

By the Committee on Comprehensive Planning, Local and Military  
Affairs

316-599E-99

1                                   A bill to be entitled  
2           An act relating to eminent domain; creating s.  
3           73.015, F.S.; requiring presuit negotiation  
4           before an action in eminent domain may be  
5           initiated under ch. 73, F.S., or ch. 74, F.S.;  
6           providing requirements for the condemning  
7           authority; requiring the condemning authority  
8           to give specified notices; requiring a written  
9           offer of purchase and appraisal and specifying  
10          the time period during which the owner may  
11          respond to the offer before a condemnation  
12          lawsuit may be filed; providing procedures;  
13          allowing a business owner to claim business  
14          damage within a specified time period;  
15          providing circumstances under which the court  
16          must strike a business-damage defense;  
17          providing procedures for business-damage  
18          claims; providing for nonbinding mediation;  
19          requiring the condemning authority to pay  
20          reasonable costs and attorney's fees of a  
21          property owner; allowing the property owner to  
22          file a complaint in circuit court to recover  
23          attorney's fees and costs, if the parties  
24          cannot agree on the amount; providing that  
25          certain evidence is inadmissible in specified  
26          proceedings; amending s. 73.092, F.S.; deleting  
27          provisions relating to attorney's fees for  
28          business-damage claims; amending ss. 127.01,  
29          166.401, F.S.; restricting the exercise by  
30          counties and municipalities of specified  
31          eminent domain powers granted to the Department

1 of Transportation; repealing ss. 337.27(2),  
2 337.271, 348.0008(2), 348.759(2), 348.957(2),  
3 F.S., relating to limiting the acquisition cost  
4 of lands and property acquired through eminent  
5 domain proceedings by the Department of  
6 Transportation, the Orlando-Orange County  
7 Expressway Authority, or the Seminole County  
8 Expressway Authority, or under the Florida  
9 Expressway Authority Act, and relating to the  
10 notice that the Department of Transportation  
11 must give to a fee owner at the inception of  
12 negotiations to acquire land; amending s.  
13 479.15, F.S.; preempting certain county and  
14 municipal regulation of outdoor advertising  
15 signs located adjacent to the state highway  
16 system; providing an effective date.

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

Section 1. Section 73.015, Florida Statutes, is created to read:

73.015 Presuit negotiation.--

(1) Before an eminent domain action 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 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.

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

4           1. That all or a portion of his or her property is  
5 necessary for an authorized project;

6           2. The nature of the project for which the parcel is  
7 considered necessary, and the parcel designation of the  
8 property to be acquired;

9           3. That the condemning authority will provide  
10 right-of-way maps or construction plans that depict the  
11 proposed taking within 15 days after receipt of a request by  
12 the owner for such maps;

13           4. The fee owner's statutory rights under ss. 73.091  
14 and 73.092; and

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

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

22           (c) The notice, written offer, and written appraisal  
23 upon which the offer is based must be sent by certified mail,  
24 return receipt requested, to the fee owner's last known  
25 address listed on the county ad valorem tax roll.  
26 Alternatively, the notice, written offer, and written  
27 appraisal may be personally delivered to the fee owner of the  
28 property. If there is more than one owner of a property,  
29 notice to one owner constitutes notice to all owners of the  
30 property. The return of the notice as undeliverable by the  
31 postal authorities constitutes compliance with this provision.

1 The condemning authority is not required to give notice or a  
2 written offer to a person who acquires title to the property  
3 after the notice required by this section has been given.

