

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1037 Coordination Between Schools and Local Governments

**SPONSOR(S):** Community & Military Affairs Subcommittee and Broxson

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1348

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	12 Y, 2 N, As CS	Gibson	Hoagland
2) Economic Affairs Committee	12 Y, 6 N	Gibson	Tinker

### SUMMARY ANALYSIS

The bill amends provisions of law relating to the Florida School for the Deaf and the Blind (FSDB), a state-supported residential public school located in the historic city of St. Augustine for hearing-impaired and visually impaired students in preschool through 12th grade and the school's postsecondary program.

Currently, all 67 Florida school districts and the boards of trustees for the State University System and the Florida College System have been granted legislative authorization to exercise eminent domain powers. The FSDB, a statewide school serving eligible Florida residents from across the state, has never been granted eminent domain power by the Legislature. The bill grants eminent domain power to the FSDB board of trustees to exercise with the approval of the Governor and Cabinet, sitting as the Administration Commission, and in the manner provided in ch. 73 or ch. 74, F.S. The eminent domain power being granted to the board of trustees of the statewide school is the same as the power currently granted to boards of trustees for the State University System and the Florida College System, which also must seek approval from the Administration Commission before exercising eminent domain powers and must exercise the power in the manner provided by ch. 73 or ch. 74, F.S.

The bill requires the FSDB board of trustees to provide safe and appropriate housing for all residential students at the school, in compliance with the state Fair Housing Act, the federal Fair Housing Act, and the Americans with Disabilities Act of 1990.

The bill provides vesting rights for all FSDB school facilities, and all uses, structures, fences, enclosures, and walls that exist on school facilities as of July 1, 2012. The local government is required to cooperate with the school to allow for restoration of school facilities, and all uses, structures, fences, enclosures, and walls that exist on school facilities. All school facilities, and all uses, structures, fences, enclosures, and walls that exist on school facilities, must also comply with the state Fair Housing Act, the federal Fair Housing Act, and the Americans with Disabilities Act of 1990.

The bill removes a reference, in s. 1002.36, F.S., to the coordination of planning requirements in s. 1013.351, F.S., however, the requirement for the FSDB to coordinate planning for new facilities with the local government remains. The bill makes conforming changes relating to school interlocal agreements to conform to the current law in s. 163.31777, F.S., however, the option for the FSDB and the local government to enter into an interlocal agreement to facilitate coordination remains.

The bill does not appear to have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

#### **Florida School for the Deaf and Blind**

The Florida School for the Deaf and the Blind (FSDB), originating in 1883<sup>1</sup> and located in the historic city of St. Augustine, is a state-supported residential public school for hearing-impaired and visually impaired students in preschool through 12th grade. The school also offers a post-secondary program. There is no tuition cost for eligible Florida residents. As a component of the delivery of public education within Florida's K-20 education system, the FSDB provides educational programs and support services appropriate to meet the education and related evaluation and counseling needs of hearing-impaired and visually impaired students who meet enrollment criteria. As a school of excellence, the FSDB's mission states that it "strives to provide students with an opportunity to maximize their individual potential in a caring, safe, unique learning environment to prepare them to be literate, employable, and independent lifelong learners."<sup>2</sup> Today, the FSDB is the largest school of its type in the United States. The school has grown from three small buildings on five acres to 47 major buildings on nearly 80 acres of land. The school is bordered on the east by estuaries and waterways and on the west by San Marco Avenue. The school is bordered to the north and south by the historic neighborhoods of Fullerwood Park and Nelmar Terrace.

The FSDB is managed by a seven member board of trustees, who are appointed by the Governor and confirmed by the Senate.<sup>3</sup> The board acts under general policies adopted by the State Board of Education. The board is vested with various responsibilities, including appointing faculty, determining eligibility admission requirements, providing for the services needed for daily care of students, providing for accounting and general record keeping, as well as a variety of other tasks related to the successful functioning of the school.<sup>4</sup>

The Legislature enacted s. 1013.351, F.S., to adopt the policy requiring the FSDB board of trustees to coordinate planning for new facilities with local governments to ensure that plans for site acquisition, construction, and opening of new facilities of the school are facilitated concurrent with other necessary services. The planning is supposed to integrate the educational plant survey for the school and applicable policies and procedures of the board of trustees with the local comprehensive plan and land development regulations. The coordination of planning is required to consider among other things, the effect of the location of new facilities to be located on property acquired by FSDB on or after January 1, 1998. School facilities within the geographic area or the campus of the school as it existed on or before January 1, 1998, are deemed to already be consistent with the local government's comprehensive plan and land development regulations.<sup>5</sup>

In order to facilitate planning, the FSDB and the City of St. Augustine may enter into an interlocal agreement to establish the specific ways in which the plans and processes of the board of trustees and the city are to be coordinated.<sup>6</sup> So far, the FSDB and the City of St. Augustine have opted not to enter into an interlocal agreement as envisioned by s. 1013.351, F.S.

