

# 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.)

BILL: SB 130  
 SPONSOR: Senator Silver  
 SUBJECT: Eminent Domain  
 DATE: February 28, 2001      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bowman	Yeatman	CA	Favorable
2.	O'Farrell	O'Farrell	ED	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill adds the condemnation of lands for public school sites to the list of purposes for which a municipality may exercise the power of eminent domain, if the school board requests the municipality to obtain the land for conveyance to the school board and the school board promises to use the land to establish a public school on the site, and provides that the eminent domain authority granted by the bill is repealed on January 1, 2004.

The bill amends section 166.411, Florida Statutes.

**II. Present Situation:**

Article X, s.6 (a), 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 general statutory framework for the eminent domain process is found at chapter 73, F.S. In general, the governmental entity must first engage in presuit negotiation in an attempt to effectuate a voluntary sale of the property at an agreeable price.<sup>1</sup> If a settlement is not reached, the governmental entity may file a petition with the circuit court.<sup>2</sup> The circuit court is to give preference in scheduling trials on the issue of eminent domain, and the trial is conducted before a

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<sup>1</sup>Section 73.015, F.S., effective July 1, 2000.

<sup>2</sup>Section 73.021, F.S.

12-person jury.<sup>3</sup> The owner of the property is entitled to the value of the property, and, in certain cases, damages for loss of business.<sup>4</sup> The owner may also be entitled to reimbursement of attorney's fees and costs.<sup>5</sup>

Municipalities are given the power of eminent domain by s. 166.401, F.S. The specific purposes for which a municipality may use the power of eminent domain are listed in s. 166.411, F.S.

These enumerated municipal purposes include:

- C public improvements such as drainage, ditching, and filling;
- C right-of-way for railroads, telephone lines, streets, highways and bridges;
- C public parks;
- C the abatement of any nuisance;
- C the reclamation of overflowed lands;
- C the installation of water and sewer pipes and underground conduit; and
- C city buildings, waterworks, and ponds.

In addition, s. 166.411(10), F.S., allows a municipality to exercise the power of eminent domain for other municipal purposes coextensive with the powers of the municipality exercising its right of eminent domain.

While the only constitutional limitation placed on municipalities' authority is that such powers be exercised for valid municipal purposes,<sup>6</sup> the use of eminent domain authority is one of the most harsh proceedings known to the law, consequently when the sovereign delegates the power to a political unit or agency a strict construction will be given against the agency asserting the power.<sup>7</sup> Municipalities are not specifically authorized to use the power of eminent domain to acquire property for use by a local school board, nor are they specifically prohibited from doing so by statute or case law. However, in one of the more recent appellate cases construing s. 166.411, F.S., *Basic Energy Corporation v. Hamilton County*, (Fla. 1st DCA 1995), *on subsequent appeal*, 709 So.2d 124, *rehearing denied*, 722 So.2d 192, the court held that the City

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<sup>3</sup>Section 73.071(1), F.S.

<sup>4</sup>Section 73.071(3), F.S.

<sup>5</sup>Section 73.092, F.S.

<sup>6</sup>*City of Ocala v. Nye*, 608 So.2d 15, 17 (Fla. 1992).

<sup>7</sup>*Peavy-Wilson Lumber Co. v. Brevard County*, 31 So.2d 483, 485 (Fla. 1947).

of Jasper's municipal authority to construct jails did not provide it with a legitimate municipal purpose on which to base its exercise of eminent domain power when the city intends to donate the property condemned to the State of Florida for the construction of a state prison. In reaching this result, the court stated a valid municipal purpose as one that relates to the conduct of municipal government, exercise of a municipal function, or provision of a municipal service.<sup>8</sup> *Id.* at p. 1239, citing *Ormond Beach v. County of Volusia*, 535 So.2d 302, 304 (Fla. 5th DCA 1988). The court reasoned that while the City of Jasper's donation of land for the construction of a state prison may incidentally relate to the protection of municipal inhabitants, this purpose is no more particular to residents of the city of Jasper than to any other inhabitants of the state.<sup>8</sup>

School boards are given the power of eminent domain by s. 235.05, F.S., 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, ...

### III. Effect of Proposed Changes:

The bill creates as an additional municipal public purpose for which a municipality may exercise the power of eminent domain; the procurement of certain lands for conveyance to the school board. In order to exercise this authority, the municipality must receive a written request from the school board to obtain the land and the school board must promise to use the land to establish a public school on the property.

The new subsection 166.411(11), F.S., created by the bill is repealed January 1, 2004. However, any eminent domain actions filed pursuant prior to the January 1, 2004 repeal date shall not be affected by the repeal.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Economic Impact and Fiscal Note:

#### A. Tax/Fee Issues:

None.

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<sup>8</sup>*Id.* at p. 1239.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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