

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 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 owner, the condemning authority will provide  
7 right-of-way maps, construction plans, or other documents that  
8 depict the proposed taking, and a copy of the appraisal report  
9 upon which the offer is based;

10 4. The fee owner's statutory rights under ss. 73.091  
11 and 73.092; and

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

14 (b) The condemning authority must provide a written  
15 offer of purchase to the fee owner. The owner must be given at  
16 least 30 days to respond to the offer before the condemning  
17 authority files a condemnation proceeding for the parcel  
18 identified in the offer.

19 (c) The notice and written offer must be sent by  
20 certified mail, return receipt requested, to the fee owner's  
21 last known address listed on the county ad valorem tax roll.  
22 Alternatively, the notice and written offer may be personally  
23 delivered to the fee owner of the property. If there is more  
24 than one owner of a property, notice to one owner constitutes  
25 notice to all owners of the property. The return of the notice  
26 as undeliverable by the postal authorities constitutes  
27 compliance with this provision. The condemning authority is  
28 not required to give notice or a written offer to a person who  
29 acquires title to the property after the notice required by  
30 this section has been given.

31 (d) Notwithstanding this subsection, with respect to

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1 lands acquired under s. 259.041, the condemning authority is  
2 not required to give the fee owner the current appraisal  
3 before executing an option contract.

4 (2) Effective July 1, 2000, before an eminent domain  
5 proceeding is brought under this chapter or chapter 74 by the  
6 Department of Transportation or by a county, municipality,  
7 board, district, or other public body for the condemnation of  
8 right-of-way, the condemning authority must make a good-faith  
9 effort to notify the property owners, including lessees, who  
10 operate a business located on the property to be acquired of  
11 their statutory rights under s. 73.091 and of the items listed  
12 in subparagraphs (1)(a)1.-3. The notice must be sent by  
13 certified mail, return receipt requested, or by personal  
14 delivery to any person or employee operating the business. If  
15 a business does not appear to be open and operating at the  
16 time notice is attempted, and efforts to notify the owner by  
17 certified mail and personal delivery have failed, the notice  
18 must be published in a newspaper at least once each week for  
19 two consecutive weeks in the county where the property is  
20 located. However, if the property is located in a municipality  
21 and a newspaper is published there, the notice must be  
22 published in such a newspaper. Notice to one owner of a  
23 multiple ownership business constitutes notice to all business  
24 owners of that business. The condemning authority is not  
25 required to give notice to a business owner who acquires an  
26 interest in the business after the notice required by this  
27 section has been given. Once notice has been made to business  
28 owners under this subsection, the condemning authority may  
29 file a condemnation proceeding pursuant to chapter 73 or  
30 chapter 74 for the property identified in the notice.

31 (a) If the business owner intends to claim business

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1 damages under s. 73.071(3)(b), the business owner must, within  
2 120 days after either receipt of the notice or the date of  
3 final publication of notice as required by this subsection, or  
4 at a later time mutually agreed to by the condemning authority  
5 and the business owner, submit to the condemning authority a  
6 good-faith written offer to settle any claims of business  
7 damage. The written offer must be sent to the condemning  
8 authority by certified mail, return receipt requested. Absent  
9 a showing of a good-faith justification for the failure to  
10 submit a business-damage offer within 120 days, the court must  
11 strike the business owner's claim for business damages in any  
12 condemnation proceeding. If the court finds that the business  
13 owner has made a showing of a good-faith justification for the  
14 failure to timely submit a business damage offer, the court  
15 shall grant the business owner up to 120 days within which to  
16 submit a business-damage offer, which the condemning authority  
17 must respond to within 90 days.

18 1. The business-damage offer must include an  
19 explanation of the nature, extent, and monetary amount of such  
20 damage and must be prepared by either the owner or a certified  
21 public accountant. The business owner shall also provide to  
22 the condemning authority copies of the owner's business  
23 records that substantiate the good-faith offer to settle the  
24 business damage claim. If additional information is needed  
25 beyond data that may be obtained from business records  
26 existing at the time of the offer, the business owner and  
27 condemning authority may agree on a schedule for the  
28 submission of such information. Business records that are not  
29 provided to the condemning authority under this section may  
30 not be used by the business owner either individually or in  
31 conjunction with other business records to establish or prove

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1 business damage, nor may they be used to establish an award of  
2 attorney's fees.

