

By the Committees on Governmental Reform and Oversight,
Judiciary and Senators Grant, Casas, Bronson and Kirkpatrick

306-1697-98

1 A bill to be entitled
2 An act relating to eminent domain; amending s.
3 73.0511, F.S.; providing for a dispute
4 resolution process; providing for notice to fee
5 owners and business owners; providing for an
6 exchange of appraisals, right-of-way maps, and
7 construction plans with fee owners and business
8 owners; providing for an initial concern letter
9 and conference; providing for disclosure of
10 business records; providing for an offer of
11 business damages and a counteroffer; providing
12 for negotiation, mediation, and settlement in
13 lieu of condemnation; amending s. 73.071, F.S.;
14 providing criteria for compensation by jury;
15 repealing s. 337.27(2), F.S., relating to the
16 exercise of the power of eminent domain by the
17 Department of Transportation; repealing ss.
18 348.0008(3), 348.759(3), 348.957(3), F.S.,
19 relating to the exercise of eminent domain
20 power by expressway and bridge authorities;
21 providing a finding of important state
22 interest; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Effective January 1, 1999, section 73.0511,
27 Florida Statutes, is amended to read:

28 73.0511 Dispute resolution ~~Prelitigation notice~~.--
29 (1) Notice to fee owners and offer of full
30 compensation.--

31

1 (a) Before an eminent domain action is initiated under
2 chapter 73 or chapter 74 ~~Prior to instituting litigation,~~ the
3 condemning authority shall notify the fee owners, appearing of
4 record on the date the offer is made, of their statutory
5 rights under s. 73.091 and shall make a written offer of full
6 compensation as to those elements provided in s. 73.071(3)(a)
7 and (b), naming the fee owners to whom it is made. The notice
8 and written offer must be sent by certified mail, return
9 receipt requested.

10 (b) The condemning authority may include with the
11 notice and written offer a request for information from the
12 fee owners limited to identification of any tenants or onsite
13 operators of businesses existing as of the date the offer is
14 made. If such a request for information is made by the
15 condemning authority, the fee owners shall respond in writing
16 within 30 days, listing the name, address, and contact person
17 of each tenant or onsite operator of a business to the extent
18 that such information is known to the fee owners. Information
19 provided under this subsection will assist the condemning
20 authority in notification procedures required by chapters 73
21 and 74, but shall not waive compliance by the condemning
22 authority with such notification procedures.

23 (2) Exchange of appraisals, right-of-way maps, and
24 construction plans with fee owners; initial concern letter;
25 initial concern conference.--

26 (a) After the notice and written offer provided in
27 paragraph (1)(a) is made, the fee owner may request of a
28 governmental condemning authority by certified mail, return
29 receipt requested, a copy of the most current appraisal,
30 right-of-way maps, and construction plans pertaining to the
31 property upon which the written offer is based. The

1 governmental condemning authority shall provide the appraisal,
2 maps, and plans within 15 days after the fee owners' request
3 and, at that time, may make a written request by certified
4 mail, return receipt requested, for an initial concern letter
5 from the fee owners citing to the specific language of
6 paragraph (c). However, with respect to lands acquired under
7 s. 259.041, the condemning authority is not required to give
8 the fee owners the current appraisal before execution of an
9 option contract to purchase the property.

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

16 (c) Within 30 days after receipt of the governmental
17 condemning authority's right-of-way maps and construction
18 plans, the fee owners shall provide to the governmental
19 condemning authority by certified mail, return receipt
20 requested, a letter that sets forth the fee owners' initial
21 concerns, if any, regarding the design of the proposed project
22 from a preliminary review of the maps and plans. The letter
23 is without prejudice to the fee owners in negotiations or in
24 the event that a lawsuit is filed. The letter may not be
25 introduced into evidence by the condemning authority in
26 proceedings under s. 73.071.

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 by certified mail,
31 return receipt requested, for a conference limited to the

1 concerns set forth in the letter. If the request is made by
2 the condemning authority, the condemning authority shall again
3 notify the fee owners of their statutory rights under s.
4 73.091 within the written request. The fee owners and the
5 governmental condemning authority shall make representatives
6 available for the conference within 60 days following the
7 written request.

8 (3) Notice to business owners.--

9 (a) Before an eminent domain action is initiated under
10 Chapters 73 or 74, when the action is by the Department of
11 Transportation, or by a county, municipality, board, district
12 or other public body for the condemnation of a right-of-way,
13 the governmental condemning authority shall notify the
14 business owners located on the property upon which the written
15 offer provided in paragraph (1)(a) is based of their statutory
16 rights under s. 73.091. The notice must be sent by certified
17 mail, return receipt requested.

18 (b) Before an inverse condemnation action is initiated
19 by a business owner claiming that an inverse taking of
20 property directly results in damage to a business as set forth
21 in s. 73.071(3)(c), the business owner and governmental
22 condemning authority shall comply with this section with the
23 exception of the notice provision provided in paragraph
24 (1)(a).

