

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 179 Eminent Domain Proceedings

**SPONSOR(S):** Civil Justice Subcommittee; Young

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 322

| REFERENCE                            | ACTION              | ANALYST   | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--------------------------------------|---------------------|-----------|--|
| 1) Civil Justice Subcommittee        | 12 Y, 0 N, As<br>CS | Arguelles | Bond                                     |
| 2) Local & Federal Affairs Committee | 17 Y, 0 N           | Baker     | Rojas                                    |
| 3) Judiciary Committee               |                     |           |  |

### SUMMARY ANALYSIS

Eminent domain refers to the power of the government to take private property for a public use. Florida law allows state and local governments, and specified entities ("condemning authorities") to acquire title and possession of real property before eminent domain proceedings have concluded through a process referred to as "quick taking." The condemning authority must first deposit the estimated value of the property with the Clerk of the Circuit Court. Florida law provides that 90 percent of the interest earned on this deposit is paid to the condemning authority.

The bill provides that 90 percent of interest earned is paid to the ultimate owner of the deposit, which may be the property owner or judgment creditors.

This bill may have a minimal negative fiscal impact on state and local governments.

The bill has an effective date of July 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

"Eminent domain" is the sovereign power to take private property for public use without the owner's consent.<sup>1</sup> Under the federal and state constitutions private property can only be taken for a public purpose and upon payment to the owner of the full and just value of that property.<sup>2</sup> State government, local governments, and certain entities (the "condemning authorities") all have the power of eminent domain.

In Florida, there are two types of eminent domain proceedings:

- 1) a traditional taking, and
- 2) a quick take.

In a traditional eminent domain action, the condemning authority files a petition indicating the intent to take the property. The case progresses and eventually is concluded by agreement of the parties or a trial. Once the court's judgment is rendered as to the property's value, the condemning authority pays that amount, and the title or possession sought vests in the condemning authority.<sup>3</sup>

Because of the inherent delays in the traditional process, a "quick taking" process was enacted as well.<sup>4</sup> In a "quick taking," the condemning authority must deposit a good faith estimate of the sum that will "fully secure and fully compensate the persons entitled to compensation" in the court's registry and then may take immediate possession and title of the property prior to final judgment.<sup>5</sup> The Clerk of the Circuit Court is authorized to invest monies that are held, even for temporary periods.<sup>6</sup>

Section 74.051(4), F.S., provides that 90 percent of the interest earned on deposits made under the quick take procedure is paid to the petitioner (the condemning authority)<sup>7</sup>; the other 10 percent of interest is paid to the clerk as a management fee. Regarding creditor priority, s. 74.051(2), F.S. empowers the court to make orders in respect to claimants and the deposit "as shall be just and equitable."

#### Effect of Proposed Changes

The bill amends s. 74.051(4), F.S., to allocate 90 percent of interest in accordance with the ultimate ownership in the deposit.

The bill effectively shifts the receipt of most of the earned interest from condemning authorities to those entitled to ownership, i.e., the property owners and judgment creditors.<sup>8</sup> The bill does not offer an additional order of priority for dispersing the earned interest among those entitled to it.

### B. SECTION DIRECTORY:

Section 1 amends s. 74.051, F.S., regarding payment of interest earned on quick take deposits.

Section 2 provides an effective date of July 1, 2013.

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<sup>1</sup> *Storer Cable T.V. of Florida, Inc. v. Summerwinds Apartments Associates, Ltd.*, 493 So.2d 417 (Fla. 1986).

<sup>2</sup> Section 6(a), Art. X, State Constitution ("full compensation paid . . . or secured by deposit in the registry of the court"); *Spafford v. Brevard County*, 110 So. 451 (1926); see *City of St. Petersburg v. Div. of Admin., State Dep't of Transp.*, 198 So. 2d 781 (Fla. 2d DCA 1974) (the deposit substitutes for the property taken).

<sup>3</sup> See s. 73.111, F.S. (Deposit and possession).

<sup>4</sup> See ch. 65-369, L.O.F.

