

Bill No. CS for SB 1314

Amendment No.     

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

**Senate Amendment (with title amendment)**

On page 51, line 31, delete that line

and insert:

Section 57. Effective January 1, 2000, section 73.015, Florida Statutes, is created to read:

73.015 Presuit negotiation.--

(1) Effective July 1, 2000, before an eminent domain proceeding is brought under this chapter or chapter 74, the condemning authority must attempt to negotiate in good faith with the fee owner of the parcel to be acquired, must provide the fee owner with a written offer and, if requested, a copy of the appraisal upon which the offer is based, and must attempt to reach an agreement regarding the amount of compensation to be paid for the parcel.

(a) At the inception of negotiation for acquisition, the condemning authority must notify the fee owner of the following:

1. That all or a portion of his or her property is

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1 necessary for a project.

2 2. The nature of the project for which the parcel is  
3 considered necessary, and the parcel designation of the  
4 property to be acquired.

5 3. That, within 15 business days after receipt of a  
6 request by the fee owner, the condemning authority will  
7 provide a copy of the appraisal report upon which the offer to  
8 the fee owner is based; copies, to the extent prepared, of the  
9 right-of-way maps or other documents that depict the proposed  
10 taking; and copies, to the extent prepared, of the  
11 construction plans that depict project improvements to be  
12 constructed on the property taken and improvements to be  
13 constructed adjacent to the remaining property, including, but  
14 not limited to, plan, profile, cross-section, drainage, and  
15 pavement marking sheets, and driveway connection detail. The  
16 condemning authority shall provide any additional plan sheets  
17 within 15 days of the request.

18 4. The fee owner's statutory rights under ss. 73.091  
19 and 73.092.

20 5. The fee owner's rights and responsibilities under  
21 paragraphs (b) and (c) and subsection (4).

22 (b) The condemning authority must provide a written  
23 offer of compensation to the fee owner as to the value of the  
24 property sought to be appropriated and, where less than the  
25 entire property is sought to be appropriated, any damages to  
26 the remainder caused by the taking. The owner must be given at  
27 least 30 days after either receipt of the notice or the date  
28 the notice is returned as undeliverable by the postal  
29 authorities to respond to the offer, before the condemning  
30 authority files a condemnation proceeding for the parcel  
31 identified in the offer.

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1           (c) The notice and written offer must be sent by  
2 certified mail, return receipt requested, to the fee owner's  
3 last known address listed on the county ad valorem tax roll.  
4 Alternatively, the notice and written offer may be personally  
5 delivered to the fee owner of the property. If there is more  
6 than one owner of a property, notice to one owner constitutes  
7 notice to all owners of the property. The return of the notice  
8 as undeliverable by the postal authorities constitutes  
9 compliance with this provision. The condemning authority is  
10 not required to give notice or a written offer to a person who  
11 acquires title to the property after the notice required by  
12 this section has been given.

13           (d) Notwithstanding this subsection, with respect to  
14 lands acquired under s. 259.041, the condemning authority is  
15 not required to give the fee owner the current appraisal  
16 before executing an option contract.

17           (2) Effective July 1, 2000, before an eminent domain  
18 proceeding is brought under this chapter or chapter 74 by the  
19 Department of Transportation or by a county, municipality,  
20 board, district, or other public body for the condemnation of  
21 right-of-way, the condemning authority must make a good faith  
22 effort to notify the business owners, including lessees, who  
23 operate a business located on the property to be acquired.

24           (a) The condemning authority must notify the business  
25 owner of the following:

26           1. That all or a portion of his or her property is  
27 necessary for a project.

28           2. The nature of the project for which the parcel is  
29 considered necessary, and the parcel designation of the  
30 property to be acquired.

31           3. That, within 15 business days after receipt of a

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1 request by the business owner, the condemning authority will  
2 provide a copy of the appraisal report upon which the offer to  
3 the fee owner is based; copies, to the extent prepared, of the  
4 right-of-way maps or other documents that depict the proposed  
5 taking; and copies, to the extent prepared, of the  
6 construction plans that depict project improvements to be  
7 constructed on the property taken and improvements to be  
8 constructed adjacent to the remaining property, including, but  
9 not limited to, plan, profile, cross-section, drainage,  
10 pavement marking sheets, and driveway connection detail; and  
11 that the condemning authority shall provide any additional  
12 plan sheets within 15 days of request.

13 4. The business owner's statutory rights under s.  
14 73.071, s. 73.091, and s. 73.092.

15 5. The business owner's rights and responsibilities  
16 under paragraphs (b) and (c) and subsection (4).

