

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 4029 (SB 1724)

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Albritton (Alexander)

117 Y's 0 N's

COMPANION SB 1724
BILLS:

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 4029 passed the House on March 7, 2012 as SB 1724. The bill repeals s. 388.191, F.S., which grants the board of commissioners of a mosquito control district the power of eminent domain to condemn any land or easements necessary for the purposes of mosquito control. The section also permits the board to hold, control, and acquire any real or personal property for use by the district. The board is permitted by this section to begin and maintain condemnation proceedings, pursuant to ch. 73, F.S., to obtain real and personal property by eminent domain.

Section 388.191, F.S., was enacted in 1959. According to the Department of Agriculture and Consumer Services, the eminent domain power has not been used in recent memory, and would likely be unpopular if it were exerted by a mosquito control district. Recent land issues have been resolved through the purchase of land by the mosquito control district. In addition, s. 388.181, F.S., grants to mosquito control districts the authority to do and perform all things necessary to carry out the provisions of mosquito control law in chapter 388, F.S. As political subdivisions of the state, mosquito control districts have eminent domain authority under s. 73.013, F.S., independent of their authority under s. 388.191, F.S. Therefore, the language in s. 388.191, F.S., is duplicative and unnecessary.

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

The bill was approved by the Governor on April 6, 2012, ch. 2012-50, Laws of Florida. The effective date of the bill is July 1, 2012.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Mosquito Control Districts

Section 388.101, F.S., provides that it is the public policy of the state to control mosquitoes in such a manner as to protect health and safety, improve quality of life, promote economic development, and allow for enjoyment of natural attractions of the state. To that end, the Florida Anti-Mosquito Association, now known as the Florida Mosquito Control Association, was established in 1922.¹ Soon after the creation of the association, special taxing districts for mosquito control were established by statute. The first mosquito control district (MCD) formed was the Indian River Mosquito Control District in 1925.² By 1935, five mosquito control districts were created.³ There are approximately 56 MCDs in Florida.⁴

Chapter 388, F.S., governs and regulates the operation of MCDs in the state. The chapter authorizes the MCDs to take whatever steps are necessary to control all species of mosquito within the confines of applicable state and federal law.⁵ Mosquito control is accomplished through a concept known as integrated mosquito management (IMM), which uses multidisciplinary methodologies to implement pest control strategies.⁶ IMM includes source reduction, which includes digging ditches and ponds in marsh areas and eliminating standing water that serves as a breeding ground for mosquitoes.⁷ IMM also includes the use of mosquito fish in ditches and ponds to eat mosquito larvae.⁸ Another method of mosquito control is larviciding, or the application of insecticides to target and eliminate immature mosquitoes in bodies of water harboring larvae and pupae.⁹ Florida MCDs use permanent strategies to control mosquitoes, including impounding water, ditching, and draining swampy areas that serve as mosquito breeding grounds. Florida MCDs also use temporary control measures, such as aerosol spraying by ground and aerial equipment to kill adult and larval mosquitoes.¹⁰

The Department of Agriculture and Consumer Services (DACS) administers and enforces the laws associated with mosquito control in Florida.¹¹ The Coordinating Council on Mosquito Control was established by statute to assist the DACS in developing and implementing guidelines to resolve disputes associated with mosquito control on public land.¹²

Section 388.191, F.S., permits the board of commissioners of a MCD to hold, control, and acquire any real or personal property for the use of the district. The section also permits the board of commissioners to condemn any land or easements for use by the district. Lastly, the section permits

¹ Connelly, C.R. and D.B. Carlson (Eds.), 2009. Florida Coordinating Council on Mosquito Control. *Florida Mosquito Control: The state of the mission as defined by mosquito controllers, regulators, and environmental managers*. Vero Beach, FL: University of Florida, Institute of Food and Agricultural Sciences, Florida Medical Entomology Laboratory, at page 22.

² *Id.*

³ *Id.* at page 23.

⁴ University of Florida, Institute of Food and Agricultural Sciences, Florida Medical Entomology Laboratory, *Florida Mosquito Control*, available at http://mosquito.ifas.ufl.edu/Florida_Mosquito_Control.htm, last viewed November 15, 2011.

⁵ In addition to chapter 388, F.S., chapter 487, F.S., regulates the use of pesticides in controlling mosquitoes. Chapter 5E-2, F.A.C., regulates pesticide registration in Florida. Also, states must comply with the provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136 et seq.

⁶ American Mosquito Control Association, *Control*, available at <http://www.mosquito.org/control>, last viewed on November 15, 2011.

⁷ Leon County, Florida Mosquito Control Website, *History and Facts About Leon County Mosquito Control*, available at http://www.leoncountyfl.gov/mosquito/Ed%20&%20Info/History_&_Facts.asp, last viewed November 15, 2011.

⁸ See *supra* at FN 7.

⁹ *Id.*

¹⁰ *Id.*

¹¹ S. 388.361, F.S.

¹² S. 388.46, F.S.; see also *supra* FN 2, at page 223.

the board of commissioners to exercise the right of eminent domain and begin and continue condemnation proceedings pursuant to the procedure outlined in chapter 73, F.S.

