

CHAMBER ACTION

1 The Local Government Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

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

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24 F.S.; revising eminent domain authority and procedures,
 25 including notice, hearings, and challenge; amending ss.
 26 127.01 and 127.02, F.S.; requiring county compliance with
 27 eminent domain limitations; amending ss. 166.401 and
 28 166.411, F.S.; requiring municipal compliance with eminent
 29 domain limitations; providing application; providing an
 30 effective date.

31

32 Be It Enacted by the Legislature of the State of Florida:

33

34 Section 1. Section 73.013, Florida Statutes, is created to
 35 read:

36 73.013 Conveyance of property taken by eminent domain.--

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

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

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

53 (c) A natural person or private entity that is a public or
54 private utility for use in providing electricity services or
55 systems, natural or manufactured gas services or systems, water
56 and wastewater services or systems, stormwater or runoff
57 services or systems, sewer services or systems, pipeline
58 facilities, telephone services or systems, or similar services
59 or systems;

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

62 (e) A natural person or private entity that occupies,
63 pursuant to a lease, an incidental part of a public property or
64 a public facility for the purpose of providing goods or services
65 to the public;

66 (f) A natural person or private entity if the property was
67 owned and controlled by the condemning authority or a
68 governmental entity for at least 5 years after the condemning
69 authority acquired title to the property; or

70 (g) A natural person or private entity in accordance with
71 subsection (2).

72 (2) If ownership of property is conveyed to a natural
73 person or private entity pursuant to any of paragraphs (1)(a)-
74 (e), and that natural person or private entity retains ownership
75 and control of the property for at least 5 years after acquiring
76 title, the property may subsequently be transferred, after
77 public notice and competitive bidding unless otherwise provided

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78 | by general law, to another natural person or private entity
79 | without restriction.

80 | Section 2. Subsection (3) of section 163.335, Florida
81 | Statutes, is amended, and subsection (7) is added to that
82 | section, to read:

83 | 163.335 Findings and declarations of necessity.--

84 | (3) It is further found and declared that the powers
85 | conferred by this part are for public uses and purposes for
86 | which public money may be expended, the police power exercised,
87 | and the power of eminent domain exercised subject to the
88 | limitations in s. 163.375 ~~and the power of eminent domain and~~
89 | ~~police power exercised~~, and the necessity in the public interest
90 | for the provisions herein enacted is hereby declared as a matter
91 | of legislative determination.

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

97 | Section 3. Section 163.355, Florida Statutes, is amended
98 | to read:

99 | 163.355 Finding of necessity by county or municipality.--

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

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

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

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

130 (3) At least 30 days prior to the first public hearing at
 131 which a proposed resolution finding slum or blight conditions
 132 will be considered by a county or municipality, actual notice of
 133 the public hearing must be mailed via first class mail to each

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134 real property owner whose property may be included within the
 135 community redevelopment area and to each business owner,
 136 including a lessee, who operates a business located on property
 137 that may be included within the community redevelopment area.

138 (a) Notice must be sent to each owner of real property
 139 that may be included within the community redevelopment area at
 140 the owner's last known address as listed on the county ad
 141 valorem tax roll. Alternatively, the notice may be personally
 142 delivered to a property owner. If there is more than one owner
 143 of a property, notice to one owner constitutes notice to all
 144 owners of the property. The return of the notice as
 145 undeliverable by the postal authorities constitutes compliance
 146 with this subsection. The condemning authority is not required
 147 to give notice to a person who acquires title to property after
 148 the notice required by this subsection has been given.

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

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

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162 1. Generally explain the purpose, effect, and substance of
163 the proposed resolution;

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

169 3. Indicate that private-to-private transfers of property
170 may occur;

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

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

176 6. Identify the place or places within the county or
177 municipality at which the resolution may be inspected by the
178 public;

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

182 8. Indicate that interested parties may appear and be
183 heard at all public hearings at which the resolution will be
184 considered.