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

13 (b) Within 90 days after receipt of the good-faith  
14 business-damage offer and accompanying business records, the  
15 condemning authority must, by certified mail, accept or reject  
16 the business owner's offer or make a counteroffer.

17 (3) At any time in the presuit negotiation process,  
18 the parties may agree to submit the compensation or  
19 business-damage claims to nonbinding mediation. The parties  
20 shall agree upon a mediator certified under s. 44.102.

21 (4) Upon submission of an invoice that complies with  
22 the requirements of this subsection, the condemning authority  
23 shall pay all reasonable costs, including reasonable  
24 attorney's fees and reasonable mediation costs, incurred on  
25 behalf of a fee or business property owner under this section  
26 for presuit negotiations. In order to qualify for reasonable  
27 attorney's fees and costs for presuit negotiations, the fee or  
28 business owner must have complied with the requirements of  
29 this section and must be entitled to compensation from the  
30 condemning authority under this chapter. The invoice must  
31 include complete time records and a detailed statement of

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1 services performed, including the date on which the service  
2 was performed, the hourly rate charged for the service, and  
3 the person performing the service.

4 (a) Attorney's fees for presuit negotiations under  
5 this section regarding the amount of compensation to be paid  
6 for the land, severance damages, and improvements must be  
7 calculated in accordance with s. 73.092(1). When business  
8 damages are paid, attorney's fees incurred in presentation of  
9 the business owner's good-faith offer under paragraph (2)(a)  
10 must be calculated in accordance with s. 73.092(2), (3), (4),  
11 and (5), and any subsequent fees which may be payable must be  
12 calculated as provided in s. 73.092(1), based on the  
13 difference between the final payment of business damages and  
14 the counteroffer to the business owner's offer by the  
15 condemning authority. Failure of the condemning authority to  
16 respond to a business-damage offer as provided in this section  
17 must be deemed to be a counteroffer of zero dollars.

18 (b) Presuit costs must be presented, calculated, and  
19 awarded in the same manner as provided in s. 73.091, after  
20 submission by the business or property owner to the condemning  
21 authority of all appraisal reports, business damage reports,  
22 or other work-products for which recovery is sought, and upon  
23 transfer of title of the real property by closing, upon  
24 payment of any amounts due for business damages, or upon final  
25 judgment.

26 (c) If the parties cannot agree on the amount of costs  
27 and attorney's fees to be paid by the condemning authority,  
28 the property owner may file a complaint in the circuit court  
29 in the county in which the property is located to recover  
30 attorney's fees and costs.

31 (5) Evidence of negotiations, or of any written or

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1 oral statements used in mediation or negotiations between the  
2 parties under this section is inadmissible in any condemnation  
3 proceeding, except in a proceeding to determine reasonable  
4 costs and attorney's fees.

5 Section 58. Effective January 1, 2000, section 73.092,  
6 Florida Statutes, is amended to read:

7 73.092 Attorney's fees.--

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

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

19 ~~1. In determining attorney's fees in prelitigation~~  
20 ~~negotiations, benefits do not include amounts awarded for~~  
21 ~~business damages unless the business owner provided to the~~  
22 ~~condemning authority, upon written request, prior to~~  
23 ~~litigation, those financial and business records kept by the~~  
24 ~~owner in the ordinary course of business.~~

25 ~~2. In determining attorney's fees subsequent to the~~  
26 ~~filing of litigation, if financial and business records kept~~  
27 ~~by the owner in the ordinary course of business were not~~  
28 ~~provided to the condemning authority prior to litigation,~~  
29 ~~benefits for amounts awarded for business damages must be~~  
30 ~~based on the first written offer made by the condemning~~  
31 ~~authority within 120 days after the filing of the eminent~~

