

Bill No. CS for SB 1426

Amendment No.     

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| <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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Senator Grant moved the following amendment:

**Senate Amendment (with title amendment)**

On page 23, lines 3 and 4, delete those lines

and insert:

Section 19. Section 73.0511, Florida Statutes, is amended to read:

73.0511 Prelitigation notice and offer of full compensation.--Before an eminent domain action is initiated under chapter 73 or chapter 74 ~~Prior to instituting litigation,~~ the condemning authority shall notify the fee owners appearing of record on the date the offer is made of their statutory rights under s. 73.091 and shall make a written offer of full compensation for the property to be acquired and any damages to the remainder caused by the taking, naming the fee owners to whom it is made. The notice and written offer must be sent to the fee owners' last known address listed on the county ad valorem tax roll. Notice to one fee owner constitutes notice to all fee owners on multiple-ownership property. This section may not be

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1 interpreted as shifting the burden of proof of either the  
2 condemning authority or fee owners at a valuation trial under  
3 chapter 73 or chapter 74, as otherwise provided by law. The  
4 governmental condemning authority is not required to give  
5 notice to a person who acquires title to the property  
6 subsequent to the notice required by this section.

7 Section 20. Subsection (2) of section 337.27, section  
8 337.271, subsection (2) of section 348.0008, subsection (2) of  
9 section 348.759, and subsection (2) of section 348.957,  
10 Florida Statutes, are repealed.

11 Section 21. Subsection (6) is added to section 253.82,  
12 Florida Statutes, to read:

13 253.82 Title of state or private owners to Murphy Act  
14 lands.--

15 (6)(a) All reservations of easements on deeds by the  
16 Board of Trustees of the Internal Improvement Trust Fund  
17 conveying land acquired under chapter 18296, Laws of Florida,  
18 1937, are hereby vested by operation of law, and without the  
19 necessity of instruments of conveyance from the Board of  
20 Trustees of the Internal Improvement Trust Fund, in the  
21 governmental entity having right and title to the road to  
22 which the reservations are adjacent. All reservations adjacent  
23 to a road that was designated as a state road at the time of  
24 the reservation, which road is currently held by the state,  
25 are conveyed to the Department of Transportation. All  
26 reservations adjacent to a road that was designated as a state  
27 road at the time of the reservation, which road is located in  
28 an unincorporated area of a county or owned by the county  
29 within any incorporated area, are conveyed to the respective  
30 county. All other reservations within an incorporated area  
31 adjacent to a road that was designated as a state road at the

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1 time of the reservation, which reservations are not otherwise  
2 conveyed to the state or the county, are conveyed to the  
3 incorporated area. The conveyance includes all right, title,  
4 and interest in the reservation held by the Board of Trustees  
5 of the Internal Improvement Trust Fund.

6 (b) Every entity that holds title to Murphy Act  
7 reservations must establish a procedure for reviewing any deed  
8 that contains a reservation when a review is requested or a  
9 road project is anticipated. The review process must provide  
10 for:

11 1. A determination of whether the language of the deed  
12 created a reservation at the time of the original conveyance.

13 2. A review of any release of the reservation provided  
14 by the property owner.

15 3. The recording of a notice of the nonexistence of a  
16 reservation if reservation language in the deed does not  
17 impact the property.

18 4. A determination of whether any or all of the  
19 reservation may be released, and a form for recording the  
20 release.

21 5. A process to allow for review through mediation if  
22 requested by the property owner or through binding arbitration  
23 pursuant to chapter 44.

24  
25 Any fee charged may not exceed the actual cost to review the  
26 deed, perform an appeal, and pay any recording expenses. Any  
27 such fee may not exceed \$300.

28 (c)1. Any owner of property encumbered by a Murphy Act  
29 road reservation who has been denied a release of all or part  
30 of the reservation or who has received notice of a  
31 governmental entity's intent to preserve the reservation under

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1 s. 712.05 may appeal to the entity and show that the  
2 reservation substantially denies the property owner the  
3 current economic use of the property held by the owner. For  
4 purposes of this determination, the term "current economic  
5 use" means the use of the property on the date notice of the  
6 easement is filed under s. 712.05.

