

By Representative Ritter

1 A bill to be entitled
2 An act relating to eminent domain; amending s.
3 73.021, F.S.; providing that other actions
4 relating to condemned property may be included
5 in eminent domain actions; providing for joint
6 condemnation actions by two or more condemning
7 authorities; amending s. 73.032, F.S.;
8 providing preemption for rules of the Florida
9 Supreme Court relating to offers of judgment;
10 providing that any party may serve an offer of
11 judgment regardless of the amount at issue;
12 deleting a provision authorizing a defendant to
13 make offers to enter judgment under \$100,000;
14 expanding contents of an offer of judgment;
15 excluding attorney's fees in determining
16 certain costs; amending s. 73.051, F.S.;
17 providing for filing written defenses to
18 eminent domain petitions after entry of an
19 order of taking; amending s. 73.0511, F.S.;
20 requiring a fee owner's counsel to be provided
21 prelitigation notice; requiring notice of the
22 Department of Environmental Protection or water
23 management districts; amending s. 73.071, F.S.;
24 requiring a defendant claiming fixtures or
25 trade fixture damages to provide an inventory
26 identifying the items claimed; clarifying the
27 determination of enhancement values in setoff
28 of severance damages; requiring consideration
29 of certain cleanup costs and sources in
30 determining the value of property; prohibiting
31 recovery of special damages under certain

1 circumstances; limiting business damages to
2 parties with an actual ownership interest in
3 the property taken; providing criteria;
4 creating s. 73.074, F.S.; providing for the
5 valuation and apportionment of awards relating
6 to condominium units and condominium common
7 elements; creating s. 73.075, F.S.; providing
8 legislative findings; creating s. 73.076, F.S.;
9 providing standards for discovery of documents,
10 property visits, and other items; authorizing
11 presuit settlement offers by the condemning
12 authority and each owner; providing procedures;
13 providing sanctions for failure to comply with
14 presuit discovery requirements; creating s.
15 73.077, F.S.; providing for court ordered
16 mediation; requiring monetary claims to be
17 quantified before mediation; requiring parties
18 to exchange valuation reports and summaries
19 before mediation; providing sanctions for
20 failure to comply with court ordered mediation;
21 amending s. 73.091, F.S.; providing a
22 definition; requiring payment of costs incurred
23 in a sale in settlement of pending
24 condemnation; prohibiting award of certain fees
25 and costs; excluding recovery of certain costs;
26 amending s. 73.092, F.S.; providing for
27 attorney's fees based on certain criteria;
28 providing a definition; requiring the filing of
29 certain information by a condemnee's attorneys;
30 requiring a defendant's attorney to provide for
31 certain fee agreements; amending s. 73.093,

1 F.S.; providing for written valuation reports;
2 providing for compensation for certain
3 valuation reports; precluding expert testimony
4 inconsistent with written reports; amending s.
5 73.131, F.S.; exempting a condemning authority
6 from liability for certain costs and attorney's
7 fees; providing conditions for attorney's fees
8 or costs on the appeal of a business damages
9 claim; amending s. 74.031, F.S.; providing for
10 contents of declarations of taking; amending s.
11 74.041, F.S.; eliminating authorization to
12 combine certain summonses for certain purposes;
13 providing that certain petitions are not
14 required to meet certain constructive service
15 requirements; amending s. 74.051, F.S.;
16 requiring a court to enter an order of taking
17 under certain circumstances; providing for
18 budgeting of certain expert witness costs;
19 providing for acquisition of certain property;
20 amending s. 74.071, F.S.; providing for
21 interest on judgments; amending s. 127.01,
22 F.S.; clarifying that counties may condemn land
23 for certain purposes; authorizing state
24 agencies to delegate eminent domain power for
25 programs and projects to local governments
26 under certain conditions; providing an
27 effective date.

28
29 WHEREAS, when a condemning authority acquires property
30 under the powers of eminent domain, the owners are entitled to
31

1 full compensation and reasonable costs including attorney's
2 fees, and

3 WHEREAS, when contaminated property is condemned, the
4 cost of cleanup is a factor influencing value and
5 consideration of any monetary sources to defray the cost of
6 contamination cleanup assures that the public pays one time
7 for the cleanup with the owner being fully compensated, and

8 WHEREAS, public improvement projects frequently enhance
9 property values in the general area of the project, and

10 WHEREAS, condominium units, timeshare units, and
11 condominium common areas present unique valuation issues and
12 apportionment of condominium awards assures an equitable
13 distribution of the compensation due unit owners, and

14 WHEREAS, presuit discovery and early mediation of
15 eminent domain proceedings may substantially reduce the
16 court's case load, delay, and costs, including attorney's
17 fees, while preserving each owner's right to compensation for
18 the property acquired, and

19 WHEREAS, when the public pays costs, including
20 attorney's fees, those fees and costs should be objectively
21 measurable and properly reflect the economic benefit that
22 accrues to attorneys and experts paid by the public, and

23 WHEREAS, attorneys and expert witnesses paid by the
24 public benefit from timely payment, assured payment at the
25 outset of the case, and reduced office costs of collection of
26 fees due attorneys and expert witnesses as a result of public
27 payment, and

