

1 73.091, and shall make a written offer of full compensation
2 naming the fee owners to whom it is made.

3 (2)(a) After the offer is made, the fee owner may
4 request a copy of the most current appraisal and construction
5 plans pertaining to the property upon which the offer is
6 based. The governmental condemning authority shall provide
7 the appraisal and plans within 15 days after the request;
8 however, with respect to lands acquired pursuant s. 259.041,
9 the condemning authority shall not be required to give the fee
10 owners the current appraisal prior to the execution of an
11 option contract to purchase the property.

12 (b) Within 30 days after receipt of the governmental
13 condemning authority's appraisal, the fee owners shall provide
14 the governmental condemning authority a copy of the most
15 current appraisal of the property prepared during the prior 3
16 years which is within the control or possession of the owner.

17 (3) Prior to instituting litigation, the governmental
18 condemning authority shall make a good faith effort to notify
19 the onsite operators of businesses located on property to be
20 acquired for a proposed right-of-way project of all statutory
21 rights under s. 73.091. If requested, the governmental
22 condemning authority shall, within 30 days, provide to the
23 owner or onsite operator of the business a copy of the
24 construction plans, if any, and right-of-way maps pertaining
25 to the property to be acquired.

26 (4) After the governmental condemning authority
27 tenders a prelitigation offer pursuant to subsection (1), the
28 governmental condemning authority may seek to obtain from the
29 owner or onsite operator of the business a copy of the
30 business records kept in the ordinary course of business, if
31 available. For the purposes of this section and s.

1 73.092(1)(a)2., business records shall be limited to copies of
2 federal income tax returns, federal income tax withholding
3 statements, federal miscellaneous income tax statements,
4 balance sheets, profit and loss statements, and state
5 corporate income tax returns attributable to the business
6 operation on the property to be acquired for the 3 years
7 preceding notification. If any of these records are
8 consolidated with other business operations not on the
9 property to be acquired, then it will be sufficient in the
10 alternative that edited portions of the business records
11 attributable to the business operation on the property to be
12 acquired for the 3 years preceding notification be provided in
13 addition to a signed acknowledgment from the business owner.
14 The provisions of this subsection are not mandatory and shall
15 not be construed as a condition for claiming business damages,
16 but are intended solely for the purposes of encouraging
17 prelitigation settlements.

18 (5) Subsequent to the owner or onsite operator of the
19 business furnishing the business records in response to a
20 request, the governmental condemning authority may make a
21 written offer of settlement for business damages. If an
22 eminent domain action is initiated under chapters 73 and 74
23 for acquisition of the property more than 90 days after the
24 governmental condemning authority has received the business
25 records, it shall include the amount of its good faith
26 estimate of business damages in its declaration of taking and
27 shall deposit the amount of the business damage estimate into
28 the court registry. The good faith estimate shall constitute
29 a written offer of settlement.

30 Section 2. Subsection (3) of section 73.071, Florida
31 Statutes, is amended to read:

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

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

4 (a) The value of the property sought to be
5 appropriated, provided that when the use of the property to be
6 acquired is an agricultural operation as defined in s.
7 570.02(1), income from farming shall be deemed attributable to
8 real estate.†

9 (b) Where less than the entire property is sought to
10 be appropriated, any damages to the remainder caused by the
11 taking.†

12 (c) ~~including,~~When the action is by the Department of
13 Transportation, county, municipality, board, district or other
14 public body for the condemnation of a right-of-way, and the
15 effect of the taking of the property involved or substantial
16 diminution of access may damage or destroy an established
17 business of more than 3 5 years' standing at that business
18 location, owned and operated at that location ~~owned~~ by the
19 party whose property is being taken or whose access is being
20 substantially diminished ~~lands are being so taken, located~~
21 ~~upon adjoining lands owned or held by such party,~~ the probable
22 damages to such business which the denial of the use of the
23 property ~~so taken~~ or access substantially diminished may
24 reasonably cause; any person claiming the right to recover
25 such special damages shall set forth in his or her written
26 defenses the nature and extent of such damages, provided that
27 the total compensation awarded for business damages may not
28 exceed the value of the business and reasonable moving
29 expenses.†~~and~~

30 (d) Evidence of the ability to mitigate severance and
31 business damages onsite or by relocating all or part of the

1 business to an adjacent property or to another comparable
2 location in the same market trade area may be considered when
3 the cost of mitigation is less than the total severance and
4 business damages claimed. Any increased costs of operation and
5 reasonable expenses of mitigation resulting from the onsite
6 mitigation plan or from the relocation of the business to
7 another comparable location in the same market trade area,
8 together with moving costs, downtime losses, and unmitigated
9 damages, may be included when determining severance damages,
10 business damages, and the total cost to cure payable to the
11 claimant.

