school board or a municipality would enter into such an agreement without the benefit of legal advice or a contract that specifies responsibilities, limitations, and penalties seems unlikely.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s.166.411(11), F.S., to:

- expand the authority of municipalities to use the power of eminent domain to obtain land for the purpose of conveying the land to local school boards;

- require the local school board to request in writing that the municipality take the land for conveyance to the school board and pledge to use the land to build a public school; and,
- specify that a municipality exercising the power of eminent domain in order to obtain land that is conveyed to a local school board for the purpose of building a public school serves a valid municipal public purpose.

Section 2. Repeals s. 166.411(11), F.S., on January 1, 2004 and preserves the existence of those eminent domain actions filed prior to this date.

Section 3. Provides that this act shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

This bill may increase local government expenditures should municipalities elect to participate in an eminent domain action on behalf of a local school board. Expenditures consist of compensation, and cost of litigation, including attorney's fees for the property owner.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may have a slight adverse economic impact on the private sector, as it provides an additional avenue for school boards to effectuate takings of private property through municipalities, assuming that private industry does not benefit from condemnation actions.

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 expend funds or to take 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 state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This bill does not appear to violate any constitutional issues.

B. RULE-MAKING AUTHORITY:

This bill does not necessitate additional rulemaking authority.

C. OTHER COMMENTS:

This bill contains similar language to CS/SB 1230, which passed the Legislature during the 2000 Legislative Session. The Governor vetoed CS/SB 1230 on June 7, 2000. In his veto message, the Governor objected to language, which, in effect, allowed 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. The portion of the bill containing this hospital district language does not appear in the current bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT AND VETERANS AFFAIRS:

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