

By the Committee on Transportation and Representatives K. Pruitt, Sembler, Mackey, Putnam, Cosgrove, Kelly, Sublette, Ogles, Valdes, Barreiro, Bainter, Melvin, Casey, Flanagan, Futch, Fasano, Tamargo, Burroughs, Wallace, Peaden, Byrd, (Additional Sponsors on Last Printed Page)

1                                   A bill to be entitled  
2           An act relating to eminent domain and local  
3           fuel tax revenues; providing legislative intent  
4           with respect to certain eminent domain  
5           provisions; amending s. 73.0511, F.S.;  
6           providing requirements with respect to dispute  
7           resolution; providing for prelitigation notice  
8           to fee owners and business owners; providing  
9           requirements with respect to written offers;  
10          providing for business information requests;  
11          providing for exchange of appraisals and other  
12          documents; providing for initial concern  
13          letters; providing for conferences between the  
14          parties; providing for disclosure of business  
15          records; providing for business damage offers  
16          and counteroffers; providing for negotiations,  
17          mediation, and settlement; requiring the use of  
18          certified mail for delivery of certain  
19          documents; providing for notice in certain  
20          inverse condemnation proceedings; allowing  
21          modification of certain provisions by mutual  
22          agreement; amending s. 73.071, F.S.; revising  
23          language with respect to compensation which may  
24          be awarded by determination of a jury; allowing  
25          evidence of ability to mitigate damages;  
26          providing a statement of important state  
27          interest; amending s. 73.091, F.S.; revising  
28          language with respect to costs of proceedings;  
29          amending s. 73.131, F.S.; prohibiting the award  
30          of attorney's fees on an appeal of a business  
31          damage claim under certain circumstances;

1 providing for the application of certain  
2 amendments to eminent domain proceedings;  
3 amending ss. 215.20 and 215.22, F.S.; providing  
4 that the 7 percent service charge for the cost  
5 of general government which is deducted from  
6 the proceeds of the county fuel tax and from  
7 the Local Option Fuel Tax Trust Fund shall be  
8 reduced over a specified period and shall be  
9 eliminated for those funds on July 1, 2004;  
10 providing that the additional 0.3 percent  
11 service charge shall not be deducted from those  
12 funds beginning July 1, 2004; amending s.  
13 704.01, F.S.; revising language with respect to  
14 implied grants of ways of necessity and  
15 statutory ways of necessity; repealing s.  
16 704.03, F.S., relating to a definition of the  
17 term "practicable"; amending s. 704.04, F.S.;  
18 providing for evidencing a way of necessity;  
19 providing applicability with respect to ways of  
20 necessity; providing for a report; creating a  
21 working group to report on the feasibility of  
22 establishing programs for assisting businesses  
23 adversely affected by transportation projects;  
24 providing elements of a required report;  
25 repealing ss. 337.27(2), 348.759(2), and  
26 348.957(2), F.S.; removing language with  
27 respect to the power of certain condemning  
28 authorities to acquire certain whole parcels of  
29 property; amending ss. 127.01 and 166.401,  
30 F.S.; correcting cross references; providing  
31 effective dates.

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

2

3           Section 1. It is the intent of the Legislature that  
4 governmental entities involved in eminent domain proceedings  
5 attempt, to the maximum extent feasible, to minimize damage or  
6 disruption to businesses during construction and to resolve  
7 business damage disputes prior to litigation.

8           Section 2. Effective July 1, 1999, section 73.0511,  
9 Florida Statutes, is amended to read:

10           (Substantial rewording of section. See

11           s. 73.0511, F.S., for present text.)

12           73.0511 Dispute resolution.--

13           (1) NOTICE TO FEE OWNERS; OFFER OF FULL

14 COMPENSATION.--

15           (a) Before an eminent domain action is initiated under  
16 this chapter or chapter 74, the condemning authority shall  
17 notify the fee owners appearing of record on the date the  
18 offer is made of their statutory rights under s. 73.091 and  
19 shall make a written offer of full compensation as to those  
20 elements provided in s. 73.071(3)(a) and (b), naming the fee  
21 owners to whom it is made. The notice and written offer shall  
22 be sent to the fee owners' last known address listed on the  
23 county ad valorem tax roll. Notice to one fee owner  
24 constitutes notice to all fee owners on multiple-ownership  
25 property. Nothing herein shall be interpreted as shifting the  
26 burden of proof of either the condemning authority or fee  
27 owners at a valuation trial under this chapter or chapter 74,  
28 as otherwise provided by law. The governmental condemning  
29 authority is not required to give notice to a person who  
30 acquires title to the property subsequent to the notice  
31 required by this section.

1           (b) The condemning authority may include with the  
2 notice and written offer a request for information from the  
3 fee owners limited to identification of any tenants or onsite  
4 operators of business existing as of the date the offer is  
5 made. If such a request for information is made by the  
6 condemning authority, the fee owners shall respond in writing,  
7 within 30 days, listing the name, address, and contact person  
8 of each tenant or onsite operator of business, to the extent  
9 that such information is known to the fee owners. Information  
10 provided under this subsection shall assist the condemning  
11 authority in notification procedures required by this chapter  
12 or chapter 74, but shall not waive compliance by the  
13 condemning authority with such notification procedures.