28 WHEREAS, it is the intent of the Legislature by
29 adoption of this act to assure full compensation to each owner
30 while reducing costs of acquiring property under the powers of
31 eminent domain, NOW, THEREFORE,

1 Be It Enacted by the Legislature of the State of Florida:

2

3 Section 1. Section 73.021, Florida Statutes, is
4 amended to read:

5 73.021 Petition; contents.--Those having the right to
6 exercise the power of eminent domain may file a petition
7 therefor in the circuit court of the county wherein the
8 property lies, which petition shall set forth:

9 (1) The authority under which and the use for which
10 the property is to be acquired, and that the property is
11 necessary for that use.†

12 (2) A description identifying the property sought to
13 be acquired. The petitioners may join in the same action all
14 properties involved in a planned project whether in the same
15 or different ownership, or whether or not the property is
16 sought for the same use. A petition may assert alternative
17 claims with regard to requesting partial takings and total
18 takings if the authorizing resolution of the condemning
19 authority provides for such a result and the condemning
20 authority is proposing to undertake a total acquisition under
21 the authority of s. 337.27(2), if the testimony at the hearing
22 on the order of taking justifies a total acquisition of a
23 parcel of property.†

24 (3) The estate or interest in the property which the
25 petitioner intends to acquire, except a petitioner may, under
26 s. 337.27(2), describe an entire lot, block, or tract of land
27 or alternatively describe a portion of the property to be
28 acquired.†

29 (4) The names, places of residence, legal
30 disabilities, if any, and interests in the property of all
31 owners, lessees, mortgagees, judgment creditors, and

1 lienholders, so far as ascertainable by diligent search, and
2 all unknown persons having an interest in the property when
3 the petitioner has been unable to ascertain the identity of
4 such persons by diligent search and inquiry. If any interest
5 in the property, or lien thereon, belongs to the unsettled
6 estate of a decedent, the executor or administrator shall be
7 made a defendant without joining the devisee or heir; if a
8 trust estate, the trustee shall be made a defendant without
9 joining the cestui que trust. The court may appoint an
10 administrator ad litem to represent the estate of a deceased
11 person whose estate is not being administered, and a guardian
12 ad litem for all defendants who are infants or are under other
13 legal disabilities; and for defendants whose names or
14 addresses are unknown. A copy of the order of appointment
15 shall be served on the guardian ad litem at least 10 days
16 before trial unless he or she has entered an appearance.†

17 (5) Whether any mobile home is located on the property
18 sought to be acquired and, if so, whether the removal of that
19 mobile home will be required. If such removal shall be
20 required, the petition shall name the owners of each such
21 mobile home as defendants. This subsection shall not apply to
22 any governmental authority exercising its power of eminent
23 domain when reasonable relocation or removal expenses must be
24 paid to mobile home owners under other provisions of law or
25 agency rule applicable to such exercise of power.

26 (6) A statement that the petitioner has surveyed and
27 located its line or area of construction, and intends in good
28 faith to construct the project on or over the described
29 property.†

30
31

1 (7) A demand for relief that the property be condemned
2 and taken for the uses and purposes set forth in the petition,
3 and that the interest sought be vested in the petitioner.

4 (8) Any other cause of action relating to the property
5 to be condemned, its parent parcel or the property, roadway,
6 or right-of-way which it abuts, in whole or part, including,
7 but not limited to, claims pertaining to environmental matters
8 of any nature.

9
10 Two or more condemning authorities may combine to condemn
11 property. Although the entire property is not necessary for
12 an individual condemning authority's project, the combined or
13 coordinated use of the property to be condemned shall satisfy
14 the requirement that the property be acquired for a public
15 purpose notwithstanding the fact that only one of the
16 condemning authorities acts as the petitioner pursuant to an
17 agreement between the condemning authorities. A condemning
18 authority may exercise the powers of eminent domain granted to
19 the Department of Transportation by s. 337.27(1) and (2) and
20 this section.

21 Section 2. Section 73.032, Florida Statutes, is
22 amended to read:

23 73.032 Offer of judgment.--

24 (1) This section shall provide the exclusive offer of
25 judgment provisions for eminent domain actions unless the
26 Florida Supreme Court adopts procedural rules to the contrary.

27 (2) Any party ~~The petitioner~~ may serve ~~a defendant~~
28 ~~with~~ an offer of judgment upon the other party no sooner than
29 ~~120 days after~~ the date the applicable defendant has filed an
30 answer and no later than 20 days prior to trial.

31

1 ~~(3) A defendant may make an offer to have judgment~~
2 ~~entered against defendant for payment of compensation by~~
3 ~~petitioner only for an amount that is under \$100,000, and such~~
4 ~~offer may be served on petitioner no sooner than 120 days~~
5 ~~after the defendant has filed an answer and no later than 20~~
6 ~~days prior to trial.~~

7 (3)(4)(a) The offer of judgment must:

8 1. Be in writing;

9 2. Settle all pending claims in defense of the eminent
10 domain proceeding with that party subject to apportionment
11 claims if there are multiple parties claiming an interest in
12 the land being condemned ~~or parties~~ exclusive of attorney's
13 fees and costs;

14 3. Offers of judgment relating to business damages or
15 other special damages must be made to any party asserting such
16 claims and are subject to apportionment claims if there are
17 multiple parties claiming an interest in the damage claims;

18 ~~4.3.~~ State that the offer is made pursuant to this
19 section;

20 ~~5.4.~~ Name the parties to whom the offer is made;

21 ~~6.5.~~ Briefly summarize any relevant conditions;

22 ~~7.6.~~ State the total amount of the offer; and

23 ~~8.7.~~ Include a certificate of service.