17 (b) The notice must be made subsequent to or  
18 concurrent with the condemning authority's making the written  
19 offer of compensation to the fee owner pursuant to subsection  
20 (1). The notice must be sent by certified mail, return receipt  
21 requested, to the address of the registered agent for the  
22 business located on the property to be acquired, or if no  
23 agent is registered, by certified mail or personal delivery to  
24 the address of the business located on the property to be  
25 acquired. Notice to one owner of a multiple ownership business  
26 constitutes notice to all business owners of that business.  
27 The return of the notice as undeliverable by the postal  
28 authorities constitutes compliance with these provisions. The  
29 condemning authority is not required to give notice to a  
30 person who acquires an interest in the business after the  
31 notice required by this section has been given. Once notice

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1 has been made to business owners under this subsection, the  
2 condemning authority may file a condemnation proceeding  
3 pursuant to chapter 73 or chapter 74 for the property  
4 identified in the notice.

5 (c) If the business qualifies for business damages  
6 pursuant to s. 73.071(3)(b) and the business intends to claim  
7 business damages, the business owner must, within 180 days  
8 after either receipt of the notice or the date the notice is  
9 returned as undeliverable by the postal authorities, or at a  
10 later time mutually agreed to by the condemning authority and  
11 the business owner, submit to the condemning authority a  
12 good-faith written offer to settle any claims of business  
13 damage. The written offer must be sent to the condemning  
14 authority by certified mail, return receipt requested. Absent  
15 a showing of a good-faith justification for the failure to  
16 submit a business-damage offer within 180 days, the court must  
17 strike the business owner's claim for business damages in any  
18 condemnation proceeding. If the court finds that the business  
19 owner has made a showing of a good-faith justification for the  
20 failure to timely submit a business damage offer, the court  
21 shall grant the business owner up to 180 days within which to  
22 submit a business-damage offer, which the condemning authority  
23 must respond to within 120 days.

24 1. The business-damage offer must include an  
25 explanation of the nature, extent, and monetary amount of such  
26 damage and must be prepared by the owner, a certified public  
27 accountant, or a business damage expert familiar with the  
28 nature of the operations of the owner's business. The business  
29 owner shall also provide to the condemning authority copies of  
30 the owner's business records that substantiate the good-faith  
31 offer to settle the business damage claim. If additional

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1 information is needed beyond data that may be obtained from  
2 business records existing at the time of the offer, the  
3 business owner and condemning authority may agree on a  
4 schedule for the submission of such information.

5 2. As used in this paragraph, the term "business  
6 records" includes, but is not limited to, copies of federal  
7 income tax returns, federal income tax withholding statements,  
8 federal miscellaneous income tax statements, state sales tax  
9 returns, balance sheets, profit and loss statements, and state  
10 corporate income tax returns for the 5 years preceding  
11 notification which are attributable to the business operation  
12 on the property to be acquired, and other records relied upon  
13 by the business owner that substantiate the business-damage  
14 claim.

15 (d) Within 120 days after receipt of the good-faith  
16 business-damage offer and accompanying business records, the  
17 condemning authority must, by certified mail, accept or reject  
18 the business owner's offer or make a counteroffer. Failure of  
19 the condemning authority to respond to the business damage  
20 offer, or rejection thereof pursuant to this section, must be  
21 deemed to be a counteroffer of zero dollars for purposes of  
22 subsequent application of s. 73.092(1).

23 (3) At any time in the presuit negotiation process,  
24 the parties may agree to submit the compensation or  
25 business-damage claims to nonbinding mediation. The parties  
26 shall agree upon a mediator certified under s. 44.102. In the  
27 event that there is a settlement reached as a result of  
28 mediation or other mutually acceptable dispute resolution  
29 procedure, the agreement reached shall be in writing. The  
30 written agreement provided for in this section shall  
31 incorporate by reference the right-of-way maps, construction

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1 plans, or other documents related to the taking upon which the  
2 settlement is based. In the event of a settlement, both  
3 parties shall have the same legal rights that would have been  
4 available under law if the matter had been resolved through  
5 eminent domain proceedings in circuit court with the maps,  
6 plans, or other documents having been made a part of the  
7 record.

8 (4) If a settlement is reached between the condemning  
9 authority and a property or business owner prior to a lawsuit  
10 being filed, the property or business owner who settles  
11 compensation claims in lieu of condemnation shall be entitled  
12 to recover costs in the same manner as provided in s. 73.091  
13 and attorney's fees in the same manner as provided in s.  
14 73.092, more specifically as follows:

15 (a) Attorney's fees for presuit negotiations under  
16 this section regarding the amount of compensation to be paid  
17 for the land, severance damages, and improvements must be  
18 calculated in the same manner as provided in s. 73.092(1)  
19 unless the parties otherwise agree.

