Select Committee to Protect Private Property Rights

Tuesday February 21, 2006
4:15 p.m.—6:00 p.m.
Morris Hall

Allan G. Bense
Speaker

Marco Rubio
Chair

Staff Summary

STAFF SUMMARY OF WORKING DRAFTS

HOUSE JOINT RESOLUTION WORKING DRAFT A
(Companion to General Bill Working Draft A)

Consistent with the provisions of General Bill Working Draft A, this joint resolution proposes an amendment to the State Constitution to prohibit the transfer of ownership or control of private property taken by eminent domain to any person, except that ownership or control of private property taken by eminent domain may be conveyed to:

(1) A person for use in providing common carrier services or systems;
(2) A person for use as a road or other right of way or means open to the public for transportation, whether at no charge or by toll;
(3) A person that is a public or private utility for use in providing electricity services or systems, natural or manufactured gas services or systems, water and wastewater services or systems, stormwater or runoff services or systems, sewer services or systems, pipeline facilities, telephone services or systems, or similar services or systems;
(4) A person for use in providing public infrastructure; or
(5) A person that occupies, pursuant to a lease, an incidental part of public property or a public facility, such as a retail establishment on the ground floor of a public building.

The term "person" refers to natural persons as well as private legal entities. This HJR does not prohibit the taking of private property for the purpose of eliminating harmful conditions on the property even though the General Bill Working Draft does so. If the Committee wishes to do so, such a prohibition can be added to the HJR.

GENERAL BILL WORKING DRAFT A

Executive Summary

This draft essentially removes all power to take property to eliminate slum or blight conditions and eliminates the home rule power of cities to take property to eliminate a nuisance. The draft also prohibits the transfer of taken property to another private person with specified exceptions, which include transfers to common carriers, public utilities, private utilities, and persons that lease an incidental part of a public facility. In addition, the draft prohibits the taking of property to eliminate a harmful condition on the property. Local government power to take property for traditional uses should remain unchanged but the list of exceptions for private transfers may not include all necessary exceptions. Additional exceptions may be identified during discussions of the draft.

Section-by-Section

Section 1, Line 27. Declares that prevention or elimination of slum or blighted areas, and the enhancement of the tax base, are not public uses or purposes for which private property may be taken by eminent domain.

Section 2, Line 40. Provides that a county or city may not delegate its eminent domain power to a community redevelopment agency.

Section 3, Line 51. Limits local government authority to acquire property by eminent domain within community redevelopment areas to the same authority available outside of these areas

and prohibits a community redevelopment agency from exercising the power of eminent domain.

Section 4, Line 138. Eliminates s. 163.375, F.S., which provides eminent domain authority under the CRA Act.

Section 5, Line 195. Deletes a reference to property acquired by eminent domain under the CRA Act.

Section 6, Line 217. Requires counties to strictly comply with new limitations on the exercise of eminent domain set forth in new ss. 73.013 and 73.014, F.S, which begin on Line 269 of the draft.

Section 7, Line 224. Authorizes counties to exercise the power of eminent domain subject such power to the new limitations on the exercise of eminent domain set forth in new ss. 73.013 and 73.014, F.S. , which begin on Line 269 of the draft.

Section 8, Line 232. Require municipalities to strictly comply with new limitations on the exercise of eminent domain set forth in new ss. 73.013 and 73.014, F.S., which begin on Line 269 of the draft.

Section 9, Line 238. Authorizes cities to exercise the power of eminent domain subject such power to the new limitations on the exercise of eminent domain set forth in new ss. 73.013 and 73.014, F.S. , which begin on Line 269 of the draft. **The section also deletes current municipal authority to take property by eminent domain for the purpose of abating any nuisance.**

Section 10, Line 271. Creates a new s. 73.013, F.S., to provide that the state, any political subdivision of the state, or any other entity to which the power of eminent domain has been delegated may not take private property by eminent domain without the owner's consent and convey ownership or control of such property to another private person, except that ownership or control of private property taken by eminent domain may be conveyed to:

(1) A person for use in providing common carrier services or systems;
(2) A person for use as a road or other right of way or means open to the public for transportation, whether at no charge or by toll;
(3) A person that is a public or private utility for use in providing electricity services or systems, natural or manufactured gas services or systems, water and wastewater services or systems, stormwater or runoff services or systems, sewer services or systems, pipeline facilities, telephone services or systems, or similar services or systems;
(4) A person for use in providing public infrastructure; or
(5) A person that occupies, pursuant to a lease, an incidental part of public property or a public facility, such as a retail establishment on the ground floor of a public building.

Section 11, Line 298. Creates a new section s. 73.014, F.S., to prohibit the state, any political subdivision of the state, or any other entity to which the power of eminent domain has been delegated from exercising the power of eminent domain to take private property for the purpose of eliminating harmful conditions on the property or harmful uses of the property. Language is included providing that this provision does not diminish the power of counties or municipalities to adopt or enforce county or municipal ordinances related to code enforcement or the elimination of public nuisances to the extent that such ordinances do not authorize the taking of private property by eminent domain.

Section 12, Line 312. This act shall take effect July 1, 2006 and shall apply to all condemnation proceedings in which a petition of taking is filed pursuant to chapter 73 on or after that date.

HOUSE JOINT RESOLUTION WORKING DRAFT B
(Companion to General Bill Working Draft B)

Consistent with the provisions of General Bill Working Draft B, this joint resolution proposes an amendment to the State Constitution to prohibit the transfer of ownership or control of private property taken by eminent domain to any person, except that ownership or control of private property taken by eminent domain may be conveyed to:

(1) A person for use in providing common carrier services or systems;
(2) A person for use as a road or other right of way or means open to the public for transportation, whether at no charge or by toll;
(3) A person that is a public or private utility for use in providing electricity services or systems, natural or manufactured gas services or systems, water and wastewater services or systems, stormwater or runoff services or systems, sewer services or systems, pipeline facilities, telephone services or systems, or similar services or systems;
(4) A person for use in providing public infrastructure;
(5) A person that occupies, pursuant to a lease, an incidental part of public property or a public facility, such as a retail establishment on the ground floor of a public building; or
(6) A person if the property was taken to eliminate an existing threat to public health and safety as provided by general law.

The term "person" refers to natural persons as well as private legal entities. The only difference between this HJR and HJR Working Draft A is (6), which is not in HJR Working Draft A.

GENERAL BILL WORKING DRAFT B

Executive Summary

This draft eliminates authority take property for purposes of eliminating slum or blight and to enhance the tax base, but allows takings to eliminate an existing threat to public health and safety as described in the draft. The draft requires the local governments to exercise the power of eminent domain and prohibits the delegation of that authority to a community redevelopment agency. The draft provides enhanced property owner notice procedures. If property is located within a community redevelopment area and is taken for the purpose of eliminating a threat to public health and safety, the property may be transferred to a private entity for redevelopment uses. If property is taken to eliminate a nuisance outside a community redevelopment area, the property may not be transferred to a private entity unless the transfer qualifies as an exception to the prohibition against transfers of taken property to private entities. The draft prohibits all transfers of taken property to another private entity with specified exceptions, which include transfers to common carriers, public utilities, private utilities, transfers to private entities that occupy an incidental part of a public facility, and transfers of property taken under the Community Redevelopment Act to eliminate a threat to public health and safety. Local government power to take property for traditional uses should remain unchanged but the list of exceptions for private transfers may not include all necessary exceptions. Additional exceptions may be identified during discussions of the draft.

Section-by-Section

Section 1, Line 27. Declares that the power of eminent domain conferred by the Community Redevelopment Act may be exercised subject to the limitations provided in the bill. Provides a

new legislative finding that the prevention or elimination of a "slum area" or "blighted area" as defined in the Act, and the preservation or enhancement of the tax base, are not public uses or purposes for which private property may be taken by eminent domain.

Section 2, Line 43. Provides that resolution finding slum or blight adopted by the city or county must indicate whether property within the community redevelopment area will be subject to taking by eminent domain under the eminent domain authority provided by the Act. If a resolution of slum or blight conditions allows for the exercise of eminent domain, the section requires the local government to comply with new enhanced notice requirements prior to considering the resolution.