24 (b) The offer of judgment must be served in the same
25 manner as other pleadings upon the parties to whom it is made,
26 but may not be filed with the court unless it is accepted or
27 unless filing is necessary to enforce this section.

28 (c) The offer of judgment shall be deemed rejected
29 unless accepted by filing both a written acceptance and the
30 written offer with the court within 30 days after service of
31 the offer, or before the trial begins if less than 30 days.

1 Upon proper filing of both the offer and acceptance, the court
2 shall enter judgment thereon. A rejection of an offer
3 terminates the offer.

4 (d) The party making the offer may withdraw the offer
5 in a writing served on the opposing party before a written
6 acceptance is filed with the court. Once withdrawn in this
7 manner, an offer is void.

8 (e) An offer of judgment which is rejected or which is
9 withdrawn does not preclude the making of a subsequent offer
10 of judgment; however, any such subsequent offer of judgment
11 shall automatically void the prior offer of judgment as if the
12 same had never been made.

13 (4)~~(5)~~ If a defendant does not accept the offer of
14 judgment made by the petitioner and the judgment obtained by
15 the defendant, exclusive of any interest accumulated after the
16 offer of judgment was initially made, is equal to or less than
17 such offer, then the court shall not award any costs,
18 including attorney's fees, incurred by the defendant after the
19 date the offer of judgment was rejected.

20 (5)~~(6)~~ If the petitioner rejects the offer of judgment
21 made by defendant and the judgment obtained by defendant,
22 exclusive of any interest accumulated after the offer of
23 judgment was initially made, is equal to or is more than such
24 offer, then the court shall consider such factor in evaluating
25 the difficulty of the case when determining the amount to
26 award as a reasonable attorney's fee to the defendant based on
27 the factors set forth in s. 73.092(2) and (3).

28 (6)~~(7)~~ At the time an offer of judgment is made by the
29 petitioner, the petitioner shall identify and make available
30 to the defendant the construction plans, if any, for the
31 project on which the offer is based.

1 ~~(7)(8)~~ Evidence of an offer of judgment is admissible
2 only in proceedings to enforce an accepted offer or to
3 determine the costs to be awarded a defendant ~~pursuant to~~
4 ~~subsection (5) or a reasonable attorney's fee pursuant to~~
5 ~~subsection (6)~~.

6 Section 3. Section 73.051, Florida Statutes, is
7 amended to read:

8 73.051 Returns; defaults.--Any person interested in or
9 having a lien upon the property, whether named as a defendant
10 or not, may file his or her written defenses to the petition,
11 as a matter of right, on or before the return date set in the
12 notice or thereafter by leave of court subsequent to the order
13 of taking being entered if the proceedings are under chapter
14 74. If a defendant does not file his or her defenses on or
15 before the return date, defaults may be entered against the
16 defendant, but nothing shall prevent any person who is shown
17 by the record to be interested in the property from appearing
18 before the jury to claim the amount of compensation that he or
19 she conceives to be due for the property.

20 Section 4. Section 73.0511, Florida Statutes, is
21 amended to read:

22 73.0511 Prelitigation notice.--

23 (1) Prior to instituting litigation, the condemning
24 authority shall notify the fee owners of statutory rights
25 under s. 73.091 or the fee owner's legal counsel if the fee
26 owner is known to be represented by legal counsel.

27 (2) The condemning authority shall notify the
28 department or governing board of a water management district
29 as provided in s. 373.023.

30 Section 5. Section 73.071, Florida Statutes, is
31 amended to read:

1 73.071 Jury trial; compensation; severance damages.--

2 (1) When the action is at issue, and only upon notice
3 and hearing to set the cause for trial, the court shall
4 impanel a jury of 12 persons as soon as practical considering
5 the reasonable necessities of the court and of the parties,
6 and giving preference to the trial of eminent domain cases
7 over other civil actions, and submit the issue of compensation
8 to them for determination, which issue shall be tried in the
9 same manner as other issues of fact are tried in the circuit
10 courts.

11 (2) The amount of such compensation shall be
12 determined as of the date of trial, or the date upon which
13 title passes, whichever shall occur first.

