

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: Education Committee

BILL: CS/SB 756

SPONSOR: Community Affairs Committee and Senator Margolis

SUBJECT: Eminent Domain/Municipalities

DATE: February 22, 2005

REVISED: 03/15/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vickers	Yeatman	CA	Favorable/CS
2.	Woodruff	O'Farrell	ED	Fav/1 Amendment
3.			JU	
4.				
5.				
6.				

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

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 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:

- 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, 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

¹Section 73.015, F.S.

²Section 73.021, F.S.

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).

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 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.

D. Other Constitutional Issues:

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.

This committee substitute may be constitutionally challenged under section 11, Art. III of the State Constitution in that the bill may be alleged to be a special or local law clothed under the guise of a general law. Section 11, Art. III of the State Constitution provides that “In the enactment of general laws on other subjects, political subdivisions or other governmental entities may be classified only on a basis reasonably related to the subject of the law.” In order for a classification to meet the requirement for a general law, the classification: (1) may not be simply a descriptive technique used to identify particular subdivisions to which the statute applies, (2) must operate uniformly among similarly situated subdivisions, and (3) may not be arbitrary. *City of Miami v. McGrath*, 824 So.2d 143, 150-151 (Fla. 2002). If the classification is not limited to a specific governmental entity or entities either through a particular description or a designated timeframe, the court may uphold the statute. *See State v. City of Miami Beach*, 234 So.2d 103 (Fla. 1970) (upholding the statute’s population classification for the authorization of a resort tax because the classification was reasonably based on the state’s interest in promoting tourism and the classification was not limited to a particularly-designated census or other particularly designated date in that other counties were potentially within the population classification of the statute). In addition, a classification may be constitutional if the characteristics shared by the governmental entities under the classification scheme are reasonably related to the purpose of the law. *See Golden Nugget Group v. Metropolitan Dade County*, 464 So.2d 535 (Fla. 1985) (upholding a bed tax on short term rentals of living quarters or accommodations for counties that adopted a home rule charter because the classification scheme was based on the shared tourism-oriented characteristics of the counties).

The committee substitute authorizes a municipality located within a county, as defined in s. 125.011(1), F.S., to exercise certain eminent domain powers for the benefit of the school district in the county in which the municipality is located. Essentially, s. 125.011, F.S., defines a county as any county operating under a home rule charter adopted under ss. 10, 11, and 24, Art. VIII of the State Constitution, which has elected to exercise the powers of a home rule charter. This definition encompasses only Miami-Dade County. The bill does not articulate a reason for limiting the authorization of eminent domain to municipalities located in Miami-Dade County. Accordingly, opponents of an eminent domain action authorized under this bill may allege that the bill employs a descriptive technique to otherwise identify Miami-Dade County as the sole beneficiary under the proposed law. *See City of Miami v. McGrath*, 824 So.2d at 150-151. In addition, opponents of the measure may allege that the home rule charter classification is arbitrary in that the purpose of the classification is not reasonably related to the subject of the bill. *See id.*

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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:

Barcode 290378 by Education:

The amendment revises the criteria for a municipality to exercise the power of eminent domain on behalf of a local school district. A municipality must be located in a county having at least 350,000 public school age students to exercise this power.

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