14           (2) EXCHANGE OF APPRAISALS, RIGHT-OF-WAY MAPS, AND  
15 CONSTRUCTION PLANS WITH FEE OWNERS; INITIAL CONCERN LETTER;  
16 INITIAL CONCERN CONFERENCE.--

17           (a) After the notice and written offer provided in  
18 paragraph (1)(a) is made, the fee owner may request of a  
19 governmental condemning authority a copy of the most current  
20 appraisal, right-of-way maps, and construction plans  
21 pertaining to the property upon which the written offer is  
22 based. The governmental condemning authority shall provide  
23 the appraisal, maps, and plans within 15 days after receipt of  
24 the fee owners' request and, at that time, may make a written  
25 request for an initial concern letter from the fee owners  
26 citing to the specific language of paragraph (c). In the  
27 alternative, after the notice and written offer provided in  
28 paragraph (1)(a) is made, a governmental condemning authority  
29 may, of its own accord, provide the appraisal, maps, and plans  
30 to the fee owners and, at that time, make a written request  
31 for an initial concern letter from the fee owners citing to

1 the specific language of paragraph (c). However,  
2 notwithstanding the provisions of this paragraph, with respect  
3 to lands acquired under s. 259.041, the condemning authority  
4 is not required to give the fee owners the current appraisal  
5 before execution of an option contract to purchase the  
6 property.

7 (b) Within 30 days after receipt of the governmental  
8 condemning authority's appraisal, the fee owners shall provide  
9 to the governmental condemning authority a copy of the most  
10 current appraisal of the property, if any, prepared during the  
11 prior 3 years which is within the possession or control of the  
12 owner.

13 (c) Within 30 days after receipt of a copy of the  
14 governmental condemning authority's most recent appraisal,  
15 right-of-way maps, and construction plans, the fee owners  
16 shall provide to the governmental condemning authority a  
17 letter which sets forth the fee owners' initial concerns, if  
18 any, regarding the design of the proposed project from a  
19 preliminary review of the maps and plans. The letter shall set  
20 forth such issues so as to reasonably inform the condemning  
21 authority of the concerns of the fee owners. The letter shall  
22 be without prejudice to the fee owners in negotiations or in  
23 the event a lawsuit is filed. The letter may not be introduced  
24 into evidence by either the condemning authority or the fee  
25 owners in any proceeding under this chapter or chapter 74,  
26 with the exception of proceedings under ss. 73.091 and 73.092.

27 (d) After the initial concern letter is provided by  
28 the fee owners to the governmental condemning authority,  
29 either the fee owners or the governmental condemning authority  
30 may make a written request of the other for a conference to  
31 discuss the concerns of the fee owners. If such request is

1 made by the condemning authority, the condemning authority  
2 shall again notify the fee owners of statutory rights under s.  
3 73.091 within the written request. The fee owners and the  
4 governmental condemning authority shall make representatives  
5 available for such conference within 60 days following the  
6 written request. Evidence of any written or oral statements  
7 made at the conference, other than a written settlement  
8 agreement as provided under paragraph (7)(d), may not be  
9 introduced into evidence by either the condemning authority or  
10 the fee owners in any proceeding under this chapter or chapter  
11 74, with the exception of proceedings under ss. 73.091 and  
12 73.092.

13 (3) NOTICE TO BUSINESS OWNERS.--Before an eminent  
14 domain action is initiated under this chapter or chapter 74,  
15 where the action is by the Department of Transportation,  
16 county, municipality, board, or district, or other public body  
17 for the condemnation of a right-of-way, the governmental  
18 condemning authority shall notify the business owners, located  
19 on the property upon which the written offer provided in  
20 paragraph (1)(a) is based, of statutory rights under s.  
21 73.091. Notice to one business owner of a multiple-owner  
22 business constitutes notice to all business owners of the  
23 multiple-ownership business. Nothing herein shall be  
24 interpreted as shifting the burden of proof of either the  
25 condemning authority or business owners at a valuation trial  
26 under this chapter or chapter 74, as otherwise provided by  
27 law. The governmental condemning authority is not required to  
28 give notice to a business owner who acquires title to the  
29 property subsequent to the notice required by this section.

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1           (4) EXCHANGE OF APPRAISALS, RIGHT-OF-WAY MAPS, AND  
2 CONSTRUCTION PLANS WITH BUSINESS OWNERS; INITIAL CONCERN  
3 LETTER; INITIAL CONCERN CONFERENCE.--

4           (a) After the notice provided in subsection (3) is  
5 made, the business owners may request of a governmental  
6 condemning authority a copy of the most current appraisal,  
7 right-of-way maps, and construction plans pertaining to the  
8 property upon which the written offer provided in paragraph  
9 (1)(a) is based. The governmental condemning authority shall  
10 provide the appraisal, maps, and plans within 15 days after  
11 receipt of the business owners' request and, at that time, may  
12 make a written request for an initial concern letter from the  
13 business owners citing to the specific language of paragraph  
14 (b). In the alternative, after the notice provided in  
15 subsection (3) is made, a governmental condemning authority  
16 may, of its own accord, provide the appraisal, maps, and plans  
17 to the business owners and, at that time, make a written  
18 request for an initial concern letter from the business owners  
19 citing to the specific language of paragraph (b).