Section 3, Line 169. Prohibits delegation of eminent domain power to a community redevelopment agency by a city or county.

Section 4, Line 179. Requires a community redevelopment plan to indicate that property within the community redevelopment area may be subject to taking by eminent domain under the Act. If consistent with the resolution finding slum or blight conditions, the plan must indicate that the power of eminent domain provided under the Act may not be exercised by the county or municipality within the community redevelopment area.

Section 5, Line 191. Prohibits delegation of the power of eminent domain to community redevelopment agencies by a city or county.

Section 6, Line 213. Provides that, after the community redevelopment plan is adopted, a county or municipality may acquire by eminent domain any interest in real property within a community redevelopment area, including a fee simple title, for the purpose of eliminating an existing threat to public health or safety if the property is condemnation-eligible. Private property is condemnation-eligible if the current condition of the property poses an existing threat to public health or safety as evidenced by at least one of the following factors:

> (a) The physical condition, use, or occupancy of the property constitutes a public nuisance or attractive nuisance;
> (b) The property contains a structure which, because it is dilapidated, unsanitary, unsafe, or vermin-infested, has been designated by the agency responsible for enforcement of the housing, building, or fire codes as unfit for human habitation or use;
> (c) The property contains a structure which, in its current condition, is a fire hazard, or is otherwise dangerous to the safety of persons or property;
> (d) The property contains a structure from which the utilities, plumbing, heating, sewerage, or other facilities have been disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use;
> (e) The property is a vacant or unimproved lot or parcel of ground in a predominantly developed area, which by reason of neglect or lack of maintenance has become a place for accumulation of trash and debris, or a haven for rodents or other vermin;
> (f) The property has been the subject of code violations affecting health or safety that has not been substantially rehabilitated within one year of receipt of notice to rehabilitate from the appropriate code enforcement agency;
> (g) The property, by reason of environmentally hazardous conditions or solid waste pollution or contamination, poses a direct threat to public health or safety.

The section further requires that within a community redevelopment area, a county or municipality must exercise the power of eminent domain in the manner provided in this section and in chapters 73 and 74, or pursuant to the power of eminent domain provided by any other statutory provision, as limited by new s. 73.013 (beginning on Line 449). However, no real

property belonging to the United States, the state, or any political subdivision of the state may be acquired without its consent.

The section provides that a county or municipality may not exercise the power of eminent domain conferred by this section unless the governing body first adopts a resolution of taking containing specific findings that (a) the public purpose of the taking is to eliminate an existing threat to public health and safety; (b) the property is condemnation-eligible as defined in the Act, including a specific reference to the factors applicable to the property; and (c) taking the property is reasonably necessary in order to accomplish the public purpose. The city or county may not adopt a resolution of taking unless actual notice of the hearing at which the resolution is considered was provided at least 45 days prior to the hearing to the property owner and to any business owner, including a lessee, who operates a business located on the property. The section provides specific requirements for enhanced notice.

In accordance with chapter 73 and 74, F.S., if a property owner challenges an attempt to acquire his or her property by eminent domain under this section, the condemning authority must demonstrate by clear and convincing evidence in an evidentiary hearing before the circuit court that the public purpose of the taking is to eliminate an existing threat to public health and safety, that the property is condemnation-eligible, and that taking the property is reasonably necessary in order to accomplish the public purpose. The circuit court must determine whether the public purpose of the taking is to eliminate an existing threat to public health and safety, whether the property is condemnation-eligible as defined in (2), and whether taking the property is reasonably necessary in order to accomplish the public purpose. The circuit court shall make these determinations without attaching a presumption of correctness or deference to any determinations or findings in the resolution of taking adopted by the condemning authority.

Section 7, Line 395. Requires that counties strictly comply with new limitations on the transfer of property taken by eminent domain found in new s. 73.013, which begins on Line 449 of the draft.

Section 8, Line 419. Authorizes counties to acquire property by eminent domain subject to the new limitations on the transfer of property taken by eminent domain found in new s. 73.013, which begins on Line 449 of the draft.

Section 9, Line 427. Requires municipalities to strictly comply with new limitations on the exercise of eminent domain found in new s. 73.013, which begins on Line 449 of the draft.

Section 10, Line 432. Limits purposes for which municipalities may take private property subject to the limitations on the exercise of eminent domain found in new s. 73.013, which begins on Line 449 of the draft.

Section 11, Line 449. Creates a new s. 73.013, F.S., to provide that the state, any political subdivision of the state, or any other entity to which the power of eminent domain has been delegated may not take private property by eminent domain without the owner's consent and convey ownership or control of such property to another private person except the ownership or control of private property taken by eminent domain may be conveyed to a private person:

(1) A person for use in providing common carrier services or systems;
(2) A person for use as a road or other right of way or means open to the public for transportation, whether at no charge or by toll;
(3) A person that is a public or private utility for use in providing electricity services or systems, natural or manufactured gas services or systems, water and wastewater services or systems, stormwater or runoff services or systems, sewer services or

systems, pipeline facilities, telephone services or systems, or similar services or systems;
(4) A person for use in providing public infrastructure; or
(5) A person that occupies, pursuant to a lease, an incidental part of public property or a public facility, such as a retail establishment on the ground floor of a public building; or
(6) if the property was taken pursuant to s. 163.375, F.S., of the CRA Act. [Found in section 6 of the draft].

Section 12, Line 477. This act shall take effect July 1, 2006 and shall apply to all condemnation proceedings in which a petition of taking is filed pursuant to chapter 73 on or after that date.

HJR WORKING DRAFT C
(Portability)

This joint resolution proposes an amendment to Article VII, Section 4 of the State Constitution to provide for assessing at less than just value property purchased within two years after a homestead is taken by eminent domain if the new property is established as homestead, to provide that the difference between the new property's just value and its assessed value in the first year may not exceed the difference between the previous homestead's just value and its assessed value in the year the homestead property is taken by eminent domain, and to provide that the assessed value of the new homestead must equal or exceed the assessed value of the previous homestead.

1 House Joint Resolution
2 A joint resolution proposing an amendment to Section 6
3 of Article X of the State Constitution to restrict the
4 taking of private property power of eminent domain with
5 exceptions.
6
7 Be It Resolved by the Legislature of the State of Florida:
8
9 That the following amendment to Section 6 of Article X
10 of the State Constitution is agreed to and shall be submitted to
11 the electors of this state for approval or rejection at the next
12 general election or at an earlier special election specifically
13 authorized by law for that purpose:
14 ARTICLE X
15 Miscellaneous
16 SECTION 6. Eminent domain.--
17 (a) No private property shall be taken except for a public
18 purpose and with full compensation therefor paid to each owner or
19 secured by deposit in the registry of the court and available to
20 the owner.
21 (b) Provision may be made by law for the taking of
22 easements, by like proceedings, for the drainage of the land of
23 one person over or through the land of another.
24 <u>(c) Ownership or control of private property taken by</u>
25 <u>eminent domain without the property owner's consent may not be</u>
26 <u>conveyed to any person, except that ownership or control of</u>

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27 private property taken by eminent domain without the property
28 owner's consent may be conveyed to:
29 (1) A person for use in providing common carrier services
30 or systems;
31 (2) A person for use as a road or other right of way or
32 means open to the public for transportation, whether at no charge
33 or by toll;
34 (3) A person that is a public or private utility for use in
35 providing electricity services or systems, natural or
36 manufactured gas services or systems, water and wastewater
37 services or systems, stormwater or runoff services or systems,
38 sewer services or systems, pipeline facilities, telephone
39 services or systems, or similar services or systems;
40 (4) A person for use in providing public infrastructure; or
41 (5) A person that occupies, pursuant to a lease, an
42 incidental part of public property or a public facility, such as
43 a retail establishment on the ground floor of a public building.
44
45 BE IT FURTHER RESOLVED that the following statement be
46 placed on the ballot:
47 CONSTITUTIONAL AMENDMENT
48 ARTICLE X , SECTION 6
49 RESTRICTING THE POWER OF EMINENT DOMAIN - Proposing an
50 amendment to the State Constitution to prohibit the transfer of
51 ownership or control of private property taken by eminent domain
52 without the property owner's consent to any person, except that

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53 ownership or control of private property taken by eminent domain
54 without the property owner's consent may be conveyed to:
55 (1) A person for use in providing common carrier services
56 or systems;
57 (2) A person for use as a road or other right of way or
58 means open to the public for transportation, whether at no charge
59 or by toll;
60 (3) A person that is a public or private utility for use in
61 providing electricity services or systems, natural or
62 manufactured gas services or systems, water and wastewater
63 services or systems, stormwater or runoff services or systems,
64 sewer services or systems, pipeline facilities, telephone
65 services or systems, or similar services or systems;
66 (4) A person for use in providing public infrastructure; or
67 (5) A person that occupies, pursuant to a lease, an
68 incidental part of public property or a public facility, such as
69 a retail establishment on the ground floor of a public building.

