Select Committee to Protect Private Property Rights

Monday March 13, 2006
3:15 p.m.—5:15 p.m.
Morris Hall

REVISED

Allan G. Bense
Speaker

Marco Rubio
Chair

HB 1567

SELECT COMMITTEE TO PROTECT PRIVATE PROPERTY RIGHTS
DRAFT STAFF ANALYSIS OF HB 1567
March 10, 2006

INTRODUCTION

On June 23, 2005, the United States Supreme Court issued its decision in the case of *Kelo v. City of New London*[1], concluding that the U.S. Constitution does not prohibit the City of New London from taking private property by eminent domain for the public purpose of economic development. Even though the Court's decision approved *Kelo*-type takings under the U.S. Constitution, the decision does not restrict the State of Florida from prohibiting takings for economic development or prohibiting transfers of property taken by eminent domain to private parties.

On June 24, 2005, House Speaker Allen Bense announced the creation of the Select Committee to Protect Private Property Rights chaired by Representative Marco Rubio. The Select Committee was tasked with reviewing Florida law in an effort to identify areas of ambiguity and recommend appropriate changes to ensure appropriate protections of property rights.

The fundamental issue raised by the *Kelo* decision may be summarized as follows: Under Florida law, is economic development -- which may include, but is not limited to, creating jobs and enhancing the tax base -- a valid public purpose for which private property may be taken and transferred to another private entity? In short, the Florida Constitution, Florida Statutes, and Florida Supreme Court decisions do not explicitly prohibit takings of private property for the purpose of economic development. Therefore, unless the Florida Constitution or statutes are amended, the question of whether a city or a county may take property for purposes of economic development will remain unanswered until directly addressed by the Florida Supreme Court.

While the case law and statutes do not expressly authorize takings for economic development purposes, private property rights advocates assert that current statutes authorizing the taking of private property for the public purpose of eliminating and preventing the recurrence of slum or blight conditions within a geographical area are being used to take property that is not genuinely blighted for economic development purposes. Much of the concern expressed by property rights advocates centers around the application of the statutory definition of "blighted area" and what many perceive as vague and inappropriate criteria in the definition. On the other hand, representatives of local government assert that the statutory criteria for slum and blight are sufficiently narrow and that the power of eminent domain is rarely exercised in the community redevelopment context.

This bill addresses takings of private property outside the redevelopment context for economic development purposes by prohibiting the transfer of taken property to private parties unless the transfer qualifies as one of the listed exceptions to the prohibition. The bill significantly limits eminent domain authority in the redevelopment context by authorizing the taking of property only if conditions on the property pose an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain; requiring enhanced notice to property and business owners in a redevelopment area; increasing the burden of proof on the local government at the time of taking property in a redevelopment area; and requiring a circuit court reviewing a proposed taking of property located in a redevelopment area to make certain

[1] 125 S.Ct. 2655 (2005).

determinations without applying a presumption of correctness or extending judicial deference to the local government determinations regarding the taking. The bill does not, however, alter the manner in which community redevelopment areas are created, funded, modified, or otherwise governed.

BILL ANALYSIS SUMMARY

This bill eliminates authority to take property for the purpose of eliminating slum or blight conditions in a geographical area and to enhance the tax base in community redevelopment areas, but allows takings of a parcel of property in a community redevelopment area if taking the property is reasonably necessary to eliminate an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain. The bill requires local governments to exercise the power of eminent domain under the Community Redevelopment Act and prohibits delegation of that power to a community redevelopment agency. The bill requires enhanced property owner notice prior to consideration of any resolution finding slum or blight. Enhanced notice must also be provided 45 days prior to consideration of a county or city resolution to take a specific parcel of property, and the notice must indicate that the property will not be subject to taking if the conditions that pose a threat to public health or public safety are removed prior to the public hearing at which the resolution is considered.

If a property owner challenges an attempt to acquire his or her property by eminent domain under the Community Redevelopment Act, 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 or public safety that is likely to continue absent the exercise of eminent domain, 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 or public safety that is likely to continue absent the exercise of eminent domain, whether the property is condemnation-eligible, and whether taking the property is reasonably necessary in order to accomplish the public purpose. The circuit court must make these determinations without attaching a presumption of correctness or extending judicial deference to any determinations or findings in the resolution of taking adopted by the condemning authority.

The bill also prohibits transfers of taken property to another private entity with specified exceptions, which include transfers to common carriers, public utilities, private utilities, private entities that occupy an incidental part of a public facility for the purpose of providing goods or services to the public, and transfers of property taken under the Community Redevelopment Act to eliminate a threat to public health or public safety that is likely to continue absent the exercise of eminent domain. In addition, the bill allows the transfer of taken property to a private entity for any use if the property is retained by the condemning authority, or a private party to whom property was transferred under one of the exceptions, for 5 years after acquiring title to the property.

This bill does not prohibit or limit the ability of local governments to take private property to abate a public nuisance inside or outside of a community redevelopment area. Therefore, cities and counties retain authority to take property to abate or eliminate any public nuisance if the taking is reasonably necessary. However, if property is taken to abate a nuisance on property that does not pose a threat to public health or public safety that is likely to continue absent the exercise of eminent domain, 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.

City and county power to take property by eminent domain for a public purpose is otherwise unchanged; however, cities and counties are required to strictly comply with the prohibitions against transfers of taken property to private entities as provided in new s. 73.013, F.S.

CURRENT SITUATION

General Principles of Eminent Domain Law

"Eminent domain" may be described as the fundamental power of the sovereign to take private property for a public use without the owner's consent. The power of eminent domain is absolute, except as limited by the Federal and State Constitutions, and all private property is subject to the superior power of the government to take private property by eminent domain.

The U.S. Constitution places two general constraints on the use of eminent domain: The taking must be for a "public use" and government must pay the owner "just compensation" for the taken property.[2] Even though the U.S. Constitution requires private property to be taken for a "public use", the U.S. Supreme Court long ago rejected any requirement that condemned property be put into use for the general public. Instead, the Court embraced what the Court characterizes as a broader and more natural interpretation of public use as "public purpose".

As long ago as 1905, the Court upheld state statutes that resulted in the transfer of taken property from one private owner to another for a legislatively declared public purpose. Prior to *Kelo*, the two most significant cases regarding this type of taking were *Berman v. Parker*[3] and *Hawaii Housing Authority v. Midkiff*[4].

In 1954, the Court issued a decision in the *Berman* case upholding a redevelopment plan targeting a blighted area. Under the Plan, part of the taken property would be leased or sold to private parties for redevelopment. A property owner challenged the taking, arguing that his property was not blighted and that the creation of a "better balanced, more attractive community" was not a valid public use. The Court held that eliminating slum or blight conditions in a geographic area is a public prupose and that it is permissible for government to take a parcel of private property in the area even if that particular parcel is not slum or blighted. Perhaps the most important aspect of the decision is the Court's conclusion that "when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive."

In 1984, the Court decided the *Midkiff* case in which private property owners challenged a Hawaii statute under which private properties were taken and transferred to lessees of those properties for the public purpose of reducing concentration of land ownership. Reaffirming the *Berman* decision's deferential approach to legislative judgments, the court unanimously upheld the statute. The Court concluded that a taking should be upheld as long as it is "rationally related to a conceivable public purpose."

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[2] U.S. Const. amend. V.
[3] 348 U.S. 326 (1954).
[4] 467 U.S. 229 (1984).

Kelo v. City of New London

In 1990, a state agency designated the City of New London a "distressed municipality." The City was not, however, designated as a blighted or slum area. Thereafter, state and local officials targeted the area for economic revitalization, and a development plan was drafted. In addition to creating a large number of jobs and increasing the City's tax base, the plan was designed to make the City more attractive and to create leisure and recreational opportunities. While most of the property owners in the development area negotiated the sale of their property, negotiations with 7 property owners were unsuccessful. The property owners who did not wish to negotiate challenged the taking arguing that the use of eminent domain was unconstitutional because economic development without a determination of blight is not a valid public purpose.

In a 4-3 decision, the Supreme Court of Connecticut ruled that the takings were authorized by Connecticut's municipal development statute, which declares that the taking of land as part of an economic development project is a "public use" and in the "public interest". The case was appealed to the U.S. Supreme Court. The specific question before the Court was whether the City's taking of non-blighted private property for the purpose of economic development, in compliance with a state statute, satisfied the "public use" requirement of the U.S. Constitution even though the property would be transferred to other private entities for seemingly private uses.

The Court concluded that because the City's development plan "unquestionably" serves a public purpose, the takings satisfy the public use requirement of the U.S. Constitution. The Court immediately acknowledged, however, that a governmental entity may not take the private property of party A for the sole purpose of transferring the property to another private party B, even though A is paid just compensation. The court also noted that a one-to-one transfer of private property for the purpose of putting the property to more productive use, executed outside the confines of an integrated development plan, was not at issue in this case. The court concluded that, while such an unusual exercise of government power "would certainly raise a suspicion that a private purpose was afoot" the issue was not presented in the *Kelo* case and would not be addressed by the Court until directly presented in a future case.

The Court explicitly stated that the City could not take property simply to confer a private benefit to a "particular" private party. The Court also acknowledged that a governmental entity may not take property under the mere "pretext" of a public purpose, when its actual purpose was to bestow a private benefit. In *Kelo*, the Court noted that the takings would be executed pursuant to a "carefully considered" development plan; therefore, the property was not being taken under a mere pretext of public purpose.

Unlike more traditional public use takings, i.e., roads, schools, public parks, the Court recognized that the private lessees of the condemned property in New London would not be required to make the property or their services available to all comers. However, the Court noted that over the last hundred years, it has repeatedly rejected a literal requirement that condemned property be put into use for the general public and embraced the broader and more natural interpretation of public use as public purpose. The Court explained the erosion of "use by the public" as the definition of "public use" by pointing to the difficulty in administering the test and the impracticality of the test "given the diverse and always evolving needs of society."

The Court noted that, without exception, its decisions have "defined [the concept of public purpose] broadly, reflecting our longstanding policy of deference to legislative judgments in this field." The Court pointed out that its earliest cases in particular embodied a strong theme of

federalism, emphasizing the "great respect" the Court "owe[s] state legislatures and state courts in discerning local public needs." For more than a century, the Court said, its public use jurisprudence has "wisely eschewed" rigid formulas and intrusive scrutiny in favor of affording legislatures broad latitude in determining what public needs justify the use of the takings power.

Moreover, citing the *Berman* redevelopment case, the Court reasoned that promoting economic development is a traditional function of government and that "[t]here is... no principled way of distinguishing economic development from the other public purposes that we have recognized."

The Court also noted that a determination by municipal officials, acting pursuant to state authorization, that city-planned economic redevelopment is necessary "is entitled to [the Court's] deference." The city had, the Court recognized, carefully formulated a development plan that it believes will provide appreciable benefits to the community, including, but not limited to, new jobs and increased tax revenue.

As with many eminent domain cases, the holding of the *Kelo* case is not absolutely clear. However, the Court explicitly concluded that the City's plan unquestionably serves a public purpose and that taking private property under the facts presented in the case is permissible under the public use requirement of the U.S. Constitution.

It should be emphasized that the *Kelo* decision does not in any way restrict the State of Florida from prohibiting takings for purposes similar to those in *Kelo*, or for any other purpose for that matter. The Court emphasized that "nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose 'public use' requirements that are stricter than the federal baseline." Every state is entitled to interpret the public purpose provisions of its own state constitution in a manner that more narrowly interprets the public purpose requirement. In short, Florida may prohibit takings that are allowed under the U.S. Constitution, but may not allow takings that are prohibited.

Florida Eminent Domain Law

The Florida Constitution addresses eminent domain in section 6, Article X, as follows:

> (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.

The Florida Constitution prohibits takings of private property unless the taking is for a "public purpose" and the property owner is paid "full compensation." The Florida Supreme Court recognized long ago that the taking of private property is one of the most harsh proceedings known to the law, that "private ownership and possession of property was one of the great rights preserved in our constitution and for which our forefathers fought and died; it must be jealously preserved within the reasonable limits prescribed by law."[5]

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[5] *Peavy-Wilson Lumber Co. v. Brevard County*, 159 Fla. 311, 31 So.2d 483 (Fla. 1947).
Baycol, Inc. v. Downtown Development Authority of City of Fort Lauderdale, 315 So.2d 451 (Fla. 1975).

Generally speaking, in order for a taking to be valid in Florida, the condemning authority must:

1. Possess authority to exercise the power of eminent domain;
2. Demonstrate that a taking of private property is pursued for a valid public purpose and that all statutory requirements have been fulfilled;
3. Offer evidence showing that the taking is reasonably, not absolutely, necessary to accomplish the public purpose of the taking; and
4. Pay the property owner full compensation as determined by a 12-member jury.

Each of these four requirements is more fully discussed below.

