

# 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.)

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Prepared By: Judiciary Committee

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BILL: CS/CS/SB 756

SPONSOR: Judiciary Committee, Community Affairs Committee, and Senator Margolis

SUBJECT: Eminent Domain/Municipalities

DATE: April 28, 2005

REVISED: \_\_\_\_\_

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

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## I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 756 authorizes municipalities with a public school student population in grades K-12 of 350,000 or more before December 31, 2006, to exercise the power of eminent domain for public school sites. To exercise the power, the school board must request in writing that the municipality obtain the land for conveyance to the school board, and the school board must promise to use the land to establish a public school on the site. The committee substitute provides for the expiration of this provision on January 1, 2007; however, the committee substitute stipulates this expiration does not affect an action in eminent domain that is filed prior to January 1, 2007.

This committee substitute creates an unnumbered section of the Florida Statutes.

## II. Present Situation:

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 in 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,

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

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>

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, this provision was repealed effective January 1, 2004.<sup>6</sup>

While the only constitutional limitation placed on municipalities' authority is that such powers be exercised for valid "municipal purposes,"<sup>7</sup> 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."<sup>8</sup> 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., 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.<sup>9</sup> In reaching this result, the court stated a valid municipal

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

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

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

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

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

<sup>7</sup> *City of Ocala v. Nye*, 608 So.2d 15, 17 (Fla. 1992).

<sup>8</sup> *Peavy-Wilson Lumber Co. v. Brevard County*, 31 So.2d 483, 485 (Fla. 1947).

<sup>9</sup> *Basic Energy Corporation v. Hamilton County*, (Fla. 1st DCA 1995), *on subsequent appeal*, 709 So.2d 124, *rehearing denied*, 722 So.2d 192.

purpose as one that relates “to the conduct of municipal government, exercise of a municipal function, or provision of a municipal service.”<sup>10</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>11</sup>

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:**

Committee Substitute for Committee Substitute for Senate Bill 756 provides that a municipality located within a county that has a public school student population in grades K-12 of 350,000 or more before December, 2006, may exercise the power of eminent domain for public school sites if the school board requests in writing that the municipality 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 committee substitute provides that it is the Legislature’s intent to authorize municipalities in counties that meet the provided criteria to exercise the power of eminent domain to aid the school districts in obtaining suitable land to meet the student population’s needs. The language also stipulates that such action constitutes a valid municipal public purpose.

The committee substitute provides for the expiration of this section on January 1, 2007; however, the committee substitute provides this expiration does not affect an action in eminent domain that is filed prior to January 1, 2007.

This bill provides an effective date of upon becoming a law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

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<sup>10</sup> *Id.* at p. 1239, citing *Ormond Beach v. County of Volusia*, 535 So.2d 302, 304 (Fla. 5th DCA 1988).

<sup>11</sup> *Id.* at p. 1239.

**D. Other Constitutional Issues:**

This committee substitute may be constitutionally challenged under art. III, s. 11, of the Florida Constitution, by alleging that the proposed language is a special or local law clothed under the guise of a general law. Article III, s. 11, of the Florida 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

**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 committee substitute does not affect such costs. It is not evident from the committee substitute if upon conveyance to the school board, the municipality will be reimbursed for any costs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>12</sup> *City of Miami v. McGrath*, 824 So.2d 143, 150-151 (Fla. 2002).

<sup>13</sup> *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).

<sup>14</sup> *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).

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

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## **VIII. Summary of Amendments:**

None.

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