In order to improve coordination in selecting potential school facility sites, the FSDB board of trustees is required to give notice to the city at least 60 days before acquiring additional property, and the city is required to notify the board of trustees no later than 45 days after receiving notice, whether or not the proposed acquisition site is consistent with the land use categories and the city's comprehensive plan. Further, within 90 days before the school starts construction on any property acquired by the board of trustees on or after

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<sup>1</sup> In 1883, the Legislature with an appropriation of \$20,000 established an institution for the blind and deaf for two years. See <http://www.fsdb.k12.fl.us/about/history> (last accessed January 12, 2012).

<sup>2</sup> S. 1002.36(2), F.S.

<sup>3</sup> S. 1002.36(4)(a), F.S.

<sup>4</sup> S. 1002.36(4)(e), F.S.

<sup>5</sup> S. 1013.351(8), F.S.

<sup>6</sup> S. 1013.351(3), F.S.

January 1, 1998, the board must request a determination of consistency from the city that the proposed use of the property is consistent with the comprehensive plan and corresponding land development regulations. If consistency is determined, construction on the property may begin and additional local government approvals are not required, except as provided in s. 1013.351, F.S.

## Eminent Domain Power

In 2003, an Attorney General opinion stated that the FSDB could not use eminent domain authority without specific legislative delegation.<sup>7</sup> The opinion stated that in the absence of any specific statutory authorization, the board of trustees of the FSDB may not condemn property or exercise the power of eminent domain.<sup>8</sup> The opinion explained that an administrative agency possesses no inherent power, and may only exercise authority as conferred by law.<sup>9</sup>

The Florida Legislature has the authority to grant specific entities the power to take land through eminent domain. Courts have held that “[t]he right to appropriate private property for public use lies dormant in the State until legislative action is had.”<sup>10</sup> While there are no express limitations on the legislature’s authority to grant eminent domain powers, legislative authorization does not entitle an entity to condemn property for any reason, it simply provides a presumption in favor of public use.<sup>11</sup> The courts retain the authority to determine if the land is being taken for public use.<sup>12</sup> Once eminent domain power is granted by the legislature, an entity is still required to abide by the protections for property owners outlined in the U.S. Constitution<sup>13</sup> and the State Constitution<sup>14</sup> as well as follow the strict judicial process outlined in ch. 73 or ch. 74, F.S.<sup>15</sup> Among the requirements in ch. 73, F.S., is for the governmental entity, prior to instituting an eminent domain procedure, to attempt to negotiate in good faith with the owner of the parcel to be acquired, to provide the owner with a written offer including a copy of the appraisal the offer is based on if requested, and for the governmental entity to attempt to reach an agreement with the parcel owner regarding the amount of compensation to be paid for the parcel.<sup>16</sup>

District school boards have the authority to take private property for any public school purpose or use when, in the opinion of the school board, such property is needed in the operation of any or all of the public schools within the district.<sup>17</sup> District school boards consist of not less than five elected members.<sup>18</sup>

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<sup>7</sup> Op. Att’y Gen. Fla. 2003-02 (2003).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*; see also *State ex. rel. Greenberg v. Fla. State Bd. of Dentistry*, 297 So.2d 628 (Fla. 1st DCA 1974).

<sup>10</sup> *Marvin v. Hous. Auth. of Jacksonville*, 183 So. 145, 152 (Fla. 1938).

<sup>11</sup> *Daniels v. State Road Dept.*, 170 So.2d 846, 852 (Fla. 1964).

<sup>12</sup> See generally ss. 73 and 74, F.S.

<sup>13</sup> The Fifth Amendment to the United States Constitution guarantees that a citizen’s private property may not be taken for public use without just compensation. The “takings” clause of the Fifth Amendment is applicable to the states through the Fourteenth Amendment, which provides that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law. . . .”

