

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 1037 (CS/SB 1348)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Community & Military Affairs Subcommittee; Broxson (Education Pre-K-12; Wise; and others)	115 Y's	0 N's
COMPANION BILLS:	CS/SB 1348	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 1037 passed the House on February 15, 2012, was amended in the Senate, and subsequently was passed by the House on March 9, 2012. The bill grants eminent domain power to the board of trustees of the Florida School for the Deaf and the Blind (FSDB), a state-supported residential public school located in the historic City of St. Augustine for hearing-impaired and visually impaired students in preschool through 12th grade and the school's postsecondary program.

Currently, all 67 Florida school districts and the boards of trustees for the State University System and the Florida College System have been granted legislative authorization to exercise eminent domain powers. The FSDB, a statewide school serving eligible Florida residents from across the state, has never been granted eminent domain power by the Legislature.

The bill provides that the FSDB board of trustees may only exercise eminent domain power with the approval of the Governor and Cabinet, sitting as the Administration Commission, and in the manner provided in ch. 73 or ch. 74, F.S. The eminent domain power granted to the board of trustees of the statewide school is the same as the power currently granted to boards of trustees for the State University System and the Florida College System, which also must seek approval from the Administration Commission before exercising eminent domain powers and must exercise the power in the manner provided by ch. 73 or ch. 74, F.S.

The bill has no fiscal impact on state or local governments.

The bill was approved by the Governor on April 6, 2012, ch. 2012-78, Laws of Florida. The effective date of the bill is July 1, 2012.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Florida School for the Deaf and Blind

The Florida School for the Deaf and the Blind (FSDB), originating in 1883¹ and located in the historic City of St. Augustine, is a state-supported residential public school for hearing-impaired and visually impaired students in preschool through 12th grade. The school also offers a post-secondary program. There is no tuition cost for eligible Florida residents. As a component of the delivery of public education within Florida's K-20 education system, the FSDB provides educational programs and support services appropriate to meet the education and related evaluation and counseling needs of hearing-impaired and visually impaired students who meet enrollment criteria. As a school of excellence, the FSDB's mission states that it "strives to provide students with an opportunity to maximize their individual potential in a caring, safe, unique learning environment to prepare them to be literate, employable, and independent lifelong learners."² Today, the FSDB is the largest school of its type in the United States. The school has grown from three small buildings on five acres to 47 major buildings on nearly 80 acres of land. The school is bordered on the east by estuaries and waterways and on the west by San Marco Avenue. The school is bordered to the north and south by the historic neighborhoods of Fullerwood Park and Nelmar Terrace.

The FSDB is managed by a seven member board of trustees, who are appointed by the Governor and confirmed by the Senate.³ The board acts under general policies adopted by the State Board of Education. The board is vested with various responsibilities, including appointing faculty, determining eligibility admission requirements, providing for the services needed for daily care of students, providing for accounting and general record keeping, as well as a variety of other tasks related to the successful functioning of the school.⁴

The Legislature enacted s. 1013.351, F.S., to adopt the policy requiring the FSDB board of trustees to coordinate planning for new facilities with local governments to ensure that plans for site acquisition, construction, and opening of new facilities of the school are facilitated concurrent with other necessary services. The planning is supposed to integrate the educational plant survey for the school and applicable policies and procedures of the board of trustees with the local comprehensive plan and land development regulations. The coordination of planning is required to consider among other things, the effect of the location of new facilities to be located on property acquired by FSDB on or after January 1, 1998. School facilities within the geographic area or the campus of the school as it existed on or before January 1, 1998, are deemed to already be consistent with the local government's comprehensive plan and land development regulations.⁵

In order to facilitate planning, the FSDB and the City of St. Augustine may enter into an interlocal agreement to establish the specific ways in which the plans and processes of the board of trustees and the city are to be coordinated.⁶ So far, the FSDB and the City of St. Augustine have opted not to enter into an interlocal agreement as envisioned by s. 1013.351, F.S.

