

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 1480

INTRODUCER: Community Affairs Committee and Senator Sobel

SUBJECT: Conveyance of Property Taken by Eminent Domain

DATE: February 1, 2016

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Cochran | Yeatman        | CA        | Fav/CS |
| 2. |         |                | JU        |        |
| 3. |         |                | RC        |        |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1480 authorizes certain condemning authorities to convey, without restriction, property taken by inverse condemnation to a private party if the property is condemned pursuant to a large hub airport noise mitigation or noise compatibility program.

**II. Present Situation:**

**Constitutional Provisions on Takings**

The Fifth Amendment of the United States Constitution applies to the states through the Fourteenth Amendment and provides, in part: “nor shall private property be taken for public use, without just compensation.”<sup>1</sup>

Similarly, the Florida Constitution states that: “No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.”<sup>2</sup>

There is no absolute definition of what constitutes a public use. The concept changes along with evolutions of societal norms and changed “circumstances brought about by an increase in

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<sup>1</sup> U.S.C.A. CONST. AMEND V.

<sup>2</sup> FLA. CONST., Article X., s. 6(a).

population and new modes of communication and transportation.”<sup>3</sup> In situations where both private and public benefits result from a condemnation, the determination of whether the condemnation was for a public use may turn on whether the public benefits are of a primary or an incidental character.<sup>4</sup> An incidental benefit to a private party does not render a taking invalid so long as the primary benefit is to the public.

### **Florida Law on Eminent Domain**

Florida affords generous treatment to private property owners, or defendants in eminent domain proceedings. In Florida, the owner is entitled to full and fair compensation.<sup>5</sup> Compensation is generally the payment of the fair market value of the property.<sup>6</sup> Fair market value is considered to be based upon what a willing buyer would pay to a willing seller.<sup>7</sup> Also, the petitioner must always pay attorney’s fees and reasonable costs to the defendant.<sup>8</sup> Reasonable costs include appraisal fees and, if business damages are involved, an accountant’s fee.<sup>9</sup> Defendants also have the right to a jury trial.<sup>10</sup>

Eminent domain is effected in one of two ways. The first is through the traditional eminent domain process, which involves the filing of a petition for condemnation and, if the property owner challenges the action, a jury trial.<sup>11</sup> The second process, called a “quick taking,” occurs when the governmental entity files a declaration of taking (containing a good faith estimate of the value of the property) and takes immediate possession of the property before the completion of the judicial procedure.<sup>12</sup> “A taking may result from a ‘physical invasion’ of the property or may follow a ‘regulatory imposition.’”<sup>13</sup> Either way, the government asserts its authority to condemn property.<sup>14</sup> Conversely, it should be noted that “inverse condemnation” is a cause of action by a property owner to recover the value of property that has been de facto taken by an agency having the power of eminent domain where no formal exercise of that power has been undertaken.<sup>15</sup> Essentially, inverse condemnation is the cause of action when a governmental entity, by its conduct or activities, has taken private property without a formal exercise of eminent domain.<sup>16</sup>

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<sup>3</sup> 21 Fla. Jur. 2d Eminent Domain s. 27, *Generally; public purpose distinguished* (2015).

<sup>4</sup> 21 Fla. Jur. 2d Eminent Domain s. 29, *Purpose partly public and partly private; incidental private use or benefit* (2015).

<sup>5</sup> Debra Herman and Jorge Martinez-Esteve, *The Admissibility of Dedication Requirements in Condemnation Cases: No Longer the Road Less Traveled*, 85 FLA. B.J. 20, 21 (November 2011).

<sup>6</sup> *Id.*

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

<sup>8</sup> Section 73.091(1), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 73.071(1), F.S.

<sup>11</sup> Sections 73.031(1) and 73.071(1), F.S.

<sup>12</sup> Section 74.031, F.S.

<sup>13</sup> *Alachua Land Investors, LLC v. City of Gainesville*, 107 So.3d 1154, 1158 (Fla. 1st DCA 2013) (internal citations omitted).

<sup>14</sup> 21 FLA. JUR. 2D EMINENT DOMAIN s. 227 *Inverse Condemnation; Generally* (2015).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

## Restrictions on the Conveyance of Condemned Property to Private Parties

The state may not authorize the taking of private property solely for another private party's private use, even if the state pays full compensation for the condemned property.<sup>17</sup> Neither the state nor any political subdivision may convey a property taken by condemnation to a private entity, unless the conveyance is authorized by law.<sup>18</sup> Current law allows condemned property to be conveyed to a private party for:

- Use in common carrier services or systems;
- Use as a road or other right-of-way;
- Use in providing utility services or systems; and
- Use in providing public infrastructure.

