

By Senator Grant

13-58-98

1 A bill to be entitled
2 An act relating to eminent domain; amending s.
3 73.0511, F.S.; providing for a written offer of
4 settlement as part of the prelitigation notice;
5 amending s. 73.071, F.S.; providing that the
6 jury must determine full compensation in
7 eminent domain actions; providing for
8 consideration of business damages; providing
9 for the determination of compensation in
10 inverse condemnation proceedings; providing for
11 consideration of mitigation by a property
12 owner; providing for construction of the term
13 "property"; creating s. 74.0205, F.S.;
14 providing for presuit negotiations; creating s.
15 74.042, F.S.; providing for mandatory
16 nonbinding mediation prior to the order of
17 taking hearing; amending s. 337.271, F.S.;
18 providing for the simplification of the
19 acquisition negotiation process; providing an
20 effective date.

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

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24 Section 1. Section 73.0511, Florida Statutes, is
25 amended to read:

26 73.0511 Prelitigation notice.--At least 60 days before
27 ~~Prior to~~ instituting litigation, the condemning authority
28 shall make a written offer of settlement to each defendant for
29 payment of full compensation under s. 73.071. The offer must
30 name the defendant to whom it is made, briefly summarize any
31 relevant conditions, identify all interested parties who might

1 have an apportionable interest in the compensation, and state
2 that the offer is considered to have been rejected unless
3 accepted in writing within 30 days after receipt. At the time
4 the offer is made, the condemning authority shall identify and
5 make available to each defendant the appraisal information and
6 construction plans, if any, upon which the offer is based. The
7 condemning authority shall also notify each defendant ~~the fee~~
8 ~~owners~~ of all statutory rights under s. 73.091.

9 Section 2. Section 73.071, Florida Statutes, is
10 amended to read:

11 73.071 Jury trial; full compensation; severance
12 damages; business damages.--

13 (1) When the action is at issue, and only upon notice
14 and hearing to set the cause for trial, the court shall
15 impanel a jury of 12 persons ~~as soon as practical considering~~
16 ~~the reasonable necessities of the court and of the parties,~~
17 ~~and giving preference to the trial of eminent domain cases~~
18 ~~over other civil actions,~~ and submit the issue of full
19 compensation to them for determination, which issue shall be
20 tried in the same manner as other issues of fact are tried in
21 the circuit courts. The court shall give priority to the trial
22 of eminent domain cases over other civil actions.

23 (2) The amount of such full compensation shall be
24 determined as of the date of trial, or the date upon which
25 title passes, whichever shall occur first. The jury shall
26 determine full compensation based upon a claim of inverse
27 condemnation as of the date of appropriation.

28 (3) The jury shall determine ~~solely~~ the amount of full
29 compensation to be paid, which compensation shall include:

30 (a) The value of the property ~~sought to be~~
31 appropriated by direct or inverse condemnation;

1 (b) Where less than the entire property is ~~sought to~~
2 ~~be~~ appropriated, any damages to remaining property the
3 ~~remainder~~ caused by that appropriation ~~the taking~~, including,
4 any damage resulting from the project that necessitated or
5 caused that the property be appropriated;~~when the action is~~
6 ~~by the Department of Transportation, county, municipality,~~
7 ~~board, district or other public body for the condemnation of a~~
8 ~~right-of-way, and the effect of the taking of the property~~
9 ~~involved may damage or destroy an established business of more~~
10 ~~than 5 years' standing, owned by the party whose lands are~~
11 ~~being so taken, located upon adjoining lands owned or held by~~
12 ~~such party, the probable damages to such business which the~~
13 ~~denial of the use of the property so taken may reasonably~~
14 ~~cause; any person claiming the right to recover such special~~
15 ~~damages shall set forth in his or her written defenses the~~
16 ~~nature and extent of such damages; and~~

17 (c) Any damage to an established business of 3 years'
18 standing, operated at the location from which property has
19 been appropriated by a governmental entity through direct or
20 inverse condemnation, including any damage resulting from the
21 project that necessitated or caused that the property be
22 appropriated. Such damages shall include, but are not limited
23 to, those suffered by agricultural operations, as defined in
24 s. 570.02(1), as a result of the appropriation of agricultural
25 property. Evidence of a claimant's ability to mitigate
26 business damage onsite or by relocating to another comparable
27 location in the same market trade area may be considered. Any
28 increased costs of operation and reasonable expenses of
29 mitigation resulting from the onsite mitigation plan or from
30 the relocation of the business to another comparable location
31 in the same market trade area, together with moving costs and

1 downtime losses, must be included when determining business
2 damages payable to the claimant; and

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

21
22 For the purpose of determining compensation under paragraphs
23 (a), (b), and (c), the term "property" is to be broadly
24 construed and includes, but is not limited to, land,
25 improvements, farm operations, and rights of access, air,
26 light, and view.

