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1                   A bill to be entitled  
2           An act relating to eminent domain; creating s. 73.013,  
3           F.S.; restricting certain transfers of property taken by  
4           eminent domain to certain natural persons or private  
5           entities; amending s. 163.335, F.S.; providing legislative  
6           findings and declarations; amending s. 163.355, F.S.;  
7           requiring disclosure of eminent domain authority in  
8           resolutions finding slum or blight conditions; providing  
9           for notice to property owners and business owners or  
10          lessees and requirements therefor; providing for hearings  
11          and advertising requirements therefor; amending s.  
12          163.358, F.S.; providing that the power of eminent domain  
13          does not vest in a community redevelopment agency but  
14          rather with the governing body of a county or  
15          municipality; amending s. 163.360, F.S.; requiring  
16          disclosure of eminent domain authority in community  
17          redevelopment plans; amending s. 163.370, F.S.; revising  
18          powers of community redevelopment agencies with respect to  
19          the acquisition of real property; amending s. 163.375,  
20          F.S.; revising eminent domain authority and procedures;  
21          amending ss. 127.01 and 127.02, F.S.; requiring county  
22          compliance with eminent domain limitations; amending ss.  
23          166.401 and 166.411, F.S.; requiring municipal compliance  
24          with eminent domain limitations; providing application;  
25          providing an effective date.

26  
27   Be It Enacted by the Legislature of the State of Florida:  
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29 Section 1. Section 73.013, Florida Statutes, is created to  
30 read:

31 73.013 Conveyance of property taken by eminent domain.--

32 (1) Notwithstanding any other provision of law, including  
33 any charter provision, ordinance, statute, or special law, if  
34 the state, any political subdivision as defined in s. 1.01(8),  
35 or any other entity to which the power of eminent domain is  
36 delegated files a petition of taking on or after July 1, 2006,  
37 regarding a parcel of real property in this state, ownership or  
38 control of property acquired pursuant to such petition may not  
39 be conveyed by the condemning authority or any other entity to a  
40 natural person or private entity, except that ownership or  
41 control of property acquired pursuant to such petition may be  
42 conveyed to:

43 (a) A natural person or private entity for use in  
44 providing common carrier services or systems;

45 (b) A natural person or private entity for use as a road  
46 or other right-of-way or means open to the public for  
47 transportation, whether at no charge or by toll;

48 (c) A natural person or private entity that is a public or  
49 private utility for use in providing electricity services or  
50 systems, natural or manufactured gas services or systems, water  
51 and wastewater services or systems, stormwater or runoff  
52 services or systems, sewer services or systems, pipeline  
53 facilities, telephone services or systems, or similar services  
54 or systems;

55 (d) A natural person or private entity for use in  
56 providing public infrastructure;

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57 (e) A natural person or private entity that occupies,  
58 pursuant to a lease, an incidental part of a public property or  
59 a public facility for the purpose of providing goods or services  
60 to the public;

61 (f) A natural person or private entity if the property was  
62 taken pursuant to s. 163.375;

63 (g) A natural person or private entity if the property was  
64 owned and controlled by the condemning authority or a  
65 governmental entity for at least 5 years after the condemning  
66 authority acquired title to the property; or

67 (h) A natural person or private entity in accordance with  
68 subsection (2).

69 (2) If ownership of property is conveyed to a natural  
70 person or private entity pursuant to paragraph (1) (a), (b), (c),  
71 (d), (e), or (f), and that natural person or private entity  
72 retains ownership and control of the property for at least 5  
73 years after acquiring title, the property may subsequently be  
74 transferred to another natural person or private entity without  
75 restriction.

76 Section 2. Subsection (3) of section 163.335, Florida  
77 Statutes, is amended, and subsection (7) is added to that  
78 section, to read:

79 163.335 Findings and declarations of necessity.--

80 (3) It is further found and declared that the powers  
81 conferred by this part are for public uses and purposes for  
82 which public money may be expended, the police power exercised,  
83 and the power of eminent domain exercised subject to the  
84 limitations in s. 163.375 ~~and the power of eminent domain and~~

85 ~~police power exercised~~, and the necessity in the public interest  
 86 for the provisions herein enacted is hereby declared as a matter  
 87 of legislative determination.