There are also statutory restrictions on the subsequent conveyance of a condemned property that has already been conveyed to a private party. If ownership of a condemned property is conveyed to a private party pursuant to one of the statutory exceptions described above and at least 10 years have elapsed since the condemning authority acquired title to the property, then the property may be transferred again to another private party after public notice and competitive bidding (unless otherwise provided by general law).<sup>19</sup> If fewer than 10 years have elapsed since the condemning authority acquired title to the property, the property may be conveyed a second time if the current titleholder certifies that the property is no longer needed for the use for which the property was originally condemned, and the owner from whom the property was taken by eminent domain is given the opportunity to repurchase the property at the price received from the condemning authority.<sup>20</sup> Two statutory exceptions that substitute the condemning authority for the certifying party or the current titleholder operate similarly.<sup>21</sup>

## Large Hub Airports

According to the Federal Aviation Administration, a “large hub airport” is a public use airport that serves civil aviation and accounts for 1 percent or more of annual national passenger boarding.<sup>22</sup> There are four large hub airports in Florida: Fort Lauderdale-Hollywood International Airport, Miami International Airport, Orlando International Airport, and Tampa International Airport.<sup>23</sup>

The National Plan of Integrated Airport Systems is overseen by the United States Secretary of Transportation.<sup>24</sup> The plan is designed to ensure a “safe, efficient, and integrated system of public-use airports adequate to anticipate and meet the needs of civil aeronautics, to meet the

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<sup>17</sup> 21 Fla. Jur. 2d Eminent Domain s. 25, *Taking for private use restricted* (2015).

<sup>18</sup> FLA. CONST., Article X, s. 6(c); *see also*, s 73.013(1), F.S.

<sup>19</sup> Section 73.013(2)(a), F.S.

<sup>20</sup> Section 73.013(2)(b), F.S.

<sup>21</sup> Sections 73.013(1)(f) and (g), F.S.

<sup>22</sup> Federal Aviation Administration, *Airport Categories – Airports*, available at, [http://www.faa.gov/airports/planning\\_capacity/passenger\\_allcargo\\_stats/categories/](http://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/categories/) (last visited January 21, 2016).

<sup>23</sup> Wikipedia, *List of airports in Florida*, available at [https://en.wikipedia.org/wiki/List\\_of\\_airports\\_in\\_Florida](https://en.wikipedia.org/wiki/List_of_airports_in_Florida) (last visited January 21, 2016).

<sup>24</sup> 49 U.S.C. s. 47103.

national defense requirements of the Secretary of Defense, and to meet identified needs of the United States Postal Service.”<sup>25</sup>

The State of Florida and its political subdivisions have the authority to condemn property when necessary for air approach protection.<sup>26</sup> A county’s taking of only residential property (but not similarly situated commercial property) serves a valid public purpose when the residential property is condemned “because the airport zoning laws indicate that residential construction in areas exceeding certain noise level requirements is an incompatible use, and testimony indicates that the parcels taken meet the requirements for incompatible use.”<sup>27</sup>

Appendix A of 14 C.F.R. part 150 regulates “noise exposure maps” related to airports. A noise exposure map is a “scaled, geographic depiction of an airport, its noise contours, and surrounding area.”<sup>28</sup> Appendix A establishes a uniform methodology for the development and preparation of airport noise exposure maps. It also identifies land uses that are considered to be compatible with various exposures of individuals to noise around airports. Residential land uses are not recommended for areas with an average noise exposure above 65 decibels.

### III. Effect of Proposed Changes:

**Section 1** amends s. 73.013, F.S., authorizing certain condemning authorities to convey, without restriction, property taken by inverse condemnation to a private party if the property is condemned pursuant to a large hub airport noise mitigation or noise compatibility program. This authority only applies to large hub airports identified in the National Plan of Integrated Airport Systems prepared in accordance with 49 U.S.C. s. 47103. The condemning authority may convey ownership or control of the property to a natural person or private entity under this paragraph only if the property is zoned so that future uses conform to the airport noise compatibility standards provided in 14 C.F.R. part 150, Appendix A.

**Section 2** provides an effective date of July 1, 2016.

### IV. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

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<sup>25</sup> *Id.*

<sup>26</sup> Section 333.12, F.S.

<sup>27</sup> 21 Fla. Jur. 2d Eminent Domain s. 31, *Airports* (2015).

<sup>28</sup> 14 C.F.R. s. 150.7.

**D. Other Constitutional Issues:**

The Florida Constitution prohibits the conveyance of private property taken by eminent domain after January 2, 2007, to a private party, unless that conveyance is authorized by a general law passed by a three-fifths vote of the membership of each house of the Legislature.<sup>29</sup> The bill authorizes the conveyance of private property taken by eminent domain, therefore it requires a three-fifths vote for final passage.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Florida's eminent domain law requires a condemning authority to pay the owner of the condemned lands full compensation (as opposed to the federally mandated "just compensation"). Therefore, any private owner of condemned lands should not suffer an adverse fiscal impact.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 73.013 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Community Affairs on February 1, 2016:**

Limits the application of the exception to instances where a condemning authority has acquired property in fee simple by inverse condemnation as a result of noise mitigation measures, or on the basis of measures required for the safety, utility, or efficiency of the airport.

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<sup>29</sup> FLA. CONST., Article X., s. 6(c).

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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