14 (3) The jury shall determine solely the amount of
15 compensation to be paid, which compensation shall include:

16 (a) The value of the property sought to be
17 appropriated.†

18 **(b) The cost of cleanup of contamination, if any, on**
19 **the property shall be considered when determining the value of**
20 **the property, together with any monetary sources to defray the**
21 **cost of contamination cleanup that are available to the**
22 **property owner.**

23 ~~(c)~~(b) Where less than the entire property is sought
24 to be appropriated, any damages to the remainder caused by the
25 taking, including, when the action is by the Department of
26 Transportation, county, municipality, board, district or other
27 public body for the condemnation of a right-of-way, and the
28 effect of the taking of the property involved may damage or
29 destroy an established business of more than 5 years'
30 standing, owned by the party whose lands are being so taken,
31 located upon adjoining lands owned or held by such party, the

1 probable damages to such business which the denial of the use
2 of the property so taken may reasonably cause; any person
3 claiming the right to recover such special damages shall set
4 forth in his or her written defenses the nature and extent of
5 such damages, however, if an entire lot, block, or tract of
6 land which encompasses the business is acquired, no special
7 damages shall be allowed. ~~and~~

8 (d)~~(c)~~ Where the appropriation is of property upon
9 which a mobile home, other than a travel trailer as defined in
10 s. 320.01, is located, whether or not the owner of the mobile
11 home is an owner or lessee of the property involved, and the
12 effect of the taking of the property involved requires the
13 relocation of such mobile home, the reasonable removal or
14 relocation expenses incurred by such mobile home owner, not to
15 exceed the replacement value of such mobile home. The
16 compensation paid to a mobile home owner under this paragraph
17 shall preclude an award to a mobile home park owner for such
18 expenses of removal or relocation. Any mobile home owner
19 claiming the right to such removal or relocation expenses
20 shall set forth in his or her written defenses the nature and
21 extent of such expenses. This paragraph shall not apply to
22 any governmental authority exercising its power of eminent
23 domain when reasonable removal or relocation expenses must be
24 paid to mobile home owners under other provisions of law or
25 agency rule applicable to such exercise of power.

26 (e) Business damages are limited to those parties that
27 have an actual ownership interest in the property taken. The
28 party claiming business damages must specifically plead in his
29 or her written defenses to the condemnation petition the exact
30 dollar amount of business damages. The party claiming business
31 damages must also set forth in his or her written defenses the

1 specific basis or theory upon which they are claiming business
2 damages.

3 (4) When the action is by the Department of
4 Transportation, county, municipality, board, district, or
5 other public body for the condemnation of a road, canal,
6 levee, or water control facility right-of-way, the
7 enhancement, if any, in value of the remaining adjoining
8 property of the defendant property owner by reason of the
9 construction or improvement made or contemplated by the
10 petitioner shall be offset against the damage, if any,
11 resulting to such remaining adjoining property of the
12 defendant property owner by reason of the construction or
13 improvement. However, such enhancement in the value shall not
14 be offset against the value of the property appropriated, and
15 if such enhancement in value shall exceed the damage, if any,
16 to the remaining adjoining property, there shall be no
17 recovery over against such property owner for such excess.
18 Enhancement need not be unique to the property which is the
19 subject of the condemnation but may be general to the area.
20 It is the intent of the Legislature that property owners not
21 receive windfalls which result from actions of government
22 which benefit property owners by enhancing property values.
23 When the actions of government enhance property values, the
24 enhanced value of the remainder of a parcel of property shall
25 offset any damages resulting to the remainder of a parcel
26 resulting from acquisition by eminent domain.

27 (5) Any increase or decrease in the value of any
28 property to be acquired which occurs after the scope of the
29 project for which the property is being acquired is known in
30 the market, and which is solely a result of the knowledge of
31 the project location, shall not be considered in arriving at

1 the value of the property acquired. For the purpose of this
2 section, the scope of the project for which the property is
3 being acquired shall be presumed to be known in the market on
4 or after the condemnor executes a resolution which depicts the
5 location of the project or includes the project in the capital
6 improvements element of a local government comprehensive plan.

7 (6) Any person claiming the right to recover for the
8 taking of, or damages to, fixtures or trade fixtures shall set
9 forth in his or her written defenses an inventory identifying
10 each item claimed as a fixture or trade fixture and the nature
11 and extent of such damages.

12 (7)(6) The jury shall view the subject property upon
13 demand by any party or by order of the court.

14 (8)(7) If the jury cannot agree on a verdict the court
15 shall discharge them, impanel a new jury, and proceed with the
16 trial.

17 Section 6. Sections 73.074, 73.075, 73.076, and
18 73.077, Florida Statutes, are created to read:

19 73.074 Valuation and apportionment related to
20 condominium units and common elements.--

21 (1) Notwithstanding any other provision of this
22 chapter or any other provision of law, the valuation of
23 condominium units including timeshare units, common elements,
24 and apportionment of compensation with respect to the
25 acquisition of a unit, part of a unit, or an acquisition of a
26 portion of the common elements of a condominium shall comply
27 with the provisions of this section.

28 (2) If a unit or part of a unit including timeshare
29 units, excluding common elements, is acquired by eminent
30 domain, the award must compensate for damages to the unit and
31 its common element interest. Appraisal valuations shall

1 separately value the unit or part of a unit including its
2 common element interest when a unit or part of a unit,
3 excluding common elements, is acquired.

4 (3) If part of the common elements is acquired by
5 eminent domain, an appraisal valuation shall value the common
6 elements and damages to the condominium property in respect to
7 all or an abbreviated part of the condominium property as
8 appropriate. Damages to individual units including timeshare
9 units resulting from the acquisition of common elements of
10 condominium property may be apportioned to individual units
11 within the appraisal valuation if the damage to individual
12 units is different in kind or degree from other units within
13 the condominium property.

14 (4) The declaration or bylaws of a condominium
15 association may provide for the apportionment of any award for
16 an acquisition of all or a part of the condominium property.

