

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 including notice, hearings, and challenge; amending ss.
22 127.01 and 127.02, F.S.; requiring county compliance with
23 eminent domain limitations; amending ss. 166.401 and
24 166.411, F.S.; requiring municipal compliance with eminent
25 domain limitations; providing application; providing an
26 effective date.
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28 Be It Enacted by the Legislature of the State of Florida:

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

73.013 Conveyance of property taken by eminent domain.--

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

- (a) A natural person or private entity for use in providing common carrier services or systems;
- (b) A natural person or private entity for use as a road or other right-of-way or means open to the public for transportation, whether at no charge or by toll;
- (c) A natural person or private entity that is a public or private utility for use in providing electricity services or systems, natural or manufactured gas services or systems, water and wastewater services or systems, stormwater or runoff services or systems, sewer services or systems, pipeline

54 facilities, telephone services or systems, or similar services
55 or systems;

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

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

62 (f) A natural person or private entity, after public
63 notice and competitive bidding unless otherwise provided by
64 general law, if the property was owned and controlled by the
65 condemning authority or a governmental entity for at least 5
66 years after the condemning authority acquired title to the
67 property; or

68 (g) A natural person or private entity in accordance with
69 subsection (2).

70 (2) If ownership of property is conveyed to a natural
71 person or private entity pursuant to any of paragraphs (1)(a)-
72 (e), and that natural person or private entity retains ownership
73 and control of the property for at least 5 years after acquiring
74 title, the property may subsequently be transferred, after
75 public notice and competitive bidding unless otherwise provided
76 by general law, to another natural person or private entity
77 without restriction.

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

81 163.335 Findings and declarations of necessity.--

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

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

95 Section 3. Section 163.355, Florida Statutes, is amended
 96 to read:

97 163.355 Finding of necessity by county or municipality.--

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

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

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

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

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

134 including a lessee, who operates a business located on property
135 that may be included within the community redevelopment area.

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

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

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

160 1. Generally explain the purpose, effect, and substance of
161 the proposed resolution;

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

167 3. Indicate that private-to-private transfers of property
168 may occur;

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

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

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

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

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

183 (4) In addition to mailing notice to property owners, the
184 county or municipality must conduct at least two advertised
185 public hearings prior to adoption of the proposed resolution. At
186 least one hearing must be held after 5 p.m. on a weekday, unless

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

204 (a) Generally explain the substance and effect of the
205 resolution;

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

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

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

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

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

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

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

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

232 (6) The power of eminent domain.

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

235 163.360 Community redevelopment plans.--

236 (2) The community redevelopment plan shall:

237 (d) Indicate that real property within the community
 238 redevelopment area may be subject to taking by eminent domain

239 pursuant to s. 163.375. If consistent with the resolution
240 finding slum or blight conditions, the plan must indicate that
241 the power of eminent domain provided under s. 163.375 will not
242 be exercised by the county or municipality within the community
243 redevelopment area.

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

247 163.370 Powers; counties and municipalities; community
248 redevelopment agencies.--

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

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

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

260 (a) Prior to approval of a community redevelopment plan or
261 approval of any modifications of the plan, acquire real property
262 in a community redevelopment area by purchase, lease, option,
263 gift, grant, bequest, devise, or other voluntary method of
264 acquisition, demolish and remove any structures on the property,

265 and pay all costs related to the acquisition, demolition, or
 266 removal, including any administrative or relocation expenses.

267 Section 7. Section 163.375, Florida Statutes, is amended
 268 to read:

269 163.375 Eminent domain.--

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

292 ~~governing body of the county or municipality which established~~
293 ~~the agency, as provided by any county or municipal ordinance may~~
294 ~~exercise the power of eminent domain in the manner provided in~~
295 ~~chapters 73 and 74 and acts amendatory thereof or supplementary~~
296 ~~thereto, or it may exercise the power of eminent domain in the~~
297 ~~manner now or which may be hereafter provided by any other~~
298 ~~statutory provision for the exercise of the power of eminent~~
299 ~~domain. Property in unincorporated enclaves surrounded by the~~
300 ~~boundaries of a community redevelopment area may be acquired~~
301 ~~when it is determined necessary by the agency to accomplish the~~
302 ~~community redevelopment plan. Property already devoted to a~~
303 ~~public use may be acquired in like manner. However, no real~~
304 ~~property belonging to the United States, the state, or any~~
305 ~~political subdivision of the state may be acquired without its~~
306 ~~consent.~~

