

704-114AX-02

Bill No. HB 591

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Representative(s) Goodlette offered the following:

Amendment (with title amendment)

On page 50, lines 16 & 17,
remove from the bill: all of said lines

insert:

Section 56. 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:

704-114AX-02

Bill No. HB 591

Amendment No. ____ (for drafter's use only)

- 1 1. That all or a portion of his or her property is
2 necessary for a project.
- 3 2. The nature of the project for which the parcel is
4 considered necessary, and the parcel designation of the
5 property to be acquired.
- 6 3. That, within 15 business days after receipt of a
7 request by the fee owner, the condemning authority will
8 provide a copy of the appraisal report upon which the offer to
9 the fee owner is based; copies, to the extent prepared, of the
10 right-of-way maps or other documents that depict the proposed
11 taking; and copies, to the extent prepared, of the
12 construction plans that depict project improvements to be
13 constructed on the property taken and improvements to be
14 constructed adjacent to the remaining property, including, but
15 not limited to, plan, profile, cross-section, drainage, and
16 pavement marking sheets, and driveway connection detail. The
17 condemning authority shall provide any additional plan sheets
18 within 15 days of request.
- 19 4. The fee owner's statutory rights under ss. 73.091
20 and 73.092.
- 21 5. The fee owner's rights and responsibilities under
22 paragraphs (b) and (c) and subsection (4).
- 23 (b) The condemning authority must provide a written
24 offer of compensation to the fee owner as to the value of the
25 property sought to be appropriated and, where less than the
26 entire property is sought to be appropriated, any damages to
27 the remainder caused by the taking. The owner must be given at
28 least 30 days after either receipt of the notice or the date
29 the notice is returned as undeliverable by the postal
30 authorities to respond to the offer, before the condemning
31 authority files a condemnation proceeding for the parcel

704-114AX-02

Bill No. HB 591

Amendment No. ____ (for drafter's use only)

1 identified in the offer.

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

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

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

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

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

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

704-114AX-02

Bill No. HB 591

Amendment No. ____ (for drafter's use only)

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

14 4. The business owner's statutory rights under ss.
15 73.071, 73.091, and 73.092.

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

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

704-114AX-02

Bill No. HB 591

Amendment No. ____ (for drafter's use only)

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

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

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

704-114AX-02

Bill No. HB 591

Amendment No. ____ (for drafter's use only)

1 good-faith offer to settle the business damage claim. If
2 additional information is needed beyond data that may be
3 obtained from business records existing at the time of the
4 offer, the business owner and condemning authority may agree
5 on a schedule for the submission of such information.

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

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

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

704-114AX-02

Bill No. HB 591

Amendment No. ____ (for drafter's use only)

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

9 (4) If a settlement is reached between the condemning
10 authority and a property or business owner prior to a lawsuit
11 being filed, the property or business owner who settles
12 compensation claims in lieu of condemnation shall be entitled
13 to recover costs in the same manner as provided in s. 73.091
14 and attorney's fees in the same manner as provided in s.
15 73.092, more specifically as follows:

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

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

1 offer by the condemning authority.

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

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

15
16 Investor-owned utilities are exempt from the provisions of
17 this subsection.

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

23 Section 57. Effective January 1, 2000, subsection (3)
24 of section 73.071, Florida Statutes, is amended to read:

25 73.071 Jury trial; compensation; severance damages;
26 business damages.--

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

29 (a) The value of the property sought to be
30 appropriated;

31 (b) Where less than the entire property is sought to

704-114AX-02

Bill No. HB 591

Amendment No. ____ (for drafter's use only)

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

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

704-114AX-02

Bill No. HB 591

Amendment No. ____ (for drafter's use only)

1 Section 58. Effective January 1, 2000, the amendments
2 to subsection (3) of section 73.071, Florida Statutes, as
3 contained in this act shall stand repealed effective January
4 1, 2003.

5 Section 59. Effective January 1, 2000, subsection (1)
6 of section 73.091, Florida Statutes, is amended to read:

7 73.091 Costs of the proceedings.--

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

15 Section 60. Effective January 1, 2000, subsection (1)
16 of section 73.092, Florida Statutes, is amended to read:

17 73.092 Attorney's fees.--

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

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

29 1. In determining attorney's fees, if business records
30 as defined in s. 73.015(2)(c)2. and kept by the owner in the
31 ordinary course of business were provided to the condemning

1 authority to substantiate the business damage offer in s.
2 73.015(2)(c), benefits for amounts awarded for business
3 damages must be based on the difference between the final
4 judgment or settlement and the written counteroffer made by
5 the condemning authority provided in s. 73.015(2)(d).

