

Bill No. HB 4765, 2nd Eng.

Amendment No.

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
---------------	----------------	--------------

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

.
.
.
.
.

Senator Grant moved the following amendment to amendment (020784):

Senate Amendment (with title amendment)

On page 29, lines 14 and 15, delete those lines

and insert:

Section 35. Effective January 1, 1999, 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

Bill No. HB 4765, 2nd Eng.

Amendment No. ____

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

8 Section 36. Effective July 1, 1998, and applicable to
9 eminent domain actions filed after June 30, 1998, subsection
10 (2) of section 337.27, section 337.271, subsection (2) of
11 section 348.0008, subsection (2) of section 348.759, and
12 subsection (2) of section 348.957, Florida Statutes, are
13 repealed.

14 Section 37. Subsection (6) is added to section 253.82,
15 Florida Statutes, to read:

16 253.82 Title of state or private owners to Murphy Act
17 lands.--

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

Bill No. HB 4765, 2nd Eng.

Amendment No. ____

1 within any incorporated area, are conveyed to the respective
2 county. All other reservations within an incorporated area
3 adjacent to a road that was designated as a state road at the
4 time of the reservation, which reservations are not otherwise
5 conveyed to the state or the county, are conveyed to the
6 incorporated area. The conveyance includes all right, title,
7 and interest in the reservation held by the Board of Trustees
8 of the Internal Improvement Trust Fund.

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

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

16 2. A review of any release of the reservation provided
17 by the property owner.

18 3. The recording of a notice of the nonexistence of a
19 reservation if reservation language in the deed does not
20 impact the property.

21 4. A determination of whether any or all of the
22 reservation may be released, and a form for recording the
23 release.

24 5. A process to allow for review through mediation if
25 requested by the property owner or through binding arbitration
26 pursuant to chapter 44.

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

31 (c)1. Any owner of property encumbered by a Murphy Act

Bill No. HB 4765, 2nd Eng.

Amendment No. ____

1 road reservation who has been denied a release of all or part
2 of the reservation or who has received notice of a
3 governmental entity's intent to preserve the reservation under
4 s. 712.05 may appeal to the entity and show that the
5 reservation substantially denies the property owner the
6 current economic use of the property held by the owner. For
7 purposes of this determination, the term "current economic
8 use" means the use of the property on the date notice of the
9 easement is filed under s. 712.05.

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

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

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

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

Bill No. HB 4765, 2nd Eng.

Amendment No. ____

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

4 Section 38. Section 712.04, Florida Statutes, is
5 amended to read:

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

Bill No. HB 4765, 2nd Eng.

Amendment No. ____

1 July 1, 2001.

2 Section 39. Subsection (3) is added to section 712.05,
3 Florida Statutes, to read:

4 712.05 Effect of filing notice.--

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

21 Section 40. Subsection (3) is added to section 479.15,
22 Florida Statutes, to read:

23 479.15 Harmony of regulations.--

24 (3) It is the express intent of the Legislature to
25 limit the state right-of-way acquisition costs in eminent
26 domain proceedings by preempting county and municipal
27 regulation of outdoor advertising signs located adjacent to
28 any part of the state highway system when the state is making
29 improvement to such highways, the provisions of s. 479.155
30 notwithstanding. Whenever land is acquired upon which is
31 situated a lawful nonconforming sign, the sign may, upon

Bill No. HB 4765, 2nd Eng.

Amendment No. ____

1 receiving a waiver from federal regulations and at the
2 election of its owner, be relocated or reconstructed adjacent
3 to the new right-of-way at the same station along the roadway
4 and any local ordinance to the contrary is preempted.

5 Section 41. (1) The Legislature finds that balancing
6 the property and business interests of private citizens with
7 costs of advancing the public purposes of governmental
8 projects is an important function of the Legislature.

9 Therefore, the Legislature creates and establishes a study
10 panel on eminent domain to make an assessment of the current
11 administration of the exercise of the eminent domain power by
12 state and local governments, to identify issues of fairness
13 and justice in the protection of property and business rights
14 upon the acquisition for public good, to analyze the
15 feasibility of establishing procedures or programs to assist
16 property or business owners adversely affected by
17 transportation projects when demonstrating actual loss, and to
18 ascertain any potential increase or decrease in the costs of
19 right-of-way acquisition upon any proposed legislative
20 recommendation. In carrying forth its stated purpose, the
21 study panel will provide and address:

22 (a) A brief jurisprudential history of the basis of
23 the power of eminent domain vis a vis property and business
24 rights, constitutional or otherwise.

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

Bill No. HB 4765, 2nd Eng.

Amendment No.

1 the condemning authority.

2 (c) A study of right-of-way costs per parcel for
3 transportation projects in which acquisition of title took
4 place between January 1, 1997, and December 31, 1997,
5 comparing the amount of any initial offer with the amount of
6 settlement; identifying whether settlement occurred prior to
7 lawsuit, in litigation prior to jury trial, or by jury trial;
8 identifying any stipulated allocations between the amounts
9 reimbursed to a property or business owner for property,
10 business damages, attorney's fees and costs, or expert costs;
11 and identifying any allocations between administrative costs
12 or expert costs expended by the condemning authority.