88 (7) It is further found that the prevention or elimination  
 89 of a "slum area" or "blighted area" as defined in this part and  
 90 the preservation or enhancement of the tax base are not public  
 91 uses or purposes for which private property may be taken by  
 92 eminent domain.

93 Section 3. Section 163.355, Florida Statutes, is amended  
 94 to read:

95 163.355 Finding of necessity by county or municipality.--

96 (1) No county or municipality shall exercise the community  
 97 redevelopment authority conferred by this part until after the  
 98 governing body has adopted a resolution, supported by data and  
 99 analysis, which makes a legislative finding that the conditions  
 100 in the area meet the criteria described in s. 163.340(7) or (8).  
 101 The resolution must state that:

102 (a)~~(1)~~ One or more slum or blighted areas, or one or more  
 103 areas in which there is a shortage of housing affordable to  
 104 residents of low or moderate income, including the elderly,  
 105 exist in such county or municipality; and

106 (b)~~(2)~~ The rehabilitation, conservation, or redevelopment,  
 107 or a combination thereof, of such area or areas, including, if  
 108 appropriate, the development of housing which residents of low  
 109 or moderate income, including the elderly, can afford, is  
 110 necessary in the interest of the public health, safety, morals,  
 111 or welfare of the residents of such county or municipality.

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112       (2) A resolution finding slum or blight conditions must  
113 indicate that property within the community redevelopment area  
114 may be subject to taking by eminent domain pursuant to s.  
115 163.375. In the alternative, the county or municipality may  
116 explicitly state in the resolution that the power of eminent  
117 domain provided under s. 163.375 will not be exercised by the  
118 county or municipality within the community redevelopment area.  
119 A county or municipality is not required to provide notice in  
120 accordance with subsections (3) and (4) if the resolution  
121 finding slum or blight conditions, as proposed and adopted by  
122 the county or municipality, expressly declares that the power of  
123 eminent domain provided under s. 163.375 will not be exercised  
124 by the county or municipality within the community redevelopment  
125 area.

126       (3) At least 30 days prior to the first public hearing at  
127 which a proposed resolution finding slum or blight conditions  
128 will be considered by a county or municipality, actual notice of  
129 the public hearing must be mailed via first class mail to each  
130 real property owner whose property may be included within the  
131 community redevelopment area and to each business owner,  
132 including a lessee, who operates a business located on property  
133 that may be included within the community redevelopment area.

134       (a) Notice must be sent to each owner of real property  
135 that may be included within the community redevelopment area at  
136 the owner's last known address as listed on the county ad  
137 valorem tax roll. Alternatively, the notice may be personally  
138 delivered to a property owner. If there is more than one owner  
139 of a property, notice to one owner constitutes notice to all

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140 owners of the property. The return of the notice as  
141 undeliverable by the postal authorities constitutes compliance  
142 with this subsection. The condemning authority is not required  
143 to give notice to a person who acquires title to property after  
144 the notice required by this subsection has been given.

145 (b) Notice must be sent to the address of the registered  
146 agent for the business located on the property or, if no agent  
147 is registered, by certified mail or personal delivery to the  
148 address of the business located on the property. Notice to one  
149 owner of a multiple ownership business constitutes notice to all  
150 owners of that business. The return of the notice as  
151 undeliverable by the postal authorities constitutes compliance  
152 with this subsection. The condemning authority is not required  
153 to give notice to a person who acquires an interest in a  
154 business after the notice required by this subsection has been  
155 given.