20           (b) Within 30 days after receipt of a copy of the  
21 governmental condemning authority's right-of-way maps,  
22 construction plans, and request for an initial concern letter,  
23 the business owners shall provide to the governmental  
24 condemning authority a letter which sets forth the business  
25 owners' initial concerns, if any, regarding the design of the  
26 proposed project from a preliminary review of the maps and  
27 plans. The letter shall set forth such issues so as to  
28 reasonably inform the condemning authority of the concerns of  
29 the business owners. The letter is without prejudice to the  
30 business owners in negotiations or in the event a lawsuit is  
31 filed. The letter may not be introduced into evidence by

1 either the condemning authority or the business owners in any  
2 proceeding under this chapter or chapter 74, with the  
3 exception of proceedings under ss. 73.091 and 73.092.

4 (c) After the initial concern letter is provided by  
5 the business owners to the governmental condemning authority,  
6 either the business owners or the governmental condemning  
7 authority may make a written request of the other for a  
8 conference to discuss the concerns of the business owners. If  
9 such request is made by the condemning authority, the  
10 condemning authority shall again notify the business owners of  
11 statutory rights under s. 73.091 within the written request.  
12 The business owners and the governmental condemning authority  
13 shall make representatives available for such conference  
14 within 60 days following the written request. Evidence of any  
15 written or oral statements made at the conference, other than  
16 a written settlement agreement as provided under paragraph  
17 (7)(d), may not be introduced into evidence by either the  
18 condemning authority or the business owners in any proceeding  
19 under this chapter or chapter 74, with the exception of  
20 proceedings under ss. 73.091 and 73.092.

21 (5) DISCLOSURE OF BUSINESS RECORDS.--

22 (a) After a governmental condemning authority tenders  
23 a written offer under paragraph (1)(a) and notifies the  
24 business owners under subsection (3), the governmental  
25 condemning authority may obtain from the business owners a  
26 copy of the business records kept, in the ordinary course of  
27 business, within the possession or control of the business  
28 owners, as set forth in this subsection.

29 (b) For the purposes of this section and s.  
30 73.092(1)(a)2., the term "business records" means copies of  
31 federal income tax returns, federal income tax withholding



1 statements, federal miscellaneous income tax statements, state  
2 sales tax returns, balance sheets, profit and loss statements,  
3 and state corporate income tax returns attributable to the  
4 business operation on the property to be acquired for the 3  
5 years preceding notification. If any of these records are  
6 consolidated with records of other business operations not on  
7 the property to be acquired, then it will be sufficient in the  
8 alternative that edited portions of the business records  
9 attributable to the business operation on the property to be  
10 acquired for the 3 years preceding notification be provided in  
11 addition to a signed acknowledgment from the business owner  
12 that the records for the business operation on the property to  
13 be taken are consolidated with records of other business  
14 operations not on the property to be acquired.

15 (c) The governmental condemning authority's request  
16 for business records must be in writing and shall define  
17 "business records" within such request with citation to the  
18 specific language of paragraph (b) in its entirety and include  
19 a notice of penalty for noncompliance with citation to the  
20 specific language of this paragraph in its entirety. If the  
21 condemning authority's request for business records is not  
22 included with a notice under subsection (3), the request must  
23 also be accompanied by notice of statutory rights under s.  
24 73.091. The condemning authority shall not make a request for  
25 business records of a business owner more often than once  
26 before a lawsuit is filed. The written request shall be sent  
27 by certified mail, return receipt requested.

28 (d) Failure of a business owner to provide a copy of  
29 the business records kept in the ordinary course of business  
30 as defined in paragraph (b), within the possession or control  
31 of the business owner, within 60 days after the condemning

1 authority's written request, shall preclude the business owner  
2 from recovery of any accountant's fee for estimating business  
3 damages otherwise provided in paragraph (7)(c) or s. 73.091.  
4 (e) After a copy of the business records are provided  
5 by the business owners to the governmental condemning  
6 authority, the condemning authority may make a written request  
7 of the business owners for a conference to discuss the  
8 acquisition, the anticipated issues and problems caused to any  
9 remaining property by the proposed condemnation, and any  
10 potential resolution or settlement. Within the written  
11 request, the condemning authority shall again notify the  
12 business owners of statutory rights under s. 73.091 and  
13 identify issues regarding the business operations or business  
14 records provided by the business owners. The business owners  
15 and the condemning authority shall make representatives  
16 available for such conference within 60 days following the  
17 written request. Evidence of any written or oral statements  
18 made at the conference shall be without prejudice to either  
19 party in negotiations or in the event a lawsuit is filed.  
20 Evidence of any written or oral statements made at the  
21 conference, other than a written settlement agreement as  
22 provided under paragraph (7)(d), may not be introduced into  
23 evidence by either the condemning authority or the business  
24 owners in any proceeding under this chapter or chapter 74,  
25 with the exception of proceedings under ss. 73.091 and 73.092.  
26 (6) OFFER OF BUSINESS DAMAGES; COUNTEROFFER.--  
27 (a) If a business owner provides a copy of business  
28 records as set forth in subsection (5), the governmental  
29 condemning authority shall make a written offer of settlement  
30 of business damages as to those elements provided in s.  
31 73.071(3)(c) within 60 days after receipt of the business

1 records provided by the business owners or 30 days after the  
2 conference set forth in paragraph (5)(e), whichever is later.