7 2. Upon a determination by the governmental entity  
8 that the reservation substantially denies the property owner  
9 the current economic use of the property held by the owner,  
10 the governmental entity must purchase the real property and  
11 improvements not retained by the property owner in fee simple  
12 title or release all or part of the reservation as necessary  
13 to allow for beneficial use of the property.

14 3. If the governmental entity and property owner are  
15 unable to agree as to whether the reservation substantially  
16 denies the current economic use of the property or as to the  
17 purchase price, the property owner may request mediation or  
18 binding arbitration under chapter 44 to resolve these issues.

19 4. Before the payment of any compensation, the  
20 property owner must provide the governmental entity copies of  
21 any title insurance policies and notice of any compensation  
22 received from a title company related to the easement.

23 (7) The process for release of any road reservation  
24 covered by this section or payment for property impacted by  
25 the use of a reservation covered by this section must be  
26 solely in accordance with this section. Any action for the  
27 taking of property related to road construction is separate  
28 and distinct from an action under this section.

29 (8) The governmental entity is not liable for  
30 attorney's fees or costs incurred by the owner in establishing  
31 the impact of the road reservation on the property.

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1           Section 22. Section 712.04, Florida Statutes, is  
2 amended to read:

3           712.04 Interests extinguished by marketable record  
4 title.--Subject to the matters stated in s. 712.03, such  
5 marketable record title shall be free and clear of all  
6 estates, interests, claims, or charges whatsoever, the  
7 existence of which depends upon any act, title transaction,  
8 event or omission that occurred prior to the effective date of  
9 the root of title. All such estates, interests, claims, or  
10 charges, however denominated, whether such estates, interests,  
11 claims, or charges are or appear to be held or asserted by a  
12 person sui juris or under a disability, whether such person is  
13 within or without the state, whether such person is natural or  
14 corporate, or is private or governmental, are hereby declared  
15 to be null and void, except that this chapter shall not be  
16 deemed to affect any right, title, or interest of the United  
17 States, Florida, or any of its officers, boards, commissions,  
18 or other agencies reserved in the patent or deed by which the  
19 United States, Florida, or any of its agencies parted with  
20 title. However, all reservations of easements in deeds by the  
21 Trustees of the Internal Improvement Trust Fund conveying land  
22 acquired under chapter 18296, Laws of Florida, 1937, shall be  
23 extinguished by the Marketable Record Title Act on July 1,  
24 2001, subject to the provisions of s. 712.03, and further  
25 subject to the right of any governmental entity that holds  
26 title to the reservations to preserve such reservations as are  
27 necessary for future transportation projects in adopted  
28 transportation plans by filing notice under s. 712.05 before  
29 July 1, 2001.

30           Section 23. Subsection (3) is added to section 712.05,  
31 Florida Statutes, to read:

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1           712.05 Effect of filing notice.--  
2           (3) Any governmental entity that claims a road  
3 reservation pursuant to a deed conveyed under the Murphy Act  
4 may preserve the reservation or any portion thereof necessary  
5 for future transportation projects in adopted transportation  
6 plans and protect the reservation from extinguishment by the  
7 operation of this chapter by filing for record, prior to July  
8 1, 2001, a notice, in writing, in accordance with the  
9 provisions of this chapter. The notice preserves the  
10 reservation or portion thereof for 10 years following the date  
11 of record if the reservation is used or identified by the  
12 governmental entity in the final design plans of a road  
13 project scheduled for construction to begin before the end of  
14 the 10-year period. Any reservation used or identified in the  
15 final design plans of a road project scheduled for  
16 construction to begin before the end of the 10-year period is  
17 not extinguished.