6 2. In determining attorney's fees, if existing
7 business records as defined in s. 73.015(2)(c)2. and kept by
8 the owner in the ordinary course of business were not provided
9 to the condemning authority to substantiate the business
10 damage offer in s. 73.015(2)(c) and those records which were
11 not provided are later deemed material to the determination of
12 business damages, benefits for amounts awarded for business
13 damages must be based upon the difference between the final
14 judgment or settlement and the first written counteroffer made
15 by the condemning authority within 90 days from the condemning
16 authority's receipt of the business records previously not
17 provided.

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

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

Amendment No. ____ (for drafter's use only)

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

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

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

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

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

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

25 Section 61. Effective January 1, 2000, subsection (1)
26 of section 127.01, Florida Statutes, is amended to read:

27 127.01 Counties delegated power of eminent domain;
28 recreational purposes, issue of necessity of taking.--

29 (1)(a) Each county of the state is delegated authority
30 to exercise the right and power of eminent domain; that is,
31 the right to appropriate property, except state or federal,

1 for any county purpose. The absolute fee simple title to all
2 property so taken and acquired shall vest in such county
3 unless the county seeks to condemn a particular right or
4 estate in such property.

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

10 Section 62. Effective January 1, 2000, subsection (2)
11 of section 166.401, Florida Statutes, is amended to read:

12 166.401 Right of eminent domain.--

13 (2) Each municipality is further authorized to
14 exercise the eminent domain power ~~powers~~ granted to the
15 Department of Transportation in s. 337.27(1) ~~and (2)~~ and the
16 transportation corridor protection provisions of s. 337.273.

17 Section 63. Effective January 1, 2000, subsection (2)
18 of section 337.27, section 337.271, subsection (2) of section
19 348.0008, subsection (2) of section 348.759, and subsection
20 (2) of section 348.957, Florida Statutes, are repealed.

21 Section 64. Except as otherwise provided herein, this
22 act shall take effect July 1, 1999.

23
24

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

26 And the title is amended as follows:

27 On page 2, line 4,
28 remove from the title of the bill: all of said line

29
30

31 and insert in lieu thereof:
system; amending s. 73.015, F.S.; requiring

704-114AX-02

Bill No. HB 591

Amendment No. ____ (for drafter's use only)

1 presuit negotiation before an action in eminent
2 domain may be initiated under ch. 73 or ch. 74,
3 F.S.; providing requirements for the condemning
4 authority; requiring the condemning authority
5 to give specified notices; requiring a written
6 offer of purchase and appraisal and specifying
7 the time period during which the owner may
8 respond to the offer before a condemnation
9 lawsuit may be filed; providing procedures;
10 allowing a business owner to claim business
11 damage within a specified time period;
12 providing circumstances under which the court
13 must strike a business-damage defense;
14 providing procedures for business-damage
15 claims; providing for nonbinding mediation;
16 requiring the condemning authority to pay
17 reasonable costs and attorney's fees of a
18 property owner; allowing the property owner to
19 file a complaint in circuit court to recover
20 attorney's fees and costs, if the parties
21 cannot agree on the amount; providing that
22 certain evidence is inadmissible in specified
23 proceedings; amending s. 73.071, F.S.;
24 modifying eligibility requirements for business
25 owners to claim business damages; providing for
26 future repeal; amending s. 73.091, F.S.;
27 providing that no prejudgment interest shall be
28 paid on costs or attorney's fees in eminent
29 domain; amending s. 73.092, F.S.; revising
30 provisions relating to attorney's fees for
31 business-damage claims; amending ss. 127.01 and

704-114AX-02

Bill No. HB 591

Amendment No. ____ (for drafter's use only)

1 166.401, F.S.; restricting the exercise by
2 counties and municipalities of specified
3 eminent domain powers granted to the Department
4 of Transportation; repealing ss. 337.27(2),
5 337.271, 348.0008(2), 348.759(2), 348.957(2),
6 F.S., relating to limiting the acquisition cost
7 of lands and property acquired through eminent
8 domain proceedings by the Department of
9 Transportation, the Orlando-Orange County
10 Expressway Authority, or the Seminole County
11 Expressway Authority, or under the Florida
12 Expressway Authority Act, and relating to the
13 notice that the Department of Transportation
14 must give to a fee owner at the inception of
15 negotiations to acquire land; providing
16 effective dates.

17
18
19
20
21
22
23
24
25
26
27
28
29
30
31