3 (b) Within 60 days after receipt of the written offer  
4 of business damages provided in paragraph (a), the business  
5 owners shall either accept such offer in writing or make a  
6 written counteroffer in settlement of business damages as to  
7 those elements provided in s. 73.071(3)(c). The written  
8 acceptance or counteroffer shall be sent to the governmental  
9 condemning authority.

10 (c) If an eminent domain action is initiated under  
11 chapter 74, the amount of the written offer of business  
12 damages provided in paragraph (a) shall be deposited by the  
13 governmental condemning authority into the court registry,  
14 available for withdrawal by the business owners to whom the  
15 offer was made, prior to the vesting of title to the property  
16 acquired if the offer was made at least 30 days before the  
17 date title vests, otherwise, within 30 days after the offer  
18 was made. Such deposit of an offer of business damages does  
19 not create a right of the business owner to interest on  
20 business damages.

21 (7) NEGOTIATIONS; MEDIATION; SETTLEMENT IN LIEU OF  
22 CONDEMNATION.--

23 (a) The condemning authority, together with the  
24 property and business owners potentially impacted by the  
25 condemnation of property necessarily acquired for public  
26 purpose, shall negotiate in good faith.

27 (b) Subsequent to the condemning authority making an  
28 offer under paragraph (1)(a) or paragraph (6)(a), the  
29 condemning authority or the party to whom the offer was made  
30 may make a written request to have mediation presided over by  
31 a mediator certified pursuant to s. 44.102. Mediation shall

1 occur within 60 days after the written request. The property  
2 or business owners shall have representatives present at  
3 mediation with authority to bind the property or business  
4 owners in settlement. The condemning authority shall have a  
5 representative present at mediation with authority to bind the  
6 condemning authority in settlement, except that, where  
7 applicable, a settlement may be made subject to the approval  
8 of an elected governing body. Either party may notice other  
9 interested parties with rights of apportionment otherwise  
10 provided under s. 73.101 to be present at the mediation.  
11 Evidence of negotiations or any written or oral statements  
12 made in mediation, other than a written settlement agreement  
13 as provided under paragraph (d), is not admissible in any  
14 subsequent legal proceedings.

15 (c) If a settlement is reached between the condemning  
16 authority and a property or business owner prior to a lawsuit  
17 being filed, the property or business owner who settles  
18 compensation claims in lieu of condemnation shall be entitled  
19 to recover costs as provided in s. 73.091 and attorney's fees  
20 as provided in s. 73.092(1). The parties, if mutually agreed,  
21 may stipulate in the alternative to attorney's fees as  
22 provided in s. 73.092(2)(a)-(f) upon which the property or  
23 business owner's attorney shall submit to the condemning  
24 authority complete time records and a detailed statement of  
25 services rendered by date, nature of services performed, time  
26 spent performing such services, and costs incurred. In the  
27 event the parties are unable to agree on costs or attorney's  
28 fees, the property or business owner may file a complaint in  
29 circuit court in the county in which the property to be  
30 acquired is located to recover costs or attorney's fees from  
31 the condemning authority as provided in this subsection.

1       (d) In the event there is a settlement reached as a  
2 result of the conferences or mediation set forth in this  
3 section, the agreement reached shall be in writing. The  
4 written agreement shall incorporate by reference the  
5 right-of-way maps and construction plans upon which the  
6 settlement is based and expressly provide that if the  
7 condemning authority implements its project in a manner  
8 different from the maps and plans incorporated in the  
9 agreement that the property or business owners shall have the  
10 same legal rights that would have been available under law if  
11 the matter had been resolved through eminent domain  
12 proceedings in circuit court and the maps and plans having  
13 been made part of the record.

14       (8) DELIVERY REQUIREMENTS; COMPLIANCE.--In each  
15 instance in which a written notice, offer, counteroffer,  
16 initial concern letter, or request is required or allowed by  
17 subsections (1) through (7), it shall be sent by certified  
18 mail, return receipt requested. The return of same as  
19 undeliverable by the postal authorities shall constitute  
20 compliance with such provisions.

21       (9) INVERSE CONDEMNATION ACTION; NOTICE.--Before an  
22 inverse condemnation action is initiated by a business owner  
23 claiming damages as set forth in s. 73.071(3)(c), the business  
24 owner shall provide the condemning authority with a written  
25 notice of intent to file an inverse condemnation action, and,  
26 upon such notice being made, the parties shall proceed under  
27 subsections (4) through (8).

28       (10) PROCEDURAL MODIFICATIONS.--By mutual agreement of  
29 the parties, the provisions of dispute resolution set forth in  
30 this section may be modified, except for those provisions set  
31

1 forth in subsections (1)(a), (3), (6)(a), (b), and (c), 7(a),  
2 (c), and (d), and (8) which are mandatory.