25 (4) Exchange of appraisals, right-of-way maps, and
26 construction plans with business owners; initial concern
27 letter; initial concern conference.--

28 (a) After the notice provided in subsection (3) is
29 made, the business owners may request of a governmental
30 condemning authority by certified mail, return receipt
31 requested, a copy of the most current appraisal, right-of-way

1 maps, and construction plans pertaining to the property upon
2 which the written offer provided in paragraph (1)(a) is based.
3 The governmental condemning authority shall provide the
4 appraisal, maps, and plans within 15 days after the business
5 owners' request and, at that time, may make a written request
6 for an initial concern letter from the business owners citing
7 to the specific language of paragraph (b).

8 (b) Within 30 days after receipt of the governmental
9 condemning authority's right-of-way maps and construction
10 plans, the business owners shall provide to the governmental
11 condemning authority a letter that sets forth the business
12 owners' initial concerns, if any, regarding the design of the
13 proposed project from a preliminary review of the maps and
14 plans. The letter is without prejudice to the business owners
15 in negotiations or in the event that a lawsuit is filed. The
16 letter may not be introduced into evidence by the condemning
17 authority in proceedings under s. 73.071.

18 (c) After the initial concern letter is provided by
19 the business owners to the governmental condemning authority,
20 either the business owners or the governmental condemning
21 authority may make a written request by certified mail, return
22 receipt requested, of the other for a meeting limited to the
23 concerns set forth in the letter. If the request is made by
24 the condemning authority, the condemning authority shall again
25 notify the business owners of their statutory rights under s.
26 73.091 within the written request. The business owners and
27 the governmental condemning authority shall make
28 representatives available for the meeting within 60 days
29 following the written request.

30 (5) Disclosure of business records.--
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1 (a) After a governmental condemning authority tenders
2 a written offer under paragraph (1)(a) and notifies the
3 business owners under subsection (3), the governmental
4 condemning authority may obtain from the business owners a
5 copy of the business records kept, in the ordinary course of
6 business, within the possession or control of the business
7 owners, as set forth in this subsection.

8 (b) For the purposes of this section and s.
9 73.092(1)(a)2., the term "business records" means copies of
10 federal income tax returns, federal income tax withholding
11 statements, federal miscellaneous income tax statements, state
12 sales tax returns, balance sheets, profit and loss statements,
13 and state corporate income tax returns attributable to the
14 business operation on the property to be acquired for the 3
15 years preceding notification. If any of these records are
16 consolidated with records of other business operations not on
17 the property to be acquired, then it will be sufficient in the
18 alternative that edited portions of the business records
19 attributable to the business operation on the property to be
20 acquired for the 3 years preceding notification be provided in
21 addition to a signed acknowledgment from the business owner.

22 (c) The governmental condemning authority's request
23 for business records must be in writing and must define
24 "business records" within such request with citation to the
25 specific language of paragraph (b) in its entirety and include
26 a notice of penalty for noncompliance with citation to the
27 specific language of this paragraph in its entirety. If the
28 condemning authority's request for business records is not
29 included with a notice under subsection (3), the request must
30 also be accompanied by notice of statutory rights under s.
31 73.091. The condemning authority shall not make a request for

1 business records of a business owner more often than once
2 before a lawsuit is filed. The written request must be sent by
3 certified mail, return receipt requested.

4 (d) Failure of a business owner to provide in good
5 faith a copy of the business records kept, in the ordinary
6 course of business, as defined in paragraph (b), within the
7 possession or control of the business owner, within 60 days
8 after the condemning authority's written request, precludes
9 the business owner from recovery of any accountant's fee for
10 estimating business damages otherwise provided in paragraph
11 (7)(c) or s. 73.091.

12 (e) After a copy of the business records is provided
13 by the business owners to the governmental condemning
14 authority, the condemning authority may make a written request
15 by certified mail, return receipt requested, of the business
16 owners for a business records conference. Within the written
17 request, the condemning authority shall again notify the
18 business owners of their statutory rights under s. 73.091 and
19 itemize questions regarding the business records provided by
20 the business owners. The business owners and the condemning
21 authority shall make representatives available for the
22 conference, which must be limited to a discussion of those
23 questions itemized in the condemning authority's written
24 request, within 60 days following the written request.

25 (6) Offer of business damages; counteroffer.--

26 (a) If a business owner provides a copy of business
27 records as set forth in paragraph (5)(b), the governmental
28 condemning authority shall make a written offer in settlement
29 of business damages as to those elements provided in s.
30 73.071(3)(c) before an eminent domain action is initiated
31

1 under chapter 73 or chapter 74. The written offer must be
2 sent by certified mail, return receipt requested.

3 (b) Within 60 days after receipt of the written offer
4 of business damages provided in paragraph (a), the business
5 owners shall make a written counteroffer in settlement of
6 business damages as to those elements provided in s.
7 73.071(3)(c). The written counteroffer must be sent by
8 certified mail, return receipt requested.