18           Section 24. Subsection (3) is added to section 479.15,  
19 Florida Statutes, to read:

20           479.15 Harmony of regulations.--  
21           (3) It is the express intent of the Legislature to  
22 limit the state right-of-way acquisition costs in eminent  
23 domain proceedings by preempting county and municipal  
24 regulation of outdoor advertising signs located adjacent to  
25 any part of the state highway system when the state is making  
26 improvement to such highways, the provisions of s. 479.155  
27 notwithstanding. Whenever land is acquired upon which is  
28 situated a lawful nonconforming sign, the sign may, upon  
29 receiving a waiver from federal regulations and at the  
30 election of its owner, be relocated or reconstructed adjacent  
31 to the new right-of-way at the same station along the roadway,

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1 and any local ordinance to the contrary is preempted.

2       Section 25. (1) The Legislature finds that balancing  
3 the property and business interests of private citizens with  
4 costs of advancing the public purposes of governmental  
5 projects is an important function of the Legislature.  
6 Therefore, the Legislature creates and establishes a study  
7 panel on eminent domain to make an assessment of the current  
8 administration of the exercise of the eminent domain power by  
9 state and local governments, to identify issues of fairness  
10 and justice in the protection of property and business rights  
11 upon the acquisition for public good, to analyze the  
12 feasibility of establishing procedures or programs to assist  
13 property or business owners adversely affected by  
14 transportation projects when demonstrating actual loss, and to  
15 ascertain any potential increase or decrease in the costs of  
16 right-of-way acquisition upon any proposed legislative  
17 recommendation. In carrying forth its stated purpose, the  
18 study panel will provide and address:

19       (a) A brief jurisprudential history of the basis of  
20 the power of eminent domain vis a vis property and business  
21 rights, constitutional or otherwise.

22       (b) A study of the frequency of acquisition by  
23 voluntary purchase prior to the filing of an eminent domain  
24 lawsuit rather than acquisition by lawsuit for transportation  
25 projects in which acquisition of title took place between  
26 January 1, 1997, and December 31, 1997, identifying whether  
27 acquisition included any business interests in addition to  
28 property interests and whether an initial offer was made by  
29 the condemning authority.

30       (c) A study of right-of-way costs per parcel for  
31 transportation projects in which acquisition of title took

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1 place between January 1, 1997, and December 31, 1997,  
2 comparing the amount of any initial offer with the amount of  
3 settlement; identifying whether settlement occurred prior to  
4 lawsuit, in litigation prior to jury trial, or by jury trial;  
5 identifying any stipulated allocations between the amounts  
6 reimbursed to a property or business owner for property,  
7 business damages, attorney's fees and costs, or expert costs;  
8 and identifying any allocations between administrative costs  
9 or expert costs expended by the condemning authority.

10 (d) A study of the appraisal methodology employed by  
11 condemning authorities for the valuation of real estate with  
12 the highest and best use in agriculture for acquisitions in  
13 which title vested or purchase contracts were agreed to  
14 between January 1, 1997, and December 31, 1997.

15 (e) A study of the frequency with which the property  
16 owner received compensation for a substantial diminution of  
17 access to the exclusion of a business owner in transportation  
18 projects in which acquisition of title took place between  
19 January 1, 1997, and December 31, 1997.

20 (f) A study of the frequency of the number of whole  
21 takings relative to the number of partial takings in  
22 transportation projects in which acquisition of title took  
23 place between January 1, 1997, and December 31, 1997.

24 (g) A study of the feasibility of potential programs  
25 for assisting businesses adversely affected by transportation  
26 projects, including, but not limited to:

27 1. Business loan programs with low or no interest.

28 2. Business grant programs.

29 3. Credits for, and exemptions from, taxes or fees for  
30 impacted businesses.

31 4. Use of state surcharges on local fuel tax revenues



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1 to fund local business assistance programs.

2 5. Use of alternative dispute resolution approaches to  
3 resolving business damage claims.

4 6. Provision by statute or constitutional amendment to  
5 further protect business rights when affected by eminent  
6 domain.

7 (h) A study of alternative approaches to business  
8 damages which would make the business owner whole.