17 (5) Unless otherwise provided in the declaration or
18 bylaws of a condominium association, any compensation for the
19 acquisition of all or part of condominium property shall be
20 apportioned as follows:

21 (a) Each unit owner shall be awarded the entire award,
22 or apportioned share as to timeshare units, for the
23 acquisition of all or part of an individual unit and for
24 damages to the unit when all or part of the individual unit is
25 acquired.

26 (b) If the declaration or bylaws establish limited
27 common areas, the award for limited common elements shall be
28 apportioned to the unit owners of the units to which the use
29 of those limited common elements is restricted in proportion
30 to their respective percentage interests in the limited common
31 elements.

1 (c) Any award for the acquisition of general common
2 elements shall be allocated to all unit owners in proportion
3 to their respective percentage interest in the general common
4 elements.

5 73.075 Legislative findings and intent.--

6 (1) The Legislature makes the following findings:

7 (a) The costs of condemnation proceedings have
8 increased in recent years, present post-litigation discovery
9 and mediation practices have contributed to increased costs
10 for acquiring property necessary for road construction and
11 other public improvement projects.

12 (b) The high cost of condemnation proceedings can be
13 substantially alleviated by quantifying the claims of owners
14 early in the proceedings, by presuit discovery of information
15 and documents, and by early mediation of claims, thereby
16 reducing delay and costs, including attorney's fees, while
17 preserving each owner's right to compensation for the property
18 taken and special damages.

19 (c) The intent of presuit discovery and court-ordered
20 mediation is to encourage prelitigation negotiations,
21 voluntary exchange of information and documents related to the
22 determination of compensation due each owner, mediated
23 settlements, and to deter discovery and mediation abuse in
24 condemnation proceedings, and to protect condemning
25 authorities, the public, and property owners from unnecessary
26 litigation.

27 73.076 Presuit discovery of condemnation claims and
28 making presuit settlement offers.--

29 (1) After written notice of pending condemnation
30 proceedings is provided to the fee owners by the condemning
31 authority, each owner and the condemning authority shall

1 provide to the other party reasonable access to the property
2 and information within its possession or control in order to
3 facilitate evaluation of compensation due each owner,
4 negotiated settlements, and mediation.

5 (2) Access to the property and information shall be
6 provided without formal discovery and the failure of any party
7 to comply with presuit discovery shall constitute evidence of
8 failure of that party to comply with good faith presuit
9 discovery requirements and the court shall impose appropriate
10 sanctions, including payment of the costs of the discovery,
11 the disallowance of payment of all or part of the costs
12 including attorney's fees under s. 73.091, or other sanctions
13 appropriate to discovery abuse.

14 (3) By written request after the notice of pending
15 condemnation proceedings, the condemning authority and each
16 owner shall request discovery of documents or things. The
17 documents or things must be produced within 30 days after the
18 date of receipt of the request. The condemning authority and
19 each owner are required to produce discoverable documents and
20 things within that party's possession or control.

21 (4) The condemning authority may conduct property
22 visits and request information and documents relating to any
23 owner's property and business interests, including, but not
24 limited to, leases, financial, and business records kept by
25 each owner in the ordinary course of business, trade fixture,
26 and equipment inventories and other information and documents
27 related to valuation of each owners' interests in the property
28 sought to be condemned. The owners may in writing request that
29 the condemning authority provide related right-of-way maps,
30 construction plans, and other information and documents
31 related to the property sought to be condemned.

1 (5) It shall not be grounds to refuse property visits
2 or information or documents on the basis that they are not yet
3 completed or available.

4 (6) Within 60 days following the production of
5 documents or things under this section, the condemning
6 authority and each owner shall each serve written settlement
7 offers with supporting documentation on the other. If there
8 are multiple owners of the land being condemned or multiple
9 interests in business damages or other special damages, then
10 settlement offers shall be made subject to apportionment among
11 the multiple interests.

12 (7) Following service of the settlement offers, the
13 condemning authority and owners are encouraged to engage in
14 voluntary negotiations and mediation to achieve presuit
15 settlements or sales in settlement of pending or threatened
16 condemnation proceedings.

17 (8) The written settlement offers made under this
18 section shall not be admissible in any subsequent proceeding.

19 (9) The actual costs of presuit discovery shall be
20 paid by the condemning authority unless an owner fails to
21 comply with the requirements of this section. A failure of
22 the condemning authority or any owner to comply with this
23 section shall constitute evidence of failure of that party to
24 comply with good faith presuit discovery requirements and the
25 court shall impose appropriate sanctions, including requiring
26 an owner to pay costs of presuit discovery, the disallowance
27 of payment of all or part of the costs, including attorney's
28 fees under s. 73.091, or other sanctions appropriate to a
29 failure to comply with discovery practice.

30 73.077 Court ordered mediation.--
31

1 (1) Upon motion by the condemning authority or any
2 owner, the court shall refer all valuation issues to
3 mediation. The parties may submit a list of recommended
4 mediators to the court. The court, after consideration of the
5 lists of recommended mediators, shall appoint a qualified
6 mediator. The costs of mediation shall be paid by the
7 condemning authority unless a party fails to comply with the
8 requirements of this section.