1. The condemning authority must be authorized to exercise the power of eminent domain.

In order to take private property by eminent domain, an entity must possess statutory or constitutional authority to exercise the power of eminent domain. With the exception of cities and possibly charter counties, an entity does not have authority to exercise the power of eminent domain unless authorized to do so by the Legislature. If the Legislature delegates authority to exercise the power of eminent domain, procedures and requirements imposed by statute are mandatory.

a. Constitutional Delegation of Home Rule Powers to Cities and Counties

The municipal home rule provision in Florida's Constitution authorizes cities to "exercise any power for municipal purposes except as otherwise provided by law".[6] In 1992, the Florida Supreme Court concluded that a statutory grant of authority is not necessary in order for a city to exercise the power of eminent domain.[7] However, because cities have all powers "except as otherwise provided by law", the Legislature may expressly prohibit cities from exercising the power of eminent domain for particular purposes. Rather than prohibiting municipal exercise of the power of eminent domain, the Legislature has granted municipalities broad statutory powers of eminent domain, including the power to take private property for "good reason connected in anywise with the public welfare of the interests of the municipality and the people thereof" and for "municipal purposes".[8]

The Florida Constitution grants charter counties "all powers of local self government not inconsistent with general law" and grants noncharter counties "such power of self-government as is provided by general law."[9] Based upon the broad constitutional grant of authority, it appears that charter counties possess the power of eminent domain except as expressly prohibited by general law. However, the Florida Supreme Court has stated, in what appears to be dicta, that counties may not have the power of eminent domain unless specifically authorized by the Legislature.[10] Even if charter counties do not possess constitutional home rule power to take property, the Legislature has granted broad statutory powers to all counties, including the power to take property for "any county purpose".[11]

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[6] Art. VIII, § 2, Fla. Const.
[7] *City of Ocala v. Nye*, 608 So.2d 15 (Fla. 1992).
[8] § 166.411, F.S.
[9] Art. VIII, § 1, Fla. Const.
[10] *City of Ocala v. Nye*, 608 So.2d 15 (Fla. 1992).
[11] § 127.01, F.S.

It should be noted there is no evidence indicating that a city or county in Florida has exercised the power of eminent domain under constitutional home rule powers for the declared purpose of economic development.

2. A condemning authority must demonstrate that a taking is pursued for a valid public purpose and that any statutory requirements have been fulfilled.

a. What is a valid public purpose for which property may be taken by eminent domain under Florida law?

The second requirement for a valid taking is that the property must be taken for a public purpose. The fundamental question is this: what qualifies as a public purpose in Florida? There is not a definitive answer to the question for at least three reasons. First, the determination of whether a taking serves a valid public purpose depends upon the facts of each case. Second, the concept of public purpose has evolved in Florida case law over the past century from a narrowly defined and applied concept to broadly defined and applied concept. Third, the Florida Supreme Court has equated the public purpose necessary to support the issuance of public bonds with the public purpose necessary to support a taking of private property by eminent domain. However, as with eminent domain cases, recent bond validation cases that appear to apply a narrow interpretation of the public purpose doctrine while early cases apply a more narrow interpretation of the doctrine.

The Florida Courts have long held that the public purpose requirement in the Florida Constitution does not require private property taken by eminent domain to be "used by the public" if the court determines that the taking accomplishes a valid public purpose. However, Florida law does <u>not</u> allow government to take property from private owner A and transfer it to private owner B for "the <u>sole</u> purpose of making such property available to private enterprises for private use."[12]

In order to demonstrate that public purpose is not a clearly defined concept, the following Florida Supreme Court decisions illustrate the fact that some decisions apply the public purpose concept narrowly, while other cases apply the concept broadly.

The first case illustrating the narrow view is the 1947 case of *Peavy-Wilson Lumber Co. v. Brevard County.*[13] In the *Peavy* case, the Court concluded that the power of eminent domain should be limited to taking property for "something basically essential" such as roads, schools, drainage projects, parks, and playgrounds. However, even the *Peavy* Court recognized that the concept is not static and advances with caution to meet society's needs in conformity with the constitution.

In 1975, the court considered the case of *Baycol v. Downtown Development Authority of City of Ft. Lauderdale*[14], in which a downtown development authority attempted to condemn private property for a parking garage. The Supreme Court concluded that there was not a public need for extra parking facilities, which was cited as the <u>sole</u> basis for the taking, without the shopping center that would be constructed atop the parking garage. The development authority did not assert that economic development -- job creation or tax base enhancement -- was the public

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[12] *State v. Miami Beach Redevelopment Agency*, 392 So.2d 875 (Fla. 1980); *State ex rel. Ervin v. Cotney,* 104 So.2d 346 (Fla. 1958).
[13] *Peavy-Wilson Lumber Co. v. Brevard County*, 159 Fla. 311, 31 So.2d 483 (Fla. 1947).
[14] *Baycol, Inc. v. Downtown Development Authority of City of Fort Lauderdale*, 315 So.2d 451 (Fla. 1975).

purpose for condemning the property. Therefore, the *Baycol* court did not explicitly rule on whether a taking for the declared public purpose of economic development is permissible under the Florida Constitution. The *Baycol* court declared, however, that private property may not be taken by eminent domain for a predominantly private use. To date, the Court has not established a "test" for determining when a public purpose predominates over the private interest. Each case is viewed on the individual facts presented to the court and based upon the public purpose asserted by the condemning authority. Therefore, it is unknown whether the Florida courts would consider a *Kelo*-type taking as serving a predominately public or private use.

In 1977, the court considered the case of *Deseret Ranches of Florida v. Bowman,*[15] and upheld a state statute that permitted one private property owner to exercise the power of eminent domain for the purpose of obtaining an easement of necessity over the property of another private landowner. The court reasoned that the "the statute's purpose is predominantly public and the benefit to the landowner is incidental to the public purpose....Useful land becomes more scarce in proportion to the population increase, and the problem in this state becomes greater as tourism, commerce and the need for housing and agricultural goods grow. By its application to shut-off lands to be used for housing, agriculture, timber production and stock raising, the statute is designed to fill these needs. There is then a clear public purpose in providing means of access to such lands so that they may be utilized in the enumerated ways." It has been asserted that the court's decision in *Deseret* "utterly complicates what some thought might have otherwise been a straightforward argument that *Baycol* prohibits *Kelo*-style economic development takings. In *Deseret Ranches*, it was clear that all the direct benefits of the taking were private, and any public benefits were purely incidental. Yet the 'sensible utilization of land' was, for the Court, of such a dominant public purpose as to allow that rather lopsided outcome to be characterized as consistent with *Baycol*. One does not have to possess much imagination to think of how economic development takings could be portrayed as also serving the predominant public purpose of 'sensible utilization of land.'"[16]

In 1988, the court continued to broaden the application of the public purpose doctrine in *Fl. Dep't of Transp. v Fortune Federal Savings and Loan Ass'n,*[17] concluding that "[t]he term 'public purpose' does not mean simply that the land is used for a specific public function, i.e. a road or other right of way. Rather, the concept of public purpose must be read more broadly to include projects which benefit the state in a tangible, foreseeable way."

There is also a large body of case law addressing the "public purpose" necessary to support the issuance of public bonds or the spending of public funds. When the Florida Supreme Court upheld the Community Redevelopment Act in 1980[18], it equated the public purpose necessary to support the issuance of public bonds with the public purpose necessary to support a taking of private property by eminent domain. At least since 1968, the Court has broadly applied the public purpose concept in bond validation cases. However, there are early bond validation cases that appear to apply a narrow view of the public purpose doctrine.

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[15] 349 So.2d 155 (Fla. 1977).
[16] Professor J. B. Ruhl, *Property Rights at Risk? Eminent Domain Law in Florida After The U.S. Supreme Court Decision In Kelo v. City of New London*, p. 11 (James Madison Institute Backgrounder, Number 46, Sept. 2005).
[17] *Dep't of Transp. v. Fortune Federal Sav. and Loan Ass'n*, 532 So.2d 1267 (Fla. 1988).
[18] *State v. Miami Beach Redevelopment Agency*, 392 So.2d 875 (Fla. 1980).

b. Determinations of public purpose

The Legislature may authorize an entity to take property and, at the same time, declare that the taking serves a particular public purpose. However, the ultimate question of the validity of a legislatively declared public purpose is resolved by the courts.[19] Nonetheless, the courts' role in determining whether the power of eminent domain is exercised in furtherance of a legislatively declared public purpose is narrow.[20] In order to invalidate a statute that has a stated public purpose, the party challenging the statute must show that the stated purpose is arbitrary and capricious and so clearly erroneous as to be beyond the power of the legislature.[21] The threshold question for the courts is not whether the proposed use is a public one, but whether the Legislature might reasonably consider it a public one.[22]

While the question of whether the use for which private property is taken is a public use is ultimately a judicial question, where the Legislature declares a particular use to be a public use, the presumption is in favor of its declaration, and the courts will not interfere unless the use is clearly and manifestly of a private character.[23]

Similarly, when a local government's governing body determines that a taking of private property serves a statutory public purpose, the determination is entitled to judicial deference and is presumed valid and correct unless patently erroneous. Unless a condemning authority acts illegally, in bad faith, or abuses its discretion, its selection of land for condemnation will not be overruled by a court; a court is not authorized to substitute its judgment for that of a governmental body acting within the scope of its lawful authority.[24] The court will sustain the local government's determination that a taking serves the statutory public purpose as long as it is "fairly debatable".[25]

3. A condemning authority must offer evidence showing that the taking is reasonably, not absolutely, necessary to accomplish the public purpose of the taking.

If a governmental entity is authorized to take property for a valid public purpose, the entity must show that taking the property is reasonably, not absolutely, necessary in order to accomplish the declared public purpose. First, the condemning authority must show some evidence of a reasonable necessity for the taking. Once a reasonable necessity is shown, the exercise of the condemning authority's discretion will not be disturbed in the absence of illegality, bad faith, or gross abuse of discretion.[26]

4. A condemning authority must pay the property owner full compensation as determined by a 12-member jury.

If a court finds that a governmental entity is authorized to take private property for a valid public purpose, and that the entity has presented evidence showing that the property is reasonably

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[19] *Dep't of Transp. v. Fortune Federal Sav. and Loan Ass'n*, 532 So.2d 1267 (Fla. 1988).
[20] *Id.*
[21] *Id.*
[22] *Wilton v. St. Johns County*, 98 Fla. 26, 123 So. 527 (Fla. 1929).
[23] *Spafford v. Brevard County*, 92 Fla. 617, 110 So. 451 (Fla. 1926).
[24] *Canal Authority v. Miller*, 243 So.2d 131 (Fla. 1970).
[25] *Panama City Beach Community Redevelopment Agency v. State*, 831 So.2d 662 (Fla. 2002); *JFR Inv. v. Delray Beach Community Redevelopment Agency*, 652 So.2d 1261 (Fla. 4th DCA 1995).
[26] *City of Jacksonville v. Griffin*, 346 So.2d 988 (Fla. 1977).

necessary to accomplish the declared public purpose, the property owner must be paid full compensation for the taken property. Key aspects of the constitutional requirement for payment of full compensation may be summarized as follows:

- A property owner is entitled to full and just compensation.
- A twelve-member jury determines the amount of compensation.
- Determining the amount of just compensation is a judicial function that cannot be performed by the Legislature directly or indirectly.
- The Legislature may create an obligation to pay more than what the courts might consider full compensation.
- Generally, the just and full compensation due is the fair market value of the property at the time of the taking.
- A condemning authority must pay reasonable attorney's fees and costs.
- A landowner is entitled to compensation for the reasonable cost of moving personal property, including impact fees.
- Business damages are available only in the case of partial takings, not takings of a full parcel.

Impact of the *Kelo* Decision on Florida Law

The question of whether the *Kelo* decision impacts takings in Florida continues to be the subject of debate. Arguably, the *Kelo* decision has no direct impact on Florida's eminent domain law. Although the decision applies in Florida to the extent that a *Kelo*-type taking may not violate the U.S. Constitution, the decision does not mean that a *Kelo*-type taking is allowed under the Florida Constitution. Whether the Florida Constitution allows a *Kelo*-type taking must be decided by the Florida Supreme Court, not the U.S. Supreme Court. What remains uncertain is whether the *Kelo* decision will have an indirect impact on the Florida courts' interpretation and application of eminent domain law in any future attempts by cities or counties to take private property for economic development purposes.

Determining whether a *Kelo*-type taking may occur in Florida must be considered in two contexts:

1. First, whether a city or county taking of private property in a non-blighted or non-slum area for the purpose of economic development is permitted outside the context of Florida's Community Redevelopment Act; and

2. Second, whether *Kelo*-type takings are now occurring under the Community Redevelopment Act.

Kelo-type takings outside the Community Redevelopment Act context

Unlike Connecticut, the Florida Legislature has not enacted a statute that expressly authorizes takings of private property in non-blighted or non-slum areas for the purpose of economic development. Therefore, state agencies are prohibited from taking property for economic development purposes. Based on the absence of a statutory delegation of authority, it may appear that a *Kelo*-type taking cannot occur under any circumstances. As previously discussed, however, cities have and charter counties may have constitutional home rule power to take property by eminent domain for economic development purposes without an explicit authorization from the Legislature. In addition, current statutes grant broad home rule authority

to cities and counties, including the authority to exercise the power of eminent domain for any municipal or county purpose, and declare that economic development is a public purpose for which cities and counties may expend public funds. It could be argued that, since the Legislature has declared economic development a public purpose for spending public funds[27], economic development may be considered a public purpose for which cities and counties may exercise the power of eminent domain.