9 (i) A study of the costs of eminent domain actions in  
10 this state, including property and business damage  
11 compensation and attorney's fees, as compared to the costs  
12 under the federal system and that of other states.

13 (j) Any other aspects of eminent domain deemed  
14 appropriate by the study panel.

15 (2) When not otherwise specifically provided, the  
16 study panel shall establish guidelines or parameters of the  
17 studies in subsection (1) so that the studies are not  
18 exhaustive but maintain representative statistical accuracy.  
19 In order for the study panel to receive input, and to assist  
20 it in its evaluations and its formulation of recommendations,  
21 the study panel may establish one or more technical or other  
22 special advisory committees. The advisory committees may  
23 include study panel or non-study panel members, including  
24 representatives of those industries that may be affected by  
25 the study panel's recommendations. Study panel and non-study  
26 panel members of any technical or other special advisory  
27 committees may not receive remuneration for their services.  
28 Study panel members shall be reimbursed for travel and  
29 expenses in accordance with chapter 112, Florida Statutes, to  
30 the extent that funds are available for this purpose. Public  
31 officers and employees shall be reimbursed by their respective

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1 agencies in accordance with chapter 112, Florida Statutes.  
2 Costs for the study panel shall be funded in the Department of  
3 Transportation's adopted 5-year work program. The department  
4 may contract with the Florida Conflict Resolution Consortium  
5 and Florida State University. All state agencies are requested  
6 to provide assistance to the study panel as necessary to  
7 accomplish the purposes set forth for the study panel in this  
8 act.

9 (3) The study panel shall consist of the following  
10 members:

11 (a) A representative of the Department of  
12 Transportation, a representative of the Department of Banking  
13 and Finance, a representative of the Association of Counties,  
14 a representative of the League of Cities, a representative of  
15 the Florida Metropolitan Planning Organization, a  
16 representative of the Office of the Attorney General, a  
17 representative of either the St. Johns River Water Management  
18 District or the South Florida Water Management District, and a  
19 representative of the Florida Transportation Commission, all  
20 to be appointed by the Governor.

21 (b) A member of the Florida Senate, a representative  
22 of the Florida Transportation Builders Association, a  
23 representative of the Florida Petroleum Council, a  
24 representative of the Florida Retail Federation, a  
25 representative of the Florida Division of the National  
26 Federation of Independent Businesses, a representative of the  
27 Florida Restaurant Association, and a representative of the  
28 Eminent Domain Committee of the Academy of Florida Trial  
29 Lawyers, all to be appointed by the President of the Senate.

30 (c) A member of the Florida House of Representatives,  
31 a representative of the Florida Petroleum Marketers

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1 Association, a representative of the Florida United Businesses  
2 Association, a representative of the Florida Farm Bureau  
3 Federation, a representative of the Florida Property Rights  
4 Coalition, a representative of the Florida Chamber of  
5 Commerce, and a representative of the Florida Bar Eminent  
6 Domain Committee, all to be appointed by the Speaker of the  
7 House of Representatives.

8       (4) The study panel shall hold at least two public  
9 hearings, one of which shall be outside Tallahassee, and shall  
10 seek public comment and input. The study panel shall submit a  
11 written report to the Governor, the President of the Senate,  
12 and the Speaker of the House of Representatives on its  
13 findings and any recommendations for proposed legislation no  
14 later than December 31, 1999.

15       Section 26. The Legislature finds that balancing  
16 property and business interests of private citizens and  
17 governmental entities is an important function of the  
18 Legislature. Likewise, the Legislature finds that, in the  
19 balancing of those interests, prelitigation offers of  
20 compensation assist in reducing the costs of acquisition; that  
21 an entire lot, block, or tract of land should be acquired only  
22 when the public purpose and necessity are related to the  
23 engineering needs of a project and not the saving of  
24 acquisition costs to the detriment of business owners; that  
25 orderly procedures for the transference of deeds under the  
26 Murphy Act should be established to save administrative costs;  
27 that provision should be made for the underlying fee owner to  
28 be eligible for compensation for the denial of economic use  
29 caused by the exercise of a reservation pursuant to deeds  
30 under the Murphy Act; and that local ordinances regulating  
31 outdoor advertising signs should be preempted upon relocation

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1 of an outdoor advertising sign resulting from the acquisition  
2 of right-of-way. Therefore, the Legislature finds that this  
3 act fulfills an important state interest.