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1 ~~domain action. In the event the petitioner makes a discovery~~  
2 ~~request for a defendant's financial and business records kept~~  
3 ~~in the ordinary course of business within 45 days after the~~  
4 ~~filing of that defendant's answer, then the 120-day period~~  
5 ~~shall be extended to 60 days after receipt by petitioner of~~  
6 ~~those records. If the condemning authority makes no written~~  
7 ~~offer to the defendant for business damages within the time~~  
8 ~~period provided in this section, benefits for amounts awarded~~  
9 ~~for business damages must be based on the difference between~~  
10 ~~the final judgment or settlement and the last written offer~~  
11 ~~made by the condemning authority before the defendant hired an~~  
12 ~~attorney.~~

13 (b) The court may also consider nonmonetary benefits  
14 obtained for the client through the efforts of the attorney,  
15 to the extent such nonmonetary benefits are specifically  
16 identified by the court and can, within a reasonable degree of  
17 certainty, be quantified.

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

20 1. Thirty-three percent of any benefit up to \$250,000;  
21 plus

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

24 3. Twenty percent of any portion of the benefit  
25 exceeding \$1 million.

26 (2) In assessing attorney's fees incurred in defeating  
27 an order of taking, or for apportionment, or other  
28 supplemental proceedings, when not otherwise provided for, the  
29 court shall consider:

30 (a) The novelty, difficulty, and importance of the  
31 questions involved.



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1           (b) The skill employed by the attorney in conducting  
2 the cause.

3           (c) The amount of money involved.

4           (d) The responsibility incurred and fulfilled by the  
5 attorney.

6           (e) The attorney's time and labor reasonably required  
7 adequately to represent the client in relation to the benefits  
8 resulting to the client.

9           (f) The fee, or rate of fee, customarily charged for  
10 legal services of a comparable or similar nature.

11           (g) Any attorney's fee award made under subsection  
12 (1).

13           (3) In determining the amount of attorney's fees to be  
14 paid by the petitioner under subsection (2), the court shall  
15 be guided by the fees the defendant would ordinarily be  
16 expected to pay for these services if the petitioner were not  
17 responsible for the payment of those fees.

18           (4) At least 30 days prior to a hearing to assess  
19 attorney's fees under subsection (2), the condemnee's attorney  
20 shall submit to the condemning authority and to the court  
21 complete time records and a detailed statement of services  
22 rendered by date, nature of services performed, time spent  
23 performing such services, and costs incurred.

24           (5) The defendant shall provide to the court a copy of  
25 any fee agreement that may exist between the defendant and his  
26 or her attorney, and the court must reduce the amount of  
27 attorney's fees to be paid by the defendant by the amount of  
28 any attorney's fees awarded by the court.

29           Section 59. Effective January 1, 2000, subsection (1)  
30 of section 127.01, Florida Statutes, is amended to read:

31           127.01 Counties delegated power of eminent domain;

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1 recreational purposes, issue of necessity of taking.--

2 (1)(a) Each county of the state is delegated authority  
3 to exercise the right and power of eminent domain; that is,  
4 the right to appropriate property, except state or federal,  
5 for any county purpose. The absolute fee simple title to all  
6 property so taken and acquired shall vest in such county  
7 unless the county seeks to condemn a particular right or  
8 estate in such property.

9 (b) Each county is further authorized to exercise the  
10 eminent domain power ~~powers~~ granted to the Department of  
11 Transportation by s. 337.27(1) ~~and (2)~~, the transportation  
12 corridor protection provisions of s. 337.273, and the right of  
13 entry onto property pursuant to s. 337.274.

14 Section 60. Effective January 1, 2000, subsection (2)  
15 of section 166.401, Florida Statutes, is amended to read:

16 166.401 Right of eminent domain.--

17 (2) Each municipality is further authorized to  
18 exercise the eminent domain power ~~powers~~ granted to the  
19 Department of Transportation in s. 337.27(1) ~~and (2)~~ and the  
20 transportation corridor protection provisions of s. 337.273.

21 Section 61. Effective January 1, 2000, subsection (2)  
22 of section 337.27, Florida Statutes, section 337.271, Florida  
23 Statutes, subsection (2) of section 348.0008, Florida  
24 Statutes, subsection (2) of section 348.759, Florida Statutes,  
25 and subsection (2) of section 348.957, Florida Statutes, are  
26 repealed.

