

CHAPTER 361

PUBLIC UTILITIES: SPECIAL POWERS

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PART I

EMINENT DOMAIN RIGHTS

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361.01 Eminent domain.—The president and directors of any corporation organized for the purpose of constructing, maintaining or operating public works, or their properly authorized agents, may enter upon any lands, public or private, necessary to the business contemplated in the charter, and may appropriate the same, or may take from any land most convenient to their work, any timber, stone, earth or other material which may be necessary for the construction and the keeping in repair of its works and improvements upon making due compensation according to law to private owners.

History.—s. 10, ch. 1639, 1868; RS 2158; GS 2683; RGS 4111; CGL 6042.

361.02 Constructing dams for waterpower.—Whenever any person owning lands in this state on any watercourse, may desire to erect dams for furnishing power for a water gristmill, electric light power, or other machine for public utility, and shall not have the fee simple title to the lands on the opposite side thereof, against which the petitioner would abut his or her dam, or surrounding lands which would be overflowed thereby, he or she may proceed to condemn such affected lands under the provisions of law relating to the condemnation of lands for other purposes.

History.—s. 1, ch. 5198, 1903; GS 2684; RGS 4112; CGL 6043; s. 544, ch. 95-148.

361.025 Right of eminent domain to railroad companies.—Any railroad company organized under the laws of this state, or organized under the laws of any other state and qualified to do business in this state, shall have the right of eminent domain to enter upon, for survey purposes, any land necessary for the construction, operation, and maintenance of its roads and

required facilities and to appropriate the same or any part thereof upon making due compensation according to the procedures set forth in chapters 73 and 74; however, no such company shall have the right of eminent domain with respect to property belonging to the state or any agency thereof. Any railroad company may construct, operate, and maintain its roads and required facilities on such property, subject only to the permitting requirements and reasonable regulations that may be imposed by the public authorities having jurisdiction over such property. The right of eminent domain for the purpose of securing terminal facilities on any waters of this state, including a sufficient amount of land for such facilities, shall be subordinate to the right of the governmental entity wherein the property is located to condemn such property through the exercise of its powers of eminent domain for a public purpose.

History.—ss. 6, 16, ch. 82-90; s. 3, ch. 83-113; s. 1, ch. 83-212; ss. 9, 10, ch. 92-192.

Note.—Repealed effective October 1, 2002, by s. 10, ch. 92-192, and scheduled for review pursuant to s. 11.61. Section 4, ch. 91-429, repealed s. 11.61 effective April 5, 1993.

361.03 Right of eminent domain to electric railway companies.—Any electric railway company operating or constructing any line of its railway outside the incorporated limits of cities or towns in this state, whether for the purpose of transporting passengers exclusively or not, shall have the same rights, powers and privileges of eminent domain as are now exercised and enjoyed by all railroad and canal companies in this state, as and with reference to and concerning the condemnation of public and private property for the right-of-way of such railroads and canals, and such electric railway company shall have the right, privilege and authority to condemn and acquire such right-of-way for the construction of its lines in the same manner and by the use of the same process as is now prescribed by the laws of this state for the condemnation of right-of-way for railroads and canals, and each and every one of the laws of the state applying to the condemnation of right-of-way for railroads and canals in this state, shall apply to, govern and control the acquisition of such right-of-way by and for such electric railway companies.

History.—s. 1, ch. 5018, 1901; GS 2685; RGS 4113; CGL 6044.

361.04 Right of eminent domain to waterworks companies.—Any corporation organized under the laws of this state, either general or special, for the purpose of supplying any city, town, village, or the inhabitants thereof, or any community with water for domestic or sanitary purposes, or for fire protection, shall have the right, through its officers or agents, to enter upon any land, public or private, necessary to the business contemplated in its charter, and may appropriate the same;

or may take from any land most convenient to its works, any timber, stone, earth, water or material which may be necessary for the construction, operation, keeping in repair or preservation of such works, upon making due compensation according to law to private owners; and should such waterworks company derive its supply of water, or any part thereof, from any lake, pond or stream of water, whether surface or subterranean, it may, upon making compensation as above specified, to private owners, appropriate any land lying contiguous to such pond, lake or stream, necessary for the preservation or protection of said water from diversion or contamination.

History.—s. 1, ch. 4165, 1893; GS 2686; RGS 4114; CGL 6045.