9 (2) At least 20 days prior to the date of the
10 mediation, the condemning authority and each owner shall file
11 with the court, the mediator, and serve each other with a
12 mediation statement stating with particularity:

13 (a) The experts employed in the case, and the areas of
14 expertise.

15 (b) The condemning authority shall quantify its
16 monetary position and each owner shall quantify its claims by
17 dollar amount specific to each element of compensation,
18 including the amount to be paid for the property taken, and
19 when applicable, the damage to the remainder caused by the
20 taking, business damages, moving costs, separate compensation
21 for permanent improvements made by a mobile home owner under
22 s. 73.072, or other special damages.

23 (3) At least 20 days prior to the date of the
24 mediation, the condemning authority and each owner shall
25 mutually exchange written valuation reports prepared by
26 valuation experts.

27 (4) Failure of the condemning authority or any owner
28 to comply with this section shall constitute evidence of
29 failure of that party to comply with good faith mediation
30 requirements and the court shall impose appropriate sanctions,
31 including requiring an owner to pay the costs of mediation,

1 costs of discovery, the disallowance of payment of all or part
2 of the costs, including attorney's fees under s. 73.091, or
3 other sanctions appropriate to a failure to comply with
4 mediation practice.

5 Section 7. Subsections (1) and (2) of section 73.091,
6 Florida Statutes, are amended, and subsections (6), (7), (8),
7 (9), and (10) are added to said section, to read:

8 73.091 Costs of the proceedings.--

9 (1) The petitioner shall pay ~~attorney's fees as~~
10 ~~provided in s. 73.092 as well as all~~ reasonable costs,
11 including attorney's fees, incurred in the defense of the
12 eminent domain proceedings in the circuit court, including,
13 but not limited to, reasonable appraisal fees and, when
14 business damages are compensable, a reasonable accountant's
15 fee, to be assessed by that court. As used in this chapter,
16 the term "costs in the defense of the eminent domain
17 proceedings" means costs incurred in defeating an order of
18 taking or, in the event of a taking, costs limited to the
19 determination of the value of the land acquired.

20 (2) At least 30 days prior to a hearing to assess
21 costs under this section, the condemnee's attorney shall
22 submit to the condemning authority for each expert witness
23 complete time records and a detailed statement of services
24 rendered by date, nature of services performed, time spent
25 performing such services, and costs incurred, and a copy of
26 any fee agreement which may exist ~~between the expert and the~~
27 ~~condemnee or the condemnee's attorney.~~

28 (6) Costs, including, but not limited to, attorney's
29 fees and other fees, shall not be awarded for time, work, or
30 effort directed toward the amount of fees or costs to be
31

1 awarded unless the condemning authority denies entitlement to
2 the costs.

3 (7) Costs in defense of the eminent domain proceedings
4 may include costs, including attorney's fees actually incurred
5 in a sale in settlement of any pending or threatened
6 condemnation proceedings.

7 (8) Attorneys and experts entitled to fees resulting
8 from a sale in settlement of any pending or threatened
9 condemnation proceeding shall have a statutory cause of action
10 in the circuit court to determine reasonable fees.

11 (9) Costs in defense of the proceedings shall not
12 include travel expenses of attorneys and experts except where
13 it is shown that a lack of attorneys or expertise exists in
14 the judicial circuit where the petition was filed.

15 (10) Costs in defense of the eminent domain
16 proceedings shall not include office expenses of attorneys and
17 expert witnesses, such as, but not limited to, travel
18 expenses, postage, copy costs, facsimile expenses, express
19 delivery, courier services, long distance telephone service,
20 tolls, computer research costs, and other similar office
21 expenses. Court reporter services and exhibit preparation
22 when the exhibits are actually used at a mediation,
23 evidentiary hearing, or trial shall be compensable if
24 necessarily incurred in defense of the eminent domain
25 proceeding.

26 Section 8. Section 73.092, Florida Statutes, is
27 amended to read:

28 (Substantial rewording of section. See
29 s. 73.092, F.S., for present text.)
30 73.092 Attorney's fees.--

31

1 (1) In assessing attorney's fees incurred in defense
2 of eminent domain proceedings, inverse condemnation, or
3 prelitigation settlement of any pending or threatened
4 condemnation proceeding, the court shall consider:

5 (a) An objective determination of the attorney's time
6 reasonably required to adequately represent the owner and the
7 reasonable hourly rate for attorneys in the community in cases
8 in which fees are not contingent upon the success of the
9 claim.

10 (b) The skill employed by the attorney in conducting
11 the cause.

12 (c) The "result obtained" by the attorney's work
13 efforts. The term "result obtained" means the difference,
14 exclusive of interest, between the final judgment or
15 settlement and the total compensation claim of the defendant
16 based on the defendant's written appraisals, business damage,
17 and other valuation reports.

18 (d) The responsibility incurred and fulfilled by the
19 attorney.

20 (e) The novelty, difficulty, and importance of the
21 questions involved, including whether an order of taking was
22 defeated, whether the case went to trial, whether the parties
23 participated in voluntary negotiations and mediation, and
24 other similar matters.

25 (2) In assessing costs, including attorney's fees, at
26 least 30 days prior to a hearing on costs the condemnee's
27 attorney shall file with the court and serve on the condemning
28 authority:

29 (a) Complete time records for each attorney and expert
30 witness including a detailed statement of services rendered by
31

1 date, nature of services performed, time spent performing such
2 services and actual costs incurred.

