

Bill No. CS/HB 4071, 2nd Eng.

Amendment No.

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

Senate Amendment (with title amendment)

On page 18, lines 22 and 23, delete those lines

and insert:

Section 6. Section 73.0511, Florida Statutes, is amended to read:

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

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

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10 Florida Statutes, are repealed.

11 Section 8. Subsection (6) is added to section 253.82,
12 Florida Statutes, to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 Section 9. Section 712.04, Florida Statutes, is
2 amended to read:

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

30 Section 10. Subsection (3) is added to section 712.05,
31 Florida Statutes, to read:

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

18 Section 11. Subsection (3) is added to section 479.15,
19 Florida Statutes, to read:

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

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1 and any local ordinance to the contrary is preempted.

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

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

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

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

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

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

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

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

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

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

28 2. Business grant programs.

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

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

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1 to fund local business assistance programs.

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

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

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

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

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

15 (2) When not otherwise specifically provided, the
16 study panel shall establish guidelines or parameters of the
17 studies in subsection (1) so that the studies are not
18 exhaustive, but maintain representative statistical accuracy.

19 In order for the study panel to receive input, and to assist
20 it in its evaluations and its formulation of recommendations,

21 the study panel may establish one or more technical or other
22 special advisory committees. The advisory committees may

23 include study panel or non-study panel members, including
24 representatives of those industries that may be affected by

25 the study panel's recommendations. Study panel and non-study
26 panel members of any technical or other special advisory

27 committees may not receive remuneration for their services.

28 Study panel members shall be reimbursed for travel and

29 expenses in accordance with chapter 112, Florida Statutes, to
30 the extent that funds are available for this purpose. Public

31 officers and employees shall be reimbursed by their respective

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

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

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

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

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

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

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

15 Section 13. The Legislature finds that balancing
16 property and business interests of private citizens and
17 governmental entities is an important function of the
18 Legislature. Likewise, the Legislature finds that, in the
19 balancing of those interests, prelitigation offers of
20 compensation assist in reducing the costs of acquisition; that
21 an entire lot, block, or tract of land should be acquired only
22 when the public purpose and necessity are related to the
23 engineering needs of a project and not the saving of
24 acquisition costs to the detriment of business owners; that
25 orderly procedures for the transference of deeds under the
26 Murphy Act should be established to save administrative costs;
27 that provision should be made for the underlying fee owner to
28 be eligible for compensation for the denial of economic use
29 caused by the exercise of a reservation pursuant to deeds
30 under the Murphy Act; and that local ordinances regulating
31 outdoor advertising signs should be preempted upon relocation

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

4 Section 14. Subsection (1) of section 337.19, Florida
5 Statutes, is amended to read:

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

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

25 Section 15. Section 6 of this act shall take effect
26 January 1, 1999; section 7 of this act shall take effect July
27 1, 1998, for eminent domain actions filed after July 1, 1998;
28 and all other sections of this act, unless otherwise provided,
29 shall take effect upon this act becoming a law.

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

2 And the title is amended as follows:

3 On page 2, lines 17 and 18, delete those lines

4

5 and insert:

6 the Pollution Recovery Trust Fund; amending s.
7 73.0511, F.S.; providing requirements with
8 respect to prelitigation; providing
9 prelitigation notice to fee owners; providing
10 for prelitigation offer to fee owners;
11 repealing s. 337.27(2), F.S., which provides
12 for the acquisition of lands and property;
13 repealing s. 337.271, F.S., which provides for
14 negotiations for acquisitions by the Department
15 of Transportation; repealing s. 348.0008, F.S.,
16 which provides for the acquisition of lands and
17 property in the Florida Expressway Authority
18 Act; repealing s. 348.759(2), F.S., which
19 provides for the acquisition of lands or
20 property by the Orlando-Orange County
21 Expressway Authority; repealing s. 348.957(2),
22 F.S., which provides for the acquisition of
23 lands or property by the Seminole County
24 Expressway Authority; amending s. 253.82, F.S.;
25 providing for all transportation easements
26 acquired under the Murphy Act to be conveyed to
27 the Department of Transportation or the
28 governmental entity currently having title to
29 the adjacent roadway; requiring the
30 establishment of a procedure for review of
31 deeds containing transportation reservations

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

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