156 (c) At a minimum, the mailed notice required by paragraphs  
157 (a) and (b) must:

158 1. Generally explain the purpose, effect, and substance of  
159 the proposed resolution;

160 2. Indicate that private property within the proposed  
161 redevelopment area may be subject to taking by eminent domain if  
162 the current condition of the property poses an existing threat  
163 to the public health or public safety that is likely to continue  
164 absent the exercise of eminent domain;

165 3. Indicate that private-to-private transfers of property  
166 may occur;

167 4. Contain a geographic location map that clearly  
168 indicates the area covered by the resolution, including major  
169 street names as a means of identification of the general area;

170 5. Provide the dates, times, and locations of future  
171 public hearings during which the resolution may be considered;

172 6. Identify the place or places within the county or  
173 municipality at which the resolution may be inspected by the  
174 public;

175 7. Indicate that the property owner may file written  
176 objections with the local governing board prior to any public  
177 hearing on the resolution; and

178 8. Indicate that interested parties may appear and be  
179 heard at all public hearings at which the resolution will be  
180 considered.

181 (4) In addition to mailing notice to property owners, the  
182 county or municipality must conduct at least two advertised  
183 public hearings prior to adoption of the proposed resolution. At  
184 least one hearing must be held after 5 p.m. on a weekday, unless  
185 the governing body, by a majority plus one vote, elects to  
186 conduct the hearing at another time of day. The first public  
187 hearing must be held at least 7 days after the day the first  
188 advertisement is published. The second hearing must be held at  
189 least 10 days after the first hearing and must be advertised at  
190 least 5 days prior to the public hearing. The required  
191 advertisements must be no less than 2 columns wide by 10 inches  
192 long in a standard size or a tabloid size newspaper, and the  
193 headline in the advertisement must be in a type no smaller than  
194 18 point. The advertisement must not be placed in that portion

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195 of the newspaper where legal notices and classified  
196 advertisements appear and must be placed in a newspaper of  
197 general paid circulation rather than one of limited subject  
198 matter. Whenever possible, the advertisement must appear in a  
199 newspaper that is published at least 5 days a week unless the  
200 only newspaper in the community is published fewer than 5 days a  
201 week. At a minimum, the advertisement must:

202 (a) Generally explain the substance and effect of the  
203 resolution;

204 (b) Include a statement indicating that private property  
205 within the proposed redevelopment area may be subject to taking  
206 by eminent domain if the current condition of the property poses  
207 an existing threat to the public health or public safety that is  
208 likely to continue absent the exercise of eminent domain;

209 (c) Provide the date, time, and location of the meeting;

210 (d) Identify the place or places within the county or  
211 municipality at which the resolution may be inspected by the  
212 public;

213 (e) Contain a geographic location map that clearly  
214 indicates the area covered by the resolution, including major  
215 street names as a means of identification of the general area;

216 (f) Indicate that any interested party may file written  
217 objections with the local governing board prior to the public  
218 hearing; and

219 (g) Indicate that any interested party may appear and be  
220 heard at the public hearing.

221 Section 4. Subsection (6) is added to section 163.358,  
222 Florida Statutes, to read:



223           163.358 Exercise of powers in carrying out community  
 224 redevelopment and related activities.--The community  
 225 redevelopment powers assigned to a community redevelopment  
 226 agency created under s. 163.356 include all the powers necessary  
 227 or convenient to carry out and effectuate the purposes and  
 228 provisions of this part, except the following, which continue to  
 229 vest in the governing body of the county or municipality:

230           (6) The power of eminent domain.

231           Section 5. Paragraph (d) is added to subsection (2) of  
 232 section 163.360, Florida Statutes, to read:

233           163.360 Community redevelopment plans.--

234           (2) The community redevelopment plan shall:

235           (d) Indicate that real property within the community  
 236 redevelopment area may be subject to taking by eminent domain  
 237 pursuant to s. 163.375. If consistent with the resolution  
 238 finding slum or blight conditions, the plan must indicate that  
 239 the power of eminent domain provided under s. 163.375 will not  
 240 be exercised by the county or municipality within the community  
 241 redevelopment area.