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

312 (a) The property contains a structure which, in its
313 current condition, has substantial dilapidation which is either
314 physically incurable or economically incurable in that the cost
315 of repair or rehabilitation would exceed the replacement cost of
316 a new structure. Superficial or cosmetic disrepair, which is
317 repairable by a nominal expenditure, not to exceed 20 percent of
318 the market value of the existing structure, shall not constitute

319 dilapidation for purposes of constituting a condemnation-
320 eligible factor;

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

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

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

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

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

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

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

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

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

365 (a) Notice must be sent by certified mail, return receipt
366 requested, to the last known address listed on the county ad
367 valorem tax roll of each owner of the property. Alternatively,
368 the notice may be personally delivered to each property owner.
369 Compliance with this subsection shall also require conspicuous
370 posting of the notice to the premises of the property to be
371 acquired. The posted notice shall prominently and legibly
372 display the information provided in paragraph (c). The

373 condemning authority is not required to give notice to a person
374 who acquires title to the property after the notice required by
375 this subsection has been given.

376 (b) Notice must be sent by certified mail, return receipt
377 requested, to the address of the registered agent for the
378 business located on the property to be acquired or, if no agent
379 is registered, by certified mail or personal delivery to the
380 address of the business located on the property to be acquired.
381 Notice to one owner of a multiple ownership business constitutes
382 notice to all business owners of that business. Compliance with
383 this subsection shall also require conspicuous posting of the
384 notice to the premises of the property to be acquired. The
385 posted notice shall prominently and legibly display the
386 information provided in paragraph (c). The condemning authority
387 is not required to give notice to a person who acquires an
388 interest in the business after the notice required by this
389 subsection has been given.

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

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

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

399 safety that is likely to continue absent the exercise of eminent
 400 domain;

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

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

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

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

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

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

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

425 2. The property is condemnation eligible as defined in
426 subsection (2); and

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

432 (b) The circuit court shall determine whether the public
433 purpose of the taking is to eliminate an existing threat to
434 public health or public safety that is likely to continue absent
435 the exercise of eminent domain, whether the property is
436 condemnation eligible as defined in subsection (2), and whether
437 taking the property is reasonably necessary in order to
438 accomplish the public purpose of eliminating an existing threat
439 to public health or public safety that is likely to continue
440 absent the exercise of eminent domain. The circuit court shall
441 make these determinations without attaching a presumption of
442 correctness or extending judicial deference to any
443 determinations or findings in the resolution of taking adopted
444 by the condemning authority.

445 (6)-(2) In any proceeding to fix or assess compensation for
446 damages for the taking of property, or any interest therein,
447 through the exercise of the power of eminent domain or
448 condemnation, evidence or testimony bearing upon the following
449 matters shall be admissible and shall be considered in fixing
450 such compensation or damages in addition to evidence or
451 testimony otherwise admissible:

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

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

464 (7)-(3) In any proceeding to fix or assess compensation for
465 damages for the taking of property, or any interest therein, the
466 foregoing testimony and evidence shall be admissible
467 notwithstanding that no action has been taken by any public body
468 or public officer toward the abatement, prohibition,
469 elimination, or correction of any such use, condition,
470 occupancy, or operation. Testimony or evidence that any public
471 body or public officer charged with the duty or authority so to
472 do has rendered, made, or issued any judgment, decree,
473 determination, or order for the abatement, prohibition,
474 elimination, or correction of any such use, condition,
475 occupancy, or operation shall be admissible and shall be prima
476 facie evidence of the existence and character of such use,
477 condition, or operation.

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

480 127.01 Counties delegated power of eminent domain;
 481 recreational purposes, issue of necessity of taking.--

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

484 Section 9. Section 127.02, Florida Statutes, is amended to
 485 read:

486 127.02 County commissioners may authorize acquirement of
 487 property by eminent domain.--The board of county commissioners
 488 may, by resolution, authorize the acquirement by eminent domain
 489 of property, real or personal, for any county use or purpose
 490 designated in such resolution, subject to the limitations set
 491 forth in s. 73.013.

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

494 166.401 Right of eminent domain.--

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

497 Section 11. Subsections (1), (9), and (10) of section
 498 166.411, Florida Statutes, are amended to read:

499 166.411 Eminent domain; uses or purposes.--Municipalities
 500 are authorized to exercise the power of eminent domain for the
 501 following uses or purposes:

502 (1) For the proper and efficient carrying into effect of
 503 any proposed scheme or plan of drainage, ditching, grading,
 504 filling, or other public improvement deemed necessary or

505 | expedient for the preservation of the public health, or for
506 | other good reason connected in anywise with the public welfare
507 | or the interests of the municipality and the people thereof,
508 | subject to the limitations set forth in s. 73.013;

509 | (9) For laying wires and conduits underground; and

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

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