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

8 (2) Before an eminent domain action is brought under  
9 this chapter or chapter 74 by the Department of Transportation  
10 or by a county, municipality, board, district, or other public  
11 body for the condemnation of right-of-way, the condemning  
12 authority must make a good-faith effort to notify the property  
13 owners, including lessees, who operate a business located on  
14 the property to be acquired of their statutory rights under s.  
15 73.091 and of the items listed in subparagraphs (1)(a)1.-3.  
16 The notice must be sent by certified mail, return receipt  
17 requested, or by personal delivery to any person in possession  
18 of the premises. If a diligent search fails to locate a  
19 business owner, the notice must be published in a newspaper at  
20 least once each week for two consecutive weeks in the county  
21 where the property is located. However, if the property is  
22 located in a municipality and a newspaper is published there,  
23 the notice must be published in such a newspaper. Notice to  
24 one owner of a multiple ownership business constitutes notice  
25 to all business owners of that business. The condemning  
26 authority is not required to give notice to a business owner  
27 who acquires an interest in the business after the notice  
28 required by this section has been given. Once notice has been  
29 made to business owners under this subsection, the condemning  
30 authority may file a condemnation action pursuant to chapter  
31 73 or chapter 74 for the property identified in the notice.

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

18           1. The business-damage claim 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  
24 claims of business damage. 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 data. 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

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 that  
11 substantiate the business-damage claim.

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

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

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

1           (a) The attorney's fees must be calculated on the  
2 basis of criteria set forth in s. 73.092(1), except for  
3 attorney's fees associated with business-damage claims, which  
4 must be calculated in accordance with s. 73.092(2), (3), (4),  
5 and (5). The acceptance or rejection of the business owner's  
6 offer or the counter offer by the condemning authority as  
7 required by paragraph (2)(b) constitutes the relevant written  
8 offer for purposes of calculating the benefit under s.  
9 73.092(1).

10           (b) Reasonable appraisal fees or accountant's fees as  
11 authorized by this section must not exceed the general or  
12 customary hourly rate for such fees in the community.

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

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

23           Section 2. Section 73.092, Florida Statutes, is  
24 amended to read:

25           73.092 Attorney's fees.--

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

30           (a) As used in this section, the term "benefits" means  
31 the difference, exclusive of interest, between the final

1 judgment or settlement and the last written offer made by the  
2 condemning authority before the defendant hires an attorney.  
3 If no written offer is made by the condemning authority before  
4 the defendant hires an attorney, benefits must be measured  
5 from the first written offer after the attorney is hired.

6 ~~1. In determining attorney's fees in prelitigation~~  
7 ~~negotiations, benefits do not include amounts awarded for~~  
8 ~~business damages unless the business owner provided to the~~  
9 ~~condemning authority, upon written request, prior to~~  
10 ~~litigation, those financial and business records kept by the~~  
11 ~~owner in the ordinary course of business.~~

12 ~~2. In determining attorney's fees subsequent to the~~  
13 ~~filing of litigation, if financial and business records kept~~  
14 ~~by the owner in the ordinary course of business were not~~  
15 ~~provided to the condemning authority prior to litigation,~~  
16 ~~benefits for amounts awarded for business damages must be~~  
17 ~~based on the first written offer made by the condemning~~  
18 ~~authority within 120 days after the filing of the eminent~~  
19 ~~domain action. In the event the petitioner makes a discovery~~  
20 ~~request for a defendant's financial and business records kept~~  
21 ~~in the ordinary course of business within 45 days after the~~  
22 ~~filing of that defendant's answer, then the 120-day period~~  
23 ~~shall be extended to 60 days after receipt by petitioner of~~  
24 ~~those records. If the condemning authority makes no written~~  
25 ~~offer to the defendant for business damages within the time~~  
26 ~~period provided in this section, benefits for amounts awarded~~  
27 ~~for business damages must be based on the difference between~~  
28 ~~the final judgment or settlement and the last written offer~~  
29 ~~made by the condemning authority before the defendant hired an~~  
30 ~~attorney.~~

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1           (b) The court may also consider nonmonetary benefits  
2 obtained for the client through the efforts of the attorney,  
3 to the extent such nonmonetary benefits are specifically  
4 identified by the court and can, within a reasonable degree of  
5 certainty, be quantified.

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

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

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

12           3. Twenty percent of any portion of the benefit  
13 exceeding \$1 million.

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

18           (a) The novelty, difficulty, and importance of the  
19 questions involved.