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House Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article X of the State Constitution to restrict the taking of private property power of eminent domain with exceptions.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 6 of Article X of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE X

Miscellaneous

SECTION 6. Eminent domain.--

(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) Ownership or control of private property taken by eminent domain without the property owner's consent may not be conveyed to any person, except that ownership or control of

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27 private property taken by eminent domain without the property
28 owner's consent may be conveyed to:
29 (1) A person for use in providing common carrier services
30 or systems;
31 (2) A person for use as a road or other right of way or
32 means open to the public for transportation, whether at no charge
33 or by toll;
34 (3) A person that is a public or private utility for use in
35 providing electricity services or systems, natural or
36 manufactured gas services or systems, water and wastewater
37 services or systems, stormwater or runoff services or systems,
38 sewer services or systems, pipeline facilities, telephone
39 services or systems, or similar services or systems;
40 (4) A person for use in providing public infrastructure;
41 (5) A person that occupies, pursuant to a lease, an
42 incidental part of public property or a public facility, such as
43 a retail establishment on the ground floor of a public building;
44 or
45 (6) A person if the property was taken to eliminate an
46 existing threat to public health and safety as provided by
47 general law.
48
49 BE IT FURTHER RESOLVED that the following statement be
50 placed on the ballot:
51
52 CONSTITUTIONAL AMENDMENT
53 ARTICLE X , SECTION 6

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54 RESTRICTING THE POWER OF EMINENT DOMAIN -Proposing an
55 amendment to the State Constitution to prohibit the transfer of
56 ownership or control of private property taken by eminent domain
57 without the property owner's consent to any person, except that
58 ownership or control of private property taken by eminent domain
59 without the property owner's consent may be conveyed to:
60 (1) A person for use in providing common carrier services
61 or systems;
62 (2) A person for use as a road or other right of way or
63 means open to the public for transportation, whether at no charge
64 or by toll;
65 (3) A person that is a public or private utility for use in
66 providing electricity services or systems, natural or
67 manufactured gas services or systems, water and wastewater
68 services or systems, stormwater or runoff services or systems,
69 sewer services or systems, pipeline facilities, telephone
70 services or systems, or similar services or systems;
71 (4) A person for use in providing public infrastructure;
72 (5) A person that occupies, pursuant to a lease, an
73 incidental part of public property or a public facility, such as
74 a retail establishment on the ground floor of a public building;
75 or
76 (6) A person if the property was taken to eliminate an
77 existing threat to public health and safety as provided by
78 general law.

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SELECT COMMITTEE TO PROTECT PRIVATE PROPERTY RIGHTS
HJR WORKING DRAFT C
PORTABILITY

1 House Joint Resolution
2 A joint resolution proposing an amendment to Section 4 of
3 Article VII of the State Constitution to provide an
4 additional circumstance for assessing homestead property
5 at less than just value.
6
7 Be It Resolved by the Legislature of the State of Florida:
8
9 That the following amendment to Section 4 of Article VII of
10 the State Constitution is agreed to and shall be submitted to the
11 electors of this state for approval or rejection at the next
12 general election or at an earlier special election specifically
13 authorized by law for that purpose:
14 ARTICLE VII
15 FINANCE AND TAXATION
16 SECTION 4. Taxation; assessments.—
17 By general law regulations shall be prescribed which shall
18 secure a just valuation of all property for ad valorem taxation,
19 provided:
20 (a) Agricultural land, land producing high water recharge
21 to Florida's aquifers, or land used exclusively for noncommercial
22 recreational purposes may be classified by general law and
23 assessed solely on the basis of character or use.
24 (b) Pursuant to general law tangible personal property held
25 for sale as stock in trade and livestock may be valued for
26 taxation at a specified percentage of its value, may be
27 classified for tax purposes, or may be exempted from taxation.

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28 (c) All persons entitled to a homestead exemption under
29 Section 6 of this Article shall have their homestead assessed at
30 just value as of January 1 of the year following the effective
31 date of this amendment. This assessment shall change only as
32 provided herein.
33 (1) Assessments subject to this provision shall be changed
34 annually on January 1st of each year; but those changes in
35 assessments shall not exceed the lower of the following:
36 a. Three percent (3%) of the assessment for the prior year.
37 b. The percent change in the Consumer Price Index for all
38 urban consumers, U.S. City Average, all items 1967=100, or
39 successor reports for the preceding calendar year as initially
40 reported by the United States Department of Labor, Bureau of
41 Labor Statistics.
42 (2) No assessment shall exceed just value.
43 (3) After any change of ownership, as provided by general
44 law, homestead property shall be assessed at just value as of
45 January 1 of the following year<u>, unless the provisions of</u>
46 <u>paragraph (8) apply</u>. Thereafter, the homestead shall be assessed
47 as provided herein.
48 (4) New homestead property shall be assessed at just value
49 as of January 1st of the year following the establishment of the
50 homestead<u>, unless the provisions of paragraph (8) apply</u>. That
51 assessment shall only change as provided herein.
52 (5) Changes, additions, reductions, or improvements to
53 homestead property shall be assessed as provided for by general
54 law; provided, however, after the adjustment for any change,

55 addition, reduction, or improvement, the property shall be
56 assessed as provided herein.
57 (6) In the event of a termination of homestead status, the
58 property shall be assessed as provided by general law.
59 (7) The provisions of this amendment are severable. If any
60 of the provisions of this amendment shall be held
61 unconstitutional by any court of competent jurisdiction, the
62 decision of such court shall not affect or impair any remaining
63 provisions of this amendment.
64 (8) When a person's homestead property is taken by power of
65 eminent domain within this state and within two years the person
66 purchases another property and establishes such property as
67 homestead property, the newly established homestead property
68 shall be initially assessed at less than just value, as provided
69 by general law. The difference between the new homestead
70 property's just value and its assessed value in the first year
71 the homestead is established may not exceed the difference
72 between the previous homestead's just value and its assessed
73 value in the year the homestead property is taken by eminent
74 domain. In addition, the assessed value of the new homestead must
75 equal or exceed the assessed value of the previous homestead.
76 Thereafter, the homestead shall be assessed as provided herein.
77 (d) The legislature may, by general law, for assessment
78 purposes and subject to the provisions of this subsection, allow
79 counties and municipalities to authorize by ordinance that
80 historic property may be assessed solely on the basis of
81 character or use. Such character or use assessment shall apply

82 only to the jurisdiction adopting the ordinance. The requirements
83 for eligible properties must be specified by general law.
84 (e) A county may, in the manner prescribed by general law,
85 provide for a reduction in the assessed value of homestead
86 property to the extent of any increase in the assessed value of
87 that property which results from the construction or
88 reconstruction of the property for the purpose of providing
89 living quarters for one or more natural or adoptive grandparents
90 or parents of the owner of the property or of the owner's spouse
91 if at least one of the grandparents or parents for whom the
92 living quarters are provided is 62 years of age or older. Such a
93 reduction may not exceed the lesser of the following:
94 (1) The increase in assessed value resulting from
95 construction or reconstruction of the property.
96 (2) Twenty percent of the total assessed value of the
97 property as improved.
98
99 BE IT FURTHER RESOLVED that the following statement be
100 placed on the ballot:
101 CONSTITUTIONAL AMENDMENT
102 ARTICLE VII, SECTION 4
103 HOMESTEAD PROPERTY ASSESSMENTS.--Proposing an amendment to
104 the State Constitution to provide for assessing at less than just
105 value property purchased within two years after a homestead is
106 taken by eminent domain if the new property is established as
107 homestead, to provide that the difference between the new
108 property's just value and its assessed value in the first year
109 may not exceed the difference between the previous homestead's

110 just value and its assessed value in the year the homestead
111 property is taken by eminent domain, and to provide that the
112 assessed value of the new homestead must equal or exceed the
113 assessed value of the previous homestead.