27 ~~(4) When the action is by the Department of~~
28 ~~Transportation, county, municipality, board, district, or~~
29 ~~other public body for the condemnation of a road, canal,~~
30 ~~levee, or water control facility right-of-way, The~~
31 enhancement, if any, in value of the remaining adjoining

1 property of the defendant property owner by reason of the
2 project construction or improvement made or contemplated or
3 constructed by the petitioner shall be offset against the
4 damage, if any, resulting to such remaining adjoining property
5 of the defendant property owner by reason of the project
6 contemplated or constructed ~~construction or improvement~~.
7 However, such enhancement in the value shall not be offset
8 against the value of the property appropriated, and if such
9 enhancement in value shall exceed the damage, if any, to the
10 remaining adjoining property, there shall be no recovery over
11 against such property owner for such excess.

12 (5) Any increase or decrease in the value of any
13 property to be acquired which occurs after the scope of the
14 project for which the property is being acquired is known in
15 the market, and which is solely a result of the knowledge of
16 the project location, shall not be considered in arriving at
17 the value of the property acquired. For the purpose of this
18 section, the scope of the project for which the property is
19 being acquired shall be presumed to be known in the market on
20 or after the condemnor executes a resolution which depicts the
21 location of the project.

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

24 (7) If the jury cannot agree on a verdict the court
25 shall discharge them, impanel a new jury, and proceed with the
26 trial.

27 Section 3. Section 74.0205, Florida Statutes, is
28 created to read:

29 74.0205 Presuit negotiations.--The condemning
30 authority shall negotiate in good faith with the owner of a
31 parcel to be acquired and shall attempt to arrive at an

1 agreed-upon amount of compensation to be paid for the parcel.
2 If a settlement is reached before litigation, the condemning
3 authority shall promptly pay a reasonable appraisal fee,
4 reasonable accountant's fee, reasonable attorney's fee, and
5 other reasonable costs. The property owner may file a
6 complaint in the circuit court in the county in which the
7 property is located to recover reasonable costs.

8 Section 4. Section 74.042, Florida Statutes, is
9 created to read:

10 74.042 Mandatory mediation.--Upon motion of any party,
11 the court shall order that the case be submitted to nonbinding
12 mediation under s. 44.102 prior to conducting the order of
13 taking hearing under s. 74.051.

14 Section 5. Section 337.271, Florida Statutes, is
15 amended to read:

16 337.271 Negotiations for acquisitions.--

17 (1) The department shall negotiate in good faith with
18 the owner of a parcel to be acquired and shall attempt to
19 arrive at an agreed amount of compensation to be paid for the
20 parcel and at the inception of the negotiations shall provide
21 the owner with the right-of-way maps and notify the owner of
22 statutory rights under s. 73.091 and s. 73.092.

23 ~~(2) At the inception of negotiation for acquisition,~~
24 ~~the department shall notify the fee owner of the following:~~

25 ~~(a) That all or a portion of his or her property is~~
26 ~~necessary for a transportation facility or transportation~~
27 ~~corridor;~~

28 ~~(b) The nature of the project for which the parcel is~~
29 ~~deemed necessary, the project number, and the parcel~~
30 ~~designation of the property to be acquired;~~

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1 ~~(c) The district office of the department from which~~
2 ~~the owner may obtain right-of-way maps reflecting the proposed~~
3 ~~taking;~~

4 ~~(d) The fee owner's statutory rights under ss. 73.091~~
5 ~~and 73.092; and~~

6 ~~(e) The fee owner's rights and responsibilities under~~
7 ~~subsections (3), (4), (5), and (6).~~

8 ~~(3) The notice shall be sent by certified mail, return~~
9 ~~receipt requested, to the fee owner's last known address~~
10 ~~listed on the county ad valorem tax roll. Notice to one owner~~
11 ~~constitutes notice to all owners on multiple-ownership~~
12 ~~property. The return of the notice as undeliverable by the~~
13 ~~postal authorities constitutes compliance with this provision.~~
14 ~~The department is not required to give notice to a person who~~
15 ~~acquires title to the property subsequent to the notice~~
16 ~~required by this section.~~

17 ~~(4) The fee owner may, within 120 days after receipt~~
18 ~~of the notice required by subsection (2) or at a later date~~
19 ~~specified by the department, submit a complete appraisal~~
20 ~~report relating to the parcel to be acquired. The fee owner~~
21 ~~may waive his or her right to the 120 days to obtain an~~
22 ~~appraisal by providing the department with written notice of~~
23 ~~such waiver. If a report is submitted, it shall contain all~~
24 ~~data and information upon which the appraiser's conclusions~~
25 ~~are based and shall be prepared by a state-certified real~~
26 ~~estate appraiser as defined in chapter 475 and who has been~~
27 ~~qualified by the department. A list of those state-certified~~
28 ~~real estate appraisers, as defined in chapter 475, currently~~
29 ~~qualified by the department shall be attached to the letter~~
30 ~~submitted to the fee owner. On multiple-ownership property,~~
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1 ~~the fee owner is collectively entitled to only one appraisal~~
2 ~~report.~~

