

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 491 CS Exercise of Eminent Domain by Municipalities  
**SPONSOR(S):** Gelber and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 756

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	5 Y, 0 N, w/CS	Kruse	Billmeier
2) Local Government Council	6 Y, 0 N	Nelson	Hamby
3) Governmental Operations Committee	6 Y, 0 N	Luppert	Everhart
4) PreK-12 Committee	9 Y, 0 N, w/CS	Hunt	Mizereck
5) Education Appropriations Committee			
6) Justice Council			

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### SUMMARY ANALYSIS

HB 491 provides that a municipality in a county with more than 350,000 students in the K-12 school system 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 establish a public school on the site. The authority granted by the bill is repealed on January 1, 2007.

The bill appears to have no significant fiscal impact on state or local governments.

# 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 public purpose for certain municipalities to use the power of eminent domain to condemn property to convey to a school board that has requested the land as a site for a public school.

### B. EFFECT OF PROPOSED CHANGES:

#### **Background**

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 therefore 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 ch. 73, F.S. In general, the governmental entity must first engage in pre-suit 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 in counties with a K-12 public school population of 350,000 or more 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 statutory authority to use the power of eminent domain to acquire property to convey to a school board to build a public school. The Legislature previously provided this authority in 2001 through SB 130, which included a future repeal provision. Thus, the authority was repealed on 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

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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 130, ch. 2001-77, L.O.F.

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 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 absolute fee simple title to all property so taken vests in the district school board “unless the school board seeks to appropriate a particular right or estate in such property.”

The City of Sunny Isles, located in northeast Miami-Dade County, has been engaged in efforts to obtain land for a kindergarten-through-eighth-grade school within its boundaries. When the city’s attempts to purchase appropriate property were unsuccessful, it attempted to negotiate an inter-local agreement with the Miami-Dade County District School Board to exercise the board’s power of eminent domain to secure property on behalf of the city. The city proposed to reimburse the school board for the cost of the property and all costs associated with the taking, with the city taking a fee simple title and the school board having a leasehold interest. The school board obtained an opinion from the Florida Attorney General which provided that the language of s. 1013.24, F.S., will not allow a school board to use its eminent domain power to obtain fee simple title to property in order to transfer such property to a city.<sup>10</sup> The City has requested this bill, with the support of the school board.<sup>11</sup>

### ***Effect of Bill***

The bill provides an additional permitted ground upon which a municipality in a county with more than 350,000 students in the K-12 school system may use the power of eminent domain. The bill provides that such a municipality may obtain land through eminent domain to be conveyed to the school board of that county if the school board:

- 1) submits a written request to the municipality to obtain such land for conveyance to the school board; and
- 2) promises to establish a public school on that land.

The bill provides that this eminent domain procedure constitutes a valid municipal public purpose. The authority provided under the bill expires January 1, 2007, although this expiration does not affect an eminent domain action filed prior to that date.

The bill takes effect upon becoming a law.

### **C. SECTION DIRECTORY:**

**Section 1.** Creates an unnumbered section of the Florida Statutes, providing legislative intent.

**Section 2.** Creates an unnumbered section of the Florida Statutes, which provides that certain municipalities may exercise the power of eminent domain to obtain land to be conveyed to a school board under certain circumstances.

**Section 3.** Provides an effective date.

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

<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> AGO 2005-09, February 9, 2005

<sup>11</sup> March 2, 2005, phone conversations with the lobbyist for the City of Sunny Isles Beach, and the school board attorney.

## 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:

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

This bill was heard by the Committee on Civil Justice on February 23, 2005, and was passed favorably by the Committee with one amendment which extended the expiration date for the authority provided in the bill from January 1, 2006, to January 1, 2007.

This analysis is drawn to the Committee Substitute that was adopted at the April 5, 2005, meeting of the PreK-12 Committee. The Committee Substitute differs from the bill received from the Committee on Civil Justice in that the PreK-12 Committee Substitute:

- Adds a new Section 1, providing legislative intent.
- Amends Section 2, restricting the exercise of eminent domain for this purpose to municipalities located in counties that have 350,000 or more students in the K-12 public school system.