361.05 Right of eminent domain to natural gas companies.—Any corporation organized under the laws of this state, or by virtue of the laws of any other state, and qualified to do business in this state, for the purpose of supplying any city, town, village or the inhabitants thereof, or any community with natural gas for domestic or industrial purposes, including any natural gas transmission pipeline company that has received certification under ss. 403.9401–403.9425, shall have the right of eminent domain to lay its pipelines and works; to cause such examinations and surveys for the proposed pipelines to be made as shall be necessary for the selection of the most advantageous routes; to enter upon any land, public or private, necessary to the business contemplated in its charter; to construct its pipelines across, over, under, along, and upon any stream of water, watercourse, canal, lake, bay, gulf, road, street, highway, railroad, and transmission line; to take from any land most convenient to its pipelines and works, any timber, stone, earth, water, or other material which may be necessary to the construction, operation, keeping in repair, or preservation of its pipelines, works, and improvements, upon making due compensation according to law to private owners, with such reservation, if any, of oil, gas, and mineral rights as those owners may determine. If, in order to make repairs to or to relocate any tracks of any railroad or for the performance of any work of construction or reconstruction by any railroad upon its right-of-way, it becomes necessary to relocate temporarily or permanently any natural gas pipeline constructed upon any railroad right-of-way, such work incident to the relocation of such natural gas pipeline shall be performed, and the expense borne, by the company owning or operating that pipeline.

History.—s. 1, ch. 26893, 1951; s. 13, ch. 92–284.

361.06 Right of eminent domain to petroleum and petroleum products pipeline companies.—Any pipeline company which is or which intends to be a common carrier of petroleum and petroleum products and which is duly incorporated for such purpose under the laws of this state, or which is a foreign corporation and is qualified to do business in this state as a common carrier of petroleum and petroleum products shall have all the rights of eminent domain and all other rights granted to natural gas companies under s. 361.05 for the purpose of acquisition of rights-of-way for the installation, operation, maintenance, repair and replacement of its pipelines and all structures, pumping stations and other

installations and works incident thereto. It is specifically provided, however, that no such company shall have any right of eminent domain as to any property belonging to or operated by the state or any agency thereof, or by any county, school board, municipality or public body. However, any such pipeline company shall have the right to all necessary permits to install, operate, maintain, repair and replace its pipelines under, along and across such property, subject only to reasonable regulations that may be imposed by the particular authority having jurisdiction of such property.

History.—s. 1, ch. 57–1983; s. 1, ch. 69–300.

361.07 Right of eminent domain to companies owning and operating sewer or wastewater reuse systems.—Any corporation, person, or persons owning or operating a sewer or wastewater reuse system in this state duly authorized and regulated by the Florida Public Service Commission, or county in the state for the collection, treatment, purification, or disposal of sewage effluent and residue, including wastewater reuse, for the public shall have the right of eminent domain to enter upon any land, public or private, necessary to the business of operating such aforesaid sewer and wastewater reuse system for the public and may appropriate the same or any part thereof necessary for the operation of such sewer or wastewater reuse system, upon making due compensation according to law to private owners; provided that any lands so appropriated shall revert to the person or his or her successor in title from whom the land was acquired, should said sewer or wastewater reuse system be abandoned or cease to operate as a sewer or wastewater reuse system.

History.—s. 2, ch. 65–248; s. 10, ch. 93–51; s. 545, ch. 95–148.

1361.08 Right of eminent domain to coal pipeline companies.—

(1) It is the intent of the Legislature that the purpose of adopting this section to provide eminent domain powers and related benefits to certain firms is to make available low-cost electric power to all residents of the state and that this section should be construed consistently with this public interest policy.

(2) Any corporation, partnership, joint venture, association, or other legal entity organized under the laws of this state, or under the laws of any other state and qualified to do business in this state, for the purpose of supplying any electric utility or utilities; any city, town, or village or the inhabitants thereof; or any community with coal or its derivatives and any mixture and combination thereof by pipeline, and for the purpose of serving as a common carrier operating or proposing to operate a pipeline or pipelines for transporting or delivering coal or its derivatives or any mixture or combination thereof, shall have the right of eminent domain, for the purpose of acquiring title, easements, rights-of-way, or other rights or interests in property, necessary to acquire and take private property which is or may be needed for the construction, operation, maintenance, repair, or replacement of coal slurry and derivative plants, pipelines, pumping stations, and any other installations and works incident thereto. The procedure to condemn property or interest therein shall be exercised in the manner set forth in chapters 73 and 74. In any condemnation pro-

ceeding under this act, the circuit court shall restrict the exercise of the right of eminent domain in the following particulars:

(a) The right of eminent domain shall be limited to the taking of property or an interest therein from the owner which results in the least property or interest therein being taken to effect the purpose of the condemning entity.

