

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

BILL: CS/SB 1348

INTRODUCER: Committee on Education Pre-K - 12 and Senator Wise

SUBJECT: Eminent Domain

DATE: February 14, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	deMarsh-Mathues	ED	Fav/CS
2.	_____	_____	CA	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill grants the Board of Trustees of the Florida School for the Deaf and the Blind (FSDB) the authority to use eminent domain, upon approval by the Administration Commission.

This bill substantially amends section 1002.36 of the Florida Statutes.

II. Present Situation:

Florida School for the Deaf and the Blind (FSDB)

The FSDB is a state-supported residential public school that serves hearing- and visually-impaired students from preschool through grade 12.¹ A seven-member Board of Trustees (board) governs the FSDB and maintains complete jurisdiction over school management.² Board members must have lived in the state for at least ten years. Of the membership, at least one appointee must be blind, and one appointee must be deaf. The Governor appoints the board,

¹s. 1002.36(1), F.S.

² s. 1002.36(4)(a) and (d), F.S.

subject to Senate confirmation, to four-year terms of office. A chair is elected annually by the board.³

The board is authorized to adopt rules, subject to approval by the State Board of Education, and filing with the Department of State. The board is considered to be a body corporate and has a corporate seal.

The board is granted statutory authority to do the following:

- Enter into contracts;
- Sue and be sued;
- Procure legal and professional services;
- Appoint a president, faculty and other employees;
- Determine student eligibility and an admissions process;
- Sell or convey real or personal property that is received as a gift, donation or bequest;
- Administer personnel programs; and
- Approve an annual operating budget.

Title to gifts, donations and bequests vests in the board.⁴

The board is required to adopt a master plan, which contains the FSDB's mission and objectives. Items for inclusion in the master plan are procedures for measuring the FSDB's progress in meeting its objectives, analyzing changes in student population, and adapting school programs and services to accommodate the changes.⁵

For purposes of teacher certification and the protection of health, safety and welfare of its students, the FSDB is considered a school district.⁶ The FSDB is subject to audits by the Auditor General and investigations by the DOE's Inspector General.⁷

Florida law authorizes the FSDB to establish a direct-support organization as a state not-for-profit corporation, created for the sole purpose of receiving, holding, investing and administering property, and making expenditures to the FSDB or the board.⁸

Eminent Domain

Eminent domain, inherent to the long-standing notion of sovereignty, is the right of the state to take property for public use in exchange for just compensation.⁹ The Fifth Amendment to the federal constitution specifically provides, through Fourteenth Amendment application to the states:

³ s. 1002.36(4)(a) and (b), F.S.

⁴ s. 1002.36(4), F.S.

⁵ s. 1002.36(4)(f)9., F.S.

⁶ s. 1002.36(7)(f) and (g), F.S.

⁷ s. 1002.36(3), F.S.

⁸ s. 1002.361(1), F.S.

⁹ Norman J. Singer and J.D. Shambie Singer, 3 Sutherland Statutory Construction s. 64:6 (7th ed. December 2011).

No person shall...be deprived of...property without due process or law; nor shall private property be taken for public use, without just compensation.

Considered to be a dormant grant to the states, eminent domain requires affirmative activation at the state level through a constitutional provision or statutory authority.¹⁰ Legislatures have liberal discretion regarding how they delegate eminent domain, as follows:

In the absence of a constitutional restriction, the legislature may delegate the power to a municipality, a private corporation, a transportation company, or an individual, provided the property, when condemned, is to be put to a public use, and may deny the right to, or withhold it from, whomsoever it pleases.¹¹

Grants of condemnation are strictly interpreted against the condemning party, and in favor of the property owner, due to the sacrosanct value placed on private property rights.¹²

Article X, Section 6, of the Florida Constitution provides:

No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner....¹³

Full compensation is more expansive than the federal requirement of just compensation, and as such, embodies the concept of making the property owner whole.¹⁴ It includes mandatory payment of attorney's fees in Florida.¹⁵ It also has been applied to include reimbursement on the cost of obtaining expert witnesses.¹⁶ Full compensation requires fair market value as payment, with the value to be fixed at the time of the taking.¹⁷ Property owners subject to a taking have the right to a jury trial, with preference in scheduling given over other civil actions.¹⁸

Grounds for an inverse condemnation lawsuit accrue when a governmental entity commits a taking of private property without first initiating formal legal action.¹⁹

The Florida Statutes provide express authority for many entities regarding the exercise of eminent domain. Accordingly, eminent domain is made available to district school boards (s. 1013.24, F.S.); counties (s. 127.01, F.S.); municipalities (s. 166.401, F.S.), state

¹⁰ William Meade Fletcher, *Fletcher-Cyc* s. 2905 (Ch. 35).

