

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Community Affairs Committee

BILL: CS/SB 756

SPONSOR: Community Affairs Committee and Senator Margolis

SUBJECT: Eminent Domain/Municipalities

DATE: February 22, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vickers	Yeatman	CA	Favorable/CS
2.	_____	_____	ED	_____
3.	_____	_____	JU	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This CS authorizes municipalities located in Miami-Dade County to exercise the power of eminent domain for public school sites if the school board requests the municipality to obtain the land for conveyance to the school board and the school board promises to use the land to establish a public school on the site. The CS provides for the expiration of this provision on January 1, 2007, however, the CS stipulates this expiration does not affect an action in eminent domain which was filed prior to January 1, 2007.

This CS creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Article X, s.6 (a), 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 in chapter 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.¹ If a settlement is not reached, the governmental entity may file a petition with the circuit court.² The circuit court is to give

¹Section 73.015, F.S.

²Section 73.021, F.S.

preference in scheduling trials on the issue of eminent domain, and the trial is conducted before a 12-person jury.³ The owner of the property is entitled to the value of the property, and, in certain cases, damages for loss of business.⁴ The owner may also be entitled to reimbursement of attorney's fees and costs.⁵

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 in s. 166.411, F.S. These enumerated municipal purposes include:

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

In addition, s.166.411 (10), F.S., 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.

Prior to January 1, 2004, s. 166.411, F.S., contained a specific provision authorizing municipalities to use the power of eminent domain to acquire property for use by a local school board. Pursuant to the enacting legislation (Chapter 2001-77, Laws of Florida), this provision was repealed effective January 1, 2004.

While the only constitutional limitation placed on municipalities' authority is that such powers be exercised for valid municipal purposes,⁶ 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.⁷ 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. However, in one of the more recent appellate cases construing s. 166.411, F.S., *Basic Energy Corporation v. Hamilton County*, (Fla. 1st DCA 1995), *on subsequent appeal*, 709 So.2d 124, *rehearing denied*, 722 So.2d 192, the court held that the City of Jasper's municipal authority to construct jails did not provide it with a legitimate municipal purpose on which to base its exercise of eminent domain power when the city intends to donate the property condemned to the State of Florida for the construction of a state prison. In reaching this result, the court stated a valid municipal purpose as one that relates "to the conduct of municipal government, exercise of a municipal function, or provision of a municipal service." *Id.* at p. 1239, citing *Ormond Beach v. County of Volusia*, 535 So.2d 302, 304 (Fla. 5th DCA 1988). The court reasoned that while the City of Jasper's donation of land for the construction of a state

³Section 73.071(1), F.S.

⁴Section 73.071(3), F.S.

⁵Section 73.092, F.S.

⁶*City of Ocala v. Nye*, 608 So.2d 15, 17 (Fla. 1992).

⁷*Peavy-Wilson Lumber Co. v. Brevard County*, 31 So.2d 483, 485 (Fla. 1947).

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.”⁸

School boards are given the power of eminent domain by s. 1013.24, F.S., 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 ...”

III. Effect of Proposed Changes:

This CS provides that a municipality located within a county as defined in s. 125.011(1), F.S., may exercise the power of eminent domain for public school sites if the school board requests in writing the municipality to obtain the land for conveyance to the school board and the school board promises to use the land to establish a public school on the site.⁹ The CS stipulates that such action constitutes a valid municipal public purpose.

The CS provides for the expiration of this section on January 1, 2007, however, the CS provides this expiration does not affect an action in eminent domain which was filed prior to January 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

⁸*Id* at p. 1239.

⁹This section defines "County" to mean any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Miami-Dade County is the only county in Florida that meets this definition.

C. Government Sector Impact:

Costs will be those associated with an eminent domain proceeding and the compensation to the landowner. However, the CS does not affect such costs. It is not evident from the CS if upon conveyance to the school board, the municipality will be reimbursed for any costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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