27 Section 62. Effective January 1, 2000, subsections  
28 (3), (4), and (5) are added to section 479.15, Florida  
29 Statutes, to read:

30 479.15 Harmony of regulations.--

31 (3) It is the express intent of the Legislature to

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1 limit the state right-of-way acquisition costs on state and  
2 federal roads in eminent domain proceedings, the provisions of  
3 ss. 479.07 and 479.155 notwithstanding. Subject to approval by  
4 the Federal Highway Administration, whenever public  
5 acquisition of land upon which is situated a lawful  
6 nonconforming sign occurs, as provided in this chapter, the  
7 sign may, at the election of its owner and the department, be  
8 relocated or reconstructed adjacent to the new right-of-way  
9 along the roadway. The sign owner shall pay all costs  
10 associated with relocating or reconstructing any sign under  
11 this subsection, and neither the state nor any local  
12 government shall reimburse the sign owner for such costs,  
13 unless part of such relocation costs are required by federal  
14 law.

15 (4) Such relocation shall be adjacent to the current  
16 site and the face of the sign shall not be increased in size  
17 or height or structurally modified at the point of relocation  
18 consistent with the current building codes of the jurisdiction  
19 in which the sign is located.

20 (5) In the event that relocation is inconsistent with  
21 the ordinances of the municipality or county within whose  
22 jurisdiction the sign is located, the ordinances of the local  
23 government shall prevail, provided that the local government  
24 shall assume the responsibility to provide the owner of the  
25 sign just compensation for its removal. Further, the  
26 provisions of this section shall not impair any agreement or  
27 future agreements between a municipality or county and the  
28 owner of a sign or signs within the jurisdiction of the  
29 municipality or county. Nothing in this section shall be  
30 deemed to cause a nonconforming sign to become conforming  
31 solely as a result of the relocation allowed in this section.

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1           Section 63. Except as otherwise provided in this act,  
2 this act shall take effect July 1, 1999.

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

6 And the title is amended as follows:

7           On page 2, line 4, after the semicolon ";"

8

9 insert:

10           creating s. 73.015, F.S.; requiring presuit  
11           negotiation before an action in eminent domain  
12           may be initiated under ch. 73, F.S., or ch. 74,  
13           F.S.; providing requirements for the condemning  
14           authority; requiring the condemning authority  
15           to give specified notices; requiring a written  
16           offer of purchase and appraisal and specifying  
17           the time period during which the owner may  
18           respond to the offer before a condemnation  
19           lawsuit may be filed; providing procedures;  
20           allowing a business owner to claim business  
21           damage within a specified time period;  
22           providing circumstances under which the court  
23           must strike a business-damage defense;  
24           providing procedures for business-damage  
25           claims; providing for nonbinding mediation;  
26           requiring the condemning authority to pay  
27           reasonable costs and attorney's fees of a  
28           property owner; allowing the property owner to  
29           file a complaint in circuit court to recover  
30           attorney's fees and costs, if the parties  
31           cannot agree on the amount; providing that

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1           certain evidence is inadmissible in specified  
2           proceedings; amending s. 73.092, F.S.; deleting  
3           provisions relating to attorney's fees for  
4           business-damage claims; amending ss. 127.01,  
5           166.401, F.S.; restricting the exercise by  
6           counties and municipalities of specified  
7           eminent domain powers granted to the Department  
8           of Transportation; repealing ss. 337.27(2),  
9           337.271, 348.0008(2), 348.759(2), 348.957(2),  
10          F.S., relating to limiting the acquisition cost  
11          of lands and property acquired through eminent  
12          domain proceedings by the Department of  
13          Transportation, the Orlando-Orange County  
14          Expressway Authority, or the Seminole County  
15          Expressway Authority, or under the Florida  
16          Expressway Authority Act, and relating to the  
17          notice that the Department of Transportation  
18          must give to a fee owner at the inception of  
19          negotiations to acquire land; amending s.  
20          479.15, F.S.; prescribing duties of local  
21          governments with respect thereto;

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