SELECT COMMITTEE TO PROTECT PRIVATE PROPERTY RIGHTS
GENERAL BILL WORKING DRAFT A
Companion to HJR Working Draft A

1 A bill to be entitled
2 An act relating to eminent domain; amending s. 163.335,
3 F.S.; providing legislative intent; amending s. 163.358,
4 F.S.; reserving the power of eminent domain to counties
5 and municipalities; amending s. 163.370, F.S.; specifying
6 methods of acquiring property and prohibiting the exercise
7 of eminent domain by community redevelopment agencies;
8 repealing s. 163.375, F.S.; eliminating authority to
9 exercise the power of eminent domain authority; amending
10 s. 163.380, F.S.; deleting reference to eminent domain;
11 amending s. 127.01, F.S.; requiring county compliance with
12 eminent domain limitations; amending s. 127.02, F.S.;
13 requiring county compliance with eminent domain
14 limitations; amending s. 166.401, F.S.; requiring
15 municipal compliance with eminent domain limitations;
16 amending s. 166.411, F.S.; requiring municipal compliance
17 with eminent domain limitations; creating s. 73.013, F.S.;
18 restricting certain transfers of property taken by eminent
19 domain to private persons; creating s. 73.104, F.S.;
20 prohibiting takings for the purpose of eliminating harmful
21 conditions or uses; providing an effective date.
22
23 Be It Enacted by the Legislature of the State of Florida:
24 Section 1. Subsection (3) of section 163.335, Florida
25 Statutes, is amended and a new subsection (7) is added to said
26 section, to read:
27 163.335 Findings and declarations of necessity.--

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28 (3) It is further found and declared that the powers
29 conferred by this part are for public uses and purposes for which
30 public money may be expended and the ~~power of eminent domain and~~
31 police power exercised, and the necessity in the public interest
32 for the provisions herein enacted is hereby declared as a matter
33 of legislative determination.
34 (7) It is further found that the prevention or elimination
35 of slum or blighted areas, and the preservation or enhancement of
36 the tax base, are not public uses or purposes for which private
37 property may be taken by eminent domain.
38 Section 2. Subsection (6) is added to section 163.358,
39 Florida Statutes, to read:
40 163.358 Exercise of powers in carrying out community
41 redevelopment and related activities.--The community
42 redevelopment powers assigned to a community redevelopment agency
43 created under s. 163.356 include all the powers necessary or
44 convenient to carry out and effectuate the purposes and
45 provisions of this part, except the following, which continue to
46 vest in the governing body of the county or municipality:
47 (6) The power of eminent domain.
48 Section 3. Paragraphs (c), (e), and (o) of subsection 1 and
49 paragraph (a) of subsection (3) of section 163.370, Florida
50 Statutes, are amended to read:
51 163.370 Powers; counties and municipalities; community
52 redevelopment agencies.--
53 (1) Every county and municipality shall have all the powers
54 necessary or convenient to carry out and effectuate the purposes

55 and provisions of this part, including the following powers in
56 addition to others herein granted:
57 (c) To undertake and carry out community redevelopment and
58 related activities within the community redevelopment area, which
59 ~~redevelopment~~ may include:
60 1. Acquisition of property within a slum area or a blighted
61 area ~~or portion thereof~~ by purchase, lease, option, gift, grant,
62 bequest, devise or other voluntary method of acquisition, or by
63 eminent domain pursuant to authority granted in ss. 127.01,
64 127.02, 166.401, or 166.411 as applicable.
65 4. Disposition of any property acquired in the community
66 redevelopment area at its fair value for uses in accordance with
67 the community redevelopment plan.
68 5. Carrying out plans for a program of voluntary or
69 compulsory repair and rehabilitation of buildings or other
70 improvements in accordance with the community redevelopment plan.
71 6. Acquisition by purchase, lease, option, gift, grant,
72 bequest, devise or other voluntary method of acquisition of real
73 property in the community redevelopment area which, under the
74 community redevelopment plan, is to be repaired or rehabilitated
75 for dwelling use or related facilities, repair or rehabilitation
76 of the structures for guidance purposes, and resale of the
77 property.
78 7. Acquisition by purchase, lease, option, gift, grant,
79 bequest, devise or other voluntary method of acquisition of any
80 other real property in the community redevelopment area when
81 necessary to eliminate unhealthful, unsanitary, or unsafe
82 conditions; lessen density; eliminate obsolete or other uses

83 detrimental to the public welfare; or otherwise to remove or
84 prevent the spread of blight or deterioration or to provide land
85 for needed public facilities.
86 (e) Within the community redevelopment area:
87 1. To enter into any building or property in any community
88 redevelopment area in order to make inspections, surveys,
89 appraisals, soundings, or test borings and to obtain an order for
90 this purpose from a court of competent jurisdiction in the event
91 entry is denied or resisted.
92 2. To acquire any real property (or personal property for
93 its administrative purposes), together with any improvements
94 thereon, by purchase, lease, option, gift, grant, bequest, devise
95 or other voluntary method of acquisition ~~eminent domain, or~~
96 ~~otherwise any real property (or personal property for its~~
97 ~~administrative purposes), together with any improvements thereon;~~
98 ~~except that a community redevelopment agency may not exercise any~~
99 ~~power of eminent domain unless the exercise has been specifically~~
100 ~~approved by the governing body of the county or municipality~~
101 ~~which established the agency~~.
102 3. To acquire property by eminent domain pursuant to
103 authority granted in ss. 127.01, 127.02, 166.401, or 166.411 as
104 applicable.
105 4 ~~3~~. To hold, improve, clear, or prepare for redevelopment
106 any such property.
107 5 ~~4~~. To mortgage, pledge, hypothecate, or otherwise
108 encumber or dispose of any real property.
109 6 ~~5~~. To insure or provide for the insurance of any real or
110 personal property or operations of the county or municipality

111 against any risks or hazards, including the power to pay premiums
112 on any such insurance.
113 7 ~~6~~. To enter into any contracts necessary to effectuate
114 the purposes of this part.
115 8 ~~7~~. To solicit requests for proposals for redevelopment of
116 parcels of real property contemplated by a community
117 redevelopment plan to be acquired for redevelopment purposes by a
118 community redevelopment agency and, as a result of such requests
119 for proposals, to advertise for the disposition of such real
120 property to private persons pursuant to s. 163.380 prior to
121 acquisition of such real property by the community redevelopment
122 agency.
123 (o) To exercise all or any part or combination of powers
124 herein granted or to elect to have such powers exercised by a
125 community redevelopment agency; however, the power of eminent
126 domain shall not be exercised by a community redevelopment
127 agency.
128 (3) With the approval of the governing body, a community
129 redevelopment agency may:
130 (a) Prior to approval of a community redevelopment plan or
131 approval of any modifications of the plan, acquire real property
132 in a community redevelopment area by purchase, lease, option,
133 gift, grant, bequest, devise or other voluntary method of
134 acquisition; demolish and remove any structures on the property;~~,~~
135 and pay all costs related to the acquisition, demolition, or
136 removal, including any administrative or relocation expenses.
137 Section 4. Section 163.375 is repealed:
138 ~~163.375 Eminent domain.~~