242           Section 6. Paragraph (o) of subsection (1) and paragraph  
 243 (a) of subsection (3) of section 163.370, Florida Statutes, are  
 244 amended to read:

245           163.370 Powers; counties and municipalities; community  
 246 redevelopment agencies.--

247           (1) Every county and municipality shall have all the  
 248 powers necessary or convenient to carry out and effectuate the  
 249 purposes and provisions of this part, including the following  
 250 powers in addition to others herein granted:

251 (o) To exercise all or any part or combination of powers  
 252 herein granted or to elect to have such powers exercised by a  
 253 community redevelopment agency; however, the power of eminent  
 254 domain shall not be exercised by a community redevelopment  
 255 agency.

256 (3) With the approval of the governing body, a community  
 257 redevelopment agency may:

258 (a) Prior to approval of a community redevelopment plan or  
 259 approval of any modifications of the plan, acquire real property  
 260 in a community redevelopment area by purchase, lease, option,  
 261 gift, grant, bequest, devise, or other voluntary method of  
 262 acquisition, demolish and remove any structures on the property,  
 263 and pay all costs related to the acquisition, demolition, or  
 264 removal, including any administrative or relocation expenses.

265 Section 7. Section 163.375, Florida Statutes, is amended  
 266 to read:

267 163.375 Eminent domain.--

268 (1) After the community redevelopment plan is adopted, a  
 269 county or municipality may acquire by eminent domain any  
 270 interest in a parcel of real property within a community  
 271 redevelopment area, including a fee simple title thereto, for  
 272 the purpose of eliminating an existing threat to public health  
 273 or public safety if the parcel of real property is condemnation  
 274 eligible. A parcel of real property is condemnation eligible  
 275 only if the current condition of the property poses an existing  
 276 threat to public health or public safety and the existing threat  
 277 to public health or public safety is likely to continue absent  
 278 the exercise of eminent domain. A county or municipality shall

279 exercise the power of eminent domain in the manner provided in  
280 this section and in chapters 73 and 74, or pursuant to the power  
281 of eminent domain provided by any other statutory provision, as  
282 limited by s. 73.013. Real property belonging to the United  
283 States, the state, or any political subdivision of the state may  
284 not be acquired without its consent. Any county or municipality,  
285 or any community redevelopment agency pursuant to specific  
286 approval of the governing body of the county or municipality  
287 which established the agency, as provided by any county or  
288 municipal ordinance has the right to acquire by condemnation any  
289 interest in real property, including a fee simple title thereto,  
290 which it deems necessary for, or in connection with, community  
291 redevelopment and related activities under this part. Any county  
292 or municipality, or any community redevelopment agency pursuant  
293 to specific approval by the governing body of the county or  
294 municipality which established the agency, as provided by any  
295 county or municipal ordinance may exercise the power of eminent  
296 domain in the manner provided in chapters 73 and 74 and acts  
297 amendatory thereof or supplementary thereto, or it may exercise  
298 the power of eminent domain in the manner now or which may be  
299 hereafter provided by any other statutory provision for the  
300 exercise of the power of eminent domain. Property in  
301 unincorporated enclaves surrounded by the boundaries of a  
302 community redevelopment area may be acquired when it is  
303 determined necessary by the agency to accomplish the community  
304 redevelopment plan. Property already devoted to a public use may  
305 be acquired in like manner. However, no real property belonging

306 ~~to the United States, the state, or any political subdivision of~~  
 307 ~~the state may be acquired without its consent.~~

308 (2) A county or municipality may not initiate an eminent  
 309 domain proceeding pursuant to authority conferred by this  
 310 section unless the governing body first adopts a resolution of  
 311 taking containing specific determinations or findings that:

312 (a) The public purpose of the taking is to eliminate an  
 313 existing threat to public health or public safety that is likely  
 314 to continue absent the exercise of eminent domain;

315 (b) The parcel of real property is condemnation eligible  
 316 as defined in subsection (1), including a specific description  
 317 of the current conditions on the property that pose an existing  
 318 threat to public health or public safety that is likely to  
 319 continue absent the exercise of eminent domain; and

320 (c) Taking the property by eminent domain is reasonably  
 321 necessary in order to accomplish the public purpose of  
 322 eliminating an existing threat to public health or public safety  
 323 that is likely to continue absent the exercise of eminent  
 324 domain.

