

# 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: CS/SB 1070

SPONSOR: Communications and Public Utilities Committee and Senator Bennett

SUBJECT: Natural Gas Companies

DATE: January 6, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	CP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill specifies that natural gas transmission pipeline companies subject to the regulation under the federal Natural Gas Act may exercise the right of eminent domain pursuant to the supplemental proceedings to eminent domain.

This bill substantially amends section 361.05 of the Florida Statutes.

**II. Present Situation:**

Under s. 361.01, Florida Statutes, eminent domain is the right of the president and directors of any corporation organized for the purpose of constructing, maintaining or operating public works to enter upon any lands, public or private, necessary to the business contemplated in the charter, and to appropriate the same or take from any land most convenient to their work certain material which may be necessary for the construction and the keeping in repair of its works and improvements, upon making due compensation according to law to private owners.

Section 361.05, Florida Statutes, grants the right of eminent domain to corporations organized for the purpose of supplying any city, town, village or the inhabitants, or any community with natural gas for domestic or industrial purposes to lay its pipelines and works and to do other specific works provided in the section. Included in these corporations are any natural gas pipeline transmission companies that have received certification under ss. 403.9401 through 403.9425, F.S. These sections comprise the Natural Gas Transmission Pipeline Siting Act (Act) which establishes a centralized and coordinated permitting process for the location of natural gas transmission pipeline corridors and the construction and maintenance of natural gas transmission pipelines. The goal of the Act is to facilitate the regulatory process.

Chapter 73, Florida Statutes, provides procedures for eminent domain. Some of these procedures include presuit negotiations between the entity exercising its rights and the fee owner, offers of judgment, jury trials, compensation, severance and business damages, and costs and attorneys' fees related to the proceeding.

Chapter 74, Florida Statutes, provides for proceedings supplemental to eminent domain and is commonly referred to as the "quick-take" provisions. Under these provisions, certain entities, including public utilities, may take possession and title to land subject to an eminent domain proceeding in advance of the entry to final judgment.

### **III. Effect of Proposed Changes:**

Section 361.05, Florida Statutes, is amended to include "other business entities" affected by this section. The provision is also amended to include natural gas transmission pipeline companies that are subject to regulation under the federal Natural Gas Act, 15 U.S.C. s. 717. Finally, this section is amended to allow these business entities, including natural gas transmission pipeline companies, to use the provisions of chapters 73 (eminent domain) and 74 (quick-take).

On August 8, 2003, the Florida District Court of Appeal, Second District, found that because Florida Gas Transmission Company (FGTC) was not a public utility corporation it was not entitled to use the quick-take provisions of chapter 74. *Pichowski v. Fla. Gas Transmission Co.*, 857 So. 2d 219 (Fla. 2<sup>nd</sup> DCA 2003). While not affecting the companies' right to use the power of eminent domain, this decision limits the ability of natural gas pipeline companies to construct new facilities or relocate existing facilities in a timely manner. This decision has reversed an industry practice that has been occurring for some time because trial courts have upheld the interpretation that these natural gas transmission pipeline companies could utilize the quick-take provisions.

A natural gas pipeline is a linear project. It is approximately 100 feet wide and sometimes running the length of the entire state crossing thousands of individually owned pieces of property. A project cannot begin until title is clear and held by the company for each piece of property.

This decision affects not only the natural gas transmission pipeline companies, but also governmental agencies, local governments, electric utilities, industries and businesses, and property owners. Planning for electric generation may become uncertain if right-of-way cannot be timely obtained for a pipeline to service a new power plant. Property owners cannot dispose of or otherwise obligate their property until all claims are settled. Because natural gas transmission pipelines are federally regulated, additional complications arise. These companies may acquire property pursuant to federal eminent domain laws. Federal law protects pipelines from service disruption should a state road or other state project require a line to be moved. Conflicts can arise where a natural gas transmission pipeline has a permit to be within a state (or local government) right-of-way since the agency only needs to give 30 days notice to move the pipeline because of some road project. If the natural gas transmission pipeline company cannot secure the necessary right of way, the road project can be held up.

Finally, state quick-take and eminent domain 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, the company is required to provide appraisals of the property and deposit with the court double the estimated value of the property until a determination is made. Procedures under eminent domain require a trial by a jury of 12 in the local venue. Eminent domain procedures take precedence over all other civil matters. By comparison, in federal court, criminal and civil are not separated and criminal cases are scheduled based upon the right to a speedy trial, all others are heard as court time allows. Federal eminent domain cases are not required to have a jury and the venue is at the site assigned by the court.

**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.

B. Private Sector Impact:

Where time is money, property owners will be able to sell, develop, dispose of or otherwise encumber their property without having to wait for a final judgment.

C. Government Sector Impact:

Where time is money, state agencies and local governments will be able to continue with public projects without having to wait for natural gas transmission pipeline companies to receive a final order granting them all the property needed for a particular project.

**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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