<sup>5</sup> Section 74.051(2), F.S.

<sup>6</sup> Section 74.051(4), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 73.141(1), F.S. ("In the event that no appeal has been taken . . . the clerk shall pay each judgment creditor the sum necessary to satisfy the judgment from the funds on deposit").

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill may have a minimal negative fiscal impact on state revenues but only to the extent the state uses a quick-take procedure. In the last three years, the Department of Transportation has collected \$17,452.83 in earned interest.<sup>9</sup> The bill would likely eliminate that source of revenue.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill may have a minimal negative fiscal impact on local government revenue but only to the extent that local governments decide to use a quick-take procedure. The bill would likely eliminate that source of revenue.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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

The bill may have a minimal positive fiscal impact on private property owners in Florida who are subjected to eminent domain proceedings, or the bill may have no impact. See *FISCAL COMMENTS below*.

### D. FISCAL COMMENTS:

At least one Florida Circuit Court has ruled that property owners, not condemning authorities, are entitled to the interest notwithstanding the statute.<sup>10</sup> In a separate suit pending appeal, a property owner is asserting a similar argument.<sup>11</sup> If the court rules for the property owners, then the bill merely changes the statute to comply with that finding and there will be no fiscal impact. If the court ultimately rules in favor of the condemning authorities, then the bill will have a negative fiscal impact on condemning authorities.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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<sup>9</sup> The last three years represented a significant reduction in deposit-interest collections by the Department of Transportation. In comparison, since 1986, the department has collected \$8,177,860.52 in earned interest.

<sup>10</sup> See *Mallards Cove, LLP v. Jed Pittman, Clerk of the Court of Pasco County*, (Fla. 6th Cir. Ct. 2011) (appeal taken to the Fla. 2d DCA, Jan. 22, 2013).

<sup>11</sup> See *Livingston v. Pat Frank, Clerk of the Circuit Court of Hillsborough County and City of Tampa* (Fla. 13th Cir. Ct. 2012) (appeal taken to the Fla. 2d DCA, Nov. 9, 2012, appeal 2D12-5616).

## 2. Other:

In 2011, a Florida Circuit Court declared s. 74.051(4), F.S., unconstitutional<sup>12</sup> based on the ruling of the U.S. Supreme Court in *Webb's Fabulous Pharmacies, Inc. v. Beckwith* ("The earnings of a fund are incidents of ownership of the fund itself and are property just as the fund itself is property").<sup>13</sup> The court in *Webb's* ruled that the portion of Florida's interpleader law whereby the state kept the interest on interpleader funds was unconstitutional since it was a taking without full and just compensation. However, a Florida Circuit Court has ruled the current statute constitutional as well.<sup>14</sup>

Further, the Florida Supreme Court has interpreted the Florida Constitution to require that the interest earned on the deposit from the time of the verdict until the resolution of appeals belongs to the owner whose land was taken.<sup>15</sup>

### B. RULE-MAKING AUTHORITY:

The bill does not appear to create rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

According to s. 74.051(2), F.S., a court may interpret the enacted bill to permit creditors to receive their share of the interest to the exclusion of the owner whose land was taken.<sup>16</sup>

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 7, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment substituted the word "allocated" for the word "apportioned." This analysis is drafted to the resulting committee substitute.

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<sup>12</sup> See *Mallards Cove*.

<sup>13</sup> 449 U.S. 155, 164 (1980).

<sup>14</sup> See *Livingston v. Frank*.

<sup>15</sup> *Behm v. Div. of Admin., Dep't of Transp.*, 383 So. 2d 216 (Fla. 1980); *Hartleb v. Dep't of Transp.*, 778 So. 2d 1063 (Fla. 4th DCA 2001) (holding similarly on the interest accrued from the condemnation deposit).

<sup>16</sup> See s. 74.051(2), F.S. ("The court may make such orders in respect of encumbrances, liens, rents, taxes, . . . [and] deposit, . . . as shall be just and equitable.")