(b) All takings shall be subject to the legal obligation (which shall become a restrictive covenant on the property or interest therein taken) on the part of the condemning authority and its successor in title or interest, jointly and severally, to convey the title or property interest taken to the condemnee or the condemnee's heirs, successors, or assigns if the condemned property or interest therein is not used within a reasonable time after the taking, which time limit shall be fixed by the court in the condemnation proceeding.

(c) If the property or interest therein is conveyed to the condemnee or to the condemnee's heirs, successors, or assigns, the grantee of such conveyance shall pay or cause to be paid to the condemning authority or to its successor in title or interest, as the case may be, consideration, in cash, which shall be equal to the value of the condemned property or interest therein being conveyed, as determined as of the time of the taking, discounted at a rate of 10 percent per year, compounded annually, from the date of the taking to the date of the conveyance.

(d) The court, in any condemnation proceeding brought pursuant to this section, shall be bound by the findings of the Florida Public Service Commission on the general issues of economic and environmental feasibility as determined pursuant to s. 350.80.

History.—ss. 1, 2, ch. 79-236; s. 546, ch. 95-148.

Note.—Section 5 of ch. 79-236 provides that: "This act shall take effect when every state in which the coal slurry pipeline will pass en route to Florida has enacted laws granting eminent domain authority to coal slurry pipeline companies or other entities operating or proposing to operate a coal slurry pipeline, and when the appropriate governmental authority has guaranteed in writing to the Public Service Commission that a continuous source of water shall be available for use in said coal slurry pipeline."

PART II

JOINT ELECTRIC POWER SUPPLY PROJECTS

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361.10 Purpose.—The purpose of this act is to implement the provisions of s. 10(d), Art. VII of the State Constitution, as amended. This act may be known and cited as the "Joint Power Act."

History.—s. 1, ch. 75-200.

361.11 Definitions.—When used in this part:

(1) "Project" means a joint electric power supply project and any and all facilities, including all equipment, structures, machinery, and tangible and intangible property, real and personal, for the joint generation or transmission of electrical energy, or both, including any fuel supply or source useful for such a project.

(2) "Electric utility" means any municipality, authority, commission, or other public body, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electrical energy generation, transmission, or distribution system within the state on June 25, 1975.

(3) "Person" means:

(a) Any natural person;

(b) The United States; any state; any municipality, political subdivision, or municipal corporation created by or pursuant to the laws of the United States or any state; or any board, corporation, or other entity or body declared by or pursuant to the laws of the United States or any state to be a department, agency, or instrumentality of any thereof;

(c) Any corporation, not-for-profit corporation, firm, partnership, cooperative association, electric cooperative, or business trust of any nature whatsoever organized and existing under the laws of the United States or any state; or

(d) Any foreign country; any political subdivision or governmental unit of a foreign country; or any corporation, not-for-profit corporation, firm, partnership, cooperative association, electric cooperative, or business trust of any nature whatsoever organized and existing under the laws of a foreign country or of a political subdivision or governmental unit of a foreign country.

(4) "Foreign public utility" means any person, as defined in subsection (3), the principal location or principal place of business of which is not located within this state, which owns, maintains, or operates facilities for the generation, transmission, or distribution of electrical energy and which supplies electricity to retail or wholesale customers, or both, on a continuous, reliable, and dependable basis; or any affiliate or subsidiary of such person, the business of which is limited to the generation or transmission, or both, of electrical energy and activities reasonably incidental thereto.

History.—s. 2, ch. 75-200; s. 3, ch. 82-53.