Based upon the uncertainty created by the current case law and the lack of case law directly on point, it is not possible to determine how the Florida courts will view takings of private property for economic development purposes in Florida if directly presented with the issue. What is certain is that there is not an explicit statutory or constitutional provision that prohibits cities or counties from taking private property in non-blighted or non-slum areas for purposes of increasing jobs, increasing the tax base, maximizing efficient use of property, or other general economic development purposes. Further, the Florida Supreme Court has never considered a case involving a taking of private property in non-blighted or non-slum areas by a city or county asserting home rule powers for the declared public purpose of economic development.

Therefore, the decision as to whether *Kelo*-type takings are permissible in Florida lies squarely in the judiciary, and will remain so unless the constitution or statutes are amended to restrict takings for economic development purposes or restrict transfers of taken property to private entities.

Takings in the context of the Community Redevelopment Act

After the *Kelo* decision was issued, the media and other interested parties focused primarily on Florida's Community Redevelopment Act (Act), alleging that abuses of the Act are occurring throughout Florida. However, the *Kelo* decision does not have a direct impact on takings in the redevelopment context due to the fact that the property at issue in *Kelo* was not blighted or taken under a "redevelopment" statute.

In 1980, the Florida Supreme Court upheld Florida's Community Redevelopment Act in its entirety. The Act authorizes the use of eminent domain for acquisition and clearance of private property for the public purpose of eliminating and preventing the recurrence of slum or blight conditions in a geographic area. The Act also authorizes "substantial private and commercial uses of the property after redevelopment."[28]

The Act imposes requirements that must be satisfied by a county or city that wishes to create a redevelopment agency, declare redevelopment areas, or issue revenue bonds to finance projects within these areas. Under the Act, a county or city may not exercise community redevelopment authority, including the power of eminent domain, until the county or city satisfies the statutory requirements. Those requirements include adoption of a resolution, supported by data and analysis, which makes a legislative finding that the conditions in the area meet the criteria of a "slum area" or "blighted area" as defined in statute,[29] and that the rehabilitation, conservation, or redevelopment of the area is necessary in the interest of the public health, safety, morals, or welfare of the residents of the county or city.[30]

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[27] ss. 125.045 and 166.021, F.S.
[28] *State v. Miami Beach Redevelopment Agency*, 392 So.2d 875 (Fla. 1980).
[29] § 163.355, F.S.
[30] § 163.355, F.S.

The Community Redevelopment Act does not specifically authorize takings for "economic development" purposes; rather, the Act authorizes the taking of property within a blighted or slum area for the public purpose of eliminating and preventing slum and blight conditions, and permits the transfer of taken property to private entities for redevelopment in order to accomplish that public purpose. Private property rights advocates assert that the Act is being used to take areas of property that are not genuinely blighted for purely economic development purposes. Much of the concern expressed by property rights advocates centers around the application of the statutory definition of "blighted area," and what many perceive as the vague and inappropriate criteria in the definition.

Soon after the *Kelo* decision was issued, an Order of Taking was entered by the Circuit Court in Volusia County in a case involving takings of private property on the Daytona Beach Boardwalk, which is located within a community redevelopment area. The Order of Taking cites extensively to the *Kelo* decision, as well as to Florida judicial decisions, to uphold the takings in the case. Citing the *Kelo* decision, the circuit court opined that "[w]hen a taking serves a public purpose, the fact that the property ultimately is transferred to a private owner and that it confers a private benefits on others does not render the taking unconstitutional. The public use clause would be violated only if the taking were for purely private purposes or if the alleged public purpose were merely pretextual."[31]

Community Redevelopment Act issues addressed in case law

A large body of case law exists regarding the exercise of eminent domain under the Community Redevelopment Act, which includes the following significant judicial conclusions:

- A community redevelopment agency is not required to prove that the same level of blight exists when it seeks to condemn property as was present when the redevelopment plan was initially adopted.[32]
- Designations of blight or slum do not expire after a given period of time; therefore, property located within a redevelopment area is subject to taking for an indefinite period of time.[33]
- If a public purpose and reasonable necessity exists for the taking of property for slum or blight clearance, the fact that a landowner has begun to develop the property in accordance with the redevelopment plan does not give the owner an option to retain and develop the property unless approved by the redevelopment agency.[34]
- The general characteristics of a slum or blighted geographic area control whether property within the entire area is subject to taking, not the condition of an individual parcel.[35] Therefore, a parcel of property may be subject to taking by eminent domain if

[31] *City of Daytona Beach v. Mathas*, 2004-31846-CICI (Fla. Cir. Ct. Aug. 19, 2005).
[32] *Batmasian v. Boca Raton Community Redevelopment Agency*, 580 So.2d 199 (Fla. 4th DCA 1991); *City of Daytona Beach v. Mathas*, 2004-31846-CICI (Fla. Cir. Ct. Aug. 19, 2005).
[33] *Rukab v. City of Jacksonville Beach*, 866 So.2d 773 (Fla. 1st DCA 2004); *Batmasian v. Boca Raton Community Redevelopment Agency*, 580 So.2d 199 (Fla. 4th DCA 1991); *City of Jacksonville v. Griffin*, 346 So.2d 988 (Fla. 1977).
[34] *Post v. Dade County*, 467 So.2d 758 (Fla. 3rd DCA 1985); rev. den. *Post v. Dade County*, 479 So.2d 118 (Fla. 1985).
[35] *Berman v. Parker*, 348 U.S. 26 (1954); *State v. Miami Beach Redevelopment Agency*, 392 So.2d 875 (Fla. 1980); *Post v. Dade County*, 467 So.2d 758 (Fla. 3rd DCA 1985); rev. den. *Post v. Dade County*, 479 So.2d 118 (Fla. 1985); *Grubstein v. Urban Renewal Agency of City of Tampa*, 115 So.2d 745 (Fla. 1959).

the parcel is located in an area designated as slum or blighted even if the parcel itself is not in a slum or blighted condition.

Summary of Key Points

The following may be considered a summary of the key aspects of the preceding discussion of the law:

- The decision as to whether a taking for economic development purposes is permissible in Florida lies squarely in the judiciary, and will remain so unless the constitution or statutes are amended to restrict such takings.
- The *Kelo* decision did not directly effect the fundamental principles of Florida's eminent domain law; however, for the first time, the U.S. Supreme Court approved, under the U.S. Constitution, a taking of private property in a non-blighted or non-slum area and subsequent transfer to private parties for the purpose of economic development.
- Whether the *Kelo* decision will have an indirect impact on the Florida courts' interpretation and application of the law in a future attempt by cities or counties to take private property for economic development purposes is unknown.
- There is not a Florida statute that explicitly prohibits the taking of private property for economic development purposes; therefore, cities and counties appear to have the underlying authority to initiate a taking for economic development purposes under their constitutional and statutory home rule power.
- The Florida Supreme Court has not considered a case involving a taking for the declared public purpose of economic development. Therefore, whether the Court will uphold or prohibit such takings in the future is unknown.
- The Florida Supreme Court has upheld the Community Redevelopment Act, concluding that the elimination and prevention of slum and blight serves a public purpose and that the public purpose is not invalidated by the substantial involvement of private interests in redevelopment.
- The Community Redevelopment Act includes a broad definition of "blighted area," which may permit the taking of an individual parcel of property that does not appear to be blighted. Private property rights advocates claim that under the current definition of "blight," *Kelo*-type takings are occurring in Florida.
- The League of Cities and the Community Redevelopment Association assert that eminent domain is typically a last resort to complete the land assembly process. However, they predict that, without the power of eminent domain, "CRAs will have much difficulty in assembling land especially where many landowners are involved".

Community Redevelopment Act Generally

The Community Redevelopment Act of 1969, Ch. 163, Part II, F.S. (Act), provides a mechanism to eliminate and prevent the recurrence of slum or blighted areas, "which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state." The Act finds and declares that the powers conferred by the Act, including the power of eminent domain, are for public uses and purposes for which public money may be expended and the power of eminent domain exercised. In short, the Act declares that eliminating and preventing the recurrence of slum or blight conditions is a valid public purpose for which property may be taken by eminent domain.

The Act authorizes counties and cities to exercise the community redevelopment powers under the Act if the governing body first adopts a "finding of necessity" resolution finding that conditions in the area meet the criteria for a "slum area" or "blighted area" under the Act. The definition has undergone revisions over the years whereby the criteria were made more general in order to allow non-traditional "slum" and "blighted" areas to be eligible for participation. Section 163.340, F.S., defines "slum area" and "blighted area" as follows:

> (7) "Slum area" means an area having physical or economic conditions conducive to disease, infant mortality, juvenile delinquency, poverty, or crime because there is a predominance of buildings or improvements, whether residential or nonresidential, which are impaired by reason of dilapidation, deterioration, age, or obsolescence, and exhibiting one or more of the following factors:
> (a) Inadequate provision for ventilation, light, air, sanitation, or open spaces;
> (b) High density of population, compared to the population density of adjacent areas within the county or municipality; and overcrowding, as indicated by government-maintained statistics or other studies and the requirements of the Florida Building Code; or
> (c) The existence of conditions that endanger life or property by fire or other causes.
>
> (8) "Blighted area" means an area in which there are a substantial number of deteriorated, or deteriorating structures, in which conditions, as indicated by government-maintained statistics or other studies, are leading to economic distress or endanger life or property, and in which two or more of the following factors are present:
> (a) Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities;
> (b) Aggregate assessed values of real property in the area for ad valorem tax purposes have failed to show any appreciable increase over the 5 years prior to the finding of such conditions;
> (c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
> (d) Unsanitary or unsafe conditions;
> (e) Deterioration of site or other improvements;
> (f) Inadequate and outdated building density patterns;
> (g) Falling lease rates per square foot of office, commercial, or industrial space compared to the remainder of the county or municipality;
> (h) Tax or special assessment delinquency exceeding the fair value of the land;
> (i) Residential and commercial vacancy rates higher in the area than in the remainder of the county or municipality;
> (j) Incidence of crime in the area higher than in the remainder of the county or municipality;
> (k) Fire and emergency medical service calls to the area proportionately higher than in the remainder of the county or municipality;
> (l) A greater number of violations of the Florida Building Code in the area than the number of violations recorded in the remainder of the county or municipality;
> (m) Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area; or
> (n) Governmentally owned property with adverse environmental conditions caused by a public or private entity.
>
> However, the term "blighted area" also means any area in which at least one of the factors identified in paragraphs (a) through (n) are present and all taxing authorities subject to s. 163.387(2)(a) agree, either by interlocal agreement or agreements with the agency or by resolution, that the area is blighted. Such agreement or resolution shall only determine that the area is blighted. For purposes of qualifying for the tax credits authorized in chapter 220, "blighted area" means an area as defined in this subsection.

Upon a further finding that there is a need for a community redevelopment agency to carry out the community redevelopment purposes of the Act, the governing body may create a community redevelopment agency. The finding of necessity resolution is not required to specify that property within the redevelopment area may be subject to taking by eminent domain, and the governing body is not required to provide notice of the resolution to property owners within the area other than the notice typically provided for public hearings conducted by a governmental entity. The notice of the public hearing is not required to specify that property within the redevelopment area may be subject to taking. After the finding of necessity resolution is adopted and the community redevelopment agency is formed, property within the area is subject to taking if taking the property is reasonably necessary to accomplish the public purpose of eliminating and preventing the recurrence of slum or blight conditions in the area.

Section 163.375, F.S., currently authorizes any county or municipality, or any community redevelopment agency pursuant to specific approval of the governing body of the county or municipality that established the agency, to acquire by eminent domain any interest in real property, including a fee simple title, that it deems necessary for, or in connection with, community redevelopment and related activities under the Act. Any county or municipality, or any community redevelopment agency pursuant to specific approval by the governing body of the county or municipality that established the agency, may exercise the power of eminent domain in the manner provided in chs. 73 and 74, F.S., or may exercise the power of eminent domain in the manner provided by any other statutory provision for the exercise of the power of eminent domain. Property in unincorporated enclaves surrounded by the boundaries of a community redevelopment area may be acquired when it is determined necessary by the agency to accomplish the community redevelopment plan. Property already devoted to a public use may be acquired in like manner. However, no real property belonging to the United States, the state, or any political subdivision of the state may be acquired without its consent.

If a governing body adopts a finding of necessity resolution and creates a redevelopment agency, any property within the redevelopment area may be subject to taking if taking the property is reasonably necessary to accomplish the public purpose of eliminating and preventing the recurrence of slum or blight conditions. If, at some point after the resolution is adopted, a property owner challenges the taking of a specific parcel of private property and questions the validity of the resolution finding blight or slum conditions, the courts will sustain the resolution and findings of the governing body "as long as [they were] fairly debatable" at the time the resolution was adopted.[36]

When a local government determines that a taking of private property serves the statutory public purpose of eliminating slum or blight conditions, the determination is entitled to judicial deference and is presumed valid and correct unless patently erroneous. Unless a condemning authority acts illegally, in bad faith, or abuses its discretion, its selection of land for condemnation will not be overruled by a court, and a court is not authorized to substitute its judgment for that of a governmental body acting within the scope of its lawful authority.[37] The court will sustain the local government's determination that a taking serves the declared public purpose as long as it is "fairly debatable".[38]

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[36] *Panama City Beach Community Redevelopment Agency v. State*, 831 So.2d 662 (Fla. 1992).
[37] *Canal Authority v. Miller*, 243 So.2d 131 (Fla. 1970).
[38] *Panama City Beach Community Redevelopment Agency v. State*, 831 So.2d 662 (Fla. 2002); *JFR Inv. v. Delray Beach Community Redevelopment Agency*, 652 So.2d 1261 (Fla. 4th DCA 1995).