<sup>14</sup> Art. X, s. 6 of the Florida Constitution, provides:

(a) 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.

(b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.

(c) Private property taken by eminent domain pursuant to a petition to initiate condemnation proceedings filed on or after January 2, 2007, may not be conveyed to a natural person or private entity except as provided by general law passed by a three-fifths vote of the membership of each house of the Legislature.

<sup>15</sup> See, e.g., s. 1013.25, F.S. The statutory eminent domain procedures in ch. 73, F.S., include presuit negotiations between the entity exercising its rights and the fee owner, offers of judgment, jury trials, compensation, business damage offers, and costs and attorneys’ fees related to the proceeding. Eminent domain actions proceeding to trial require a jury of 12 in the circuit court of the county where the property lies. Eminent domain procedures take precedence over other civil matters. Supplementary procedures for eminent domain actions in ch. 74, F.S., are commonly referred to as “quick-take” provisions. Under the quick-take provisions, certain entities, including school boards, counties and municipalities, and public utilities may take possession and title of land subject to an eminent domain proceeding in advance of the entry of final judgment.

<sup>16</sup> See s. 73.015(1), F.S.

<sup>17</sup> S. 1013.24, F.S.

<sup>18</sup> S. 1001.34, F.S.

The boards of trustees for the State University System and the Florida College System have also been given eminent domain authority, but with more constraints than that of school boards.<sup>19</sup> To use its authority, the board of trustees must first attempt to reach an agreement with the property owner; if such an agreement cannot be reached, the board may exercise the power of eminent domain after receiving approval from the Administration Commission, proceeding under the manner provided by ch. 73 or 74, F.S.<sup>20</sup> Unlike district school boards, boards of trustees for the State University System and the Florida College System are appointed by the governor and/or the board of governors and are confirmed by the senate.<sup>21</sup>

## **Florida Governmental Conflict Resolution Act**

Chapter 164, F.S., contains the “Florida Governmental Conflict Resolution Act.” Because the legislature’s intent is to resolve conflicts to the greatest extent possible without litigation, the Act is designed to provide a procedure that is equitable, expeditious, effective, and inexpensive for resolution of conflicts between and among local and regional governmental entities.<sup>22</sup> The purpose and intent of the Act is to “promote, protect, and improve the public health, safety, and welfare and to enhance intergovernmental coordination efforts. . . .”<sup>23</sup>

Section 1013.351(11), F.S., provides that disputes between the local governments and the FSDB arising as a result of inconsistencies between proposed facility sites and uses of property and the local comprehensive plan and/or land development regulations must be resolved in accordance with ch. 164, F.S.

The FSDB and the City of St. Augustine have recently entered into a ch. 164, F.S., dispute resolution process to seek resolution to a disagreement over the proposed use of certain FSDB properties and consistency with the city’s land development regulations. This resolution process is still ongoing.

## **School Interlocal Agreement**

Interlocal agreements between a county, the municipalities within, and a school board exist in order to coordinate plans and processes of the local governments and school boards. Section 163.31777, F.S., provides that “[t]he county and municipalities located within the geographic area of a school district shall enter into an interlocal agreement with the district school board which jointly establishes the specific ways in which the plans and processes of the district school board and the local governments are to be coordinated.” The Community Planning Act, ch. 2011-139, L.O.F., removed state oversight and review of the interlocal agreements while maintaining certain minimum issues that the interlocal agreement must address. Certain outdated provisions requiring the optional school interlocal agreement between the FSDB and the local government to be submitted to and reviewed by the state land planning agency and the Office of Educational Facilities, within the Department of Education, inadvertently still remain in s. 1013.351, F.S.

### Effect of Proposed Changes:

#### *Eminent Domain Power Granted to the FSDB Board of Trustees*

The bill grants eminent domain power to the FSDB board of trustees upon approval of the Administration Commission, which consists of the Governor and the Cabinet. After receiving approval from the Administration Commission, the bill requires the board of trustees to exercise the power of eminent domain in the manner provided in ch. 73 or ch. 74, F.S., which includes the requirement to negotiate in good faith with the owner of a parcel to be acquired and attempt to reach an agreement as to compensation prior to instituting an eminent domain proceeding. The eminent domain power granted to the board of trustees of the statewide school is the same power currently granted to boards of trustees for the State University System and the Florida College

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<sup>19</sup> S. 1013.25, F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Art. IX, s. 7(c), Fla. Const.; ss. 1001.61 and 1001.71, F.S.