20           (b) The skill employed by the attorney in conducting  
21 the cause.

22           (c) The amount of money involved.

23           (d) The responsibility incurred and fulfilled by the  
24 attorney.

25           (e) The attorney's time and labor reasonably required  
26 adequately to represent the client in relation to the benefits  
27 resulting to the client.

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

30           (g) Any attorney's fee award made under subsection  
31 (1).

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

6           (4) At least 30 days prior to a hearing to assess  
7 attorney's fees under subsection (2), the condemnee's attorney  
8 shall submit to the condemning authority and to the court  
9 complete time records and a detailed statement of services  
10 rendered by date, nature of services performed, time spent  
11 performing such services, and costs incurred.

12           (5) The defendant shall provide to the court a copy of  
13 any fee agreement that may exist between the defendant and his  
14 or her attorney, and the court must reduce the amount of  
15 attorney's fees to be paid by the defendant by the amount of  
16 any attorney's fees awarded by the court.

17           Section 3. Subsection (1) of section 127.01, Florida  
18 Statutes, is amended to read:

19           127.01 Counties delegated power of eminent domain;  
20 recreational purposes, issue of necessity of taking.--

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

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

3 Section 4. Subsection (2) of section 166.401, Florida  
4 Statutes, is amended to read:

5 166.401 Right of eminent domain.--

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

10 Section 5. Subsection (2) of section 337.27, Florida  
11 Statutes, section 337.271, Florida Statutes, subsection (2) of  
12 section 348.0008, Florida Statutes, subsection (2) of section  
13 348.759, Florida Statutes, and subsection (2) of section  
14 348.957, Florida Statutes, are repealed.

15 Section 6. Subsection (3) is added to section 479.15,  
16 Florida Statutes, to read:

17 479.15 Harmony of regulations.--

18 (3) It is the express intent of the Legislature to  
19 limit the state right-of-way acquisition costs in eminent  
20 domain proceedings by preempting county and municipal  
21 regulation of outdoor advertising signs located adjacent to  
22 any part of the state highway system when the state is making  
23 improvement to such highways, the provisions of ss. 479.07 and  
24 479.155 notwithstanding. Subject to approval by the Federal  
25 Highway Administration, whenever public acquisition of land  
26 upon which is situated a lawful nonconforming sign occurs, the  
27 sign may, at the election of its owner, be relocated or  
28 reconstructed adjacent to the new right-of-way at the same  
29 station along the roadway, and any administrative rule or  
30 local ordinance to the contrary is preempted.

31 Section 7. This act shall take effect January 1, 2000.

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SENATE SUMMARY

Requires presuit negotiation before an action in eminent domain may be initiated under ch. 73, F.S., or ch. 74, F.S. Provides requirements for the condemning authority. Requires the condemning authority to give specified notices. Provides that, before a condemnation lawsuit may be filed, a written offer of purchase must be tendered, and the owner has 30 days in which to respond to the offer. Provides procedures. Allows a business owner to submit, within a specified time period, a claim for business damages. Prescribes circumstances under which the court must strike a business-damage defense. Provides procedures for business-damage claims. Provides for nonbinding mediation. Requires the condemning authority to pay reasonable costs and attorney's fees and reasonable mediation costs of a property owner under specified conditions. Allows the property owner to file a complaint in circuit court to recover costs and attorney's fees, if the parties cannot agree on the amount. Provides that certain evidence is inadmissible in specified proceedings. Deletes current provisions relating to attorney's fees for business-damage claims. Restricts the exercise by counties and municipalities of specified eminent domain powers granted to the Department of Transportation. Repeals ss. 337.27(2), 337.271, 348.0008(2), 348.759(2), and 348.957(2), F.S., relating to limiting the acquisition cost of lands and property acquired through eminent domain proceedings by the Department of Transportation or by various expressway authorities, and relating to the notice that the Department of Transportation must give to a fee owner at the inception of negotiations to acquire land. Preempts the regulation of outdoor advertising along the state highway system to the state.