If a governmental entity is authorized to take property for a valid public purpose, the entity must show that a taking of the property is reasonably, not absolutely, necessary in order to accomplish the declared public purpose of eliminating and preventing the recurrence of slum or blight conditions. First, the condemning authority must show some evidence of a reasonable necessity for the taking. Once a reasonable necessity is shown, the exercise of the condemning authority's discretion will not be disturbed in the absence of illegality, bad faith, or gross abuse of discretion.[39]

Within community redevelopment areas, charter counties and cities may also exercise the power of eminent domain pursuant to their home rule powers or any other statutory authorization, including the power to take property for any county or municipal purpose. Non-charter counties may take property within the boundaries of a community redevelopment area for any purpose authorized by statute, including any county purpose.

EFFECT OF PROPOSED CHANGES

Section-by-Section Analysis

Section 1. Creates s. 73.013, F.S.

This section creates new s. 73.013, F.S., to restrict transfers of property taken by eminent domain to private parties. This section is created to address takings for economic development purposes by prohibiting transfers of property taken by eminent domain to private parties unless the transfer qualifies as one of the exceptions listed in this section.

According to this new section, if the state, any political subdivision as defined by statute, or any other entity to which the power of eminent domain is delegated files a petition of taking on or after July 1, 2006, regarding a parcel of real property, ownership or control of property acquired pursuant to the petition may not be conveyed by the condemning authority or any other entity to a natural person or private entity, except that ownership or control of property acquired pursuant to the petition may be conveyed to:

> (1) (a) A natural person or private entity for use in providing common carrier services or systems;
> (b) A natural person or private entity 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;
> (c) A natural person or private entity 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;
> (d) A natural person or private entity for use in providing public infrastructure;
> (e) A natural person or private entity that occupies, pursuant to a lease, an incidental part of a public property or a public facility for the purpose of providing goods or services to the public;
> (f) A natural person or private entity if the property was taken pursuant to s. 163.375;

[39] *City of Jacksonville v. Griffin*, 346 So.2d 988 (Fla. 1977).

(g) A natural person or private entity if the property was owned and controlled by the condemning authority or a governmental entity for at least 5 years after the condemning authority acquired title to the property; or
(h) A natural person or private entity in accordance with subsection (2).
(2) If ownership of property is conveyed to a natural person or private entity pursuant to paragraph (1)(a), (b), (c), (d), (e), or (f), and that natural person or private entity retains ownership and control of the property for at least 5 years after acquiring title, the property may subsequently be transferred to another natural person or private entity without restriction.

1. Common Carriers

New s. 73.013(1)(a), F.S., allows transfers of taken property to a natural person or private entity for use in providing common carrier services or systems. A common carrier is generally defined as "one who holds himself out to the public as engaged in the business of transporting persons or property from place to place, for compensation, offering his services to the public generally....The distinctive characteristic of a common carrier is that he undertakes to carry for all people indifferently and hence he is regarded, in some respects, as a public servant. The dominant and controlling factor in determining the status of one as a common carrier is his public profession or holding out, by words or by a course of conduct, as to the service offered or performed.... To constitute a public conveyance a common carrier, it is not necessary that it come within the definition of a public utility so as to be subjected to the rules and regulations of a public utility commission."[40]

2. Public Infrastructure

New s. 73.013(1)(d), F.S., allows the transfer of taken property to a private person or entity if the property will be used for purposes of public infrastructure. Although the new statutory section does not define "public infrastructure", the term is defined in The American Heritage Dictionary as "[t]he basic facilities, services, and installations needed for the functioning of a community or society, such as transportation and communications systems, water and power lines, and public institutions including schools, post offices, and prisons."[41]

Infrastructure has come to connote a diverse collection of constructed facilities and associated services, ranging from airports to energy supply to landfills to wastewater treatment. Many of the facilities are built and operated by governments, and thus fall easily into the category of public works, but others are built or operated, in whole or in part, by private enterprise or joint public-private partnership. What is today considered infrastructure has traditionally been viewed as separate systems of constructed facilities, supporting such functions as supplying water, enabling travel, and controlling floods.[42]

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[40] *L. B. Smith Aircraft Corp. v. Green,* 94 so.2d 832 (Fla.1957); *Ruke Transport Line, Inc. v. Green*, 156 So.2d 176 (Fla. 1st DCA 1963).
[41] The American Heritage® Dictionary of the English Language, Fourth Edition. Copyright © 2000 by Houghton Mifflin Company.
[42] In Our Own Backyard: Principles for Effective Improvement of the Nation's Infrastructure, COMMITTEE ON INFRASTRUCTURE BUILDING RESEARCH BOARD COMMISSION ON ENGINEERING AND TECHNICAL SYSTEMS NATIONAL RESEARCH COUNCIL, Albert A. Grant, Andrew C. Lemer, Editors, NATIONAL ACADEMY PRESS, WASHINGTON, D.C., 1993.

A 1987 committee of the National Research Council, reporting on Infrastructure for the 21st Century adopted the term "public works infrastructure" including both specific functional modes—highways, streets, roads, and bridges; mass transit; airports and airways; water supply and water resources; wastewater management; solidwaste treatment and disposal; electric power generation and transmission; telecommunications; and hazardous waste management—and the combined system these modal elements comprise. Parkland, open space, urban forests, drainage channels and aquifers, and other hydrologic features also qualify as infrastructure, not only for their aesthetic and recreational value, but because they play important roles in supplying clean air and water.[43]

Section 2. Amends s. 163.335, F.S.

Currently, s. 163.335, F.S., provides legislative findings and declarations of necessity in the Community Redevelopment Act. This section finds and declares that the powers conferred by the Act, including the power of eminent domain, are for public uses and purposes for which public money may be expended and the power of eminent domain exercised. In short, this provision declares that eliminating and preventing the recurrence of slum or blight conditions is a valid public purpose for which private property may be taken by eminent domain. In 1980, the Florida Supreme Court stated that "it was recognized very early that slum clearance and public housing, when declared to be so by the legislature, were public purposes...The wisdom of authorizing the cataclysmic demolition and redesign of neighborhoods or even whole districts is not for the Court to determine."[44] The courts have concluded that eliminating and preventing the recurrence of slum or blight conditions is a valid public purpose for taking any property within a community redevelopment area even if the property is in immaculate condition and the taking occurs long after the local government determines that slum or blight conditions exist in the area.[45]

The bill amends s. 163.335, F.S., to specify 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 3. Amends s. 163.355, F.S.

Currently, s. 163.355, F.S., requires a city or county to adopt a finding of necessity resolution that makes a legislative finding that the conditions in the area meet the criteria described in the statutory definitions of "slum area" and "blighted area". The resolution must state that (a) one or more slum or blighted areas, or one or more areas in which there is a shortage of housing affordable to residents of low or moderate income, including the elderly, exist in such county or municipality; and (b) the rehabilitation, conservation, or redevelopment, or a combination thereof, of such area or areas, including, if appropriate, the development of housing which residents of low or moderate income, including the elderly, can afford, is necessary in the interest of the public health, safety, morals, or welfare of the residents of such county or municipality.

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[43] *Id.*

[44] *State v. Miami Beach Redevelopment Agency*, 392 So.2d 875 (Fla. 1980); *Batmasian v. Boca Raton Community Redevelopment Agency*, 580 So.2d 199 (Fla. 4th DCA 1991); *City of Daytona Beach v. Mathas*, 2004-31846-CICI (Fla. Cir. Ct. Aug. 19, 2005).

[45] See *Berman v. Parker,* 348 U.S. 326 (1954); *City of Jacksonville v. Moman*, 290 So.2d 105 (Fla. 1st DCA 1974); cert. den., 297 So.2d 570 (Fla. 1974); *Grubstein v. Urban Renewal Agency of City of Tampa*, 115 So.2d 745 (Fla. 1959).

The bill adds new provisions to s. 163.355, F.S., all of which generally relate to providing enhanced notice prior to formation of a community redevelopment area to owners of property that may be located within the community redevelopment area. The enhanced notice is designed to inform the public that property located within a proposed redevelopment area may be subject to taking by eminent domain if the area is designated as a redevelopment area under the Act.

New subsection (2) requires each resolution finding slum or blight conditions to indicate that property within the community redevelopment area may be subject to taking by eminent domain pursuant to s. 163.375, F.S. In the alternative, the county or municipality may explicitly state in the resolution that the power of eminent domain provided under s. 163.375, F.S., will not be exercised by the county or municipality within the community redevelopment area. A county or municipality is not required to provide notice in accordance with subsections (3) and (4) if the resolution finding slum or blight conditions, as proposed and adopted by the county or municipality, expressly declares that the power of eminent domain provided under s. 163.375, F.S. will not be exercised by the county or municipality within the community redevelopment area.

New subsection (3) provides that, at least 30 days prior to the first public hearing at which a proposed resolution finding slum or blight conditions will be considered by a county or municipality, actual notice of the public hearing must be mailed via first class mail to each real property owner whose property may be included within the community redevelopment area and to each business owner, including a lessee, who operates a business located on property that may be included within the community redevelopment area.

a. Notice to Property Owners. Notice must be sent to each owner of real property that may be included within the community redevelopment area at the owner's last known address as listed on the county ad valorem tax roll. Alternatively, the notice may be personally delivered to a property owner. If there is more than one owner of a property, notice to one owner constitutes notice to all owners of the property. The return of the notice as undeliverable by the postal authorities constitutes compliance with this subsection. The condemning authority is not required to give notice to a person who acquires title to property after the notice required by this subsection has been given.

b. Notice to Business Owners. Notice must be sent to the address of the registered agent for the business located on the property or, if no agent is registered, by certified mail or personal delivery to the address of the business located on the property. Notice to one owner of a multiple ownership business constitutes notice to all owners of that business. The return of the notice as undeliverable by the postal authorities constitutes compliance with this subsection. The condemning authority is not required to give notice to a person who acquires an interest in a business after the notice required by this subsection has been given.

c. At a minimum, the mailed notice required by paragraphs (a) and (b) must:

- Generally explain the purpose, effect, and substance of the proposed resolution;
- Indicate that private property within the proposed redevelopment area may be subject to taking by eminent domain if the current condition of the property poses an existing threat to the public health or public safety that is likely to continue absent the exercise of eminent domain;
- Indicate that private-to-private transfers of property may occur;

- Contain a geographic location map that clearly indicates the area covered by the resolution, including major street names as a means of identification of the general area;
- Provide the dates, times, and locations of future public hearings during which the resolution may be considered;
- Identify the place or places within the county or municipality at which the resolution may be inspected by the public;
- Indicate that the property owner may file written objections with the local governing board prior to any public hearing on the resolution; and
- Indicate that interested parties may appear and be heard at all public hearings at which the resolution will be considered.

New subsection (4) provides that, in addition to mailing notice to property owners, the county or municipality must conduct at least two advertised public hearings prior to adoption of the proposed resolution. At least one hearing must be held after 5 p.m. on a weekday, unless the governing body, by a majority plus one vote, elects to conduct the hearing at another time of day. The first public hearing must be held at least 7 days after the day the first advertisement is published. The second hearing must be held at least 10 days after the first hearing and must be advertised at least 5 days prior to the public hearing. The required advertisements must be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement must be in a type no smaller than 18 point. The advertisement must not be placed in that portion of the newspaper where legal notices and classified advertisements appear and must be placed in a newspaper of general paid circulation rather than one of limited subject matter. Whenever possible, the advertisement must appear in a newspaper that is published at least 5 days a week unless the only newspaper in the community is published fewer than 5 days a week. At a minimum, the advertisement must:

- Generally explain the substance and effect of the resolution;
- Include a statement indicating that private property within the proposed redevelopment area may be subject to taking by eminent domain if the current condition of the property poses an existing threat to the public health or public safety that is likely to continue absent the exercise of eminent domain;
- Provide the date, time, and location of the meeting;
- Identify the place or places within the county or municipality at which the resolution may be inspected by the public;
- Contain a geographic location map that clearly indicates the area covered by the resolution, including major street names as a means of identification of the general area;
- Indicate that any interested party may file written objections with the local governing board prior to the public hearing; and
- Indicate that any interested party may appear and be heard at the public hearing.

Section 4. Amends s. 163.358, F.S.

Currently, under s. 163.358, F.S., community redevelopment powers assigned to a community redevelopment agency include all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Act, except the following, which vest in the governing body of the county or municipality:

- The power to determine an area to be a slum or blighted area, or combination thereof; to designate such area as appropriate for community redevelopment; and to hold any public hearings required with respect thereto.

- The power to grant final approval to community redevelopment plans and modifications thereof.
- The power to authorize the issuance of revenue bonds.
- The power to approve the acquisition, demolition, removal, or disposal of property and the power to assume the responsibility to bear loss.
- The power to approve the development of community policing innovations.

This bill amends s. 163.358, F.S., to specify that the power of eminent domain vests in the governing body of a city or county that has created a community redevelopment agency, and to prohibit delegation of the power of eminent domain by the governing body of a city or county to a community redevelopment agency.

Section 5. Amends s. 163.360, F.S.