¹¹ Fletcher, *supra* note 10.

¹² Singer, *supra* note 9.

¹³ s. 6, art. X, Fla. Const.

¹⁴ *Lee County v. Pierpont*, 693 So.2d 994, 996 (Fla. 2nd DCA 1997).

¹⁵ *Bradshair v. Florida Department of Highway Safety And Motor Vehicles*, 20 So.3d 915, 928-929 (Fla. 1st DCA 2009); *Schick v. Florida Department of Agriculture and Consumer Services*, 586 So.2d 452, 453 (Fla. 1st DCA 1991).

¹⁶ *Department of Transportation v. Jack's Quick Cash*, 748 So.2d 1049, 1052 (5th DCA 2000); Section 73.091, F.S., specifically requires payment of attorney's fees and all reasonable costs, including expert witness fees.

¹⁷ "Fair market value is generally defined as what a willing buyer would pay to a willing seller, neither party being obligated to act." *Department of Agriculture and Consumer Services v. Polk*, 568 So.2d 35, 41 (S.Ct. 1990).

¹⁸ s. 73.071, F.S.

¹⁹ *Pinellas County v. Baldwin*, 2012 WL 163912, 3 (Fla. App. 2 Dist.)

universities and Florida College System institutions (FCSI) (s. 1013.25, F.S.); the Division of Forestry (s. 589.27, F.S.); various state agencies, such as the Department of Transportation (s. 479.24, F.S.) and the Department of Health (s. 381.0013, F.S.); public housing authorities (s. 421.12, F.S.); a mosquito control district board of commissioners (s. 388.191, F.S.); water management control districts (s. 373.139, F.S.); and corporations organized by the laws of this state, such as railroad companies (s. 361.025, F.S.), coal pipeline companies (s. 361.08, F.S.), sewer and wastewater management companies (s. 361.07, F.S.), petroleum products pipeline companies (s. 361.06, F.S.), natural gas companies (s. 361.05, F.S.), and waterworks companies (s. 361.04, F.S.)

In an Attorney General opinion from 2003, in response to whether the FSDB has eminent domain authority, the Attorney General unequivocally determined that it does not, in that statutory authority does not expressly grant the FSDB this power:

Condemnation is not a common-law action and the method by which the power of eminent domain is to be exercised is dependent upon the constitutional or statutory provisions involved.²⁰

Local Government Use of Property

The Administration Commission is composed of the Governor and Cabinet, with the Governor serving as Chair.²¹ The Administration Commission maintains a decision-making role in local government land and property planning.²² Universities and FCSI Boards of Trustees are specifically required to secure approval from the Administration Commission before initiating eminent domain.²³

III. Effect of Proposed Changes:

Consistent with the grant of eminent domain to state universities and FCSI, this bill extends this authority to the FSDB, subject to approval by the Administration Commission. District school boards also have eminent domain authority. As the FSDB is a public school, such a grant would appear to provide parity between the FSDB and other public education entities that are similarly situated.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁰ AGO 2003-02 (January 3, 2003).

²¹ s. 14.202, F.S.

²² s. 163.3164(2), F.S.

²³ s. 1013.25, F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Regarding property already earmarked for eminent domain, given the current devalued property situation that pervades much of the state, and the setting of fair market value at the time of the taking, private homeowners subject to eminent domain in the near future could be adversely affected. This would be due to being subjected to, in essence, a forced sale during a recession.

C. Government Sector Impact:

The FSDB could incur a positive financial impact by attempting takings relatively quickly after passage of the bill, due to the favorable property-buying climate currently in the state because of the recession, and basis for compensation on fair market value (i.e., what a buyer is willing to pay.)

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Committee on Education Pre-K – 12 on February 14, 2012:

This bill:

- Grants the power of eminent domain to the FSDB, provided that the Administration Commission approves specific requests;
- Restores current law regarding the interlocal agreement process available for use by public education boards and local governments, and a requirement that interlocal agreements be provided by the FSDB to the state land planning agency and the Office of Educational Facilities;
- Deletes language which would have required the FSDB to comply with federal fair housing laws and the Americans with Disabilities Act; and

- Deletes language which would have grandfathered-in, for vesting purposes, FSDB school facilities in existence as of a certain date.

B. Amendments:

None.

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