139 ~~(1) Any county or municipality, or any community~~
140 ~~redevelopment agency pursuant to specific approval of the~~
141 ~~governing body of the county or municipality which established~~
142 ~~the agency, as provided by any county or municipal ordinance has~~
143 ~~the right to acquire by condemnation any interest in real~~
144 ~~property, including a fee simple title thereto, which it deems~~
145 ~~necessary for, or in connection with, community redevelopment and~~
146 ~~related activities under this part. Any county or municipality,~~
147 ~~or any community redevelopment agency pursuant to specific~~
148 ~~approval by the governing body of the county or municipality~~
149 ~~which established the agency, as provided by any county or~~
150 ~~municipal ordinance may exercise the power of eminent domain in~~
151 ~~the manner provided in chapters 73 and 74 and acts amendatory~~
152 ~~thereof or supplementary thereto, or it may exercise the power of~~
153 ~~eminent domain in the manner now or which may be hereafter~~
154 ~~provided by any other statutory provision for the exercise of the~~
155 ~~power of eminent domain. Property in unincorporated enclaves~~
156 ~~surrounded by the boundaries of a community redevelopment area~~
157 ~~may be acquired when it is determined necessary by the agency to~~
158 ~~accomplish the community redevelopment plan. Property already~~
159 ~~devoted to a public use may be acquired in like manner. However,~~
160 ~~no real property belonging to the United States, the state, or~~
161 ~~any political subdivision of the state may be acquired without~~
162 ~~its consent.~~
163 ~~(2) In any proceeding to fix or assess compensation for~~
164 ~~damages for the taking of property, or any interest therein,~~
165 ~~through the exercise of the power of eminent domain or~~
166 ~~condemnation, evidence or testimony bearing upon the following~~

167 ~~matters shall be admissible and shall be considered in fixing~~
168 ~~such compensation or damages in addition to evidence or testimony~~
169 ~~otherwise admissible:~~
170 ~~(a) Any use, condition, occupancy, or operation of such~~
171 ~~property, which is unlawful or violative of, or subject to~~
172 ~~elimination, abatement, prohibition, or correction under, any~~
173 ~~law, ordinance, or regulatory measure of the state, county,~~
174 ~~municipality, or other political subdivision, or any agency~~
175 ~~thereof, in which such property is located, as being unsafe,~~
176 ~~substandard, unsanitary, or otherwise contrary to the public~~
177 ~~health, safety, morals, or welfare.~~
178 ~~(b) The effect on the value of such property of any such~~
179 ~~use, condition, occupancy, or operation or of the elimination,~~
180 ~~abatement, prohibition, or correction of any such use, condition,~~
181 ~~occupancy, or operation.~~
182 ~~(3) The foregoing testimony and evidence shall be~~
183 ~~admissible notwithstanding that no action has been taken by any~~
184 ~~public body or public officer toward the abatement, prohibition,~~
185 ~~elimination, or correction of any such use, condition, occupancy,~~
186 ~~or operation. Testimony or evidence that any public body or~~
187 ~~public officer charged with the duty or authority so to do has~~
188 ~~rendered, made, or issued any judgment, decree, determination, or~~
189 ~~order for the abatement, prohibition, elimination, or correction~~
190 ~~of any such use, condition, occupancy, or operation shall be~~
191 ~~admissible and shall be prima facie evidence of the existence and~~
192 ~~character of such use, condition, or operation.~~
193 Section 5. Paragraph (b) of subsection (3) of section
194 163.380, Florida Statutes, is amended to read:

195 163.380 Disposal of property in community redevelopment
196 area.--
197 (3)(b) Any county, municipality, or community redevelopment
198 agency that, pursuant to the provisions of this section, has
199 disposed of a real property project with a land area in excess of
200 20 acres may acquire an expanded area that is immediately
201 adjacent to the original project and less than 35 percent of the
202 land area of the original project, by purchase ~~or eminent domain~~
203 as provided in this chapter, and negotiate a disposition of such
204 expanded area directly with the person who acquired the original
205 project without complying with the disposition procedures
206 established in paragraph (a), provided the county, municipality,
207 or community redevelopment agency adopts a resolution making the
208 following findings:
209 1. It is in the public interest to expand such real
210 property project to an immediately adjacent area.
211 2. The expanded area is less than 35 percent of the land
212 area of the original project.
213 3. The expanded area is entirely within the boundary of the
214 community redevelopment area.
215 Section 6. Subsection (3) is added to section 127.01,
216 Florida Statutes, to read:
217 127.01 Counties delegated power of eminent domain;
218 recreational purposes, issue of necessity of taking.--
219 <u>(3) Each county shall strictly comply with the limitations</u>
220 <u>on the exercise of the power of eminent domain set forth in ss.</u>
221 <u>73.013 and 73.014.</u>

222 Section 7. Section 127.02, Florida Statutes, is amended to
223 read:
224 127.02 County commissioners may authorize acquirement of
225 property by eminent domain.--The board of county commissioners
226 may, by resolution, authorize the acquirement by eminent domain
227 of property, real or personal, for any county use or purpose
228 designated in such resolution, subject to the limitations set
229 forth in ss. 73.013 and 73.014.
230 Section 8. Subsection (3) is added to section 166.401,
231 Florida Statutes, to read:
232 166.401 Right of eminent domain.--
233 (3) Each municipality shall strictly comply with the
234 limitations on the exercise of the power of eminent domain set
235 forth in ss. 73.013 and 73.014.
236 Section 9. Section 166.411, Florida Statutes, is amended to
237 read:
238 166.411 Eminent domain; uses or purposes.--Municipalities
239 are authorized to exercise the power of eminent domain for the
240 following uses or purposes:
241 (1) For the proper and efficient carrying into effect of
242 any proposed scheme or plan of drainage, ditching, grading,
243 filling, or other public improvement deemed necessary or
244 expedient for the preservation of the public health, or for other
245 good reason connected in anywise with the public welfare or the
246 interests of the municipality and the people thereof subject to
247 the limitations set forth in ss. 73.013 and 73.014;
248 (2) Over railroads, traction and streetcar lines, telephone
249 and telegraph lines, all public and private streets and highways,

250 drainage districts, bridge districts, school districts, or any
251 other public or private lands whatsoever necessary to enable the
252 accomplishment of purposes listed in s. 180.06;
253 (3) For streets, lanes, alleys, and ways;
254 (4) For public parks, squares, and grounds;
255 (5) For drainage, for raising or filling in land in order
256 to promote sanitation and healthfulness, and for the taking of
257 easements for the drainage of the land of one person over and
258 through the land of another;
259 (6) For reclaiming and filling when lands are low and wet,
260 or overflowed altogether or at times, or entirely or partly;
261 ~~(7) For the abatement of any nuisance;~~
262 (7) ~~(8)~~ For the use of water pipes and for sewerage and
263 drainage purposes;
264 (8) ~~(9)~~ For laying wires and conduits underground; and
265 (9) ~~(10)~~ For city buildings, waterworks, ponds, and other
266 municipal purposes which shall be coextensive with the powers of
267 the municipality exercising the right of eminent domain subject
268 to the limitations set forth in ss. 73.013 and 73.014.~~; and~~
269 Section 10. Section 73.013, Florida Statutes, is created to
270 read:
271 73.013 Conveyance of property taken by eminent domain. --
272 Notwithstanding any other provision of law, including any
273 charter provision, ordinance, statute, or special law, the state,
274 any political subdivision as defined in s. 1.01(8), or any other
275 entity to which the power of eminent domain is delegated may not
276 exercise the power of eminent domain to take private property
277 without the owner's consent and convey ownership or control of

278 such property to another person as defined in s. 1.01(3), except
279 that ownership or control of private property taken by eminent
280 domain may be conveyed to:
281 (1) A person for use in providing common carrier services
282 or systems;
283 (2) A person for use as a road or other right of way or
284 means open to the public for transportation, whether at no charge
285 or by toll;
286 (3) A person that is a public or private utility for use in
287 providing electricity services or systems, natural or
288 manufactured gas services or systems, water and wastewater
289 services or systems, stormwater or runoff services or systems,
290 sewer services or systems, pipeline facilities, telephone
291 services or systems, or similar services or systems;
292 (4) A person for use in providing public infrastructure; or
293 (5) A person that occupies, pursuant to a lease, an
294 incidental part of public property or a public facility, such as
295 a retail establishment on the ground floor of a public building.
296 Section 11. Section 73.014, Florida Statutes, is created to
297 read:
298 73.014 Taking property to eliminate harmful conditions
299 prohibited.-- Notwithstanding any other provision of law,
300 including any charter provision, ordinance, statute, or special
301 law, the state, any political subdivision as defined in s.
302 1.01(8), or any other entity to which the power of eminent domain
303 is delegated shall not exercise the power of eminent domain to
304 take private property without the owner's consent for the purpose
305 of eliminating harmful conditions on the property or harmful uses

306 of the property. This provision shall not diminish the power of
307 counties or municipalities to adopt or enforce county or
308 municipal ordinances related to code enforcement or the
309 elimination of public nuisances to the extent that such
310 ordinances do not authorize the taking of private property by
311 eminent domain.
312 Section 12. This act shall take effect July 1, 2006 and
313 shall apply to all condemnation proceedings in which a petition
314 of taking is filed pursuant to chapter 73 on or after that date.