Currently, s. 163.360, F.S., provides that community redevelopment in a community redevelopment area may not be planned or initiated unless the governing body has, by resolution, determined such area to be a slum area, a blighted area, or an area in which there is a shortage of housing affordable to residents of low or moderate income, including the elderly, or a combination thereof, and designated such area as appropriate for community redevelopment. The county, municipality, or community redevelopment agency may itself prepare or cause to be prepared a community redevelopment plan, or any person or agency, public or private, may submit such a plan to a community redevelopment agency. Prior to adopting a plan, the governing body must hold a public hearing on a community redevelopment plan after public notice by publication in a newspaper having a general circulation in the area of operation of the county or municipality. The notice must describe the time, date, place, and purpose of the hearing, identify generally the community redevelopment area covered by the plan, and outline the general scope of the community redevelopment plan under consideration.

This bill amends s. 163.360, F.S., to require each community redevelopment plan to indicate that real property within the community redevelopment area may be subject to taking by eminent domain pursuant to s. 163.375, F.S. If consistent with the resolution finding slum or blight conditions, the plan must indicate that the power of eminent domain provided under s. 163.375, F.S., will not be exercised by the county or municipality within the community redevelopment area.

Section 6. Amends s. 163.370, F.S.

Currently, s. 163.370, F.S., specifies that every county and municipality has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Act, including a non-exclusive list of powers found in that section. A county or city may exercise all or any part or combination of powers granted under the Act or to elect to have such powers exercised by a community redevelopment agency

This bill amends s. 163.370, F.S., to specify that the power of eminent domain may not be exercised by a community redevelopment agency. The bill also specifies that property may only be acquired by a community redevelopment agency by voluntary methods of acquisition prior to approval of the community redevelopment plan or approval of plan modifications.

Section 7. Amends s. 163.375, F.S.

Section 163.375, F.S., currently authorizes any county or municipality, or any community redevelopment agency pursuant to specific approval of the governing body of the county or municipality which established the agency, to acquire by condemnation any interest in real property, including a fee simple title, which it deems necessary for, or in connection with, community redevelopment and related activities under the Act. Any county or municipality, or any community redevelopment agency pursuant to specific approval by the governing body of the county or municipality which established the agency, may exercise the power of eminent domain in the manner provided in chs. 73 and 74, F.S., or it may exercise the power of eminent domain in the manner provided by any other statutory provision for the exercise of the power of eminent domain. Property in unincorporated enclaves surrounded by the boundaries of a community redevelopment area may be acquired when it is determined necessary by the agency to accomplish the community redevelopment plan. Property already devoted to a public use may be acquired in like manner. However, no real property belonging to the United States, the state, or any political subdivision of the state may be acquired without its consent.

If a governing body adopts a finding of necessity resolution and creates a redevelopment agency, any property within the redevelopment area may be subject to taking if taking the property is reasonably necessary to accomplish the public purpose of eliminating and preventing the recurrence of slum or blight conditions in a geographic area. If, at some point after the resolution is adopted, a property owner challenges the taking of a specific parcel of private property and questions the validity of the resolution finding blight or slum conditions, the courts will sustain the resolution and findings of the governing body "as long as [they were] fairly debatable" at the time the resolution was adopted.[46]

This bill substantially amends s. 163.375, F.S., to limit authority to take property by eminent domain under the Act. This bill provides that, after the community redevelopment plan is adopted, a county or municipality may acquire by eminent domain any interest in a parcel of real property within a community redevelopment area, including a fee simple title, for the purpose of eliminating an existing threat to public health or public safety if the parcel of real property is condemnation eligible. A parcel of real property is condemnation eligible only if the current condition of the property poses an existing threat to public health or public safety and the existing threat to public health or public safety is likely to continue absent the exercise of eminent domain. A county or municipality must exercise the power of eminent domain in the manner provided in this section and in chs. 73 and 74, F.S., or pursuant to the power of eminent domain provided by any other statutory provision, as limited by new s. 73.013, F.S.

A county or municipality may not initiate an eminent domain proceeding pursuant to authority conferred by this section unless the governing body first adopts a resolution of taking containing specific determinations or findings that:

- The public purpose of the taking is to eliminate an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain;
- The parcel of real property is condemnation eligible, including a specific description of the current conditions on the property that pose an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain; and

[46] *Panama City Beach Community Redevelopment Agency v. State*, 831 So.2d 662 (Fla. 1992).

- Taking the property by eminent domain is reasonably necessary in order to accomplish the public purpose of eliminating an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain.

The county or municipality may not adopt a resolution of taking under this section unless actual notice of the public 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.

a. Notice to Property Owners. Notice must be sent by certified mail, return receipt requested, to the last known address listed on the county ad valorem tax roll of each owner of the property. Alternatively, the notice may be personally delivered to each property owner. The return of the notice as undeliverable by the postal authorities constitutes compliance with this subsection. The condemning authority is not required to give notice to a person who acquires title to the property after the notice required by this subsection has been given.

b. Notice to Business Owners. Notice must be sent by certified mail, return receipt requested, to the address of the registered agent for the business located on the property to be acquired or, if no agent is registered, by certified mail or personal delivery to the address of the business located on the property to be acquired. Notice to one owner of a multiple ownership business constitutes notice to all business owners of that business. The return of the notice as undeliverable by the postal authorities constitutes compliance with this subsection. The condemning authority is not required to give notice to a person who acquires an interest in the business after the notice required by this subsection has been given.

At a minimum, the notices to property and business owners required above must indicate:

- That the county or municipal governing body will determine whether to take the parcel of real property pursuant to authority granted by this part and will formally consider a resolution of taking at a public hearing;
- That the property is subject to taking by eminent domain under this part because current conditions on the property pose an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain;
- The specific conditions on the property that pose an existing threat to public health or public safety and form the basis for taking the property;
- That the property will not be subject to taking if the specific conditions that pose an existing threat to public health or public safety and form the basis for the taking are removed prior to the public hearing at which the resolution will be considered by the governing body;
- The date, time, and location of the public hearing at which the resolution of taking will be considered;
- That the property owner or business owner may file written objections with the governing board prior to the public hearing at which the resolution of taking is considered; and
- That any interested party may appear and be heard at the public hearing at which the resolution of taking is considered.

If a property owner challenges an attempt to acquire his or her property by eminent domain under this section, the condemning authority must prove 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 or public safety that is likely to continue absent the exercise of eminent domain;
- The property is condemnation eligible because conditions on the property pose an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain; and
- Taking the property by eminent domain is reasonably necessary in order to accomplish the public purpose of eliminating an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain.

The circuit court must determine whether the public purpose of the taking is to eliminate an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain, whether the property is condemnation eligible, and whether taking the property is reasonably necessary in order to accomplish the public purpose of eliminating an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain. The circuit court must make these determinations without attaching a presumption of correctness or extending judicial deference to any determinations or findings in the resolution of taking adopted by the condemning authority.

Section 8. Amending s. 127.01, F.S.

Currently, s. 127.01, F.S., authorizes counties to exercise the right and power of eminent domain; that is, the right to appropriate property, except state or federal, for any county purpose. The absolute fee simple title to all taken property vests in the county unless the county seeks to condemn a particular right or estate in such property. Each county is further authorized to exercise the eminent domain power granted to the Department of Transportation by s. 337.27(1), F.S., the transportation corridor protection provisions of s. 337.273, F.S., and the right of entry onto property pursuant to s. 337.274, F.S.

However, no county has the right to condemn any lands outside its own county boundaries for parks, playgrounds, recreational centers, or other recreational purposes. In eminent domain proceedings, a county's burden of showing reasonable necessity for parks, playgrounds, recreational centers, or other types of recreational purposes is the same as the burden in other types of eminent domain proceedings.

The bill amends s. 127.01, F.S., to require strict compliance by counties with new s. 73.013, F.S., which limits the circumstances under which property taken by eminent domain may be transferred to private parties. (Please see Section 1 for detailed discussion of s. 73.013, F.S.)

Section 9. Amending s. 127.02, F.S.

Currently, s. 127.02, F.S., allows a board of county commissioners to, by resolution, authorize acquisition by eminent domain of property, real or personal, for any county use or purpose designated in the resolution.

This bill amends s. 127.02, F.S., to subject county acquisitions of real property to the restrictions on transfers to private parties provided in new s. 73.013, F.S., which is created by this bill. (Please see Section 1 for detailed discussion of s. 73.013, F.S.)

Section 10. Amends s. 166.401, F.S.

Currently, s. 166.401, F.S., authorizes all municipalities to exercise the right and power of eminent domain; that is, the right to appropriate property within the state, except state or federal property, for the uses or purposes authorized pursuant to part IV of ch. 166, F.S. The absolute fee simple title to all taken property vests in the municipal corporation unless the municipality seeks to condemn a particular right or estate in such property. Each municipality is further authorized to exercise the eminent domain power granted to the Department of Transportation in s. 337.27(1), F.S., and the transportation corridor protection provisions of s. 337.273, F.S.

This bill amends s. 166.401, F.S., to require strict compliance by municipalities with new s. 73.013, F.S., which limits the circumstances under which property taken by eminent domain may be transferred to private parties. (Please see Section 1 for detailed discussion of s. 73.013, F.S.)

Section 11. Amends s. 166.411, F.S.

Currently, s. 166.411(1), F.S., authorizes municipalities to exercise the power of eminent domain "[f]or the proper and efficient carrying into effect of any proposed scheme or plan of drainage, ditching, grading, filling, or other public improvement deemed necessary or expedient for the preservation of the public health, or for other good reason connected in anywise with the public welfare or the interests of the municipality and the people thereof." Section 166.411(10), F.S., authorizes the exercise of the power of eminent domain "[f]or city buildings, waterworks, ponds, and other municipal purposes which shall be coextensive with the powers of the municipality exercising the right of eminent domain".

This bill amends s. 166.411(1) and (10), F.S., to subject any exercise of power under these subsections to the restrictions on transfers to private parties provided in new s. 73.013, F.S., which is created by this bill. (Please see Section 1 for detailed discussion of s. 73.013, F.S.)

Section 12. Effective Date

This act takes effect July 1, 2006, and applies to all condemnation proceedings in which a petition of taking is filed pursuant to ch. 73, F.S., on or after that date

1 A bill to be entitled
2 An act relating to eminent domain; creating s. 73.013,
3 F.S.; restricting certain transfers of property taken by
4 eminent domain to certain natural persons or private
5 entities; amending s. 163.335, F.S.; providing legislative
6 findings and declarations; amending s. 163.355, F.S.;
7 requiring disclosure of eminent domain authority in
8 resolutions finding slum or blight conditions; providing
9 for notice to property owners and business owners or
10 lessees and requirements therefor; providing for hearings
11 and advertising requirements therefor; amending s.
12 163.358, F.S.; providing that the power of eminent domain
13 does not vest in a community redevelopment agency but
14 rather with the governing body of a county or
15 municipality; amending s. 163.360, F.S.; requiring
16 disclosure of eminent domain authority in community
17 redevelopment plans; amending s. 163.370, F.S.; revising
18 powers of community redevelopment agencies with respect to
19 the acquisition of real property; amending s. 163.375,
20 F.S.; revising eminent domain authority and procedures;
21 amending ss. 127.01 and 127.02, F.S.; requiring county
22 compliance with eminent domain limitations; amending ss.
23 166.401 and 166.411, F.S.; requiring municipal compliance
24 with eminent domain limitations; providing application;
25 providing an effective date.
26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Section 73.013, Florida Statutes, is created to
30 read:
31 73.013 Conveyance of property taken by eminent domain.--
32 (1) Notwithstanding any other provision of law, including
33 any charter provision, ordinance, statute, or special law, if
34 the state, any political subdivision as defined in s. 1.01(8),
35 or any other entity to which the power of eminent domain is
36 delegated files a petition of taking on or after July 1, 2006,
37 regarding a parcel of real property in this state, ownership or
38 control of property acquired pursuant to such petition may not
39 be conveyed by the condemning authority or any other entity to a
40 natural person or private entity, except that ownership or
41 control of property acquired pursuant to such petition may be
42 conveyed to:
43 (a) A natural person or private entity for use in
44 providing common carrier services or systems;
45 (b) A natural person or private entity for use as a road
46 or other right-of-way or means open to the public for
47 transportation, whether at no charge or by toll;
48 (c) A natural person or private entity that is a public or
49 private utility for use in providing electricity services or
50 systems, natural or manufactured gas services or systems, water
51 and wastewater services or systems, stormwater or runoff
52 services or systems, sewer services or systems, pipeline
53 facilities, telephone services or systems, or similar services
54 or systems;
55 (d) A natural person or private entity for use in
56 providing public infrastructure;

57 (e) A natural person or private entity that occupies,
58 pursuant to a lease, an incidental part of a public property or
59 a public facility for the purpose of providing goods or services
60 to the public;
61 (f) A natural person or private entity if the property was
62 taken pursuant to s. 163.375;
63 (g) A natural person or private entity if the property was
64 owned and controlled by the condemning authority or a
65 governmental entity for at least 5 years after the condemning
66 authority acquired title to the property; or
67 (h) A natural person or private entity in accordance with
68 subsection (2).
69 (2) If ownership of property is conveyed to a natural
70 person or private entity pursuant to paragraph (1)(a), (b), (c),
71 (d), (e), or (f), and that natural person or private entity
72 retains ownership and control of the property for at least 5
73 years after acquiring title, the property may subsequently be
74 transferred to another natural person or private entity without
75 restriction.
76 Section 2. Subsection (3) of section 163.335, Florida
77 Statutes, is amended, and subsection (7) is added to that
78 section, to read:
79 163.335 Findings and declarations of necessity.--
80 (3) It is further found and declared that the powers
81 conferred by this part are for public uses and purposes for
82 which public money may be expended, the police power exercised,
83 and the power of eminent domain exercised subject to the
84 limitations in s. 163.375 ~~and the power of eminent domain and~~

85 ~~police power exercised~~, and the necessity in the public interest
86 for the provisions herein enacted is hereby declared as a matter
87 of legislative determination.
88 (7) It is further found that the prevention or elimination
89 of a "slum area" or "blighted area" as defined in this part and
90 the preservation or enhancement of the tax base are not public
91 uses or purposes for which private property may be taken by
92 eminent domain.
93 Section 3. Section 163.355, Florida Statutes, is amended
94 to read:
95 163.355 Finding of necessity by county or municipality.--
96 (1) No county or municipality shall exercise the community
97 redevelopment authority conferred by this part until after the
98 governing body has adopted a resolution, supported by data and
99 analysis, which makes a legislative finding that the conditions
100 in the area meet the criteria described in s. 163.340(7) or (8).
101 The resolution must state that:
102 (a) ~~(1)~~ One or more slum or blighted areas, or one or more
103 areas in which there is a shortage of housing affordable to
104 residents of low or moderate income, including the elderly,
105 exist in such county or municipality; and
106 (b) ~~(2)~~ The rehabilitation, conservation, or redevelopment,
107 or a combination thereof, of such area or areas, including, if
108 appropriate, the development of housing which residents of low
109 or moderate income, including the elderly, can afford, is
110 necessary in the interest of the public health, safety, morals,
111 or welfare of the residents of such county or municipality.

