

By the Committee on Judiciary and Senators Grant and Casas

308-873-98

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 compensation to fee owners as part of the
 5 prelitigation notice; providing for an exchange
 6 of appraisals; requiring the governmental
 7 condemning authority to notify onsite business
 8 operators; providing for access to confidential
 9 business records; amending s. 73.071, F.S.;
 10 providing criteria for compensation by jury;
 11 repealing s. 337.27(2), F.S., relating to the
 12 exercise of the power of eminent domain by the
 13 Department of Transportation; amending s.
 14 73.092, F.S.; revising attorney's fee
 15 guidelines for eminent domain proceedings;
 16 providing an effective date.

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

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 20 Section 1. Section 73.0511, Florida Statutes, is
 21 amended to read:

22 73.0511 Prelitigation ~~notice~~--
 23 (1) Prelitigation notice to fee owners.--Before ~~Prior~~
 24 ~~to~~ instituting litigation, the condemning authority shall
 25 notify the fee owners appearing of record on the date the
 26 offer is made of statutory rights under s. 73.091 and shall
 27 make a written offer of full compensation naming the fee
 28 owners to whom it is made.

29 (2) Exchange of appraisals.--
 30 (a) After the offer is made, the fee owner may request
 31 a copy of the most current appraisal and construction plans

1 pertaining to the property upon which the offer is based. The
2 governmental condemning authority shall provide the appraisal
3 and plans within 15 days of the request. Notwithstanding the
4 foregoing, however, with respect to lands acquired under s.
5 259.041, the condemning authority is not required to give the
6 fee owners the current appraisal before execution of an option
7 contract to purchase the property.

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

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

23 (4) Business records.--After a governmental condemning
24 authority tenders a prelitigation offer under subsection (1),
25 the governmental condemning authority may seek to obtain from
26 the owner or onsite operator of the business a copy of the
27 business records kept in the ordinary course of business, if
28 available. For the purposes of this section and s.
29 73.092(1)(a)2., the term "business records" means copies of
30 federal income tax returns, federal income tax withholding
31 statements, federal miscellaneous income tax statements,

1 balance sheets, profit and loss statements, and state
2 corporate income tax returns attributable to the business
3 operation on the property to be acquired for the 3 years
4 preceding notification. If any of these records are
5 consolidated with records of other business operations not on
6 the property to be acquired, then it will be sufficient in the
7 alternative that edited portions of the business records
8 attributable to the business operation on the property to be
9 acquired for the 3 years preceding notification be provided in
10 addition to a signed acknowledgment from the business owner.
11 This subsection is not mandatory and may not be construed as a
12 condition for claiming business damages but is intended solely
13 for the purpose of encouraging prelitigation settlements. All
14 business records must be kept confidential by the governmental
15 condemning authority and used only for the purposes of a
16 written offer or in the condemnation suit for the property to
17 be acquired.

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

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

1 73.071 Jury trial; compensation; severance damages.--
2 (3) The jury shall determine solely the amount of
3 compensation to be paid, which compensation shall include:
4 (a) The value of the property sought to be
5 appropriated.When the use of the property sought to be
6 acquired is an agricultural operation as defined in s.
7 570.02(1), income from farming is attributable to real estate.
8 (b) Where less than the entire property is sought to
9 be appropriated, any damages to the remainder caused by the
10 taking.~~, including,~~
11 (c) When the action is by the Department of
12 Transportation, county, municipality, board, district or other
13 public body for the condemnation of a right-of-way, and the
14 effect of the taking of the property involved or substantial
15 diminution of access may damage or destroy an established
16 business of more than 3 5 years' standing at that business
17 location, owned and operated at that location by the party
18 whose property is being taken or whose access is being
19 substantially diminished ~~lands are being so taken, located~~
20 ~~upon adjoining lands owned or held by such party,~~ the probable
21 damages to such business which the denial of the use of the
22 property ~~so~~ taken or access substantially diminished may
23 reasonably cause; any person claiming the right to recover
24 such special damages shall set forth in his or her written
25 defenses the nature and extent of such damages.~~and~~ The total
26 compensation awarded for business damages may not exceed the
27 fair market value of the business and reasonable moving
28 expenses.
29 (d) Evidence of the ability to mitigate severance and
30 business damages on site or by relocating all or part of the
31 business to an adjacent property or to another comparable

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

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

29 Section 3. Subsection (2) of section 337.27, Florida
30 Statutes, is repealed.

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1 Section 4. Paragraph (c) of subsection (1) of section
2 73.092, Florida Statutes, is amended to read:

3 73.092 Attorney's fees.--

4 (1) Except as otherwise provided in this section, the
5 court, in eminent domain proceedings, shall award attorney's
6 fees based solely on the benefits achieved for the client.

7 (c) Attorney's fees based on benefits achieved shall
8 be awarded in accordance with the following schedule:

9 1. Thirty ~~Thirty-three~~ percent of any benefit up to
10 \$250,000; plus

11 2. Twenty ~~Twenty-five~~ percent of any portion of the
12 benefit between \$250,000 and \$1 million; plus

13 3. Twelve ~~Twenty~~ percent of any portion of the benefit
14 exceeding \$1 million.

15 Section 5. This act shall take effect July 1, 1998.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 92

The committee substitute:

1. Revises the proposed language on written offers of compensation and adds proposals for requesting business records and making offers of settlement of business damages.
2. Revises the proposals on business damages, including deleting proposals for: payment of such damages to a business operator who does not own the property sought to be acquired; payment of "any damages resulting from the project that necessitated or caused the property to be appropriated"; and payment of business damages in takings for any purpose, not just for right-of-way condemnations.
3. Deletes from the bill the sections on negotiations and settlement, mediation, and acquisition negotiations by the Department of Transportation.
4. Repeals s. 337.27(2), F.S., which currently allows the Department of Transportation to take an entire parcel if the cost of doing so is equal to or less than the cost of taking only that portion of the parcel which is needed for the project.
5. Amends s. 73.092, F.S., to reduce attorney's fees by reducing the percentages used to calculate these fees.