185 (4) In addition to mailing notice to property owners, the
186 county or municipality must conduct at least two advertised
187 public hearings prior to adoption of the proposed resolution. At
188 least one hearing must be held after 5 p.m. on a weekday, unless
189 the governing body, by a majority plus one vote, elects to

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190 conduct the hearing at another time of day. The first public
191 hearing must be held at least 7 days after the day the first
192 advertisement is published. The second hearing must be held at
193 least 10 days after the first hearing and must be advertised at
194 least 5 days prior to the public hearing. The required
195 advertisements must be no less than 2 columns wide by 10 inches
196 long in a standard size or a tabloid size newspaper, and the
197 headline in the advertisement must be in a type no smaller than
198 18 point. The advertisement must not be placed in that portion
199 of the newspaper where legal notices and classified
200 advertisements appear and must be placed in a newspaper of
201 general paid circulation rather than one of limited subject
202 matter. Whenever possible, the advertisement must appear in a
203 newspaper that is published at least 5 days a week unless the
204 only newspaper in the community is published fewer than 5 days a
205 week. At a minimum, the advertisement must:

206 (a) Generally explain the substance and effect of the
207 resolution;

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

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

214 (d) Identify the place or places within the county or
215 municipality at which the resolution may be inspected by the
216 public;

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

220 (f) Indicate that any interested party may file written
221 objections with the local governing board prior to the public
222 hearing; and

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

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

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

234 (6) The power of eminent domain.

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

237 163.360 Community redevelopment plans.--

238 (2) The community redevelopment plan shall:

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

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244 | be exercised by the county or municipality within the community
 245 | redevelopment area.

246 | Section 6. Paragraph (o) of subsection (1) and paragraph
 247 | (a) of subsection (3) of section 163.370, Florida Statutes, are
 248 | amended to read:

249 | 163.370 Powers; counties and municipalities; community
 250 | redevelopment agencies.--

251 | (1) Every county and municipality shall have all the
 252 | powers necessary or convenient to carry out and effectuate the
 253 | purposes and provisions of this part, including the following
 254 | powers in addition to others herein granted:

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

260 | (3) With the approval of the governing body, a community
 261 | redevelopment agency may:

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

269 | Section 7. Section 163.375, Florida Statutes, is amended
 270 | to read:

271 | 163.375 Eminent domain.--

272 (1) After the community redevelopment plan is adopted, a
 273 county or municipality may acquire by eminent domain any
 274 interest in a parcel of real property within a community
 275 redevelopment area, including a fee simple title thereto, for
 276 the purpose of eliminating an existing threat to public health
 277 or public safety if the parcel of real property is condemnation
 278 eligible as defined in subsection (2). A county or municipality
 279 shall exercise the power of eminent domain in the manner
 280 provided in this section and in chapters 73 and 74, or pursuant
 281 to the power of eminent domain provided by any other statutory
 282 provision, as limited by s. 73.013. Real property belonging to
 283 the United States, the state, or any political subdivision of
 284 the state may not be acquired without its consent. ~~Any county or~~
 285 ~~municipality, or any community redevelopment agency pursuant to~~
 286 ~~specific approval of the governing body of the county or~~
 287 ~~municipality which established the agency, as provided by any~~
 288 ~~county or municipal ordinance has the right to acquire by~~
 289 ~~condemnation any interest in real property, including a fee~~
 290 ~~simple title thereto, which it deems necessary for, or in~~
 291 ~~connection with, community redevelopment and related activities~~
 292 ~~under this part. Any county or municipality, or any community~~
 293 ~~redevelopment agency pursuant to specific approval by the~~
 294 ~~governing body of the county or municipality which established~~
 295 ~~the agency, as provided by any county or municipal ordinance may~~
 296 ~~exercise the power of eminent domain in the manner provided in~~
 297 ~~chapters 73 and 74 and acts amendatory thereof or supplementary~~
 298 ~~thereto, or it may exercise the power of eminent domain in the~~
 299 ~~manner now or which may be hereafter provided by any other~~

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300 ~~statutory provision for the exercise of the power of eminent~~
301 ~~domain. Property in unincorporated enclaves surrounded by the~~
302 ~~boundaries of a community redevelopment area may be acquired~~
303 ~~when it is determined necessary by the agency to accomplish the~~
304 ~~community redevelopment plan. Property already devoted to a~~
305 ~~public use may be acquired in like manner. However, no real~~
306 ~~property belonging to the United States, the state, or any~~
307 ~~political subdivision of the state may be acquired without its~~
308 ~~consent.~~