3 (b) An itemized statement indicating the amount of
4 money recovered as compensation, including the property
5 acquired, severance damage, business damages, and each element
6 of special damages claimed and a similarly itemized accounting
7 of the amount of money claimed by the owner in the proceeding.

8 (3) As an exhibit to any motion for costs, including
9 attorney's fees, the defendant's attorney shall provide to the
10 condemning authority and the court a copy of any fee agreement
11 that may exist between the defendant and his attorney and the
12 defendant and each expert.

13 Section 9. Section 73.093, Florida Statutes, is
14 created to read:

15 73.093 Valuation reports in eminent domain
16 proceedings.--

17 (1) Property appraisers, including fixture appraisers,
18 shall prepare written reports and comply with the requirements
19 of chapter 475. Business damage experts shall prepare written
20 reports and comply with the requirements of Florida
21 Administrative Code, Rule 61 HI-20.0098. Experts relied upon
22 by appraisers, fixture appraisers, business damage experts or
23 other valuation experts, such as, but not limited to,
24 marketing analysts, engineers, planners, and surveyors, shall
25 be referenced in the written valuation reports with the
26 written marketing surveys, reports, plans, surveys, or other
27 reference material of the expert relied upon attached as an
28 appendix to the appraisal, fixture appraisal, business damage,
29 or other valuation report. Written reports prepared in
30 compliance with this section shall satisfy the requirements of
31 s. 119.07.

1 (2) Upon trial or any evidentiary proceeding, all
2 parties shall be limited in their affirmative proof of value
3 to matters set forth in their respective appraisal, fixture
4 appraisal, business damage, or other valuation reports. Any
5 party who fails to exchange written appraisal, business
6 damage, or other valuation reports for court ordered
7 mediation, or prior to filing a notice or motion for trial
8 shall be precluded from offering any testimony on value as to
9 the element of compensation being valued.

10 (3) The owner may obtain one written valuation report
11 by a real property appraiser and one report by a fixture
12 appraiser and business damage expert, if those elements of
13 damage are compensable. If record title exists in more than
14 one person or if a business is owned by more than one person,
15 then the condemning authority shall not be required to
16 reimburse more than one owner for valuation reports unless
17 multiple reports are ordered by the court or required in
18 apportionment proceedings.

19 (4) Upon motion of any party, the court may, upon good
20 cause shown, relieve a party of a default in exchanging
21 valuation reports, extend the time for exchanging reports, or
22 allow an amended or supplemental report to be exchanged upon
23 such conditions as the court may direct. The court may
24 compensate the owner for more than one valuation report upon
25 good cause shown with consideration given to the number of
26 reports and types of reports prepared by the condemning
27 authority.

28 Section 10. Subsection (2) of section 73.131, Florida
29 Statutes, is amended, and subsection (3) is added to said
30 section, to read:

31 73.131 Appeals; costs.--

1 (2) The petitioner shall pay all reasonable costs of
2 the proceedings in the appellate court, including a reasonable
3 attorney's fee to be assessed by that court, except upon an
4 appeal taken by a defendant in which the judgment of the lower
5 court shall be affirmed, or upon an appeal taken by a
6 defendant or defendant's attorneys or experts relating to
7 costs, including attorney's fees, unless the condemning
8 authority denies entitlement to attorney's fees or other
9 costs.

10 (3) No attorney's fees or costs shall be awarded on an
11 appeal of a business damages claim unless the property owner
12 prevails, regardless of which party appeals the trial court's
13 decision.

14 Section 11. Section 74.031, Florida Statutes, is
15 amended to read:

16 74.031 Declaration of taking; contents.--Those having
17 the right to take possession and title in advance of the entry
18 of final judgment in eminent domain actions, as provided by
19 law, may file, either with the petition or at any time prior
20 to the entry of final judgment, a declaration of taking signed
21 by the petitioner, or its duly authorized agent or attorney,
22 stating that the property sought to be appropriated is thereby
23 taken for the use set forth in the petition. A declaration of
24 taking made under s. 337.27(2) may describe an entire lot,
25 block, or tract of land and alternatively describe a portion
26 of the property to be acquired.The petitioner shall make a
27 good faith estimate of value, based upon a valid appraisal of
28 each parcel in the proceeding, which shall be made a part of
29 the declaration of taking.

30
31

1 Section 12. Subsection (3) of section 74.041, Florida
2 Statutes, is amended, and subsection (4) is added to said
3 section, to read:

4 74.041 Process; service and publication.--

5 ~~(3) The petition date provided in this section may be~~
6 ~~combined with the summons to show cause and the published~~
7 ~~summons provided in s. 73.031, but~~ In no event shall the
8 petition date provided in this section be noticed for a date
9 earlier than 1 day following the date specified in the summons
10 to show cause and the published summons provided in s. 73.031
11 for the defendants to serve written defenses to the petition
12 in eminent domain proceedings and, if a defendant requests, a
13 hearing on the petition for order of taking.

14 (4) A petitioner who complies with the requirements of
15 this section is not required to comply with the constructive
16 service requirements of chapter 49.