3 ~~(5) If the business owner intends to claim business~~
4 ~~damages pursuant to s. 73.071(3)(b), he or she may, within 120~~
5 ~~days after receipt of the notice required by subsection (2) or~~
6 ~~at a later time specified by the department, submit to the~~
7 ~~department a complete estimate of business damages to the~~
8 ~~property. The fee owner may waive his or her right to the 120~~
9 ~~days to obtain an estimate of business damages by providing~~
10 ~~the department with written notice of such waiver. If an~~
11 ~~estimate is submitted, it shall explain the nature and extent~~
12 ~~of such damages and shall be prepared by either the owner or a~~
13 ~~certified public accountant. If the business owner elects to~~
14 ~~submit an estimate of business damages to the department, he~~
15 ~~or she shall also permit the department to copy and examine,~~
16 ~~at the owner's convenience, such of the owner's business~~
17 ~~records as the department determines to be necessary for it to~~
18 ~~arrive at an estimate of business damages.~~

19 ~~(6) Upon submission of an invoice which complies with~~
20 ~~the requirements of this subsection, the department shall pay~~
21 ~~all reasonable costs, including reasonable attorney's fees,~~
22 ~~incurred on behalf of a property owner who proceeds to~~
23 ~~prelitigation negotiation settlement pursuant to the~~
24 ~~provisions of this section. The attorney's fees shall be based~~
25 ~~upon the criteria of s. 73.092. The invoice shall include~~
26 ~~complete time records and a detailed statement of services~~
27 ~~performed and time spent performing such services. Reasonable~~
28 ~~appraisal or accountant fees as authorized by this section~~
29 ~~shall not exceed the general or customary hourly rate for~~
30 ~~appraisal or accounting fees in the community. If the parties~~
31 ~~cannot agree on the amount of costs and attorney's fees to be~~

1 ~~paid by the department, the property owner may file a~~
2 ~~complaint in the circuit court in the county where the~~
3 ~~property is located to recover reasonable attorney's fees and~~
4 ~~costs.~~

5 ~~(7) Within 30 days after receipt of the fee owner's~~
6 ~~appraisal report and the estimate of business damages if~~
7 ~~submitted, the department shall submit to the owner all~~
8 ~~appraisal reports prepared for the department which relate to~~
9 ~~the owner's parcel and any estimate of business damages~~
10 ~~prepared.~~

11 ~~(8) After receipt of the appraisal report prepared for~~
12 ~~the fee owner and the estimate of business damages if~~
13 ~~submitted, the department shall make a written offer of~~
14 ~~purchase to the fee owner and business owner, if any, which~~
15 ~~includes the value of the land and improvements taken and any~~
16 ~~business or severance damages.~~

17 ~~(9) After exchanging appraisal reports and business~~
18 ~~damage reports, the parties may jointly agree to submit the~~
19 ~~compensation and business damage claims to nonbinding~~
20 ~~mediation. The mediation may be held after the eminent domain~~
21 ~~action is filed, if the department must file the action to~~
22 ~~meet construction schedules. The parties shall agree upon a~~
23 ~~mediator certified pursuant to s. 44.102.~~

24 ~~(10) If the department agrees to mediation, the fee~~
25 ~~owner or business owner may submit to the department an~~
26 ~~invoice, which complies with this section, for payment for the~~
27 ~~appraisal reports, business damage reports, and other~~
28 ~~reasonable costs. Upon receipt of such invoice, the~~
29 ~~department shall promptly pay a reasonable appraisal fee,~~
30 ~~reasonable accountant's fee, and other reasonable costs. If~~
31 ~~the parties cannot agree on the amount of costs to be paid by~~

1 ~~the department, the property owner may file a complaint in the~~
2 ~~circuit court in the county in which the property is located~~
3 ~~to recover reasonable costs.~~

4 (2)~~(11)~~ Evidence of negotiations, or evidence of any
5 written or oral statements used in mediation, conducted by the
6 parties pursuant to this section is not admissible in any
7 subsequent proceeding.

8 Section 6. This act shall take effect July 1, 1998.

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SENATE SUMMARY

In eminent domain proceedings provides for: a simplified acquisition negotiation process; mandatory mediation prior to hearing on the order of taking; the jury to award full compensation both for direct and inverse condemnation appropriations of property; and consideration of mitigation, and of the expenses of mitigation, by a business owner. Decreases from 5 years to 3 years the length of time a business must have been established before business damages are considered. Directs that the term "property" be broadly construed in determining compensation.