309 (2) Private property is condemnation eligible if the
310 current condition of the property poses an existing threat to
311 public health or public safety that is likely to continue absent
312 the exercise of eminent domain as evidenced by at least one of
313 the following factors:

314 (a) The property contains a structure which, in its
315 current condition, has substantial dilapidation which is either
316 physically incurable or economically incurable in that the cost
317 of repair or rehabilitation would exceed the replacement cost of
318 a new structure. Superficial or cosmetic disrepair, which is
319 repairable by a nominal expenditure, not to exceed 20 percent of
320 the market value of the existing structure, shall not constitute
321 dilapidation for purposes of constituting a condemnation-
322 eligible factor;

323 (b) The property contains a structure which, in its
324 current condition, is unsanitary, unsafe, or vermin infested and
325 is designated by the agency responsible for enforcement of the
326 housing, building, or fire codes as unfit for human habitation
327 or use;

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328 (c) The property contains a structure which, in its
329 current condition, is a fire hazard, or otherwise dangerous to
330 the safety of persons or property, and is designated by the
331 agency responsible for enforcement of the housing, building, or
332 fire codes as unfit for human habitation or use;

333 (d) The property contains a structure from which, in its
334 current condition, the utilities, plumbing, heating, sewerage,
335 or other facilities have been disconnected, destroyed, removed,
336 or rendered ineffective so that the property is unfit for human
337 habitation or use; or

338 (e) The physical condition, use, or occupancy of the
339 property constitutes a public nuisance and the property has been
340 the subject of code violations affecting public health or public
341 safety that have not been substantially rehabilitated within 1
342 year after receipt of notice to rehabilitate from the
343 appropriate code enforcement agency.

344 (3) A county or municipality may not initiate an eminent
345 domain proceeding pursuant to authority conferred by this
346 section unless the governing body first adopts a resolution of
347 taking containing specific determinations or findings that:

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

351 (b) The parcel of real property is condemnation eligible
352 as defined in subsection (2), including a specific description
353 of the current conditions on the property that pose an existing
354 threat to public health or public safety that is likely to
355 continue absent the exercise of eminent domain; and

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356 (c) Taking the property by eminent domain is reasonably
357 necessary in order to accomplish the public purpose of
358 eliminating an existing threat to public health or public safety
359 that is likely to continue absent the exercise of eminent
360 domain.

361 (4) The county or municipality may not adopt a resolution
362 of taking under this section unless actual notice of the public
363 hearing at which the resolution is considered was provided, at
364 least 45 days prior to the hearing, to the property owner and to
365 any business owner, including a lessee, who operates a business
366 located on the property.

367 (a) Notice must be sent by certified mail, return receipt
368 requested, to the last known address listed on the county ad
369 valorem tax roll of each owner of the property. Alternatively,
370 the notice may be personally delivered to each property owner.
371 Compliance with this subsection shall also require conspicuous
372 posting of the notice to the premises of the property to be
373 acquired. The posted notice shall prominently and legibly
374 display the information provided in paragraph (c). The
375 condemning authority is not required to give notice to a person
376 who acquires title to the property after the notice required by
377 this subsection has been given.

378 (b) Notice must be sent by certified mail, return receipt
379 requested, to the address of the registered agent for the
380 business located on the property to be acquired or, if no agent
381 is registered, by certified mail or personal delivery to the
382 address of the business located on the property to be acquired.
383 Notice to one owner of a multiple ownership business constitutes

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384 notice to all business owners of that business. Compliance with
385 this subsection shall also require conspicuous posting of the
386 notice to the premises of the property to be acquired. The
387 posted notice shall prominently and legibly display the
388 information provided in paragraph (c). The condemning authority
389 is not required to give notice to a person who acquires an
390 interest in the business after the notice required by this
391 subsection has been given.

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

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

398 2. That the property is subject to taking by eminent
399 domain under this part because current conditions on the
400 property pose an existing threat to public health or public
401 safety that is likely to continue absent the exercise of eminent
402 domain;

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

406 4. That the property will not be subject to taking if the
407 specific conditions that pose an existing threat to public
408 health or public safety and form the basis for the taking are
409 removed prior to the public hearing at which the resolution will
410 be considered by the governing body;

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

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

416 7. That any interested party may appear and be heard at
417 the public hearing at which the resolution of taking is
418 considered.