¹ In 1883, the Legislature with an appropriation of \$20,000 established an institution for the blind and deaf for two years. See <http://www.fldb.k12.fl.us/about/history> (last accessed January 12, 2012).

² Section 1002.36(2), F.S.

³ Section 1002.36(4)(a), F.S.

⁴ Section 1002.36(4)(e), F.S.

⁵ Section 1013.351(8), F.S.

⁶ Section 1013.351(3), F.S.

In order to improve coordination in selecting potential school facility sites, the FSDB board of trustees is required to give notice to the city at least 60 days before acquiring additional property, and the city is required to notify the board of trustees no later than 45 days after receiving notice, whether or not the proposed acquisition site is consistent with the land use categories and the city's comprehensive plan. Further, within 90 days before the school starts construction on any property acquired by the board of trustees on or after January 1, 1998, the board must request a determination of consistency from the city that the proposed use of the property is consistent with the comprehensive plan and corresponding land development regulations. If consistency is determined, construction on the property may begin and additional local government approvals are not required, except as provided in s. 1013.351, F.S.

Eminent Domain Power

In 2003, an Attorney General opinion stated that the FSDB could not use eminent domain authority without specific legislative delegation.⁷ The opinion stated that in the absence of any specific statutory authorization, the board of trustees of the FSDB may not condemn property or exercise the power of eminent domain.⁸ The opinion explained that an administrative agency possesses no inherent power, and may only exercise authority as conferred by law.⁹

The Florida Legislature has the authority to grant specific entities the power to take land through eminent domain. Courts have held that “[t]he right to appropriate private property for public use lies dormant in the State until legislative action is had.”¹⁰ While there are no express limitations on the legislature's authority to grant eminent domain powers, legislative authorization does not entitle an entity to condemn property for any reason, it simply provides a presumption in favor of public use.¹¹ The courts retain the authority to determine if the land is being taken for public use.¹² Once eminent domain power is granted by the Legislature, an entity is still required to abide by the protections for property owners outlined in the U.S. Constitution¹³ and the State Constitution¹⁴ as well as follow the strict judicial process outlined in ch. 73 or ch. 74, F.S.¹⁵ Among the requirements in ch. 73, F.S., is for the governmental entity, prior to instituting an eminent domain procedure, to attempt to negotiate in good faith with the owner of the parcel to be acquired, to provide the owner with a written offer including a copy of the appraisal the offer is based on if requested, and for the governmental entity to attempt to

⁷ Op. Att’y Gen. Fla. 2003-02 (2003).

⁸ *Id.*

⁹ *Id.*; see also *State ex. rel. Greenberg v. Fla. State Bd. of Dentistry*, 297 So.2d 628 (Fla. 1st DCA 1974).

¹⁰ *Marvin v. Hous. Auth. of Jacksonville*, 183 So. 145, 152 (Fla. 1938).

¹¹ *Daniels v. State Road Dept.*, 170 So.2d 846, 852 (Fla. 1964).

¹² See generally ss. 73 and 74, F.S.

¹³ The Fifth Amendment to the United States Constitution guarantees that a citizen's private property may not be taken for public use without just compensation. The “takings” clause of the Fifth Amendment is applicable to the states through the Fourteenth Amendment, which provides that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law. . . .”

¹⁴ Art. X, s. 6 of the Florida Constitution, provides:

(a) No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.

(b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.

(c) Private property taken by eminent domain pursuant to a petition to initiate condemnation proceedings filed on or after January 2, 2007, may not be conveyed to a natural person or private entity except as provided by general law passed by a three-fifths vote of the membership of each house of the Legislature.