112 (2) A resolution finding slum or blight conditions must
113 indicate that property within the community redevelopment area
114 may be subject to taking by eminent domain pursuant to s.
115 163.375. In the alternative, the county or municipality may
116 explicitly state in the resolution that the power of eminent
117 domain provided under s. 163.375 will not be exercised by the
118 county or municipality within the community redevelopment area.
119 A county or municipality is not required to provide notice in
120 accordance with subsections (3) and (4) if the resolution
121 finding slum or blight conditions, as proposed and adopted by
122 the county or municipality, expressly declares that the power of
123 eminent domain provided under s. 163.375 will not be exercised
124 by the county or municipality within the community redevelopment
125 area.
126 (3) At least 30 days prior to the first public hearing at
127 which a proposed resolution finding slum or blight conditions
128 will be considered by a county or municipality, actual notice of
129 the public hearing must be mailed via first class mail to each
130 real property owner whose property may be included within the
131 community redevelopment area and to each business owner,
132 including a lessee, who operates a business located on property
133 that may be included within the community redevelopment area.
134 (a) Notice must be sent to each owner of real property
135 that may be included within the community redevelopment area at
136 the owner's last known address as listed on the county ad
137 valorem tax roll. Alternatively, the notice may be personally
138 delivered to a property owner. If there is more than one owner
139 of a property, notice to one owner constitutes notice to all

140 owners of the property. The return of the notice as
141 undeliverable by the postal authorities constitutes compliance
142 with this subsection. The condemning authority is not required
143 to give notice to a person who acquires title to property after
144 the notice required by this subsection has been given.
145 (b) Notice must be sent to the address of the registered
146 agent for the business located on the property or, if no agent
147 is registered, by certified mail or personal delivery to the
148 address of the business located on the property. Notice to one
149 owner of a multiple ownership business constitutes notice to all
150 owners of that business. The return of the notice as
151 undeliverable by the postal authorities constitutes compliance
152 with this subsection. The condemning authority is not required
153 to give notice to a person who acquires an interest in a
154 business after the notice required by this subsection has been
155 given.
156 (c) At a minimum, the mailed notice required by paragraphs
157 (a) and (b) must:
158 1. Generally explain the purpose, effect, and substance of
159 the proposed resolution;
160 2. Indicate that private property within the proposed
161 redevelopment area may be subject to taking by eminent domain if
162 the current condition of the property poses an existing threat
163 to the public health or public safety that is likely to continue
164 absent the exercise of eminent domain;
165 3. Indicate that private-to-private transfers of property
166 may occur;

167 4. Contain a geographic location map that clearly
168 indicates the area covered by the resolution, including major
169 street names as a means of identification of the general area;
170 5. Provide the dates, times, and locations of future
171 public hearings during which the resolution may be considered;
172 6. Identify the place or places within the county or
173 municipality at which the resolution may be inspected by the
174 public;
175 7. Indicate that the property owner may file written
176 objections with the local governing board prior to any public
177 hearing on the resolution; and
178 8. Indicate that interested parties may appear and be
179 heard at all public hearings at which the resolution will be
180 considered.
181 (4) In addition to mailing notice to property owners, the
182 county or municipality must conduct at least two advertised
183 public hearings prior to adoption of the proposed resolution. At
184 least one hearing must be held after 5 p.m. on a weekday, unless
185 the governing body, by a majority plus one vote, elects to
186 conduct the hearing at another time of day. The first public
187 hearing must be held at least 7 days after the day the first
188 advertisement is published. The second hearing must be held at
189 least 10 days after the first hearing and must be advertised at
190 least 5 days prior to the public hearing. The required
191 advertisements must be no less than 2 columns wide by 10 inches
192 long in a standard size or a tabloid size newspaper, and the
193 headline in the advertisement must be in a type no smaller than
194 18 point. The advertisement must not be placed in that portion

195 of the newspaper where legal notices and classified
196 advertisements appear and must be placed in a newspaper of
197 general paid circulation rather than one of limited subject
198 matter. Whenever possible, the advertisement must appear in a
199 newspaper that is published at least 5 days a week unless the
200 only newspaper in the community is published fewer than 5 days a
201 week. At a minimum, the advertisement must:
202 (a) Generally explain the substance and effect of the
203 resolution;
204 (b) Include a statement indicating that private property
205 within the proposed redevelopment area may be subject to taking
206 by eminent domain if the current condition of the property poses
207 an existing threat to the public health or public safety that is
208 likely to continue absent the exercise of eminent domain;
209 (c) Provide the date, time, and location of the meeting;
210 (d) Identify the place or places within the county or
211 municipality at which the resolution may be inspected by the
212 public;
213 (e) Contain a geographic location map that clearly
214 indicates the area covered by the resolution, including major
215 street names as a means of identification of the general area;
216 (f) Indicate that any interested party may file written
217 objections with the local governing board prior to the public
218 hearing; and
219 (g) Indicate that any interested party may appear and be
220 heard at the public hearing.
221 Section 4. Subsection (6) is added to section 163.358,
222 Florida Statutes, to read:

223 163.358 Exercise of powers in carrying out community
224 redevelopment and related activities.--The community
225 redevelopment powers assigned to a community redevelopment
226 agency created under s. 163.356 include all the powers necessary
227 or convenient to carry out and effectuate the purposes and
228 provisions of this part, except the following, which continue to
229 vest in the governing body of the county or municipality:
230 (6) The power of eminent domain.
231 Section 5. Paragraph (d) is added to subsection (2) of
232 section 163.360, Florida Statutes, to read:
233 163.360 Community redevelopment plans.--
234 (2) The community redevelopment plan shall:
235 (d) Indicate that real property within the community
236 redevelopment area may be subject to taking by eminent domain
237 pursuant to s. 163.375. If consistent with the resolution
238 finding slum or blight conditions, the plan must indicate that
239 the power of eminent domain provided under s. 163.375 will not
240 be exercised by the county or municipality within the community
241 redevelopment area.
242 Section 6. Paragraph (o) of subsection (1) and paragraph
243 (a) of subsection (3) of section 163.370, Florida Statutes, are
244 amended to read:
245 163.370 Powers; counties and municipalities; community
246 redevelopment agencies.--
247 (1) Every county and municipality shall have all the
248 powers necessary or convenient to carry out and effectuate the
249 purposes and provisions of this part, including the following
250 powers in addition to others herein granted:

251 (o) To exercise all or any part or combination of powers
252 herein granted or to elect to have such powers exercised by a
253 community redevelopment agency; however, the power of eminent
254 domain shall not be exercised by a community redevelopment
255 agency.
256 (3) With the approval of the governing body, a community
257 redevelopment agency may:
258 (a) Prior to approval of a community redevelopment plan or
259 approval of any modifications of the plan, acquire real property
260 in a community redevelopment area by purchase, lease, option,
261 gift, grant, bequest, devise, or other voluntary method of
262 acquisition, demolish and remove any structures on the property,
263 and pay all costs related to the acquisition, demolition, or
264 removal, including any administrative or relocation expenses.
265 Section 7. Section 163.375, Florida Statutes, is amended
266 to read:
267 163.375 Eminent domain.--
268 (1) After the community redevelopment plan is adopted, a
269 county or municipality may acquire by eminent domain any
270 interest in a parcel of real property within a community
271 redevelopment area, including a fee simple title thereto, for
272 the purpose of eliminating an existing threat to public health
273 or public safety if the parcel of real property is condemnation
274 eligible. A parcel of real property is condemnation eligible
275 only if the current condition of the property poses an existing
276 threat to public health or public safety and the existing threat
277 to public health or public safety is likely to continue absent
278 the exercise of eminent domain. A county or municipality shall

279 exercise the power of eminent domain in the manner provided in
280 this section and in chapters 73 and 74, or pursuant to the power
281 of eminent domain provided by any other statutory provision, as
282 limited by s. 73.013. Real property belonging to the United
283 States, the state, or any political subdivision of the state may
284 not be acquired without its consent. ~~Any county or municipality,~~
285 ~~or any community redevelopment agency pursuant to specific~~
286 ~~approval of the governing body of the county or municipality~~
287 ~~which established the agency, as provided by any county or~~
288 ~~municipal ordinance has the right to acquire by condemnation any~~
289 ~~interest in real property, including a fee simple title thereto,~~
290 ~~which it deems necessary for, or in connection with, community~~
291 ~~redevelopment and related activities under this part. Any county~~
292 ~~or municipality, or any community redevelopment agency pursuant~~
293 ~~to specific approval by the governing body of the county or~~
294 ~~municipality which established the agency, as provided by any~~
295 ~~county or municipal ordinance may exercise the power of eminent~~
296 ~~domain in the manner provided in chapters 73 and 74 and acts~~
297 ~~amendatory thereof or supplementary thereto, or it may exercise~~
298 ~~the power of eminent domain in the manner now or which may be~~
299 ~~hereafter provided by any other statutory provision for the~~
300 ~~exercise of the power of eminent domain. Property in~~
301 ~~unincorporated enclaves surrounded by the boundaries of a~~
302 ~~community redevelopment area may be acquired when it is~~
303 ~~determined necessary by the agency to accomplish the community~~
304 ~~redevelopment plan. Property already devoted to a public use may~~
305 ~~be acquired in like manner. However, no real property belonging~~

306 ~~to the United States, the state, or any political subdivision of~~
307 ~~the state may be acquired without its consent.~~
308 (2) A county or municipality may not initiate an eminent
309 domain proceeding pursuant to authority conferred by this
310 section unless the governing body first adopts a resolution of
311 taking containing specific determinations or findings that:
312 (a) The public purpose of the taking is to eliminate an
313 existing threat to public health or public safety that is likely
314 to continue absent the exercise of eminent domain;
315 (b) The parcel of real property is condemnation eligible
316 as defined in subsection (1), including a specific description
317 of the current conditions on the property that pose an existing
318 threat to public health or public safety that is likely to
319 continue absent the exercise of eminent domain; and
320 (c) Taking the property by eminent domain is reasonably
321 necessary in order to accomplish the public purpose of
322 eliminating an existing threat to public health or public safety
323 that is likely to continue absent the exercise of eminent
324 domain.
325 (3) The county or municipality may not adopt a resolution
326 of taking under this section unless actual notice of the public
327 hearing at which the resolution is considered was provided, at
328 least 45 days prior to the hearing, to the property owner and to
329 any business owner, including a lessee, who operates a business
330 located on the property.
331 (a) Notice must be sent by certified mail, return receipt
332 requested, to the last known address listed on the county ad
333 valorem tax roll of each owner of the property. Alternatively,

334 the notice may be personally delivered to each property owner.
335 The return of the notice as undeliverable by the postal
336 authorities constitutes compliance with this subsection. The
337 condemning authority is not required to give notice to a person
338 who acquires title to the property after the notice required by
339 this subsection has been given.
340 (b) Notice must be sent by certified mail, return receipt
341 requested, to the address of the registered agent for the
342 business located on the property to be acquired or, if no agent
343 is registered, by certified mail or personal delivery to the
344 address of the business located on the property to be acquired.
345 Notice to one owner of a multiple ownership business constitutes
346 notice to all business owners of that business. The return of
347 the notice as undeliverable by the postal authorities
348 constitutes compliance with this subsection. The condemning
349 authority is not required to give notice to a person who
350 acquires an interest in the business after the notice required
351 by this subsection has been given.
352 (c) At a minimum, the notices required by paragraphs (a)
353 and (b) shall indicate:
354 1. That the county or municipal governing body will
355 determine whether to take the parcel of real property pursuant
356 to authority granted by this part and will formally consider a
357 resolution of taking at a public hearing;
358 2. That the property is subject to taking by eminent
359 domain under this part because current conditions on the
360 property pose an existing threat to public health or public