17 Section 13. Subsections (1) and (2) of section 74.051,
18 Florida Statutes, are amended, and subsections (4) and (5) are
19 added to said section, to read:

20 74.051 Hearing on order of taking.--

21 (1) If a defendant requests a hearing pursuant to s.
22 74.041(3), said defendant may appear and be heard on all
23 matters properly before the court which may be determined
24 prior to the entry of the order of taking, including the
25 jurisdiction of the court, the sufficiency of pleadings,
26 whether the petitioner is properly exercising its delegated
27 authority, and the amount to be deposited for the property
28 sought to be appropriated. Any defendant failing to timely
29 file a request for hearing, failing to comply with presuit
30 discovery, or failing to serve a settlement offer under s.
31 73.076 shall waive any right to object to the order of taking,

1 and title shall be vested in the petitioner, upon deposit as
2 hereinafter provided, which date shall be the date of
3 valuation.

4 (2) If a hearing is timely requested, the court shall
5 make such order as it deems proper, securing to all parties
6 the rights to which they may be entitled, not inconsistent
7 with the provisions of this section. If no defendant makes a
8 timely request for hearing, or if a defendant fails to comply
9 with presuit discovery or fails to serve a settlement offer,
10 the court shall enter the order of taking.The court may make
11 such orders in respect of encumbrances, liens, rents, taxes,
12 assessments, insurance, amount of the good faith deposit, and
13 other charges, if any, as shall be just and equitable. If the
14 court finds that the petitioner is entitled to possession of
15 the property prior to final judgment, it shall enter an order
16 requiring the petitioner to deposit in the registry of the
17 court such sum of money as will fully secure and fully
18 compensate the persons entitled to compensation as ultimately
19 determined by the final judgment. Said deposit shall not be
20 less than the amount of the petitioner's estimate of value, if
21 the petitioner be the state or any agency thereof, any county,
22 the city, or other public body; otherwise, double the amount
23 of petitioner's estimate of value.

24 (4) At the hearing for an order of taking, each
25 defendant filing an answer shall identify each expert by area
26 of expertise necessary to determine the value of the property
27 taken and damage to the remainder, as well as each special
28 damage claim of that defendant. Each defendant shall propose
29 a cost budget for consideration by the court. After
30 consideration of the experts proposed, the areas of expertise,
31 the possible use of joint experts by one or more defendants,

1 and the defendants' proposed cost budgets, the court shall
2 establish a monetary cost budget for each defendant which may
3 include use of joint experts by one or more defendants. The
4 cost budget shall not be exceeded; however, upon good cause
5 shown, a defendant may move the court for additional expert
6 witnesses or an increase in the cost budget. The court shall
7 enter such orders as the court deems proper to manage expert
8 costs while securing to all parties the rights to which they
9 are entitled.

10 (5) If a declaration of taking describes an entire
11 lot, block, or tract of land and alternatively describes a
12 portion of the property to be acquired, the court shall
13 determine whether the acquisition costs for an entire lot,
14 block, or tract of land will be equal to or less than the
15 cost of acquiring a portion of the property. If the court
16 finds that the petitioner is entitled to acquire an entire
17 lot, block, or tract of land, the court shall enter an order
18 requiring the petitioner to deposit in the registry of the
19 court such sum of money as will fully secure compensation to
20 persons entitled to compensation. If the court finds that the
21 petitioner is not entitled to acquire an entire lot, block, or
22 tract of land, the court shall upon affirmative proof of
23 public purpose and necessity, determine what portion, if any,
24 of the property may be acquired and enter an order requiring
25 the petitioner to deposit such sum of money as will fully
26 secure compensation to persons entitled to compensation. The
27 jury shall determine solely the amount of compensation to be
28 paid for the property acquired under the court's order of
29 taking.

30 Section 14. Section 74.071, Florida Statutes, is
31 amended to read:

1 74.071 Paying over funds in court.--At any time, prior
2 to the entry of final judgment, and upon motion by the proper
3 defendants, the court may direct that the sum of money set
4 forth in the declaration of taking be paid forthwith to such
5 defendants from the money deposited in the registry of the
6 court. If the compensation awarded for the property by the
7 final judgment shall exceed the amount withdrawn by the
8 defendant, the court shall enter judgment against the
9 petitioner for the deficiency with interest, at the same
10 interest rate as provided in all circuit court judgments,
11 running from the date of withdrawal. If the amount withdrawn
12 exceeds the compensation awarded for the property by the final
13 judgment, the court shall enter a judgment against such
14 defendant for the excess, and such judgment shall be a lien
15 against any of the defendant's property except his or her
16 homestead.

17 Section 15. Paragraph (a) of subsection (1) of section
18 127.01, Florida Statutes, is amended, and subsection (3) is
19 added to said section, to read:

20 127.01 Counties delegated power of eminent domain;
21 recreational purposes, issue of necessity of taking.--

22 (1)(a) Each county of the state is delegated authority
23 to exercise the right and power of eminent domain in the
24 interest of the public health, safety, and welfare of the
25 county and for the county land acquisition program; that is,
26 the right to appropriate property, except state or federal,
27 for any county purpose. The absolute fee simple title to all
28 property so taken and acquired shall vest in such county
29 unless the county seeks to condemn a particular right or
30 estate in such property.

31