3 Section 3. Effective July 1, 1999, subsection (3) of  
4 section 73.071, Florida Statutes, is amended to read:

5 73.071 Jury trial; compensation; severance damages;  
6 business damages.--

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

9 (a) The value of the property sought to be  
10 appropriated. When the income approach to value is used to  
11 value the property sought to be acquired, and when the highest  
12 and best use of the property sought to be acquired is in  
13 agriculture as defined in s. 570.02(1), income from  
14 agriculture is attributable to real estate for purposes of  
15 compensation under this paragraph and paragraph (b).†

16 (b) ~~Where less than the entire property is sought to~~  
17 ~~be appropriated, any damages to the remainder caused by the~~  
18 ~~taking, including, when the action is by the Department of~~  
19 ~~Transportation, county, municipality, board, district or other~~  
20 ~~public body for the condemnation of a right-of-way, and the~~  
21 ~~effect of the taking of the property involved may damage or~~  
22 ~~destroy an established business of more than 5 years†~~  
23 ~~standing, owned by the party whose lands are being so taken,~~  
24 ~~located upon adjoining lands owned or held by such party, the~~  
25 ~~probable damages to such business which the denial of the use~~  
26 ~~of the property so taken may reasonably cause;†Any person~~  
27 ~~claiming the right to recover such special damages shall set~~  
28 ~~forth in his or her written defenses the nature and extent of~~  
29 ~~such damages.†and~~

30 (c) The probable damages reasonably caused to a  
31 business, where the action is by the Department of

1 Transportation, county, municipality, board, or district or  
2 other public body for the condemnation of a right-of-way, and  
3 where either the taking of the property sought to be  
4 appropriated as allowed under paragraph (a), or the effect of  
5 the taking on the remainder, including, but not limited to, a  
6 substantial diminution of access, as allowed under all facts  
7 and circumstances for which a property owner could recover  
8 under paragraph (b), may damage or destroy an established  
9 business of more than 4 years' standing, owned or operated at  
10 that location by the party whose property is being taken. Any  
11 person claiming the right to recover such special damages  
12 shall set forth in his or her written defenses the nature and  
13 extent of such damages. The total compensation awarded for  
14 business damages may not exceed the value of the business.  
15 Notwithstanding the provisions of this subsection to the  
16 contrary, compensation for business damages shall not be paid  
17 when the taking is by a public utility or when an entire  
18 parcel is taken for public transit intermodal or multimodal  
19 terminals and centers; however, in such instances, businesses  
20 which would otherwise be qualified under this section for  
21 business damages shall be entitled to the cost to relocate the  
22 business and downtime losses associated with the relocation of  
23 that business.

24 (d) Evidence of the ability to mitigate business  
25 damages onsite or by relocating all or part of the business to  
26 an adjacent property or to another comparable location in the  
27 same market trade area may be considered when the cost of  
28 mitigation is less than the total business damages claimed.  
29 Any increased costs of operation and reasonable expenses of  
30 mitigation resulting from the onsite mitigation plan or from  
31 the relocation of the business to another comparable location

1 in the same market trade area, together with moving costs,  
2 downtime losses, and unmitigated damages, may be included when  
3 determining business damages.

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

22 Section 4. Effective July 1, 1999, the Legislature  
23 finds that a proper and legitimate state purpose is served  
24 when business owners are extended a fair and reasonable  
25 valuation of their business and given compensation for damages  
26 to their businesses or diminution of access caused by  
27 governmental condemning authorities. Therefore, the  
28 Legislature determines and declares that this act fulfills an  
29 important state interest.

30 Section 5. Effective July 1, 1999, subsection (1) of  
31 section 73.091, Florida Statutes, is amended to read:



1           73.091 Costs of the proceedings.--  
2           (1) Except as provided in s. 73.092, the petitioner  
3 shall pay ~~attorney's fees as provided in s. 73.092 as well as~~  
4 all reasonable costs ~~incurred in the defense~~ of the  
5 proceedings in the circuit court, including, but not limited  
6 to, a reasonable attorney's fee, reasonable appraisal fees,  
7 and, when business damages are awarded, reasonable expert fees  
8 and costs compensable, ~~a reasonable accountant's fee,~~ to be  
9 assessed by that court.

10           Section 6. Effective July 1, 1999, subsection (2) of  
11 section 73.131, Florida Statutes, is amended, and subsection  
12 (3) is added to said section, to read:

13           73.131 Appeals; costs.--

14           (2) The petitioner shall pay all reasonable costs of  
15 the proceedings in the appellate court, including a reasonable  
16 attorney's fee to be assessed by that court, except upon an  
17 appeal taken by a defendant in which the judgment of the lower  
18 court shall be affirmed, or an appeal by the condemning  
19 authority in which the judgment of the lower court shall be  
20 reversed.

21           (3) No attorney's fees shall be awarded on an appeal  
22 of a business damages claim unless the property owner  
23 prevails, regardless of which party appeals the trial court's  
24 decision.

25           Section 7. The amendment to ss. 73.0511, 73.071,  
26 73.091, and 73.131, Florida Statutes, in this act shall be  
27 applicable to eminent domain actions filed on or after July 1,  
28 1999.

29           Section 8. Effective July 1, 1998, section 215.20,  
30 Florida Statutes, is amended to read:

31

1           215.20 Certain income and certain trust funds to  
2 contribute to the General Revenue Fund.--

3           (1) A service charge of 7 percent, representing the  
4 estimated pro rata share of the cost of general government  
5 paid from the General Revenue Fund, shall be deducted from all  
6 income of a revenue nature deposited in all trust funds except  
7 those enumerated in s. 215.22. Income of a revenue nature  
8 shall include all earnings received or credited by such trust  
9 funds, including the interest or benefit received from the  
10 investment of the principal of such trust funds as may be  
11 permitted by law. This provision shall be construed in favor  
12 of the General Revenue Fund in each instance. All such  
13 deductions shall be deposited in the General Revenue Fund.