361.12 Joint electric power supply project.—In addition to its existing powers, any electric utility, or any organization, association, or separate legal entity whose membership consists only of electric utilities, by participating in an agreement to implement a project, is authorized and empowered to join with any one or more of the following:

(1) Any other electric utility;

(2) Any organization, association, or separate legal entity whose membership consists only of electric utilities;

(3) One or more foreign public utilities; or

(4) Any other person, if the right to full possession and to all of the use, services, output, and capacity of any such project during the original estimated useful life thereof is vested, subject to creditors' rights, in any one

or more electric utilities, in any one or more of any such legal entity, in any one or more foreign public utilities, or in any combination thereof;

for the purpose or purposes of jointly financing, acquiring, constructing, managing, operating, or owning any project or projects. In the implementation of this act, any group of electric utilities may create any organization, association, or separate legal entity whose membership consists only of electric utilities for the accomplishment of the purposes of this act. However, no such organization, association, or separate legal entity may own, operate, or exercise the power of eminent domain with respect to any facilities for the retail distribution of electrical energy.

History.—s. 3, ch. 75-200; s. 4, ch. 82-53.

361.13 Powers.—Any electric utility, or any organization, association, or separate legal entity whose membership shall consist only of electric utilities, participating in an agreement to implement a project has the following additional powers as they may relate to the project:

(1) To plan, finance, acquire, construct, purchase, operate, maintain, use, share the cost of, own, lease, sell, or dispose of any project or projects within or without the state.

(2) To exercise the power of eminent domain, except to acquire the generating, transmission, or distribution facilities of any other electric utility or foreign public utility.

(3) To purchase capacity or energy, or both, in any quantity agreed upon in the joint power agreement from any project in which the purchaser has an ownership interest.

History.—s. 4, ch. 75-200; s. 5, ch. 82-53.

361.14 Limitation on joint ownership of project or output thereof.—The additional powers and authority provided in this chapter shall in no way be considered to authorize or permit the joint ownership of any project by, or the direct or indirect sale or transfer of the services, products, capacity, or energy of any project to, any person or persons other than electric utilities; any organization, association, or separate legal entity whose membership consists only of electric utilities; foreign public utilities; or any combination thereof, except that joint ownership of any such project with any other person shall be permitted if the right to full possession and to all of the use, services, output, and capacity of such project during the original estimated useful life thereof is vested, subject to creditors' rights, in any one or more electric utilities, in any one or more of any such legal

entity, in any one or more foreign public utilities, or in any combination thereof.

History.—s. 5, ch. 75-200; s. 6, ch. 82-53.

361.15 Issuance of bonds.—For the purpose of financing or refinancing the cost of a project or projects, any municipality, authority, board, commission, or other public body which is an electric utility as defined in this act and is a participant in a project under this act may exercise all the powers in connection with the authorization, issuance, and sale of bonds as the same are conferred upon municipalities by part I of chapter 159. All of the privileges, benefits, powers, and terms of part I of chapter 159 shall be fully applicable to such body. For the purpose of this section, a project as defined in this part shall be a project within the definition of the term "project" in s. 159.02(4).

History.—s. 6, ch. 75-200.

361.16 Powers supplemental.—The powers conferred by this act shall be in addition, and supplementary, to existing powers and statutes, and this act shall not be construed as altering, repealing, or limiting any of the provisions of any other law, general, local, or special, or of any articles of incorporation of an electric utility. However, when the exercise of any power conferred on a municipality, authority, commission, or other public body by this act would conflict with a limitation upon the public body contained in its charter or otherwise expressed by special act, such charter or special act limitation shall be superseded by this act for the purposes of the exercise of such power pursuant to this act.

History.—s. 7, ch. 75-200.

361.17 Project taxing power; interests subject to taxation.—Except as provided in s. 10, Art. VII of the State Constitution, no joint electric supply projects authorized under this statute shall lend or use its taxing power or credit to aid any corporation, association, partnership, or person. The private interest portion of such joint projects shall be subject to all taxation in accordance with their proportionate interest in such projects.

History.—s. 8, ch. 75-200.

361.18 Construction.—

(1) The provisions of this part, being necessary for the welfare and prosperity of the state and its inhabitants, shall be liberally construed to effect its purposes.

(2) Chapter 82-53, Laws of Florida, shall be deemed to be enacted for the purpose of further implementing the provisions of s. 10(d), Art. VII of the State Constitution, as amended.

History.—s. 9, ch. 75-200; s. 8, ch. 82-53.