

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: SPB 7112

INTRODUCER: For consideration by Judiciary Committee

SUBJECT: Eminent Domain

DATE: February 14, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Luczynski</u>	<u>Maclure</u>	_____	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This Senate Proposed Bill expresses the legislative intent to propose a joint resolution amending the Florida Constitution relating to eminent domain.

II. Present Situation:

The Eminent Domain Power

Eminent domain is the power of the state to take private property and convert it for public use subject to reasonable compensation. That power is limited by the federal and state constitutions. The Fifth Amendment to the U.S. Constitution provides that private property shall not be taken for public use without just compensation. The Florida Constitution similarly limits the eminent domain power; however, it substitutes “public purpose” for “public use” and “full compensation” for “just compensation.” Specifically, Article X, Section 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 Florida Constitution provides that charter counties and municipalities have powers to conduct local government functions—which arguably include the use of eminent domain for public purposes. Counties and municipalities also have been granted the general power of eminent domain for county and municipal purposes under chapters 127 and 166, F.S. However, as the Florida Supreme Court has held, municipalities do not need this statutory authority to exercise eminent domain for a valid municipal purpose.¹ Accordingly, under its constitutional

¹ *City of Ocala v. O.J. Nye*, 608 So. 2d 15, 17 (Fla. 1992).

home rule powers, a municipality may take property for a public purpose as long as it is not expressly prohibited. By analogy, the same reasoning would seem to apply to charter counties, but there do not appear to be any cases specifically holding the same. Thus, except for noncharter counties, the authority to exercise eminent domain under chapters 127 and 166, F.S., appears to be superfluous. Nevertheless, these statutes effectively permit the use of eminent domain for any local government purpose, although they do not expressly authorize the use of eminent domain for economic development. Furthermore, the Florida Supreme Court has not considered a case involving the use of eminent domain under home rule powers with the express public purpose of economic development.

Counties and municipalities also have the power of eminent domain to remedy slum and blight under the Community Redevelopment Act. The Legislature has determined that the exercise of the powers granted under the Act are for a public purpose.² After a municipality or county makes a finding that slum or blight exists, it may create a community redevelopment agency to carry out redevelopment activities within the community redevelopment area. The tools provided to facilitate the redevelopment process and the elimination and prevention of slum and blight include: the power to authorize the issuance of revenue bonds; the power to acquire (by eminent domain if necessary), demolish, remove, or dispose of property; and the power of tax increment financing. Many valid redevelopment activities to cure blight—especially blight based on economic-related factors³—inherently have an economic development-type character.

The power of eminent domain plays an important role in the operations of the state as is evident by references to eminent domain in more than 150 sections of the Florida Statutes, across almost 70 chapters. Takings that meet the public use or purpose requirement are generally grouped into three categories. Most takings under Florida Statutes fit within the first two categories that include takings generally considered straightforward and uncontroversial. The first category is private to public transfers, e.g., for a road, a school, or a park. The second category is private to private transfers where the property is available for the public's use, e.g., as with a railroad, a public utility, or a stadium. The third category involves private to private transfers where the existing property use inflicts an affirmative harm.⁴

Concerns Raised by *Kelo*

In June 2005, the U.S. Supreme Court held in *Kelo* that improving the local economy meets the public purpose requirement of the Takings Clause of the U.S. Constitution. *Kelo* has raised concerns regarding the adequacy of safeguards for private property rights. In Florida, concerns are focused on the Community Redevelopment Act because takings to remedy slum and blight under the Act may have an economic development-type character and frequently involve private to private transfers.

² Section 163.335(3), F.S.

³ Economic-related blight factors arguably would include: lack of appreciation of aggregate assessed values of real property, s. 163.340(8)(b), F.S., falling lease rates, s. 163.340(8)(g), F.S., and higher vacancy rates, s. 163.340(8)(i), F.S.

⁴ See *Kelo v. City of New London*, 125 S. Ct. 2655, 2673-74 (2005) (O'Connor, J., dissenting).

Senate Interim Project

In response to public concerns about legal safeguards for Florida property owners and potential adverse implications of *Kelo*, the Committee on Judiciary undertook Senate Interim Project 2006-151, entitled *Eminent Domain*.⁵

III. Effect of Proposed Changes:

This Senate Proposed Bill expresses the intent of the Legislature to propose a joint resolution amending the Florida Constitution relating to eminent domain.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article XI, Section 1, of the Florida Constitution provides that the Legislature may propose to amend one or more articles by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

⁵ See http://www.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-151ju.pdf.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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