9 (c) If an eminent domain action is initiated under
10 chapter 73 or chapter 74, the amount of the written offer of
11 business damages provided in paragraph (a) shall be deposited
12 by the governmental condemning authority into the court
13 registry, available for withdrawal by the business owners to
14 whom the offer was made, prior to the vesting of title to the
15 property acquired.

16 (7) Negotiations; mediation; settlement in lieu of
17 condemnation.--

18 (a) The condemning authority, together with the
19 property and business owners potentially impacted by the
20 condemnation of property necessarily acquired for a public
21 purpose, shall negotiate in good faith.

22 (b) Subsequent to the condemning authority making an
23 offer under paragraph (1)(a) or paragraph (6)(a), the party to
24 whom the offer was made may make a written request by
25 certified mail, return receipt requested, to have mediation
26 presided over by a mediator certified under s. 44.102.
27 Mediation must occur within 60 days of the written request.
28 The party requesting the mediation shall have a representative
29 with authority present at mediation to bind the property or
30 business owners. The condemning authority shall have a
31 representative with authority present at mediation to bind the

1 condemning authority in settlement, subject, if applicable, to
2 the approval of the elected governing board or council in the
3 case of a unit of local government or to the approval of the
4 agency head or his or her designee in the case of a state
5 agency. The condemning authority shall also have a
6 representative with authority present at mediation to bind the
7 condemning authority in settlement regarding access management
8 or the engineering design of the project for which property is
9 to be acquired. Either the party to whom the offer was made
10 or the condemning authority may notice other interested
11 parties with rights of apportionment otherwise provided under
12 s. 73.101 to be present at the mediation. Evidence of
13 negotiations or any written or oral statements made in
14 mediation is not admissible in any subsequent legal
15 proceedings.

16 (c) If a settlement is reached between the condemning
17 authority and a property or business owner prior to a lawsuit
18 being filed, the property or business owner who settles
19 compensation claims in lieu of condemnation is entitled to
20 recover costs as provided in s. 73.091 and attorney's fees as
21 provided in s. 73.092(1) or, for any settlement in an amount
22 under \$100,000, as provided in s. 73.092(2)(a)-(f). The
23 property or business owner may file a complaint in circuit
24 court in the county in which the property to be acquired is
25 located to recover costs and attorney's fees from the
26 condemning authority as provided in this subsection.

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

29 73.071 Jury trial; compensation; severance damages.--

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

1 (a) The value of the property sought to be
2 appropriated. ~~When the use of the property sought to be~~
3 acquired is an agricultural operation as defined in s.
4 570.02(1), income from farming is attributable to real estate.

5 (b) Where less than the entire property is sought to
6 be appropriated, any damages to the remainder caused by the
7 taking. ~~, including,~~

8 (c) When the action is by the Department of
9 Transportation, county, municipality, board, district or other
10 public body for the condemnation of a right-of-way, and the
11 effect of the taking of the property involved or substantial
12 diminution of access may damage or destroy an established
13 business of more than 3 5 years' standing at that business
14 location, owned and operated at that location by the party
15 whose property is being taken or whose access is being
16 substantially diminished ~~lands are being so taken, located~~
17 ~~upon adjoining lands owned or held by such party,~~ the probable
18 damages to such business which the denial of the use of the
19 property ~~so taken~~ or access substantially diminished may
20 reasonably cause; any person claiming the right to recover
21 such special damages shall set forth in his or her written
22 defenses the nature and extent of such damages. ~~and~~ The total
23 compensation awarded for business damages may not exceed the
24 fair-market value of the business and reasonable moving
25 expenses.

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

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

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

26 Section 3. The Legislature finds that a proper and
27 legitimate state purpose is served when business owners are
28 extended a fair and reasonable valuation of their property and
29 given compensation for damages to their businesses or
30 diminution of access caused by governmental condemning
31

1 authorities. Therefore, the Legislature determines and
2 declares that this act fulfills an important state interest.

3 Section 4. Subsection (2) of section 337.27,
4 subsection (3) of section 348.008, subsection (3) of section
5 348.759, and subsection (3) of section 348.957, Florida
6 Statutes, are repealed.

7 Section 5. Except as otherwise provided in this act,
8 this act shall take effect June 30, 1998, and shall be
9 applicable only to actions in which orders of taking under
10 chapter 73 or chapter 74 are entered after June 30, 1998.

11
12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 CS/SB 92

15 CS for CS/SB 92 removes a public records exemption contained
16 in its prior version; incorporates an "Important State
17 Interest" clause to bring the bill into compliance with
18 Article VII, Section 18, State Constitution; repeals three
19 additional sections of current law which provide separate
20 eminent domain authority for designated expressway
21 authorities; and reinstates to current law a provision in the
22 prior CS which reduced the statutory attorney fee schedule.
23 The CS for the CS also eliminates reimbursement for owner
24 accounting fees should the owner not provide any business
25 records to the condemning authority. Further changes to the
26 offer/counteroffer process provide for more detailed
27 procedures for the exchange of records within designated time
28 frames in the context of the condemning authority making the
29 first offer. Changes to mediation procedures require the
30 government condemning authority to have a party present that
31 can bind its side in those proceedings.