361 safety that is likely to continue absent the exercise of eminent
362 domain;
363 3. The specific conditions on the property that pose an
364 existing threat to public health or public safety and form the
365 basis for taking the property;
366 4. That the property will not be subject to taking if the
367 specific conditions that pose an existing threat to public
368 health or public safety and form the basis for the taking are
369 removed prior to the public hearing at which the resolution will
370 be considered by the governing body;
371 5. The date, time, and location of the public hearing at
372 which the resolution of taking will be considered;
373 6. That the property owner or business owner may file
374 written objections with the governing board prior to the public
375 hearing at which the resolution of taking is considered; and
376 7. That any interested party may appear and be heard at
377 the public hearing at which the resolution of taking is
378 considered.
379 (4)(a) In accordance with chapters 73 and 74, if a
380 property owner challenges an attempt to acquire his or her
381 property by eminent domain under this section, the condemning
382 authority must prove by clear and convincing evidence in an
383 evidentiary hearing before the circuit court that:
384 1. The public purpose of the taking is to eliminate an
385 existing threat to public health or public safety that is likely
386 to continue absent the exercise of eminent domain;
387 2. The property is condemnation eligible as defined in
388 subsection (1); and

389 3. Taking the property by eminent domain is reasonably
390 necessary in order to accomplish the public purpose of
391 eliminating an existing threat to public health or public safety
392 that is likely to continue absent the exercise of eminent
393 domain.
394 (b) The circuit court shall determine whether the public
395 purpose of the taking is to eliminate an existing threat to
396 public health or public safety that is likely to continue absent
397 the exercise of eminent domain, whether the property is
398 condemnation eligible as defined in subsection (1), and whether
399 taking the property is reasonably necessary in order to
400 accomplish the public purpose of eliminating an existing threat
401 to public health or public safety that is likely to continue
402 absent the exercise of eminent domain. The circuit court shall
403 make these determinations without attaching a presumption of
404 correctness or extending judicial deference to any
405 determinations or findings in the resolution of taking adopted
406 by the condemning authority.
407 (5) ~~(2)~~ In any proceeding to fix or assess compensation for
408 damages for the taking of property, or any interest therein,
409 through the exercise of the power of eminent domain or
410 condemnation, evidence or testimony bearing upon the following
411 matters shall be admissible and shall be considered in fixing
412 such compensation or damages in addition to evidence or
413 testimony otherwise admissible:
414 (a) Any use, condition, occupancy, or operation of such
415 property, which is unlawful or violative of, or subject to
416 elimination, abatement, prohibition, or correction under, any

417 law, ordinance, or regulatory measure of the state, county,
418 municipality, or other political subdivision, or any agency
419 thereof, in which such property is located, as being unsafe,
420 substandard, unsanitary, or otherwise contrary to the public
421 health, safety, morals, or welfare.
422 (b) The effect on the value of such property of any such
423 use, condition, occupancy, or operation or of the elimination,
424 abatement, prohibition, or correction of any such use,
425 condition, occupancy, or operation.
426 (6) ~~(3)~~ In any proceeding to fix or assess compensation for
427 damages for the taking of property, or any interest therein, the
428 foregoing testimony and evidence shall be admissible
429 notwithstanding that no action has been taken by any public body
430 or public officer toward the abatement, prohibition,
431 elimination, or correction of any such use, condition,
432 occupancy, or operation. Testimony or evidence that any public
433 body or public officer charged with the duty or authority so to
434 do has rendered, made, or issued any judgment, decree,
435 determination, or order for the abatement, prohibition,
436 elimination, or correction of any such use, condition,
437 occupancy, or operation shall be admissible and shall be prima
438 facie evidence of the existence and character of such use,
439 condition, or operation.
440 Section 8. Subsection (3) is added to section 127.01,
441 Florida Statutes, to read:
442 127.01 Counties delegated power of eminent domain;
443 recreational purposes, issue of necessity of taking.--

444 (3) Each county shall strictly comply with the limitations
445 set forth in s. 73.013.
446 Section 9. Section 127.02, Florida Statutes, is amended to
447 read:
448 127.02 County commissioners may authorize acquirement of
449 property by eminent domain.--The board of county commissioners
450 may, by resolution, authorize the acquirement by eminent domain
451 of property, real or personal, for any county use or purpose
452 designated in such resolution, subject to the limitations set
453 forth in s. 73.013.
454 Section 10. Subsection (3) is added to section 166.401,
455 Florida Statutes, to read:
456 166.401 Right of eminent domain.--
457 (3) Each municipality shall strictly comply with the
458 limitations set forth in s. 73.013.
459 Section 11. Subsections (1), (9), and (10) of section
460 166.411, Florida Statutes, are amended to read:
461 166.411 Eminent domain; uses or purposes.--Municipalities
462 are authorized to exercise the power of eminent domain for the
463 following uses or purposes:
464 (1) For the proper and efficient carrying into effect of
465 any proposed scheme or plan of drainage, ditching, grading,
466 filling, or other public improvement deemed necessary or
467 expedient for the preservation of the public health, or for
468 other good reason connected in anywise with the public welfare
469 or the interests of the municipality and the people thereof,
470 subject to the limitations set forth in s. 73.013;
471 (9) For laying wires and conduits underground; and

472 (10) For city buildings, waterworks, ponds, and other
473 municipal purposes which shall be coextensive with the powers of
474 the municipality exercising the right of eminent domain subject
475 to the limitations set forth in s. 73.013.~~; and~~
476 Section 12. This act shall take effect July 1, 2006, and
477 shall apply to all condemnation proceedings in which a petition
478 of taking is filed pursuant to chapter 73, Florida Statutes, on
479 or after that date.

HJR 1569

SELECT COMMITTEE TO PROTECT PRIVATE PROPERTY RIGHTS
DRAFT STAFF ANALYSIS OF HJR 1569
March 10, 2006

Current Situation

Please see the Draft Staff Analysis for HB 1567 for background information and the current situation analysis.

Effect of Proposed Changes

This House Joint Resolution proposes an amendment to the State Constitution to prohibit the transfer of ownership or control of private real property taken by eminent domain pursuant to a petition filed on or after January 2, 2007, to any natural person or private entity, except that:

> (a) Ownership or control of such property may be conveyed to:
> (1) A natural person or private entity for use in providing common carrier services or systems;
> (2) A natural person or private entity 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 natural person or private entity 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 natural person or private entity for use in providing public infrastructure;
> (5) A natural person or private entity that occupies, pursuant to a lease, an incidental part of a public property or a public facility for the purpose of providing goods or services to the public;
> (6) A natural person or private entity if the property was taken to eliminate an existing threat to public health or public safety as provided by general law;
> (7) A natural person or private entity if the property was owned and controlled by the condemning authority or a governmental entity for at least 5 years after the condemning authority acquired title to the property; or
> (8) A natural person or private entity in accordance with subsection (b).
> (b) If ownership of property is conveyed to a natural person or private entity pursuant to paragraph (a)(1), (2), (3), (4), (5), or (6), and that natural person or private entity retains ownership and control of the property for at least 5 years after acquiring title, the property may subsequently be transferred to another natural person or private entity without restriction.

Subsection (a)(1) allows transfers of taken property to a natural person or private entity for use in providing common carrier services or systems. A common carrier is generally defined as "one who holds himself out to the public as engaged in the business of transporting persons or property from place to place, for compensation, offering his services to the public generally....The distinctive characteristic of a common carrier is that he undertakes to carry for all people indifferently and hence he is regarded, in some respects, as a public servant. The dominant and controlling factor in determining the status of one as a common carrier is his public profession or holding out, by words or by

a course of conduct, as to the service offered or performed.... To constitute a public conveyance a common carrier, it is not necessary that it come within the definition of a public utility so as to be subjected to the rules and regulations of a public utility commission."

Subsection (a)(4) allows the transfer of taken property to a private person or entity if the property will be used for purposes of public infrastructure. Although the new statutory section does not define "public infrastructure", the term is defined in The American Heritage Dictionary as "[t]he basic facilities, services, and installations needed for the functioning of a community or society, such as transportation and communications systems, water and power lines, and public institutions including schools, post offices, and prisons."

Infrastructure has come to connote a diverse collection of constructed facilities and associated services, ranging from airports to energy supply to landfills to wastewater treatment. Many of the facilities are built and operated by governments, and thus fall easily into the category of public works, but others are built or operated, in whole or in part, by private enterprise or joint public-private partnership. What is today considered infrastructure has traditionally been viewed as separate systems of constructed facilities, supporting such functions as supplying water, enabling travel, and controlling floods.

A 1987 committee of the National Research Council, reporting on Infrastructure for the 21st Century adopted the term "public works infrastructure" including both specific functional modes—highways, streets, roads, and bridges; mass transit; airports and airways; water supply and water resources; wastewater management; solidwaste treatment and disposal; electric power generation and transmission; telecommunications; and hazardous waste management—and the combined system these modal elements comprise. Parkland, open space, urban forests, drainage channels and aquifers, and other hydrologic features also qualify as infrastructure, not only for their aesthetic and recreational value, but because they play important roles in supplying clean air and water.

1 House Joint Resolution
2 A joint resolution proposing an amendment to Section 6 of
3 Article X of the State Constitution relating to eminent
4 domain.
5
6 Be It Resolved by the Legislature of the State of Florida:
7
8 That the following amendment to Section 6 of Article X of
9 the State Constitution is agreed to and shall be submitted to
10 the electors of this state for approval or rejection at the next
11 general election or at an earlier special election specifically
12 authorized by law for that purpose:
13 ARTICLE X
14 MISCELLANEOUS
15 SECTION 6. Eminent domain.--
16 (a) No private property shall be taken except for a public
17 purpose and with full compensation therefor paid to each owner
18 or secured by deposit in the registry of the court and available
19 to the owner.
20 (b) Provision may be made by law for the taking of
21 easements, by like proceedings, for the drainage of the land of
22 one person over or through the land of another.
23 (c) If a petition is filed on or after January 2, 2007, to
24 initiate eminent domain proceedings regarding a parcel of real
25 property in this state, ownership or control of property
26 acquired pursuant to such petition shall not be conveyed by the
27 condemning authority or any other entity to a natural person or

28 private entity, except that ownership or control of property
29 acquired pursuant to such petition may be conveyed to:
30 (1) A natural person or private entity for use in
31 providing common carrier services or systems;
32 (2) A natural person or private entity for use as a road
33 or other right-of-way or means open to the public for
34 transportation, whether at no charge or by toll;
35 (3) A natural person or private entity that is a public or
36 private utility for use in providing electricity services or
37 systems, natural or manufactured gas services or systems, water
38 and wastewater services or systems, stormwater or runoff
39 services or systems, sewer services or systems, pipeline
40 facilities, telephone services or systems, or similar services
41 or systems;
42 (4) A natural person or private entity for use in
43 providing public infrastructure;
44 (5) A natural person or private entity that occupies,
45 pursuant to a lease, an incidental part of a public property or
46 a public facility for the purpose of providing goods or services
47 to the public;
48 (6) A natural person or private entity if the property was
49 taken to eliminate an existing threat to public health or public
50 safety that is likely to continue absent the exercise of eminent
51 domain, as provided by general law;
52 (7) A natural person or private entity if the property was
53 owned and controlled by the condemning authority or a
54 governmental entity for at least 5 years after the condemning
55 authority acquired title to the property; or

56 (8) A natural person or private entity in accordance with
57 subsection (d).
58 (d) If ownership of property is conveyed to a natural
59 person or private entity pursuant to paragraph (c)(1), (2), (3),
60 (4), (5), or (6), and that natural person or private entity
61 retains ownership and control of the property for at least 5
62 years after acquiring title, the property may subsequently be
63 transferred to another natural person or private entity without
64 restriction.
65 BE IT FURTHER RESOLVED that the following statement be
66 placed on the ballot:
67 CONSTITUTIONAL AMENDMENT
68 ARTICLE X, SECTION 6
69 EMINENT DOMAIN.--Proposing an amendment to the State
70 Constitution to prohibit the transfer of ownership or control of
71 private real property taken by eminent domain pursuant to a
72 petition filed on or after January 2, 2007, to any natural
73 person or private entity, except that:
74 (a) Ownership or control of such property may be conveyed
75 to:
76 (1) A natural person or private entity for use in
77 providing common carrier services or systems;
78 (2) A natural person or private entity for use as a road
79 or other right-of-way or means open to the public for
80 transportation, whether at no charge or by toll;
81 (3) A natural person or private entity that is a public or
82 private utility for use in providing electricity services or
83 systems, natural or manufactured gas services or systems, water

84 and wastewater services or systems, stormwater or runoff
85 services or systems, sewer services or systems, pipeline
86 facilities, telephone services or systems, or similar services
87 or systems;
88 (4) A natural person or private entity for use in
89 providing public infrastructure;
90 (5) A natural person or private entity that occupies,
91 pursuant to a lease, an incidental part of a public property or
92 a public facility for the purpose of providing goods or services
93 to the public;
94 (6) A natural person or private entity if the property was
95 taken to eliminate an existing threat to public health or public
96 safety as provided by general law;
97 (7) A natural person or private entity if the property was
98 owned and controlled by the condemning authority or a
99 governmental entity for at least 5 years after the condemning
100 authority acquired title to the property; or
101 (8) A natural person or private entity in accordance with
102 subsection (b).
103 (b) If ownership of property is conveyed to a natural
104 person or private entity pursuant to paragraph (a)(1), (2), (3),
105 (4), (5), or (6), and that natural person or private entity
106 retains ownership and control of the property for at least 5
107 years after acquiring title, the property may subsequently be
108 transferred to another natural person or private entity without
109 restriction.