¹⁵ See, e.g., s. 1013.25, F.S. The statutory eminent domain procedures in ch. 73, F.S., include presuit negotiations between the entity exercising its rights and the fee owner, offers of judgment, jury trials, compensation, business damage offers, and costs and attorneys' fees related to the proceeding. Eminent domain actions proceeding to trial require a jury of 12 in the circuit court of the county where the property lies. Eminent domain procedures take precedence over other civil matters. Supplementary procedures for eminent domain actions in ch. 74, F.S., are commonly referred to as “quick-take” provisions. Under the quick-take provisions, certain entities, including school boards, counties and municipalities, and public utilities may take possession and title of land subject to an eminent domain proceeding in advance of the entry of final judgment.

reach an agreement with the parcel owner regarding the amount of compensation to be paid for the parcel.¹⁶

District school boards have the authority to take private property for any public school purpose or use when, in the opinion of the school board, such property is needed in the operation of any or all of the public schools within the district.¹⁷ District school boards consist of not less than five elected members.¹⁸

The boards of trustees for the State University System and the Florida College System have also been given eminent domain authority, but with more constraints than that of school boards.¹⁹ To use its authority, the board of trustees must first attempt to reach an agreement with the property owner; if such an agreement cannot be reached, the board may exercise the power of eminent domain after receiving approval from the Administration Commission, proceeding under the manner provided by ch. 73 or 74, F.S.²⁰ Unlike district school boards, boards of trustees for the State University System and the Florida College System are appointed by the Governor and/or the Board of Governors and are confirmed by the Senate.²¹

Florida Governmental Conflict Resolution Act

Chapter 164, F.S., contains the “Florida Governmental Conflict Resolution Act.” Because the Legislature’s intent is to resolve conflicts to the greatest extent possible without litigation, the Act is designed to provide a procedure that is equitable, expeditious, effective, and inexpensive for resolution of conflicts between and among local and regional governmental entities.²² The purpose and intent of the Act is to “promote, protect, and improve the public health, safety, and welfare and to enhance intergovernmental coordination efforts. . . .”²³

Section 1013.351(11), F.S., provides that disputes between the local governments and the FSDB arising as a result of inconsistencies between proposed facility sites and uses of property and the local comprehensive plan and/or land development regulations must be resolved in accordance with ch. 164, F.S.

The FSDB and the City of St. Augustine recently entered into a ch. 164, F.S., dispute resolution process to seek resolution to a disagreement over the proposed use of certain FSDB properties and consistency with the city’s land development regulations. A settlement agreement was finalized on March 1, 2012, and included provisions relating to the use of eminent domain power by the FSDB.²⁴ The parties agreed that the FSDB would exclude permanently from the exercise of eminent domain the nearby neighborhoods, the Fullerwood and Nelmar Terrace Historic Register Districts that border the school’s present location. The parties also agreed that FSDB would exclude from the exercise of eminent domain for a period of not fewer than 10 years all other real property located within the municipal boundaries of the City of St. Augustine.

Effect of Changes:

¹⁶ See s. 73.015(1), F.S.

¹⁷ Section 1013.24, F.S.

¹⁸ Section 1001.34, F.S.

¹⁹ Section 1013.25, F.S.

²⁰ *Id.*

²¹ Art. IX, s. 7(c), Fla. Const.; ss. 1001.61 and 1001.71, F.S.

²² Section 164.102, F.S.

²³ *Id.*

²⁴ See Memorandum of Agreement between the City of St. Augustine and the Florida School for the Deaf and Blind, (March 1, 2012) (on file with the Community & Military Affairs Subcommittee).

The bill grants eminent domain power to the FSDB board of trustees upon approval of the Administration Commission, which consists of the Governor and the Cabinet. After receiving approval from the Administration Commission, the bill requires the board of trustees to exercise the power of eminent domain in the manner provided in ch. 73 or ch. 74, F.S., which includes the requirement to negotiate in good faith with the owner of a parcel to be acquired and attempt to reach an agreement as to compensation prior to instituting an eminent domain proceeding. The eminent domain power granted to the board of trustees of the statewide school is the same power currently granted to boards of trustees for the State University System and the Florida College System, which also must seek approval from the Administration Commission before exercising eminent domain powers as well as follow the procedures provided in ch. 73 or ch. 74, F.S.

The effective date of the bill is July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.