4 Section 27. Subsection (1) of section 337.19, Florida  
5 Statutes, is amended to read:

6 337.19 Suits by and against department; limitation of  
7 actions; forum.--

8 (1) Suits at law and in equity may be brought and  
9 maintained by and against the department on any contract claim  
10 arising from the breach of an express provision or an implied  
11 covenant of a written agreement or a written directive issued  
12 by the department pursuant to the written agreement. In any  
13 such suit, the department and the contractor shall have all of  
14 the same rights, obligations, remedies, and defenses as a  
15 private person under a like contract, except that no liability  
16 may be based on an oral modification of the written contract  
17 or written directive. However, this section shall not be  
18 construed to in any way prohibit the department from limiting  
19 its liability or damages through provisions in its contracts.  
20 Notwithstanding anything to the contrary contained herein, no  
21 employee or agent of the department may be held personally  
22 liable to an extent greater than that provided under s. 768.28  
23 under contract for work done; provided, that no suit sounding  
24 in tort shall be maintained against the department.

25 Section 28. Section 19 of this act shall take effect  
26 January 1, 1999; section 20 of this act shall take effect July  
27 1, 1998, for eminent domain actions filed after July 1, 1998;  
28 and all other sections of this act, unless otherwise provided,  
29 shall take effect upon this act becoming a law.

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 3, lines 5 and 6, delete those lines

4

5 and insert:

6 identification card; amending s. 73.0511, F.S.;

7 providing requirements with respect to

8 prelitigation; providing prelitigation notice

9 to fee owners; providing for prelitigation

10 offer to fee owners; repealing s. 337.27(2),

11 F.S., which provides for the acquisition of

12 lands and property; repealing s. 337.271, F.S.,

13 which provides for negotiations for

14 acquisitions by the Department of

15 Transportation; repealing s. 348.0008, F.S.,

16 which provides for the acquisition of lands and

17 property in the Florida Expressway Authority

18 Act; repealing s. 348.759(2), F.S., which

19 provides for the acquisition of lands or

20 property by the Orlando-Orange County

21 Expressway Authority; repealing s. 348.957(2),

22 F.S., which provides for the acquisition of

23 lands or property by the Seminole County

24 Expressway Authority; amending s. 253.82, F.S.;

25 providing for all transportation easements

26 acquired under the Murphy Act to be conveyed to

27 the Department of Transportation or the

28 governmental entity currently having title to

29 the adjacent roadway; requiring the

30 establishment of a procedure for review of

31 deeds containing transportation reservations

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1           acquired under the Murphy Act; setting  
2           requirements for the review process; providing  
3           compensation for certain property owners where  
4           the reservation denies current economic use of  
5           the property; providing for mediation or  
6           arbitration; amending ss. 712.04, 712.05, F.S.;  
7           providing for the release of certain easements  
8           held by governmental entities; providing for  
9           preservation of certain road easement  
10          reservations scheduled to begin within a  
11          specified period; amending s. 479.15, F.S.;  
12          providing for the preemption of local  
13          ordinances regulating outdoor advertising signs  
14          upon relocation after acquisition of  
15          right-of-way; creating an eminent domain study  
16          panel; providing for the membership of the  
17          study panel; requiring a report to the Governor  
18          and Legislature; amending s. 337.19, F.S.;  
19          authorizing suits to be brought against the  
20          department for the breach of an expressed  
21          provision or an implied covenant; providing  
22          that liability may not be based on an oral  
23          modification of a written contract; providing  
24          effective dates.

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