20 (b) If business damages are recovered by the business  
21 owner based on the condemning authority accepting the business  
22 owner's initial offer or the business owner accepting the  
23 condemning authority's initial counteroffer, attorney's fees  
24 must be calculated in accordance with s. 73.092(2), (3), (4),  
25 and (5) for the attorney's time incurred in presentation of  
26 the business owner's good-faith offer under paragraph (2)(c).  
27 Otherwise, attorney's fees for the award of business damages  
28 must be calculated as provided in s. 73.092(1), based on the  
29 difference between the final judgment or settlement of  
30 business damages and the counteroffer to the business owner's  
31 offer by the condemning authority.

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1           (c) Presuit costs must be presented, calculated, and  
2 awarded in the same manner as provided in s. 73.091, after  
3 submission by the business or property owner to the condemning  
4 authority of all appraisal reports, business damage reports,  
5 or other work-products for which recovery is sought, and upon  
6 transfer of title of the real property by closing, upon  
7 payment of any amounts due for business damages, or upon final  
8 judgment.

9           (d) If the parties cannot agree on the amount of costs  
10 and attorney's fees to be paid by the condemning authority,  
11 the business or property owner may file a complaint in the  
12 circuit court in the county in which the property is located  
13 to recover attorney's fees and costs.

14           (5) Evidence of negotiations, or of any written or  
15 oral statements used in mediation or negotiations between the  
16 parties under this section is inadmissible in any condemnation  
17 proceeding, except in a proceeding to determine reasonable  
18 costs and attorney's fees.

19           Section 58. Effective January 1, 2000, subsection (3)  
20 of section 73.071, Florida Statutes, is amended to read:

21           73.071 Jury trial; compensation; severance damages;  
22 business damages.--

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

25           (a) The value of the property sought to be  
26 appropriated;

27           (b) Where less than the entire property is sought to  
28 be appropriated, any damages to the remainder caused by the  
29 taking, including, when the action is by the Department of  
30 Transportation, county, municipality, board, district or other  
31 public body for the condemnation of a right-of-way, and the



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1 effect of the taking of the property involved may damage or  
2 destroy an established business of more than 4 5 years'  
3 standing, owned by the party whose lands are being so taken,  
4 located upon adjoining lands owned or held by such party, the  
5 probable damages to such business which the denial of the use  
6 of the property so taken may reasonably cause; any person  
7 claiming the right to recover such special damages shall set  
8 forth in his or her written defenses the nature and extent of  
9 such damages; and

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

28 Section 59. Effective January 1, 2000, the amendments  
29 to subsection (3) of section 73.071, Florida Statutes, as  
30 contained in this act shall stand repealed effective January  
31 1, 2003.

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1           Section 60. Effective January 1, 2000, subsection (1)  
2 of section 73.091, Florida Statutes, is amended to read:

3           73.091 Costs of the proceedings.--

4           (1) The petitioner shall pay attorney's fees as  
5 provided in s. 73.092 as well as all reasonable costs incurred  
6 in the defense of the proceedings in the circuit court,  
7 including, but not limited to, reasonable appraisal fees and,  
8 when business damages are compensable, a reasonable  
9 accountant's fee, to be assessed by that court. No prejudgment  
10 interest shall be paid on costs or attorney's fees.

11           Section 61. Effective January 1, 2000, subsection (1)  
12 of section 73.092, Florida Statutes, is amended to read:

13           73.092 Attorney's fees.--

14           (1) Except as otherwise provided in this section and  
15 s. 73.015, the court, in eminent domain proceedings, shall  
16 award attorney's fees based solely on the benefits achieved  
17 for the client.

18           (a) As used in this section, the term "benefits" means  
19 the difference, exclusive of interest, between the final  
20 judgment or settlement and the last written offer made by the  
21 condemning authority before the defendant hires an attorney.  
22 If no written offer is made by the condemning authority before  
23 the defendant hires an attorney, benefits must be measured  
24 from the first written offer after the attorney is hired.