SELECT COMMITTEE TO PROTECT PRIVATE PROPERTY RIGHTS
GENERAL BILL WORKING DRAFT B
Companion to HJR Working Draft B

1 A bill to be entitled
2 An act relating to eminent domain; amending s. 163.335,
3 F.S.; providing legislative intent; amending s. 163.355,
4 F.S.; requiring disclosure of eminent domain authority in
5 resolutions finding slum or blight conditions; providing
6 for notice to property owners; amending s. 163.360, F.S.;
7 requiring disclosure of eminent domain authority in
8 community redevelopment plans; amending s. 163.370, F.S.;
9 revising powers of community redevelopment agencies;
10 amending s. 163.375, F.S.; revising authority and
11 procedures for taking property by eminent domain; amending
12 s. 127.01, F.S.; requiring county compliance with eminent
13 domain limitations; amending s. 127.02, F.S.; requiring
14 county compliance with eminent domain limitations;
15 amending s. 166.401, F.S.; requiring municipal compliance
16 with eminent domain limitations; amending s. 166.411,
17 F.S.; requiring municipal compliance with eminent domain
18 limitations; creating s. 73.013, F.S.; restricting certain
19 transfers of property taken by eminent domain to private
20 persons; providing an effective date.
21
22 Be It Enacted by the Legislature of the State of Florida:
23
24 Section 1. Subsection (3) of section 163.335, Florida
25 Statutes, is amended and a new subsection (7) is added to said
26 section, to read:
27 163.335 Findings and declarations of necessity.--

28 (3) It is further found and declared that the powers
29 conferred by this part are for public uses and purposes for which
30 public money may be expended, the police power exercised, and the
31 power of eminent domain exercised subject to the limitations in
32 s. 163.375 ~~and the power of eminent domain and police power~~
33 ~~exercised~~, and the necessity in the public interest for the
34 provisions herein enacted is hereby declared as a matter of
35 legislative determination.
36 (7) It is further found that the prevention or elimination
37 of a "slum area" or "blighted area" as defined in this part, and
38 the preservation or enhancement of the tax base, are not public
39 uses or purposes for which private property may be taken by
40 eminent domain.
41 Section 2. New subsections (2) and (3) of section
42 163.355, Florida Statutes, are created to read:
43 163.355 Finding of necessity by county or municipality.—
44 (1) No county or municipality shall exercise the community
45 redevelopment authority conferred by this part until after the
46 governing body has adopted a resolution, supported by data and
47 analysis, which makes a legislative finding that the conditions
48 in the area meet the criteria described in s. 163.340(7) or (8).
49 The resolution must state that:
50 (a) ~~(1)~~ One or more slum or blighted areas, or one or more
51 areas in which there is a shortage of housing affordable to
52 residents of low or moderate income, including the elderly, exist
53 in such county or municipality; and

54 (b) ~~(2)~~ The rehabilitation, conservation, or redevelopment,
55 or a combination thereof, of such area or areas, including, if
56 appropriate, the development of housing which residents of low or
57 moderate income, including the elderly, can afford, is necessary
58 in the interest of the public health, safety, morals, or welfare
59 of the residents of such county or municipality.
60 (2) The resolution finding slum or blight conditions must
61 indicate that property within the community redevelopment area
62 may be subject to taking by eminent domain pursuant to s.
63 163.375. In the alternative, the county or municipality may
64 explicitly state in the resolution that the power of eminent
65 domain provided under s. 163.375 shall not be exercised by the
66 county or municipality within the community redevelopment area. A
67 county or municipality is not required to provide notice in
68 accordance with (3) and (4) if the resolution finding slum or
69 blight conditions, as proposed and adopted by the county or
70 municipality, expressly declares that the power of eminent domain
71 provided under s. 163.375 shall not be exercised by the county or
72 municipality within the community redevelopment area.
73 (3) At least 30 days prior to the date set for the first
74 public hearing where a proposed resolution finding slum or blight
75 conditions will be considered by a county or municipality, actual
76 notice must be mailed via first class U.S. Mail to each real
77 property owner whose property may be included within the
78 community redevelopment area and to each business owner,
79 including lessees, who operate a business located on the property
80 that may be included within the community redevelopment area.

81 (a) Real Property Owner Notice: Notice must be sent to
82 each owner of real property that may be included within the
83 community redevelopment area at the owner's last known address
84 as listed on the county ad valorem tax roll. Alternatively, the
85 notice may be personally delivered to a property owner. If there
86 is more than one owner of a property, notice to one owner
87 constitutes notice to all owners of the property. The return of
88 the notice as undeliverable by the postal authorities constitutes
89 compliance with this subsection. The condemning authority is not
90 required to give notice to a person who acquires title to the
91 property after the notice required by this subsection has been
92 given.
93 (b) Business Owner Notice: Notice must be sent to the
94 address of the registered agent for the business located on the
95 property to be acquired, or if no agent is registered, by
96 certified mail or personal delivery to the address of the
97 business located on the property to be acquired. Notice to one
98 owner of a multiple ownership business constitutes notice to all
99 owners of that business. The return of the notice as
100 undeliverable by the postal authorities constitutes compliance
101 with this subsection. The condemning authority is not required to
102 give notice to a person who acquires an interest in the business
103 after the notice required by this subsection has been given.
104 (c) At a minimum, the mailed notice required by (a) and (b)
105 must:
106 1. Generally explain the purpose, effect, and substance of
107 the proposed resolution;

108 2. Indicate that private property within the proposed
109 redevelopment area may be subject to taking by eminent domain if
110 the property meets the statutory criteria for taking under the
111 Community Redevelopment Act;
112 3. Set forth the statutory criteria for taking property
113 under the Community Redevelopment Act;
114 4. Indicate that private-to-private transfers of property
115 may occur;
116 5. Contain a geographic location map that clearly
117 indicates the area covered by the resolution, including major
118 street names as a means of identification of the general area;
119 6. Provide the dates, times, and locations of future
120 public hearings during which the resolution may be considered;
121 7. Identify the place or places within the county or city
122 where the resolution may be inspected by the public;
123 8. Indicate that the property owner may file written
124 objections with the local governing board prior to any public
125 hearing on the resolution; and
126 9. Indicate that interested parties may appear and be
127 heard at all public hearings at which the resolution will be
128 considered.
129 (4) In addition to mailing notice to property owners, the
130 city or county must conduct at least two advertised public
131 hearings prior to adoption of the proposed resolution. At least
132 one hearing must be held after 5 p.m. on a weekday, unless the
133 governing body, by a majority plus one vote, elects to conduct
134 that hearing at another time of day. The first public hearing