14           (2) Notwithstanding the provisions of subsection (1),  
15 funds collected for peanut, soybean, or tobacco marketing  
16 orders pursuant to chapter 570 and the Florida Citrus  
17 Advertising Trust Fund shall be subject to a 3-percent service  
18 charge, to be deposited in the General Revenue Fund.

19           (3) A service charge of 0.3 percent shall be deducted  
20 from income of a revenue nature deposited in the trust funds  
21 enumerated in subsection (4). Income of a revenue nature  
22 shall include all earnings received or credited by such trust  
23 funds, including the interest or benefit received from the  
24 investment of the principal of such trust funds as may be  
25 permitted by law. This provision shall be construed in favor  
26 of the General Revenue Fund in each instance. All such  
27 deductions shall be deposited in the General Revenue Fund.

28           (4) The income of a revenue nature deposited in the  
29 following described trust funds, by whatever name designated,  
30 is that from which the deductions authorized by subsection (3)  
31 shall be made:

- 1           (a) The Fuel Tax Collection Trust Fund created by s.  
2 206.875, except that, effective July 1, 2004, no deduction  
3 shall be made from the proceeds of the county fuel tax  
4 distributed pursuant to s. 206.60.
- 5           (b) All income derived from outdoor advertising and  
6 overweight violations which is deposited in the State  
7 Transportation Trust Fund created by s. 206.46.
- 8           (c) All taxes levied on motor fuels other than  
9 gasoline levied pursuant to the provisions of s. 206.87(1)(a).
- 10          (d) The State Alternative Fuel User Fee Clearing Trust  
11 Fund established pursuant to s. 206.879(1).
- 12          (e) The Local Alternative Fuel User Fee Clearing Trust  
13 Fund established pursuant to s. 206.879(2).
- 14          (f) The Cigarette Tax Collection Trust Fund created by  
15 s. 210.20.
- 16          (g) The Nonmandatory Land Reclamation Trust Fund  
17 established pursuant to s. 211.3103.
- 18          (h) The Phosphate Research Trust Fund established  
19 pursuant to s. 211.3103.
- 20          (i) The Land Reclamation Trust Fund established  
21 pursuant to s. 211.32(1)(f).
- 22          (j) The Educational Certification and Service Trust  
23 Fund created by s. 231.30.
- 24          (k) The trust funds administered by the Division of  
25 Historical Resources of the Department of State.
- 26          (l) The Marine Resources Conservation Trust Fund  
27 created by s. 370.0608, with the exception of those fees  
28 collected for recreational saltwater fishing licenses as  
29 provided in s. 370.0605.
- 30  
31

- 1           (m) The Local Option Fuel Tax Trust Fund created  
2 pursuant to s. 336.025. This paragraph is repealed July 1,  
3 2004.
- 4           (n) The Florida Public Service Regulatory Trust Fund  
5 established pursuant to s. 350.113.
- 6           (o) The State Game Trust Fund established by s.  
7 372.09.
- 8           (p) The Special Disability Trust Fund created by s.  
9 440.49.
- 10          (q) The Workers' Compensation Administration Trust  
11 Fund created by s. 440.50(1)(a).
- 12          (r) The Employment Security Administration Trust Fund  
13 created by s. 443.211(1).
- 14          (s) The Special Employment Security Administration  
15 Trust Fund created by s. 443.211(2).
- 16          (t) The Professional Regulation Trust Fund established  
17 pursuant to s. 455.219.
- 18          (u) The Speech-Language Pathology and Audiology Trust  
19 Fund.
- 20          (v) The Division of Licensing Trust Fund established  
21 pursuant to s. 493.6117.
- 22          (w) The Division of Florida Land Sales, Condominiums,  
23 and Mobile Homes Trust Fund established pursuant to s.  
24 498.019.
- 25          (x) The trust fund of the Division of Hotels and  
26 Restaurants, as defined in s. 509.072, with the exception of  
27 those fees collected for the purpose of funding of the  
28 hospitality education program as stated in s. 509.302.
- 29          (y) The trust funds administered by the Division of  
30 Pari-mutuel Wagering and the Florida Quarter Horse Racing  
31 Promotion Trust Fund.

1           (z) The General Inspection Trust Fund and subsidiary  
2 accounts thereof, unless a different percentage is authorized  
3 by s. 570.20.

4           (aa) The Florida Citrus Advertising Trust Fund created  
5 by s. 601.15(7), including transfers from any subsidiary  
6 accounts thereof, unless a different percentage is authorized  
7 in that section.

8           (bb) The Agents and Solicitors County Tax Trust Fund  
9 created by s. 624.506.

10           (cc) The Insurance Commissioner's Regulatory Trust  
11 Fund created by s. 624.523.

12           (dd) The Financial Institutions' Regulatory Trust Fund  
13 established pursuant to s. 655.049.

14           (ee) The Crimes Compensation Trust Fund established  
15 pursuant to s. 960.21.

16           (ff) The Records Management Trust Fund established  
17 pursuant to s. 257.375.

18           (gg) The Alcoholic Beverage and Tobacco Trust Fund  
19 established pursuant to s. 561.025.