25           1. In determining attorney's fees, if business records  
26 as defined in s. 73.015(2)(c)2. and kept by the owner in the  
27 ordinary course of business were provided to the condemning  
28 authority to substantiate the business damage offer in s.  
29 73.015(2)(c), benefits for amounts awarded for business  
30 damages must be based on the difference between the final  
31 judgment or settlement and the written counteroffer made by

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1 ~~the condemning authority provided in s. 73.015(2)(d). In~~  
2 ~~determining attorney's fees in prelitigation negotiations,~~  
3 ~~benefits do not include amounts awarded for business damages~~  
4 ~~unless the business owner provided to the condemning~~  
5 ~~authority, upon written request, prior to litigation, those~~  
6 ~~financial and business records kept by the owner in the~~  
7 ~~ordinary course of business.~~

8       2. In determining attorney's fees, if existing business  
9 records as defined in s. 73.015(2)(c)2. and kept by the owner  
10 in the ordinary course of business were not provided to the  
11 condemning authority to substantiate the business damage offer  
12 in s. 73.015(2)(c) and those records which were not provided  
13 are later deemed material to the determination of business  
14 damages, benefits for amounts awarded for business damages  
15 must be based upon the difference between the final judgment  
16 or settlement and the first written counteroffer made by the  
17 condemning authority within 90 days from the condemning  
18 authority's receipt of the business records previously not  
19 provided. In determining attorney's fees subsequent to the  
20 filing of litigation, if financial and business records kept  
21 by the owner in the ordinary course of business were not  
22 provided to the condemning authority prior to litigation,  
23 benefits for amounts awarded for business damages must be  
24 based on the first written offer made by the condemning  
25 authority within 120 days after the filing of the eminent  
26 domain action. In the event the petitioner makes a discovery  
27 request for a defendant's financial and business records kept  
28 in the ordinary course of business within 45 days after the  
29 filing of that defendant's answer, then the 120-day period  
30 shall be extended to 60 days after receipt by petitioner of  
31 those records. If the condemning authority makes no written

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1 ~~offer to the defendant for business damages within the time~~  
2 ~~period provided in this section, benefits for amounts awarded~~  
3 ~~for business damages must be based on the difference between~~  
4 ~~the final judgment or settlement and the last written offer~~  
5 ~~made by the condemning authority before the defendant hired an~~  
6 ~~attorney.~~

7 (b) The court may also consider nonmonetary benefits  
8 obtained for the client through the efforts of the attorney,  
9 to the extent such nonmonetary benefits are specifically  
10 identified by the court and can, within a reasonable degree of  
11 certainty, be quantified.

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

- 14 1. Thirty-three percent of any benefit up to \$250,000;  
15 plus
- 16 2. Twenty-five percent of any portion of the benefit  
17 between \$250,000 and \$1 million; plus
- 18 3. Twenty percent of any portion of the benefit  
19 exceeding \$1 million.

20 Section 62. Effective January 1, 2000, subsection (1)  
21 of section 127.01, Florida Statutes, is amended to read:

22 127.01 Counties delegated power of eminent domain;  
23 recreational purposes, issue of necessity of taking.--

24 (1)(a) Each county of the state is delegated authority  
25 to exercise the right and power of eminent domain; that is,  
26 the right to appropriate property, except state or federal,  
27 for any county purpose. The absolute fee simple title to all  
28 property so taken and acquired shall vest in such county  
29 unless the county seeks to condemn a particular right or  
30 estate in such property.

31 (b) Each county is further authorized to exercise the

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1 eminent domain power ~~powers~~ granted to the Department of  
2 Transportation by s. 337.27(1) ~~and (2)~~, the transportation  
3 corridor protection provisions of s. 337.273, and the right of  
4 entry onto property pursuant to s. 337.274.

5 Section 63. Effective January 1, 2000, subsection (2)  
6 of section 166.401, Florida Statutes, is amended to read:

7 166.401 Right of eminent domain.--

8 (2) Each municipality is further authorized to  
9 exercise the eminent domain power ~~powers~~ granted to the  
10 Department of Transportation in s. 337.27(1) ~~and (2)~~ and the  
11 transportation corridor protection provisions of s. 337.273.

12 Section 64. Effective January 1, 2000, subsection (2)  
13 of section 337.27, section 337.271, subsection (2) of section  
14 348.0008, subsection (2) of section 348.759, and subsection  
15 (2) of section 348.957, Florida Statutes, are repealed.