<sup>22</sup> S. 164.102, F.S.

<sup>23</sup> *Id.*

System, which also must seek approval from the Administration Commission before exercising eminent domain powers as well as follow the procedures provided in ch. 73 or ch. 74, F.S.

The bill further requires the board of trustees to provide safe and appropriate housing for all residential students at the FSDB, in compliance with the state Fair Housing Act,<sup>24</sup> the federal Fair Housing Act,<sup>25</sup> and the Americans with Disabilities Act of 1990.<sup>26</sup>

#### *Vesting of Existing FSDB Facilities, Uses, Structures, Fences, Enclosures, and Walls*

The bill provides that school facilities, and all uses, structures, fences, enclosures, and walls that exist on school facilities as of July 1, 2012, are vested, and therefore, are deemed consistent with the local government's comprehensive plan and land development regulations. This provision will grandfather-in all existing facilities, uses structures, fences, enclosures, and walls that are in place on July 1, 2012, the effective date of the bill. The bill further requires the local government to cooperate with the school to allow for restoration of school facilities, and all uses, structures, fences, enclosures, and walls that exist on school facilities. The bill also provides that school facilities, and all uses, structures, fences, enclosures, and walls that exist on school facilities, must comply with the state Fair Housing Act,<sup>27</sup> the federal Fair Housing Act,<sup>28</sup> and the Americans with Disabilities Act of 1990.<sup>29</sup>

#### *Interlocal Agreement and Conforming Changes*

The requirement in s. 1013.351, F.S., for the FSDB board of trustees to coordinate planning for new facilities with the local government to ensure that plans for site acquisition, construction, and opening of new facilities of the school are facilitated with other concurrent services is not affected by the bill. The FSDB must also continue to integrate into its planning for new facilities, the educational plant survey for the school and must integrate applicable policies and procedures of the board with the local comprehensive plan and land development regulations of the local government.<sup>30</sup> The bill removes in s. 1002.36, F.S., a reference to the coordination requirements in s. 1013.351, F.S., however the requirement for coordination remains.

The FSDB and the local government continue to have the option to enter into an interlocal agreement as outlined by s. 1013.351, F.S. The bill conforms s. 1013.351, F.S., to current law by removing the outdated requirement for the optional interlocal agreement to be submitted to the state land planning agency and the Office of Educational Facilities and the procedures associated with state oversight and review. These changes conform s. 1013.351, F.S., to the changes made to s. 163.31777, F.S., during the 2011 Session.<sup>31</sup>

## B. SECTION DIRECTORY:

**Section 1:** amends paragraphs (e) and (f) of subsection (4) of s. 1002.36, F.S., to authorize the Board of Trustees of the Florida School for the Deaf and the Blind to exercise the power of eminent domain after receiving approval from the Administration Commission; requires the board of trustees to provide student housing in compliance with the state Fair Housing Act, the federal Fair Housing Act, and the Americans with Disabilities Act of 1990.

**Section 2:** amends s. 1013.351 to delete a requirement that the Florida School for the Deaf and the Blind and the local government submit an interlocal agreement to the state land planning agency and the Office of

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<sup>24</sup> Ch. 760, pt. II, F.S.

<sup>25</sup> 42 U.S.C. ss. 3601-3619.

<sup>26</sup> Pub. L. No. 101-336, § 2, 104 Stat. 328.

<sup>27</sup> Ch. 760, pt. II, F.S.

<sup>28</sup> 42 U.S.C. ss. 3601-3619.

<sup>29</sup> Pub. L. No. 101-336, § 2, 104 Stat. 328.

<sup>30</sup> See s. 1013.351(2), F.S.

<sup>31</sup> Ch. 2011-139, L.O.F., "The Community Planning Act" removed the requirement in s. 163.31777, F.S., for school interlocal agreements to be submitted to and reviewed by the state land planning agency and the Office of Educational Facilities within the Department of Education.

Educational Facilities for review; provides for the vesting of Florida School for the Deaf and the Blind facilities; requires local government cooperation in the restoration of school facilities; requires school facilities to comply with the state Fair Housing Act, the federal Fair Housing Act, and the Americans with Disabilities Act of 1990.

**Section 3:** provides an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 18, 2012, the Community & Military Affairs Subcommittee adopted one amendment with a title amendment that removed conforming language dealing with school interlocal agreements. The analysis has been updated to reflect this amendment.