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

30 Section 3. Paragraph (g) of subsection (5) of section
31 337.25, Florida Statutes, is amended to read:

1 337.25 Acquisition, lease, and disposal of real and
2 personal property.--

3 (5) The department may convey a leasehold interest for
4 commercial or other purposes, in the name of the state, to any
5 land, building, or other property, real or personal, which was
6 acquired under the provisions of subsection (1).

7 (g) No lease executed under this subsection may be
8 utilized by the lessee to establish the 3 5 years' standing
9 required by s. 73.071(3)(c)~~73.071(3)(b)~~ if the business had
10 not been established for 3 5 years on the date title passed to
11 the department.

12 Section 4. Subsections (2), (3), (4), and (5) of
13 section 337.27, Florida Statutes, are amended to read:

14 337.27 Exercise of power of eminent domain by
15 department; procedure; title; cost.--

16 ~~(2) In the acquisition of lands and property, the
17 department may acquire an entire lot, block, or tract of land
18 if, by doing so, the acquisition costs to the department will
19 be equal to or less than the cost of acquiring a portion of
20 the property. This subsection shall be construed as a specific
21 recognition by the Legislature that this means of limiting the
22 rising costs to the state of property acquisition is a public
23 purpose and that, without this limitation, the viability of
24 many public projects will be threatened.~~

25 (2)~~(3)~~ Title to any land acquired in the name of the
26 department vests in the state.

27 (3)~~(4)~~ The department is authorized to pay the
28 judgment or compensation, including deposits required, awarded
29 in any such proceedings out of any funds available to the
30 department for the maintenance or construction of any
31 transportation facility on the State Highway System, on the

1 State Park Road System, or in a transportation corridor
2 designated by the department.

3 (4)~~(5)~~ When the department acquires property for a
4 transportation facility or in a transportation corridor
5 through the exercise of eminent domain authority, or by
6 purchase or donation, it is not subject to any liability
7 imposed by chapter 376 or chapter 403 for preexisting soil or
8 groundwater contamination due solely to its ownership. This
9 section does not affect the rights or liabilities of any past
10 or future owners of the acquired property nor does it affect
11 the liability of any governmental entity for the results of
12 its actions which create or exacerbate a pollution source.
13 The department and the Department of Environmental Protection
14 may enter into interagency agreements for the performance,
15 funding, and reimbursement of the investigative and remedial
16 acts necessary for property acquired by the department.

17 Section 5. Subsection (5) of section 337.271, Florida
18 Statutes, is amended to read:

19 337.271 Negotiations for acquisitions.--

20 (5) If the business owner intends to claim business
21 damages pursuant to s. 73.071(3)(b) or (c), he or she may,
22 within 120 days after receipt of the notice required by
23 subsection (2) or at a later time specified by the department,
24 submit to the department a complete estimate of business
25 damages to the property. The fee owner may waive his or her
26 right to the 120 days to obtain an estimate of business
27 damages by providing the department with written notice of
28 such waiver. If an estimate is submitted, it shall explain
29 the nature and extent of such damages and shall be prepared by
30 either the owner or a certified public accountant. If the
31 business owner elects to submit an estimate of business

1 damages to the department, he or she shall also permit the
2 department to copy and examine, at the owner's convenience,
3 such of the owner's business records as the department
4 determines to be necessary for it to arrive at an estimate of
5 business damages.

6 Section 6. Paragraph (b) of subsection (1) of section
7 127.01, Florida Statutes, is amended to read:

8 127.01 Counties delegated power of eminent domain;
9 recreational purposes, issue of necessity of taking.--

10 (1)

11 (b) Each county is further authorized to exercise the
12 eminent domain powers granted to the Department of
13 Transportation by s. 337.27(1) ~~and (2)~~, the transportation
14 corridor protection provisions of s. 337.273, and the right of
15 entry onto property pursuant to s. 337.274.

16 Section 7. Subsection (2) of section 166.401, Florida
17 Statutes, is amended to read:

18 166.401 Right of eminent domain.--

19 (2) Each municipality is further authorized to
20 exercise the eminent domain powers granted to the Department
21 of Transportation in s. 337.27(1) ~~and (2)~~ and the
22 transportation corridor protection provisions of s. 337.273.

23 Section 8. This act shall take effect October 1 of the
24 year in which enacted.

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HOUSE SUMMARY

Revises provisions of law relating to eminent domain to:
1. Revise provisions relating to prelitigation notice.
2. Revise provisions relating to the determination by the jury of the compensation to be paid.
3. Delete a provision allowing the Department of Transportation to acquire an entire lot, block, or tract of land, if, by doing so, the acquisition costs to the department will be equal to or less than the cost of acquiring a portion of the property.

See bill for details.