325 (3) The county or municipality may not adopt a resolution  
 326 of taking under this section unless actual notice of the public  
 327 hearing at which the resolution is considered was provided, at  
 328 least 45 days prior to the hearing, to the property owner and to  
 329 any business owner, including a lessee, who operates a business  
 330 located on the property.

331 (a) Notice must be sent by certified mail, return receipt  
 332 requested, to the last known address listed on the county ad  
 333 valorem tax roll of each owner of the property. Alternatively,

334 the notice may be personally delivered to each property owner.  
 335 The return of the notice as undeliverable by the postal  
 336 authorities constitutes compliance with this subsection. The  
 337 condemning authority is not required to give notice to a person  
 338 who acquires title to the property after the notice required by  
 339 this subsection has been given.

340 (b) Notice must be sent by certified mail, return receipt  
 341 requested, to the address of the registered agent for the  
 342 business located on the property to be acquired or, if no agent  
 343 is registered, by certified mail or personal delivery to the  
 344 address of the business located on the property to be acquired.  
 345 Notice to one owner of a multiple ownership business constitutes  
 346 notice to all business owners of that business. The return of  
 347 the notice as undeliverable by the postal authorities  
 348 constitutes compliance with this subsection. The condemning  
 349 authority is not required to give notice to a person who  
 350 acquires an interest in the business after the notice required  
 351 by this subsection has been given.

352 (c) At a minimum, the notices required by paragraphs (a)  
 353 and (b) shall indicate:

354 1. That the county or municipal governing body will  
 355 determine whether to take the parcel of real property pursuant  
 356 to authority granted by this part and will formally consider a  
 357 resolution of taking at a public hearing;

358 2. That the property is subject to taking by eminent  
 359 domain under this part because current conditions on the  
 360 property pose an existing threat to public health or public

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361 safety that is likely to continue absent the exercise of eminent  
362 domain;

363 3. The specific conditions on the property that pose an  
364 existing threat to public health or public safety and form the  
365 basis for taking the property;

366 4. That the property will not be subject to taking if the  
367 specific conditions that pose an existing threat to public  
368 health or public safety and form the basis for the taking are  
369 removed prior to the public hearing at which the resolution will  
370 be considered by the governing body;

371 5. The date, time, and location of the public hearing at  
372 which the resolution of taking will be considered;

373 6. That the property owner or business owner may file  
374 written objections with the governing board prior to the public  
375 hearing at which the resolution of taking is considered; and

376 7. That any interested party may appear and be heard at  
377 the public hearing at which the resolution of taking is  
378 considered.

379 (4) (a) In accordance with chapters 73 and 74, if a  
380 property owner challenges an attempt to acquire his or her  
381 property by eminent domain under this section, the condemning  
382 authority must prove by clear and convincing evidence in an  
383 evidentiary hearing before the circuit court that:

384 1. The public purpose of the taking is to eliminate an  
385 existing threat to public health or public safety that is likely  
386 to continue absent the exercise of eminent domain;

387 2. The property is condemnation eligible as defined in  
388 subsection (1); and

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389       3. Taking the property by eminent domain is reasonably  
390 necessary in order to accomplish the public purpose of  
391 eliminating an existing threat to public health or public safety  
392 that is likely to continue absent the exercise of eminent  
393 domain.

394       (b) The circuit court shall determine whether the public  
395 purpose of the taking is to eliminate an existing threat to  
396 public health or public safety that is likely to continue absent  
397 the exercise of eminent domain, whether the property is  
398 condemnation eligible as defined in subsection (1), and whether  
399 taking the property is reasonably necessary in order to  
400 accomplish the public purpose of eliminating an existing threat  
401 to public health or public safety that is likely to continue  
402 absent the exercise of eminent domain. The circuit court shall  
403 make these determinations without attaching a presumption of  
404 correctness or extending judicial deference to any  
405 determinations or findings in the resolution of taking adopted  
406 by the condemning authority.