Eminent Domain

Eminent domain is generally defined as the power of the nation or a sovereign state to take, or to authorize the taking of, private property for a public use without the owner's consent, conditioned upon the payment of just compensation.¹³ Eminent domain also refers to a legal proceeding in which a governmental entity asserts its authority to condemn property, while inverse condemnation is a shorthand description of the manner in which a landowner recovers just compensation for a taking of his or her property when condemnation proceedings have not been instituted.¹⁴ An inverse condemnation action is initiated by the property owner, rather than the governmental entity.¹⁵

Eminent domain is subject to constitutional prohibitions found in both the federal and state constitutions.¹⁶ The U.S. Constitution requires that property cannot be taken for public use without just compensation.¹⁷ Section 6, Art. X of the Florida Constitution reads:

- (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.

The "full compensation" mandated by the state constitution is restricted to the value of the condemned land,¹⁸ the value of associated appurtenances and improvements, and damages to the remaining land,¹⁹ i.e., severance damages.²⁰ Florida's law governing eminent domain can be found in chapters 73 and 74 of the Florida Statutes. Except as limited or prohibited by constitutional provisions,²¹ there can be no taking of private property for public use against the will of the owner without direct authority from the Legislature.²²

Section 73.013(1), F.S., provides that all political subdivisions of the state have eminent domain powers. Section 1.01(8), F.S., defines "political subdivision" as including "all other districts in this state". Thus, MCDs have eminent domain authority under ch. 73, F.S., independent of their authority in s. 388.191, F.S.

¹³ See 21 Fla. Jur. 2d Eminent Domain § 1, and references therein.

¹⁴ See *Agins v. City of Tiburon*, 447 U.S. 255, 100 S.Ct. 2138, 65 L.Ed. 2d 106 (1980).

¹⁵ See *supra* at FN 1.

¹⁶ See U.S. Const. Amend. XIV; Art. I, § 9, Fla. Const.

¹⁷ See U.S. Const. Amend. V; *by and through* U.S. Const. Amend. XIV.

¹⁸ See *United States v. Miller*, 317 U.S. 369, 63 S.Ct. 276, 87 L.Ed. 336 (1943) ("An owner of lands sought to be condemned is entitled to their 'market value fairly determined'"); see also *United States ex rel. TVA v. Powelson*, 319 U.S. 266, 275, 63 S.Ct. 1047, 87, L. Ed. 1390 (1943) ("...the value may be determined in light of the special or higher use of the land.").

¹⁹ See, e.g., *State Road Dep't. v. Bramlett*, 189 So.2d 481, 484 (Fla. 1966).

²⁰ See *Black's Law Dictionary* 419 (8th ed. 2004) ("severance damages. In a condemnation case, damages awarded to a property owner for diminution in the fair market value of land as a result of severance from the land of the property actually condemned; compensation awarded to a landowner for the loss in value of the tract that remains after a partial taking of the land.")

²¹ *Id.*

²² See *Marvin v. Housing Authority of Jacksonville*, 183 So. 145 (Fla. 1938); see also *City of Ocala v. Nye*, 608 So.2d 15 (Fla. 1992) (*citing* *Peavy-Wilson Lumber Co. v. Brevard County*, 31 So.2d 483 (1947)).

Statutory Eminent Domain Procedures

The statutory eminent domain procedures in ch. 73, F.S., include presuit negotiations between a governmental entity exercising its rights and the land owner,²³ offers of judgment,²⁴ jury trials,²⁵ compensation,²⁶ business damage offers,²⁷ and costs and attorneys' fees related to the proceeding.²⁸ Eminent domain actions proceeding to trial require a jury of 12 persons in the circuit court of the county where the property lies.²⁹ Eminent domain procedures take precedence over all other civil matters.³⁰

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 municipalities and public utilities, may take possession of land subject to an eminent domain proceeding in advance of the entry of final judgment.³¹ Eminent domain procedures, especially quick-take procedures, offer certain advantages. For the property owner, the only issue in dispute is the amount of compensation for the property taken. Under quick-take, a governmental entity is required to deposit, with the court, an amount not less than the petitioner's estimate of value and, in some circumstances, twice the estimated value of the property, until the amount of compensation is determined by the final judgment.³²

Effect of Proposed Changes

The bill repeals s. 388.191, F.S., as duplicative and unnecessary. Since 1959, when the statute was enacted, state and federal case law regarding eminent domain powers of the government have significantly evolved. MCD boards are political subdivisions,³³ created by statute, with eminent domain powers under s. 73.013, F.S.³⁴

According to the DACS, the eminent domain power has not been used in recent memory, and would likely be unpopular if it were exerted by a MCD.³⁵ Recent land issues have been resolved through the purchase of land by the MCD.³⁶ In addition, s. 388.181, F.S., provides that MCDs are "...fully authorized to do and perform all things necessary to carry out the intent and purposes of this law." This statutory language would include the authority to exercise eminent domain power pursuant to chapter 73, F.S. As a result, s. 388.191, F.S., is duplicative and extraneous.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

²³ S. 73.015, F.S.

²⁴ S. 73.032, F.S.

²⁵ S. 73.071, F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ SS. 73.091, F.S. and 73.092, F.S.

²⁹ *See supra* at FN 7.

³⁰ S. 73.071(1), F.S.

³¹ S. 74.011, F.S.

³² S. 74.051(2), F.S.

³³ S. 1.01(8), F.S., states "...'political subdivision' include[s] counties, cities, towns, villages, special tax districts, special road and bridge districts, bridge districts, and **all other districts in this state.**" (emphasis added).

³⁴ S. 73.013(1), F.S.

³⁵ Florida Department of Agriculture and Consumer Services Analysis of PCB 11-07, later HB 7245, dated April 18, 2011, on file with the Health and Human Services Quality Subcommittee.

³⁶ *Id.*

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.