16 Section 65. Effective January 1, 2000, subsections  
17 (3), (4), and (5) are added to section 479.15, Florida  
18 Statutes, to read:

19 479.15 Harmony of regulations.--

20 (3) It is the express intent of the Legislature to  
21 limit the state right-of-way acquisition costs on state and  
22 federal roads in eminent domain proceedings, the provisions of  
23 ss. 479.07 and 479.155 notwithstanding. Subject to approval by  
24 the Federal Highway Administration, whenever public  
25 acquisition of land upon which is situated a lawful  
26 nonconforming sign occurs, as provided in this chapter, the  
27 sign may, at the election of its owner and the department, be  
28 relocated or reconstructed adjacent to the new right-of-way  
29 along the roadway within 100 feet of the current location,  
30 provided the nonconforming sign is not relocated on a parcel  
31 zoned residential, and provided further that such relocation

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1 shall be subject to applicable setback requirements. The sign  
2 owner shall pay all costs associated with relocating or  
3 reconstructing any sign under this subsection, and neither the  
4 state nor any local government shall reimburse the sign owner  
5 for such costs, unless part of such relocation costs are  
6 required by federal law. If no adjacent property is available  
7 for the relocation, the department shall be responsible for  
8 paying the owner of the sign just compensation for its  
9 removal.

10       (4) Such relocation shall be adjacent to the current  
11 site and the face of the sign shall not be increased in size  
12 or height or structurally modified at the point of relocation  
13 in a manner inconsistent with the current building codes of  
14 the jurisdiction in which the sign is located. No permit shall  
15 be issued for the removal, cutting or trimming of existing  
16 trees or vegetation to make visible or ensure future  
17 visibility of any such existing relocated sign that is  
18 inconsistent with s. 479.106.

19       (5) In the event that relocation can be accomplished  
20 but is inconsistent with the ordinances of the municipality or  
21 county within whose jurisdiction the sign is located, the  
22 ordinances of the local government shall prevail, provided  
23 that the local government shall assume the responsibility to  
24 provide the owner of the sign just compensation for its  
25 removal, but in no event shall compensation paid by the local  
26 government exceed the compensation required under state or  
27 federal law. Further, the provisions of this section shall not  
28 impair any agreement or future agreements between a  
29 municipality or county and the owner of a sign or signs within  
30 the jurisdiction of the municipality or county. Nothing in  
31 this section shall be deemed to cause a nonconforming sign to

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1 become conforming solely as a result of the relocation allowed  
2 in this section.

3 Section 66. Except as otherwise provided in this act,  
4 this act shall take effect July 1, 1999.

5  
6

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

8 And the title is amended as follows:

9 On page 2, line 5, delete that line

10

11 and insert:

12 creating s. 73.015, F.S.; requiring presuit  
13 negotiation before an action in eminent domain  
14 may be initiated under ch. 73, F.S., or ch. 74,  
15 F.S.; providing requirements for the condemning  
16 authority; requiring the condemning authority  
17 to give specified notices; requiring a written  
18 offer of purchase and appraisal and specifying  
19 the time period during which the owner may  
20 respond to the offer before a condemnation  
21 lawsuit may be filed; providing procedures;  
22 allowing a business owner to claim business  
23 damage within a specified time period;  
24 providing circumstances under which the court  
25 must strike a business-damage defense;  
26 providing procedures for business-damage  
27 claims; providing for nonbinding mediation;  
28 requiring the condemning authority to pay  
29 reasonable costs and attorney's fees of a  
30 property owner; allowing the property owner to  
31 file a complaint in circuit court to recover

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1 attorney's fees and costs, if the parties  
2 cannot agree on the amount; providing that  
3 certain evidence is inadmissible in specified  
4 proceedings; amending s. 73.071, F.S.;  
5 modifying eligibility requirements for business  
6 owners to claim business damages; providing for  
7 future repeal; amending s. 73.091, F.S.;  
8 providing that no prejudgment interest shall be  
9 paid on costs or attorney's fees in eminent  
10 domain; amending s. 73.092, F.S.; amending  
11 provisions relating to attorney's fees for  
12 business-damage claims; amending ss. 127.01,  
13 166.401, F.S.; restricting the exercise by  
14 counties and municipalities of specified  
15 eminent domain powers granted to the Department  
16 of Transportation; repealing ss. 337.27(2),  
17 337.271, 348.0008(2), 348.759(2), 348.957(2),  
18 F.S., relating to limiting the acquisition cost  
19 of lands and property acquired through eminent  
20 domain proceedings by the Department of  
21 Transportation, the Orlando-Orange County  
22 Expressway Authority, or the Seminole County  
23 Expressway Authority, or under the Florida  
24 Expressway Authority Act, and relating to the  
25 notice that the Department of Transportation  
26 must give to a fee owner at the inception of  
27 negotiations to acquire land; amending s.  
28 479.15, F.S.; prescribing duties of local  
29 governments with respect thereto; providing  
30 effective dates.  
31