20           (hh) The Health Care Trust Fund established pursuant  
21 to s. 455.2205.

22           (ii) The Police and Firefighters' Premium Tax Trust  
23 Fund established within the Division of Retirement of the  
24 Department of Management Services.

25

26 The enumeration of the foregoing moneys or trust funds shall  
27 not prohibit the applicability thereto of s. 215.24 should the  
28 Governor determine that for the reasons mentioned in s. 215.24  
29 the money or trust funds should be exempt herefrom, as it is  
30 the purpose of this law to exempt income from its force and  
31 effect when, by the operation of this law, federal matching

1 funds or contributions or private grants to any trust fund  
2 would be lost to the state.

3 (5) There is appropriated from the proper respective  
4 trust funds from time to time such sums as may be necessary to  
5 pay to the General Revenue Fund the service charges imposed by  
6 this section.

7 (6) Notwithstanding the provisions of subsection (1),  
8 the service charge provided for by subsection (1) which is  
9 deducted from the proceeds of the county fuel tax distributed  
10 pursuant to s. 206.60 and from the Local Option Fuel Tax Trust  
11 Fund shall be reduced as follows:

12 (a) For the period July 1, 1998, through June 30,  
13 1999, the rate of this charge shall be 6 percent.

14 (b) For the period July 1, 1999, through June 30,  
15 2000, the rate of this charge shall be 5 percent.

16 (c) For the period July 1, 2000, through June 30,  
17 2001, the rate of this charge shall be 4 percent.

18 (d) For the period July 1, 2001, through June 30,  
19 2002, the rate of this charge shall be 3 percent.

20 (e) For the period July 1, 2002, through June 30,  
21 2003, the rate of this charge shall be 2 percent.

22 (f) For the period July 1, 2003, through June 30,  
23 2004, the rate of this charge shall be 1 percent.

24 (g) Beginning July 1, 2004, and thereafter, no service  
25 charge shall be deducted pursuant to subsection (1) from the  
26 proceeds of the county fuel tax distributed pursuant to s.  
27 206.60 or from the Local Option Fuel Tax Trust Fund.

28 Section 9. Effective July 1, 2004, paragraphs (t) and  
29 (u) are added to subsection (1) of section 215.22, Florida  
30 Statutes, to read:  
31

1           215.22 Certain income and certain trust funds  
2 exempt.--  
3           (1) The following income of a revenue nature or the  
4 following trust funds shall be exempt from the deduction  
5 required by s. 215.20(1):  
6           (t) The proceeds of the county fuel tax distributed  
7 pursuant to s. 206.60.  
8           (u) The Local Option Fuel Tax Trust Fund.  
9           Section 10. Section 704.01, Florida Statutes, is  
10 amended to read:  
11           (Substantial rewording of section. See  
12 s. 704.01, F.S., for present text.)  
13           704.01 Common-law and statutory easements of  
14 necessity.--  
15           (1) IMPLIED GRANT OF WAY OF NECESSITY.--The common-law  
16 rule of an implied grant of necessity is recognized, adopted,  
17 and modified as follows: An implied grant exists when a  
18 grantor has conveyed or hereafter conveys lands to which there  
19 is no reasonable legal access except over lands retained by  
20 the grantor, or when the grantor has retained or hereafter  
21 retains lands to which there is no reasonable legal access  
22 except over lands that the grantor has conveyed. An implied  
23 grant arises only when a unity of title exists from a common  
24 source other than the original grant from the state or United  
25 States. An implied grant is unaffected by subsequent transfer  
26 of either the dominant or servient estate, including  
27 involuntary transfers, such as tax deeds, foreclosures, or  
28 reversions.  
29           (2) STATUTORY WAY OF NECESSITY.--Based on public  
30 policy, convenience, and necessity, a statutory way of  
31 necessity exists when any land does not have reasonable legal

1 access and no common-law implied grant of way of necessity  
2 exists.

3 (3) EXTENT OF WAY OF NECESSITY.--

4 (a) For the purposes of either subsection (1) or  
5 subsection (2), the way of necessity shall be by the shortest  
6 route which provides reasonable legal access between the  
7 portion of the dominant estate most in need of the way and the  
8 public road nearest thereto; however, the route of an implied  
9 way of necessity to be created pursuant to subsection (1)  
10 shall take into consideration any increase in the burden upon  
11 the servient estate since the severance of unity of title  
12 arising as a result of the creation thereof, and the route of  
13 a statutory way of necessity to be created under subsection  
14 (2) shall take into consideration the new burden upon the  
15 servient estate arising as a result of the creation thereof.

16 (b) Wherever appearing in this section, the term  
17 "reasonable legal access" shall have the following meanings:

18 1. If the dominant estate is within a municipality,  
19 the term "reasonable legal access" means legal access over  
20 land which reasonably satisfies all of the requirements for  
21 the beneficial use and enjoyment of the dominant estate.

22 2. If the dominant estate is not within a  
23 municipality, the term "reasonable legal access" means legal  
24 access over land other than by way of a bridge, turnpike road,  
25 embankment, or substantial fill.

26

27 For the purposes of subparagraph 1., the fact that there  
28 exists some form of legal access to the dominant estate does  
29 not preclude the establishment of a way of necessity if said  
30 existing access is of such a nature that it does not  
31 constitute reasonable legal access by satisfying all of the



1 reasonable requirements for the beneficial use and enjoyment  
2 of the dominant estate.

