

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 0437 w/CS Eminent Domain to Natural Gas Companies
SPONSOR(S): Littlefield
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1070

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Subcommittee on Energy	6 Y, 0 N	Holt	Liepshutz
2) Business Regulation	34 Y, 0 N w/CS	Holt	Liepshutz
3) Finance & Tax			
4)			
5)			

SUMMARY ANALYSIS

The committee substitute amends section 361.05, F.S., to allow inter-state natural gas transmission pipeline companies the express authority to exercise the right of eminent domain pursuant to the quick-take provisions in chapter 74, F.S. By adding the language "or other business entity", the bill broadens the authority for exercising eminent domain to include, not just corporations, but also the other varying types of business structures within the pipeline industry.

Under the eminent domain quick-take, the company is required to provide appraisals of the property and deposit with the court double the estimated value of the property until a determination is made of the actual monetary compensation.

The bill takes effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0437b.br.doc
DATE: March 17, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

Present Situation

On August 8, 2003, the Florida District Court of Appeal, Second District, found that because Florida Gas Transmission Company (FGTC) was not a public utility it was not entitled to use the eminent domain provisions of chapter 74, F.S. *John J. Pichowski, et al. v. Florida Gas Transmission Company*, 857 So.2d 219 (Fla. 2nd DCA 2003).

Chapter 74, F.S., provides for proceedings supplemental to eminent domain. The provisions of this chapter are commonly referred to as the quick-take. Section 74.011, F.S., provide that:

In any eminent domain action, properly instituted by and in the name of the state; the Department of Transportation; any county, school board, municipality, expressway authority, regional water supply authority, transportation authority, flood control district, or drainage or subdrainage district; the ship canal authority; any lawfully constituted housing, port, or aviation authority; the Florida Space Authority; or any rural electric cooperative, telephone cooperative corporation, or **public utility corporation**, the petitioner may avail itself of the provisions of this chapter to take possession and title in advance of the entry of final judgment.
(e.s.)

According to the transmission pipeline industry, prior to this decision, it had been using the quick-take for approximately 50 years without a problem.

Chapter 361, F.S., authorizes public utilities to exercise eminent domain. However, no definition of public utility is provided in the chapter. In *Pichowski*, the court applied several definitions of public utility but concluded, among other things, that none of the definitions supported "the nature of the business conducted by FGTC."

Pursuant to s. 361.05, F.S., the authority to exercise eminent domain is provided to natural gas suppliers and natural gas transmission pipeline companies. These types of intra-state companies pursuant to s.s. 366.02(1) and 366.82(1), F.S. meet the definitions of public utilities, and as such may avail themselves of the quick-take provisions in chapter 74, F.S. Moreover, there is no dispute in FGTC's right to use the general eminent domain procedures provided under chapter 73, F.S. However, s. 361.05, F.S., does not specifically provide inter-state gas transmission pipeline companies the right

to exercise the quick-take provisions of chapter 74, F.S. As the Second DCA opinion in Pichowski noted:

This contrasts with sections 361.025 and 361.08, which specifically grant to railroad companies and coal pipeline companies the power of eminent domain under chapter 73 and the right to use the quick-take procedures under chapter 74.

Effect of Proposed Changes

The bill amends section 361.05, F.S., to allow inter-state natural gas transmission pipeline companies the express authority to exercise the right of eminent domain pursuant to the quick-take provisions in chapter 74, F.S. By adding the language "or other business entity", the bill broadens the authority for exercising eminent domain to include, not just corporations, but also the other varying types of business structures within the pipeline industry.

By allowing immediate possession of property, the bill does not create any additional effect on property rights or the amount of compensation land owners receive for property acquired by the quick-take. Under the eminent domain quick-take, the company is required to provide appraisals of the property and deposit with the court double the estimated value of the property until a determination is made of the actual monetary compensation.

The bill further removes the uncertainty that may occur at the state and local levels in planning for electric generation by insuring that inter-state natural gas transmission pipeline companies obtain timely rights-of-way.

C. SECTION DIRECTORY:

None

II. 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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Transportation (DOT) has reviewed the proposed bill and has not identified any negative impacts to DOT. To the extent that the proposed bill would avoid delays in transportation projects by allowing for the quicker acquisition of replacement rights-of-way when pipelines conflict with transportation projects, the bill would have a positive impact on DOT and would be supported.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 17, 2004, the Committee on Business Regulation (Committee) passed HB 437 as a committee substitute. The Committee adopted one amendment which clarifies that any entity subject to regulation under the Federal Natural Gas Act can use the quick-take procedure.