135 must be held at least 7 days after the day that the first
136 advertisement is published. The second hearing must be held at
137 least 10 days after the first hearing and must be advertised at
138 least 5 days prior to the public hearing. The required
139 advertisements must be no less than 2 columns wide by 10 inches
140 long in a standard size or a tabloid size newspaper, and the
141 headline in the advertisement must be in a type no smaller than
142 18 point. The advertisement must not be placed in that portion of
143 the newspaper where legal notices and classified advertisements
144 appear and must be placed in a newspaper of general paid
145 circulation rather than one of limited subject matter. Whenever
146 possible, the advertisement must appear in a newspaper that is
147 published at least 5 days a week unless the only newspaper in the
148 community is published less than 5 days a week. At a minimum, the
149 advertisement must:
150 (a) Generally explain the substance and effect of the
151 resolution;
152 (b) Include a statement indicating that private property
153 within the proposed redevelopment area may be subject to taking
154 by eminent domain if the property meets the statutory criteria
155 for taking under the Community Redevelopment Act;
156 (c) Provide the date, time, and location of the meeting;
157 (d) Identify the place or places within the county or city
158 where the resolution may be inspected by the public;
159 (e) Contain a geographic location map that clearly
160 indicates the area covered by the resolution, including major
161 street names as a means of identification of the general area;

162 (f) Indicate that any interested party may file written
163 objections with the local governing board prior to the public
164 hearing; and
165 (g) Indicate that any interested party may appear and be
166 heard at the public hearing.
167 Section 3. Subsection (6) is added to section 163.358,
168 Florida Statutes, to read:
169 163.358 Exercise of powers in carrying out community
170 redevelopment and related activities.--The community
171 redevelopment powers assigned to a community redevelopment agency
172 created under s. 163.356 include all the powers necessary or
173 convenient to carry out and effectuate the purposes and
174 provisions of this part, except the following, which continue to
175 vest in the governing body of the county or municipality:
176 (6) The power of eminent domain.
177 Section 4. New paragraph (d) is added to subsection (2)
178 of section 163.360, Florida Statutes, to read:
179 163.360 Community redevelopment plans.—
180 (2) The community redevelopment plan shall:
181 (d) Indicate that property within the community
182 redevelopment area may be subject to taking by eminent domain
183 pursuant to s. 163.375. If consistent with the resolution
184 finding slum or blight conditions, the plan must indicate that
185 the power of eminent domain provided under s. 163.375 will not be
186 exercised by the county or municipality within the community
187 redevelopment area.

188 Section 5. Paragraphs (o) of subsection 1 and paragraph
189 (a) of subsection (3) of section 163.370, Florida Statutes, are
190 amended to read:
191 163.370 Powers; counties and municipalities; community
192 redevelopment agencies.--
193 (1) Every county and municipality shall have all the powers
194 necessary or convenient to carry out and effectuate the purposes
195 and provisions of this part, including the following powers in
196 addition to others herein granted:
197 (o) To exercise all or any part or combination of powers
198 herein granted or to elect to have such powers exercised by a
199 community redevelopment agency; however, the power of eminent
200 domain shall not be exercised by a community redevelopment
201 agency.
202 (3) With the approval of the governing body, a community
203 redevelopment agency may:
204 (a) Prior to approval of a community redevelopment plan or
205 approval of any modifications of the plan, acquire real property
206 in a community redevelopment area by purchase, lease, option,
207 gift, grant, bequest, devise or other voluntary method of
208 acquisition; demolish and remove any structures on the property;~~,~~
209 and pay all costs related to the acquisition, demolition, or
210 removal, including any administrative or relocation expenses.
211 Section 6. Section 163.375, Florida Statutes, is amended
212 to read:
213 163.375 Eminent domain.—

214 (1) After the community redevelopment plan is adopted, a
215 county or municipality may acquire by eminent domain any interest
216 in real property within a community redevelopment area, including
217 a fee simple title thereto, for the purpose of eliminating an
218 existing threat to public health or safety if the property is
219 condemnation-eligible as defined by (2). A county or
220 municipality shall exercise the power of eminent domain in the
221 manner provided in this section and in chapters 73 and 74, or
222 pursuant to the power of eminent domain provided by any other
223 statutory provision, as limited by s. 73.013. However, no real
224 property belonging to the United States, the state, or any
225 political subdivision of the state may be acquired without its
226 consent. ~~Any county or municipality, or any community~~
227 ~~redevelopment agency pursuant to specific approval of the~~
228 ~~governing body of the county or municipality which established~~
229 ~~the agency, as provided by any county or municipal ordinance has~~
230 ~~the right to acquire by condemnation any interest in real~~
231 ~~property, including a fee simple title thereto, which it deems~~
232 ~~necessary for, or in connection with, community redevelopment and~~
233 ~~related activities under this part. Any county or municipality,~~
234 ~~or any community redevelopment agency pursuant to specific~~
235 ~~approval by the governing body of the county or municipality~~
236 ~~which established the agency, as provided by any county or~~
237 ~~municipal ordinance may exercise the power of eminent domain in~~
238 ~~the manner provided in chapters 73 and 74 and acts amendatory~~
239 ~~thereof or supplementary thereto, or it may exercise the power of~~
240 ~~eminent domain in the manner now or which may be hereafter~~

241 ~~provided by any other statutory provision for the exercise of the~~
242 ~~power of eminent domain. Property in unincorporated enclaves~~
243 ~~surrounded by the boundaries of a community redevelopment area~~
244 ~~may be acquired when it is determined necessary by the agency to~~
245 ~~accomplish the community redevelopment plan. Property already~~
246 ~~devoted to a public use may be acquired in like manner. However,~~
247 ~~no real property belonging to the United States, the state, or~~
248 ~~any political subdivision of the state may be acquired without~~
249 ~~its consent.~~
250 (2) Private property is condemnation-eligible if the
251 current condition of the property poses an existing threat to
252 public health or safety as evidenced by at least one of the
253 following factors:
254 (a) The physical condition, use, or occupancy of the
255 property constitutes a public nuisance or attractive nuisance;
256 (b) The property contains a structure which, because it is
257 dilapidated, unsanitary, unsafe, or vermin-infested, has been
258 designated by the agency responsible for enforcement of the
259 housing, building, or fire codes as unfit for human habitation or
260 use;
261 (c) The property contains a structure which, in its current
262 condition, is a fire hazard, or is otherwise dangerous to the
263 safety of persons or property;
264 (d) The property contains a structure from which the
265 utilities, plumbing, heating, sewerage, or other facilities have
266 been disconnected, destroyed, removed, or rendered ineffective so
267 that the property is unfit for its intended use;

268 (e) The property is a vacant or unimproved lot or parcel of
269 ground in a predominantly developed area, which by reason of
270 neglect or lack of maintenance, has become a place for
271 accumulation of trash and debris, or a haven for rodents or other
272 vermin;
273 (f) The property has been the subject of code violations
274 affecting health or safety that has not been substantially
275 rehabilitated within one year of receipt of notice to
276 rehabilitate from the appropriate code enforcement agency;
277 (g) The property, by reason of environmentally hazardous
278 conditions or solid waste pollution or contamination, poses a
279 direct threat to public health or safety.
280 (3) A county or municipality shall not exercise the power of
281 eminent domain conferred by this section unless the governing
282 body first adopts a resolution of taking containing specific
283 determinations or findings that:
284 (a) the public purpose of the taking is to eliminate
285 an existing threat to public health and safety;
286 (b) the property is condemnation-eligible as defined in
287 (2),including a specific reference to the factors applicable to
288 the property; and
289 (c) taking the property is reasonably necessary in
290 order to accomplish the public purpose.
291 (4) The city or county shall not adopt a resolution of
292 taking unless actual notice of the hearing at which the
293 resolution is considered was provided to the property owner and
294 to any business owner, including a lessee, who operates a

