

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 491

Exercise of Eminent Domain by Municipalities

**SPONSOR(S):** Gelber

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 756

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Kruse	Billmeier
2) Local Government Council			
3) Governmental Operations Committee			
4) PreK-12 Committee			
5) Education Appropriations Committee			
6) Justice Council			

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**SUMMARY ANALYSIS**

HB 491 provides that a municipality may exercise the power of eminent domain for the condemnation of land for a public school site, if: (1) a school board requests the municipality to obtain the land for conveyance to the school board; and (2) the school board promises to use the land to establish a public school on the site. The authority granted by the bill is repealed on January 1, 2006.

Although it is understood that the bill is proposed for the school board in the county where the city of Sunny Isles is located, the provisions of the bill apply to any municipality in the state.

There appears to be no significant fiscal impact on state or local governments.

This bill takes effect upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—This bill makes explicit, for a limited period of time, that it is a valid municipal purpose for a municipality to use the power of eminent domain to condemn property to be conveyed to a school board that has requested the land to be used for a public school.

#### B. EFFECT OF PROPOSED CHANGES:

Article X, s.6 (a), of the Florida Constitution, provides that:

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.

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.<sup>1</sup> If a settlement is not reached, the governmental entity may file a petition with the circuit court.<sup>2</sup> 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.<sup>3</sup> The owner of the property is entitled to the value of the property, and, in certain cases, damages for loss of business.<sup>4</sup> The owner may also be entitled to reimbursement of attorney's fees and costs.<sup>5</sup>

Section 166.401, F.S., provides municipalities with the power of eminent domain. A municipality may use the power of eminent domain for certain purposes, listed in s. 166.411, F.S., which include:

- public improvements such as drainage, ditching, and filling;
- right-of-way for railroads, telephone lines, streets, highways and bridges;
- public parks;
- the abatement of any nuisance;
- the reclamation of overflowed lands;
- the installation of water and sewer pipes and underground conduit; and
- city buildings, waterworks, and ponds.

In addition, this section allows a municipality to exercise the power of eminent domain for other municipal purposes coextensive with the powers of the municipality exercising its right of eminent domain.

Municipalities currently do not have specific authority to use the power of eminent domain to acquire property to convey to a school board to build a public school, although this authority existed until January 1, 2004.<sup>6</sup> Without an explicit grant of authority from the Legislature, a municipality may not be able to undertake this particular eminent domain procedure. In a 1995 case construing s. 166.411, F.S., a court held that the city of Jasper asserted no municipal purpose on which to base its exercise of eminent domain power when the city intended to donate the condemned property to the state for the construction of a state prison.<sup>7</sup> The court stated that a valid municipal purpose is one that relates to “the

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<sup>1</sup> Section 73.015, F.S.

<sup>2</sup> Section 73.021, F.S.

<sup>3</sup> Section 73.071(1), F.S.

<sup>4</sup> Section 73.071(3), F.S.

<sup>5</sup> Section 73.092, F.S.

<sup>6</sup> See SB 160, ch. 2001-77, L.O.F.

<sup>7</sup> *Basic Energy Corporation v. Hamilton County*, 652 So. 2d 1237, 1239 (Fla. 1st DCA 1995).

conduct of municipal government, exercise of a municipal function, or provision of a municipal service.”<sup>8</sup> The court reasoned that while the city of Jasper’s donation of land for the construction of a state prison may incidentally relate to the protection of municipal inhabitants, “this purpose is no more particular to residents of the city of Jasper than to any other inhabitants of the state.”<sup>9</sup>

Section 1013.24, F.S., provides a district school board with the power of eminent domain “to take private property for any public school purpose or use when, in the opinion of the school board, such property is needed in the operation of any or all of the public schools within the district.”

The school board in the county where the city of Sunny Isles is located has requested this bill because, under current circumstances, the school board does not have the financial ability to undertake an eminent domain proceeding. The city has agreed to undertake the proceeding if the appropriate authority is granted by the Legislature.<sup>10</sup>

The bill provides an additional permitted ground upon which a municipality may use the power of eminent domain. The bill provides that a municipality may obtain land through eminent domain to be conveyed to the school board of that county if the school board requests, in writing, that the municipality obtain such land for conveyance to the school board and the school board promises to use the land to establish a public school on that land. The bill provides that this eminent domain procedure constitutes a valid municipal purpose. The authority provided under this bill expires January 1, 2006.

The bill takes effect upon becoming a law.

C. SECTION DIRECTORY:

**Section 1.** Creates an unnumbered section of Florida Statutes, which provides that a municipality may exercise the power of eminent domain to obtain land to be conveyed to the school board of the school district within which the municipality is located if the school board requests, in writing, that the municipality obtain the land and the school board promises to use the land for a public school. Such action is recognized as constituting a valid municipal public purpose. The bill provides that this section expires January 1, 2006, and that this expiration does not effect an action in eminent domain which was filed prior to that date.

**Section 2.** Provides that this act shall take effect upon becoming a law.

## 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:

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<sup>8</sup> *Id.* at 1239, citing *Ormond Beach v. County of Volusia*, 535 So. 2d 302, 304 (Fla. 5th DCA 1988).

<sup>9</sup> *Id.*

<sup>10</sup> February 10, 2005, phone conversation with lobbyist for the city of Sunny Isles.

A municipality that agrees to exercise the authority granted under this bill will have to expend the necessary funds to complete an eminent domain procedure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, nor does it reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor does it reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

N/A