407       (5)-(2) In any proceeding to fix or assess compensation for  
408 damages for the taking of property, or any interest therein,  
409 through the exercise of the power of eminent domain or  
410 condemnation, evidence or testimony bearing upon the following  
411 matters shall be admissible and shall be considered in fixing  
412 such compensation or damages in addition to evidence or  
413 testimony otherwise admissible:

414       (a) Any use, condition, occupancy, or operation of such  
415 property, which is unlawful or violative of, or subject to  
416 elimination, abatement, prohibition, or correction under, any

417 law, ordinance, or regulatory measure of the state, county,  
 418 municipality, or other political subdivision, or any agency  
 419 thereof, in which such property is located, as being unsafe,  
 420 substandard, unsanitary, or otherwise contrary to the public  
 421 health, safety, morals, or welfare.

422 (b) The effect on the value of such property of any such  
 423 use, condition, occupancy, or operation or of the elimination,  
 424 abatement, prohibition, or correction of any such use,  
 425 condition, occupancy, or operation.

426 (6)(3) In any proceeding to fix or assess compensation for  
 427 damages for the taking of property, or any interest therein, the  
 428 foregoing testimony and evidence shall be admissible  
 429 notwithstanding that no action has been taken by any public body  
 430 or public officer toward the abatement, prohibition,  
 431 elimination, or correction of any such use, condition,  
 432 occupancy, or operation. Testimony or evidence that any public  
 433 body or public officer charged with the duty or authority so to  
 434 do has rendered, made, or issued any judgment, decree,  
 435 determination, or order for the abatement, prohibition,  
 436 elimination, or correction of any such use, condition,  
 437 occupancy, or operation shall be admissible and shall be prima  
 438 facie evidence of the existence and character of such use,  
 439 condition, or operation.

440 Section 8. Subsection (3) is added to section 127.01,  
 441 Florida Statutes, to read:

442 127.01 Counties delegated power of eminent domain;  
 443 recreational purposes, issue of necessity of taking.--



444           (3) Each county shall strictly comply with the limitations  
 445 set forth in s. 73.013.

446           Section 9. Section 127.02, Florida Statutes, is amended to  
 447 read:

448           127.02 County commissioners may authorize acquirement of  
 449 property by eminent domain.--The board of county commissioners  
 450 may, by resolution, authorize the acquirement by eminent domain  
 451 of property, real or personal, for any county use or purpose  
 452 designated in such resolution, subject to the limitations set  
 453 forth in s. 73.013.

454           Section 10. Subsection (3) is added to section 166.401,  
 455 Florida Statutes, to read:

456           166.401 Right of eminent domain.--

457           (3) Each municipality shall strictly comply with the  
 458 limitations set forth in s. 73.013.

459           Section 11. Subsections (1), (9), and (10) of section  
 460 166.411, Florida Statutes, are amended to read:

461           166.411 Eminent domain; uses or purposes.--Municipalities  
 462 are authorized to exercise the power of eminent domain for the  
 463 following uses or purposes:

464           (1) For the proper and efficient carrying into effect of  
 465 any proposed scheme or plan of drainage, ditching, grading,  
 466 filling, or other public improvement deemed necessary or  
 467 expedient for the preservation of the public health, or for  
 468 other good reason connected in anywise with the public welfare  
 469 or the interests of the municipality and the people thereof,  
 470 subject to the limitations set forth in s. 73.013;

471           (9) For laying wires and conduits underground; and

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472 (10) For city buildings, waterworks, ponds, and other  
473 municipal purposes which shall be coextensive with the powers of  
474 the municipality exercising the right of eminent domain subject  
475 to the limitations set forth in s. 73.013.~~and~~

476 Section 12. This act shall take effect July 1, 2006, and  
477 shall apply to all condemnation proceedings in which a petition  
478 of taking is filed pursuant to chapter 73, Florida Statutes, on  
479 or after that date.