419 (5) (a) In accordance with chapters 73 and 74, if a
420 property owner challenges an attempt to acquire his or her
421 property by eminent domain under this section, the condemning
422 authority must prove by clear and convincing evidence in an
423 evidentiary hearing before the circuit court that:

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

427 2. The property is condemnation eligible as defined in
428 subsection (2); and

429 3. Taking the property by eminent domain is reasonably
430 necessary in order to accomplish the public purpose of
431 eliminating an existing threat to public health or public safety
432 that is likely to continue absent the exercise of eminent
433 domain.

434 (b) The circuit court shall determine whether the public
435 purpose of the taking is to eliminate an existing threat to
436 public health or public safety that is likely to continue absent
437 the exercise of eminent domain, whether the property is
438 condemnation eligible as defined in subsection (2), and whether

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439 | taking the property is reasonably necessary in order to
440 | accomplish the public purpose of eliminating an existing threat
441 | to public health or public safety that is likely to continue
442 | absent the exercise of eminent domain. The circuit court shall
443 | make these determinations without attaching a presumption of
444 | correctness or extending judicial deference to any
445 | determinations or findings in the resolution of taking adopted
446 | by the condemning authority.

447 | ~~(6)(2)~~ In any proceeding to fix or assess compensation for
448 | damages for the taking of property, or any interest therein,
449 | through the exercise of the power of eminent domain or
450 | condemnation, evidence or testimony bearing upon the following
451 | matters shall be admissible and shall be considered in fixing
452 | such compensation or damages in addition to evidence or
453 | testimony otherwise admissible:

454 | (a) Any use, condition, occupancy, or operation of such
455 | property, which is unlawful or violative of, or subject to
456 | elimination, abatement, prohibition, or correction under, any
457 | law, ordinance, or regulatory measure of the state, county,
458 | municipality, or other political subdivision, or any agency
459 | thereof, in which such property is located, as being unsafe,
460 | substandard, unsanitary, or otherwise contrary to the public
461 | health, safety, morals, or welfare.

462 | (b) The effect on the value of such property of any such
463 | use, condition, occupancy, or operation or of the elimination,
464 | abatement, prohibition, or correction of any such use,
465 | condition, occupancy, or operation.

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466 (7)-(3) In any proceeding to fix or assess compensation for
467 damages for the taking of property, or any interest therein, the
468 foregoing testimony and evidence shall be admissible
469 notwithstanding that no action has been taken by any public body
470 or public officer toward the abatement, prohibition,
471 elimination, or correction of any such use, condition,
472 occupancy, or operation. Testimony or evidence that any public
473 body or public officer charged with the duty or authority so to
474 do has rendered, made, or issued any judgment, decree,
475 determination, or order for the abatement, prohibition,
476 elimination, or correction of any such use, condition,
477 occupancy, or operation shall be admissible and shall be prima
478 facie evidence of the existence and character of such use,
479 condition, or operation.

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

482 127.01 Counties delegated power of eminent domain;
483 recreational purposes, issue of necessity of taking.--

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

486 Section 9. Section 127.02, Florida Statutes, is amended to
487 read:

488 127.02 County commissioners may authorize acquirement of
489 property by eminent domain.--The board of county commissioners
490 may, by resolution, authorize the acquirement by eminent domain
491 of property, real or personal, for any county use or purpose
492 designated in such resolution, subject to the limitations set
493 forth in s. 73.013.

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

496 166.401 Right of eminent domain.--

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

499 Section 11. Subsections (1), (9), and (10) of section
500 166.411, Florida Statutes, are amended to read:

501 166.411 Eminent domain; uses or purposes.--Municipalities
502 are authorized to exercise the power of eminent domain for the
503 following uses or purposes:

504 (1) For the proper and efficient carrying into effect of
505 any proposed scheme or plan of drainage, ditching, grading,
506 filling, or other public improvement deemed necessary or
507 expedient for the preservation of the public health, or for
508 other good reason connected in anywise with the public welfare
509 or the interests of the municipality and the people thereof,
510 subject to the limitations set forth in s. 73.013;

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

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

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