SELECT COMMITTEE TO PROTECT PRIVATE PROPERTY RIGHTS
DRAFT STAFF ANALYSIS OF HJR 1571
March 10, 2006

Introduction

In 1992, Florida voters approved the popularly named "Save Our Homes" amendment to the State Constitution to limit the annual growth in the assessed value of homestead property to 3 percent over the prior year assessment or the percentage change in the U. S. Consumer Price Index, whichever is less. The amendment also provided for a reassessment of homestead property at just value after any change of ownership.

This joint resolution proposes to amend the Florida Constitution to provide "portability" of the Save Our Homes ad valorem property tax protections if a homestead property is taken by eminent domain by any entity authorized to exercise the power of eminent domain in Florida. The amendment may limit the growth in the amount of revenue generated from property taxes absent an adjustment in millage rates, while providing homeowners protection from increased property taxes if a homeowner's property is taken by eminent domain.

Current Situation

Ad valorem property taxes are the single largest source of tax revenues for general purpose local governments in Florida. In FY 2002-03 (the last year for which published fiscal information is available), property taxes accounted for 31 percent of county governmental revenue (i.e., $6.3 billion), and almost 20 percent of municipal government revenue (i.e., $2.4 billion). Ad valorem property tax revenues also are the primary local revenue source for school districts. For that same fiscal year, school districts levied $8.4 billion in property taxes.

Ad valorem property tax revenues result from multiplying the millage rate adopted by counties, municipalities, and school boards, by the taxable value of property within that jurisdiction. Each entity may levy up to 10 mills and, in most cases, the real property must be assessed at just value. Article VII, s. 6 of the State Constitution authorizes a $25,000 ad valorem property tax exemption for homestead property.

In 1992, Florida voters approved the so-called "Save Our Homes" amendment to the State Constitution. This amendment limits the annual growth in the assessed value of homestead property to 3 percent over the prior year assessment or the percentage change in the U. S. Consumer Price Index, whichever is less. It also provides for a reassessment of homestead property at just value after any change of ownership. The "Save Our Homes" constitutional amendment, originally proposed as a way to protect homeowners from being forced to sell their homes because of escalating property taxes caused by assessment increases, is now seen by some as keeping people from selling their homes and buying another home because of substantially higher property taxes resulting from the constitutionally required reassessment upon change in ownership.

Largely due to the recent surge in housing values and lack of corresponding millage rate reductions by local officials to offset double-digit increases in taxable values, ad valorem property tax revenues have increased substantially in recent years: 9.2 percent

in 2002, 11.5 percent in 2003, and 10.4 percent in 2004. These annual property tax increases are twice as high as the 5 percent average increase experienced between 1991 and 2000, but comparable to the 12.5 percent average annual increase from 1981 to 1990. Despite the growth in total taxable values, the statewide average actual millage rates have remained relatively unchanged, although on a generally downward trend. However, the differential between the actual millage rate and the so-called "roll back rate" (i.e., the millage rate necessary to generate the same amount of revenue as the prior year excluding new construction and boundary changes) is substantially more pronounced since 2000, than it was from 1990 to 1999. The taxable value of all real property has increased 53 percent over the past four years.

The amount of value removed from the tax rolls from the "Save Our Homes" provision is growing at a much faster rate than the amount of value removed by the homestead exemption. For example, in 2005, the amount of value excluded from the tax rolls as a result of the Save Our Homes provision grew by $81 billion over the previous year compared to $1.7 billion removed as a result of the homestead exemption.

Effect of Proposed Changes

This joint resolution proposes to amendment the Florida Constitution's "Save Our Homes" property tax protections to provide that, when a person's homestead property in this state is taken by power of eminent domain and within two years the person purchases another property and establishes such property as homestead property, the newly established homestead property must be initially assessed at less than just value, as provided by general law. The difference between the new homestead property's just value and its assessed value in the first year the homestead is established may not exceed the difference between the previous homestead property's just value and its assessed value in the year the homestead property was taken by eminent domain. In addition, the assessed value of the new homestead property must equal or exceed the assessed value of the previous homestead property. Thereafter, the homestead property must be assessed as provided by the Constitution.

The proposed amendment will be submitted to the electors at the next general election or at an earlier special election specifically authorized by law for that purpose. If approved by the voters, this amendment will take effect January 2, 2007, and will apply to property tax valuations for the 2008 tax year. If approved by the voters, the proposed amendment will require enactment of implementing legislation.

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
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 VII
15 FINANCE AND TAXATION
16 SECTION 4. Taxation; assessments.--By general law
17 regulations shall be prescribed which shall secure a just
18 valuation of all property for ad valorem taxation, provided:
19 (a) Agricultural land, land producing high water recharge
20 to Florida's aquifers, or land used exclusively for
21 noncommercial recreational purposes may be classified by general
22 law and assessed solely on the basis of character or use.
23 (b) Pursuant to general law tangible personal property
24 held for sale as stock in trade and livestock may be valued for
25 taxation at a specified percentage of its value, may be
26 classified for tax purposes, or may be exempted from taxation.
27 (c) All persons entitled to a homestead exemption under
28 Section 6 of this Article shall have their homestead assessed at

29 just value as of January 1 of the year following the effective
30 date of this amendment. This assessment shall change only as
31 provided herein.
32 (1) Assessments subject to this provision shall be changed
33 annually on January 1st of each year; but those changes in
34 assessments shall not exceed the lower of the following:
35 a. Three percent (3%) of the assessment for the prior
36 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, unless the provisions of
46 subsection (8) apply. Thereafter, the homestead shall be
47 assessed 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, unless the provisions of subsection (8) apply. 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 in this state is
65 taken by power of eminent domain 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 property's just value and its
73 assessed value in the year the homestead property was taken by
74 eminent domain. In addition, the assessed value of the new
75 homestead property must equal or exceed the assessed value of
76 the previous homestead property. Thereafter, the homestead
77 property shall be assessed as provided herein.
78 (d) The legislature may, by general law, for assessment
79 purposes and subject to the provisions of this subsection, allow
80 counties and municipalities to authorize by ordinance that
81 historic property may be assessed solely on the basis of
82 character or use. Such character or use assessment shall apply
83 only to the jurisdiction adopting the ordinance. The

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

112 difference between the previous homestead property's just value
113 and its assessed value in the year the previous homestead
114 property was taken by eminent domain and to provide that the
115 assessed value of the new homestead property must equal or
116 exceed the assessed value of the previous homestead property.

Select Committee to Protect Private Property Rights

March 13, 2006
3:15 p.m.—5:15 p.m.
Morris Hall

ADDENDUM A

(March 13, 2006 11:15 a.m.)

Allan G. Bense
Speaker

Marco Rubio
Chair

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 1567**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Select Committee to Protect
2 Private Property Rights
3 Representative(s) Evers offered the following:
4
5 **Amendment**
6 Remove line(s) 61-62

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Evers A1 to HB 1567.doc

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 1567**

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)

ADOPTED AS AMENDED ___ (Y/N)

ADOPTED W/O OBJECTION ___ (Y/N)

FAILED TO ADOPT ___ (Y/N)

WITHDRAWN ___ (Y/N)

OTHER _____

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1 Council/Committee hearing bill: Select Committee to Protect
2 Private Property Rights
3 Representative(s) Stansel offered the following:
4
5 **Amendment**
6 Remove line(s) 63-75 and insert:
7 (g) A natural person or private entity, after public
8 notice and competitive bidding unless otherwise provided by
9 general law, if the property was owned and controlled by the
10 condemning authority or a governmental entity for at least 5
11 years after the condemning authority acquired title to the
12 property; or
13 (h) A natural person or private entity in accordance with
14 subsection (2).
15 (2) If ownership of property is conveyed to a natural
16 person or private entity pursuant to paragraph (1)(a), (b), (c),
17 (d), (e), or (f), and that natural person or private entity
18 retains ownership and control of the property for at least 5
19 years after acquiring title, the property may subsequently be
20 transferred, after public notice and competitive bidding unless

21 otherwise provided by general law, to another natural person or
22 private entity without restriction.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 1567**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Select Committee to Protect
2 Private Property Rights
3 Representative(s) Kravitz offered the following:
4
5 **Amendment**
6 Remove line(s) 65-72 and insert:
7 governmental entity for at least 7 years after the condemning
8 authority acquired title to the property; or
9 (h) A natural person or private entity in accordance with
10 subsection (2).
11 (2) If ownership of property is conveyed to a natural
12 person or private entity pursuant to paragraph (1)(a), (b), (c),
13 (d), (e), or (f), and that natural person or private entity
14 retains ownership and control of the property for at least 7

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Kravitz A1 to HB 1567.doc

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 1567**

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)

ADOPTED AS AMENDED ___ (Y/N)

ADOPTED W/O OBJECTION ___ (Y/N)

FAILED TO ADOPT ___ (Y/N)

WITHDRAWN ___ (Y/N)

OTHER _____

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1 Council/Committee hearing bill: Select Committee to Protect
2 Private Property Rights
3
4 Representative(s) Galvano, Cannon, and Kravitz offered the
5 following:
6
7 **Amendment**
8 Between lines 307 and 308, insert:
9 (2) Private property is condemnation-eligible if the
10 current condition of the property poses an existing threat to
11 public health or public safety that is likely to continue absent
12 the exercise of eminent domain as evidenced by at least one of
13 the following factors:
14 (a) The property contains a structure which, in its
15 current condition, has substantial dilapidation which is either
16 physically incurable or economically incurable in that the cost
17 of repair of rehabilitation would exceed the replacement cost of
18 a new structure. Superficial or cosmetic disrepair, which is
19 reparable by a nominal expenditure, not to exceed 20% of the
20 market value of the existing structure, shall not constitute

21 dilapidation for purposes of constituting a condemnation-
22 eligible factor;
23 (b) The property contains a structure which, in its
24 current condition, is unsanitary, unsafe, or vermin-infested,
25 and is designated by the agency responsible for enforcement of
26 the housing, building, or fire codes as unfit for human
27 habitation or use;
28 (c) The property contains a structure which, in its current
29 condition, is a fire hazard, or otherwise dangerous to the
30 safety of persons or property, and is designated by the agency
31 responsible for enforcement of the housing, building, or fire
32 codes as unfit for human habitation or use;
33 (d) The property contains a structure from which, in its
34 current condition, the utilities, plumbing, heating, sewerage,
35 or other facilities have been disconnected, destroyed, removed,
36 or rendered ineffective so that the property is unfit for human
37 habitation or use; or
38 (e) The physical condition, use, or occupancy of the
39 property constitutes a public nuisance and the property has been
40 the subject of code violations affecting public health or public
41 safety that have not been substantially rehabilitated within one
42 year of receipt of notice to rehabilitate from the appropriate
43 code enforcement agency.
44
45 Renumber subsequent sections.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 1567**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

12C

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1 Council/Committee hearing bill: Select Committee to Protect
2 Private Property Rights
3 Representative(s) Kravitz offered the following:
4
5 **Amendment**
6 Remove line(s) 335-336 and insert:
7 Compliance with s. 163.375 (3) shall also require conspicuous
8 posting of the notice to the premises of the property to be
9 acquired. The posted notice shall prominently and legibly
10 display the information provided in s. 163.375(3)(c). The

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 1567**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Select Committee to Protect
2 Private Property Rights
3 Representative(s) Kravitz offered the following:
4
5 **Amendment**
6 Remove line(s) 346-348 and insert:
7 notice to all business owners of that business. Compliance with
8 s. 163.375(3) shall also require conspicuous posting of the
9 notice to the premises of the property to be acquired. The
10 posted notice shall prominently and legibly display the
11 information provided in s. 163.375(3)(c). The condemning

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 1567**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Select Committee to Protect
2 Private Property Rights
3 Representative(s) Galvano offered the following:
4
5 **Amendment**
6 Strike lines 476-479 and insert:
7 Section 12. This act shall take effect July 1, 2006 and
8 shall apply to all condemnation proceedings in which a petition
9 of taking is filed pursuant to chapter 73 or 74 on or after that
10 date, or any condemnation proceeding initiated prior to that
11 date wherein the condemnee property owner has not waived any
12 challenge to the condemnor's authority to take the condemnee's
13 property and a final adjudication in the condemnation proceeding
14 is pending in a Florida circuit or appellate court having
15 jurisdiction over the condemnor and condemnee property owner.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES 72e

Amendment No. (for drafter's use only)

Bill No. **HJR 1569**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Select Committee to Protect
2 Private Property Rights
3 Representative(s) Evers offered the following:
4
5 **Amendment**
6 Remove line(s) 48-51

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Evers A2 to HJR 1569.doc