3 (c) The way of necessity under either subsection (1)  
4 or subsection (2) may also be used for franchised cable  
5 television service and necessary utility services, including,  
6 but not limited to, water, wastewater, reclaimed water,  
7 natural gas, electricity, or telephone service.

8 Section 11. Section 704.04, Florida Statutes, is  
9 amended to read:

10 704.04 Judicial remedy and compensation to servient  
11 owner.--When the owner or owners of such lands across which a  
12 statutory way of necessity under s. 704.01(2) is claimed,  
13 exclusive of the common-law right, objects or refuses to  
14 permit the use of such way under the conditions set forth  
15 herein or until she or he receives compensation therefor,  
16 either party or the board of county commissioners of such  
17 county may file suit in the circuit court of the county  
18 wherein the land is located in order to determine if the claim  
19 for said easement exists, and the amount of compensation to  
20 which said party is entitled for use of such easement. Where  
21 said easement is awarded to the owner of the dominant  
22 tenement, it shall be in compliance with s. 704.01(2) and  
23 shall exist so long as such easement is reasonably necessary  
24 for the purposes stated herein. The court, in its discretion,  
25 shall determine all questions, including the type, duration,  
26 extent, and location of the easement, the amount of  
27 compensation, and the attorney's fees and costs to be awarded  
28 to either party for unreasonable refusal to comply with the  
29 provisions of s. 704.01(2) provided that if either of said  
30 parties so requests in her or his original pleadings, the  
31 amount of compensation may be determined by a jury trial. The

1 easement shall date from the time the award is paid. A way of  
2 necessity created pursuant to this section shall be evidenced  
3 by a written instrument (which may be the final judgment)  
4 which is placed of record and contains a legally sufficient  
5 description of the easement, the dominant estate, and the  
6 servient estate.

7       Section 12. Legislative intent.--It is the intent of  
8 the Legislature that the amendments to sections 704.01,  
9 704.03, and 704.04, Florida Statutes, in this act shall take  
10 effect upon becoming law and shall thereafter set the standard  
11 for determining the existence and extent of all ways of  
12 necessity.

13       Section 13. By January 1, 2002, the Department of  
14 Transportation shall submit a report to the Governor, to the  
15 President of the Senate, and to the Speaker of the House of  
16 Representatives on the cost and effectiveness of the statutory  
17 changes contained in ss. 73.0511, 73.071, 73.091, and 73.131,  
18 Florida Statutes, as amended by this act.

19       Section 14. A working group is hereby established  
20 composed of a representative of the Department of  
21 Transportation, the Department of Banking and Finance, the  
22 Florida Association of Counties, the Florida Farm Bureau, the  
23 Florida Chamber of Commerce, the Florida Petroleum Marketers  
24 Association, the Florida Retail Federation, the Florida  
25 Restaurant Association, the Florida United Businesses  
26 Association, and the National Federation of Independent  
27 Businesses to analyze and report on the feasibility of  
28 establishing programs for assisting businesses adversely  
29 affected by transportation projects and to make  
30 recommendations on establishing alternative methods of  
31 identifying business damage entitlements subsequent to

1 completion of project construction in order to more accurately  
2 assess business damages. The report shall be submitted to the  
3 Governor, to the President of the Senate, and to the Speaker  
4 of the House of Representatives by January 1, 1999, and may  
5 address, but is not limited to, the following:

6 (1) Business loan programs with low or no interest  
7 rates.

8 (2) Business grant programs.

9 (3) Credits for, and exemptions from, taxes or fees  
10 for impacted businesses.

11 (4) Use of state surcharges on local fuel tax revenues  
12 to fund local business assistance programs.

13 (5) Use of alternative dispute resolution approaches  
14 to resolving business damage claims.

15  
16 Such programs should only be available when a business can  
17 demonstrate actual revenue losses based on a comparison of  
18 business records before and after the acquisition and  
19 completion of construction.

20 Section 15. Section 704.03, Florida Statutes, is  
21 repealed.

22 Section 16. Effective July 1, 1999, subsection (2) of  
23 section 337.27, subsection (2) of section 348.759, and  
24 subsection (2) of section 348.957, Florida Statutes, are  
25 repealed.

26 Section 17. Effective July 1, 1999, paragraph (b) of  
27 subsection (1) of section 127.01, Florida Statutes, is amended  
28 to read:

29 127.01 Counties delegated power of eminent domain;  
30 recreational purposes, issue of necessity of taking.--

31 (1)

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

6           Section 18. Effective July 1, 1999, subsection (2) of  
7 section 166.401, Florida Statutes, is amended to read:

8           166.401 Right of eminent domain.--

9           (2) Each municipality is further authorized to  
10 exercise the eminent domain powers granted to the Department  
11 of Transportation in s. 337.27~~(1) and (2)~~and the  
12 transportation corridor protection provisions of s. 337.273.

13           Section 19. Except as otherwise provided herein, this  
14 act shall take effect upon becoming a law.

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ADDITIONAL SPONSORS

Goode, Minton, Lawson, Posey, Ball, King, Murman, Bradley,  
Ritchie, Dockery, Lynn and Culp