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

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

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

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

- 30 1. Business loan programs with low or no interest.
- 31 2. Business grant programs.

Bill No. HB 4765, 2nd Eng.

Amendment No. ____

1 3. Credits for, and exemptions from, taxes or fees for
2 impacted businesses.

3 4. Use of state surcharges on local fuel tax revenues
4 to fund local business assistance programs.

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

7 6. Provision by statute or constitutional amendment to
8 further protect business rights when affected by eminent
9 domain.

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

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

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

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

Bill No. HB 4765, 2nd Eng.

Amendment No.

1 expenses in accordance with chapter 112, Florida Statutes, to
2 the extent that funds are available for this purpose. Public
3 officers and employees shall be reimbursed by their respective
4 agencies in accordance with chapter 112, Florida Statutes.
5 Costs for the study panel shall be funded in the Department of
6 Transportation's adopted 5-year work program. The department
7 may contract with the Florida Conflict Resolution Consortium
8 and Florida State University. All state agencies are requested
9 to provide assistance to the study panel as necessary to
10 accomplish the purposes set forth for the study panel in this
11 act.

12 (3) The study panel shall consist of the following
13 members:

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

24 (b) A member of the Florida Senate, a representative
25 of the Florida Transportation Builders Association, a
26 representative of the Florida Petroleum Council, a
27 representative of the Associated Industries of Florida, a
28 representative of the Florida Retail Federation, a
29 representative of the Florida Division of the National
30 Federation of Independent Businesses, a representative of the
31 Florida Restaurant Association, and a representative of the

Bill No. HB 4765, 2nd Eng.

Amendment No. ____

1 Eminent Domain Committee of the Academy of Florida Trial
2 Lawyers, all to be appointed by the President of the Senate.
3 (c) A member of the Florida House of Representatives,
4 a representative of the Florida Petroleum Marketers
5 Association, a representative of the Florida United Businesses
6 Association, a representative of the Florida Farm Bureau
7 Federation, a representative of the Florida Property Rights
8 Coalition, a representative of the Florida Chamber of
9 Commerce, and a representative of the Florida Bar Eminent
10 Domain Committee, all to be appointed by the Speaker of the
11 House of Representatives.

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

19 Section 42. The Legislature finds that balancing
20 property and business interests of private citizens and
21 governmental entities is an important function of the
22 Legislature. Likewise, the Legislature finds that, in the
23 balancing of those interests, prelitigation offers of
24 compensation assist in reducing the costs of acquisition; that
25 an entire lot, block, or tract of land should be acquired only
26 when the public purpose and necessity are related to the
27 engineering needs of a project and not the saving of
28 acquisition costs to the detriment of business owners; that
29 orderly procedures for the transference of deeds under the
30 Murphy Act should be established to save administrative costs;
31 that provision should be made for the underlying fee owner to

Bill No. HB 4765, 2nd Eng.

Amendment No. ____

1 be eligible for compensation for the denial of economic use
2 caused by the exercise of a reservation pursuant to deeds
3 under the Murphy Act; and that local ordinances regulating
4 outdoor advertising signs should be preempted upon relocation
5 of an outdoor advertising sign resulting from the acquisition
6 of right-of-way. Therefore, the Legislature finds that this
7 act fulfills an important state interest.

8 Section 43. Subsection (1) of section 337.19, Florida
9 Statutes, is amended to read:

10 337.19 Suits by and against department; limitation of
11 actions; forum.--

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

29 Section 44. Except as otherwise expressly provided in
30 this act, this act shall take effect upon becoming a law.

31

Bill No. HB 4765, 2nd Eng.

Amendment No. ____

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 33, line 3, delete that line

4

5 and insert:

6 amending s. 73.0511, F.S.; providing

7 requirements with respect to prelitigation;

8 providing prelitigation notice to fee owners;

9 providing for prelitigation offer to fee

10 owners; repealing s. 337.27(2), F.S., which

11 provides for the acquisition of lands and

12 property; repealing s. 337.271, F.S., which

13 provides for negotiations for acquisitions by

14 the Department of Transportation; repealing s.

15 348.0008(2), F.S., which provides for the

16 acquisition of lands and property in the

17 Florida Expressway Authority Act; repealing s.

18 348.759(2), F.S., which provides for the

19 acquisition of lands or property by the

20 Orlando-Orange County Expressway Authority;

21 repealing s. 348.957(2), F.S., which provides

22 for the acquisition of lands or property by the

23 Seminole County Expressway Authority; amending

24 s. 253.82, F.S.; providing for all

25 transportation easements acquired under the

26 Murphy Act to be conveyed to the Department of

27 Transportation or the governmental entity

28 currently having title to the adjacent roadway;

29 requiring the establishment of a procedure for

30 review of deeds containing transportation

31 reservations acquired under the Murphy Act;

Bill No. HB 4765, 2nd Eng.

Amendment No. ____

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

24
25
26
27
28
29
30
31