295 business located on the property at least 45 days prior to the
296 hearing.
297 (a) Property Owner Notice: Notice must be sent by
298 certified mail, return receipt requested, to the last known
299 address listed on the county ad valorem tax roll of each owner of
300 the property. Alternatively, the notice may be personally
301 delivered to each property owner. The return of the notice as
302 undeliverable by the postal authorities constitutes compliance
303 with this subsection. The condemning authority is not required
304 to give notice to a person who acquires title to the property
305 after the notice required by this subsection has been given.
306 (b) Business Owner Notice: Notice must be sent by
307 certified mail, return receipt requested, to the address of the
308 registered agent for the business located on the property to be
309 acquired, or if no agent is registered, by certified mail or
310 personal delivery to the address of the business located on the
311 property to be acquired. Notice to one owner of a multiple
312 ownership business constitutes notice to all business owners of
313 that business. The return of the notice as undeliverable by the
314 postal authorities constitutes compliance with this subsection.
315 The condemning authority is not required to give notice to a
316 person who acquires an interest in the business after the notice
317 required by this subsection has been given.
318 (c) At a minimum, the notices required by (a) and (b) shall
319 indicate:
320 1. That the city or county governing body will determine
321 whether to take the parcel under the Community Redevelopment Act

322 and will formally consider a resolution of taking at a public
323 hearing;
324 2. The statutory criteria for taking property under the
325 Community Redevelopment Act;
326 3. The specific conditions on the property that satisfy
327 the criteria for taking and that form the basis for taking the
328 property;
329 4. That the property will not be subject to taking if the
330 specific conditions that form the basis for the taking are
331 removed prior to the hearing;
332 5. The date, time, and location of the public hearing at
333 which the resolution of taking will be considered;
334 6. That the property or business owner(s) may file written
335 objections with the governing board prior to the public hearing
336 at which the resolution of taking is considered; and
337 7. That any interested party may appear and be heard at
338 the public hearing at which the resolution of taking is
339 considered.
340 (5) In accordance with chapter 73 and 74, if a property
341 owner challenges an attempt to acquire his or her property by
342 eminent domain under this section, the condemning authority must
343 prove by clear and convincing evidence in an evidentiary hearing
344 before the circuit court that:
345 (a) The public purpose of the taking is to eliminate
346 an existing threat to public health and safety;
347 (b) The property is condemnation-eligible as defined in
348 (2); and

349 (c) Taking the property is reasonably necessary in
350 order to accomplish the public purpose.
351
352 The circuit court shall determine whether the public purpose of
353 the taking is to eliminate an existing threat to public health
354 and safety, whether the property is condemnation-eligible as
355 defined in (2), and whether taking the property is reasonably
356 necessary in order to accomplish the public purpose. The circuit
357 court shall make these determinations without attaching a
358 presumption of correctness or deference to any determinations or
359 findings in the resolution of taking adopted by the condemning
360 authority.
361 (6) ~~(2)~~ In any proceeding to fix or assess compensation for
362 damages for the taking of property, or any interest therein,
363 through the exercise of the power of eminent domain or
364 condemnation, evidence or testimony bearing upon the following
365 matters shall be admissible and shall be considered in fixing
366 such compensation or damages in addition to evidence or testimony
367 otherwise admissible:
368 (a) Any use, condition, occupancy, or operation of such
369 property, which is unlawful or violative of, or subject to
370 elimination, abatement, prohibition, or correction under, any
371 law, ordinance, or regulatory measure of the state, county,
372 municipality, or other political subdivision, or any agency
373 thereof, in which such property is located, as being unsafe,
374 substandard, unsanitary, or otherwise contrary to the public
375 health, safety, morals, or welfare.

376 (b) The effect on the value of such property of any such
377 use, condition, occupancy, or operation or of the elimination,
378 abatement, prohibition, or correction of any such use, condition,
379 occupancy, or operation.
380 (7) ~~(3)~~ In any proceeding to fix or assess compensation for
381 damages for the taking of property, or any interest therein, the
382 foregoing testimony and evidence shall be admissible
383 notwithstanding that no action has been taken by any public body
384 or public officer toward the abatement, prohibition, elimination,
385 or correction of any such use, condition, occupancy, or
386 operation. Testimony or evidence that any public body or public
387 officer charged with the duty or authority so to do has rendered,
388 made, or issued any judgment, decree, determination, or order for
389 the abatement, prohibition, elimination, or correction of any
390 such use, condition, occupancy, or operation shall be admissible
391 and shall be prima facie evidence of the existence and character
392 of such use, condition, or operation.
393 Section 7. Subsection (3) is added to section 127.01,
394 Florida Statutes, to read:
395 127.01 Counties delegated power of eminent domain;
396 recreational purposes, issue of necessity of taking.--
397 (1)(a) Each county of the state is delegated authority
398 to exercise the right and power of eminent domain; that is, the
399 right to appropriate property, except state or federal, for any
400 county purpose. The absolute fee simple title to all property so
401 taken and acquired shall vest in such county unless the county
402 seeks to condemn a particular right or estate in such property.

403 (b) Each county is further authorized to exercise the
404 eminent domain power granted to the Department of Transportation
405 by s. 337.27(1), the transportation corridor protection
406 provisions of s. 337.273, and the right of entry onto property
407 pursuant to s. 337.274.
408 (2) However, no county has the right to condemn any
409 lands outside its own county boundaries for parks, playgrounds,
410 recreational centers, or other recreational purposes. In eminent
411 domain proceedings, a county's burden of showing reasonable
412 necessity for parks, playgrounds, recreational centers, or other
413 types of recreational purposes shall be the same as the burden in
414 other types of eminent domain proceedings.
415 (3) Each county shall strictly comply with the limitations
416 set forth in s. 73.013.
417 Section 8. Section 127.02, Florida Statutes, is amended
418 to read:
419 127.02 County commissioners may authorize acquirement of
420 property by eminent domain.--The board of county commissioners
421 may, by resolution, authorize the acquirement by eminent domain
422 of property, real or personal, for any county use or purpose
423 designated in such resolution, subject to the limitations set
424 forth in s. 73.013.
425 Section 9. Subsection (3) is added to section 166.401,
426 Florida Statutes, to read:
427 166.401 Right of eminent domain.--
428 (3) Each municipality shall strictly comply with the
429 limitations set forth in s. 73.013.

430 Section 10. Subsections (1), (9), and (10) of section
431 166.411, Florida Statutes, are amended to read:
432 166.411 Eminent domain; uses or purposes.--Municipalities
433 are authorized to exercise the power of eminent domain for the
434 following uses or purposes:
435 (1) For the proper and efficient carrying into effect of
436 any proposed scheme or plan of drainage, ditching, grading,
437 filling, or other public improvement deemed necessary or
438 expedient for the preservation of the public health, or for other
439 good reason connected in anywise with the public welfare or the
440 interests of the municipality and the people thereof subject to
441 the limitations set forth in s. 73.013;
442 (9) For laying wires and conduits underground; and
443 (10) For city buildings, waterworks, ponds, and other
444 municipal purposes which shall be coextensive with the powers of
445 the municipality exercising the right of eminent domain subject
446 to the limitations set forth in s. 73.013.~~; and~~
447 Section 11. Section 73.013, Florida Statutes, is created
448 to read:
449 73.013 Conveyance of property taken by eminent domain. --
450 Notwithstanding any other provision of law, including any
451 charter provision, ordinance, statute, or special law, the state,
452 any political subdivision as defined in s. 1.01(8), or any other
453 entity to which the power of eminent domain is delegated may not
454 exercise the power of eminent domain to take private property
455 without the owner's consent and convey ownership or control of
456 such property to another person as defined in s. 1.01(3), except

457 that ownership or control of private property taken by eminent
458 domain may be conveyed to:
459 (1) A person for use in providing common carrier services
460 or systems;
461 (2) A person for use as a road or other right of way or
462 means open to the public for transportation, whether at no charge
463 or by toll;
464 (3) A person that is a public or private utility for use in
465 providing electricity services or systems, natural or
466 manufactured gas services or systems, water and wastewater
467 services or systems, stormwater or runoff services or systems,
468 sewer services or systems, pipeline facilities, telephone
469 services or systems, or similar services or systems;
470 (4) A person for use in providing public infrastructure; or
471 (5) A person that occupies, pursuant to a lease, an
472 incidental part of public property or a public facility, such as
473 a retail establishment on the ground floor of a public building;
474 or
475 (6) A person if the property was taken pursuant to s.
476 163.375.
477 Section 12. This act shall take effect July 1, 2006 and
478 shall apply to all condemnation proceedings in which a petition
479 of taking is filed pursuant to chapter 73 on or after that date.