

By the Committee on Comprehensive Planning, Local and Military
Affairs

316-1691-99

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.

17

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

19

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

22 73.015 Presuit negotiation.--

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

31

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 a 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, within 15 business days after receipt of a
10 request by the owner, the condemning authority will provide
11 right-of-way maps, construction plans, or other documents that
12 depict the proposed taking, and a copy of the appraisal report
13 upon which the offer is based;

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

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

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

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

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

1 subsection, the condemning authority may file a condemnation
2 proceeding pursuant to chapter 73 or chapter 74 for the
3 property identified in the notice.

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

22 1. The business-damage offer must include an
23 explanation of the nature, extent, and monetary amount of such
24 damage and must be prepared by either the owner or a certified
25 public accountant. The business owner shall also provide to
26 the condemning authority copies of the owner's business
27 records that substantiate the good-faith offer to settle the
28 business damage claim. If additional information is needed
29 beyond data that may be obtained from business records
30 existing at the time of the offer, the business owner and
31 condemning authority may agree on a schedule for the

1 submission of such information. Business records that are not
2 provided to the condemning authority under this section may
3 not be used by the business owner either individually or in
4 conjunction with other business records to establish or prove
5 business damage, nor may they be used to establish an award of
6 attorney's fees.

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

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

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

25 (4) Upon submission of an invoice that complies with
26 the requirements of this subsection, the condemning authority
27 shall pay all reasonable costs, including reasonable
28 attorney's fees and reasonable mediation costs, incurred on
29 behalf of a fee or business property owner under this section
30 for presuit negotiations. In order to qualify for reasonable
31 attorney's fees and costs for presuit negotiations, the fee or

1 business owner must have complied with the requirements of
2 this section and must be entitled to compensation from the
3 condemning authority under this chapter. The invoice must
4 include complete time records and a detailed statement of
5 services performed, including the date on which the service
6 was performed, the hourly rate charged for the service, and
7 the person performing the service.

8 (a) The attorney's fees for presuit negotiations
9 conducted under this section must be calculated on the basis
10 of criteria set forth in s. 73.092(1), except for attorney's
11 fees associated with business-damage claims, which must be
12 calculated in accordance with s. 73.092(2), (3), (4), and (5).
13 The submission of a counteroffer or the rejection of the
14 business owner's offer by the condemning authority pursuant to
15 paragraph (2)(b) constitutes the relevant written offer for
16 purposes of calculating the benefit under s. 73.092(1).
17 Failure of the condemning authority to respond to a
18 business-damage offer as provided in this section must be
19 deemed to be a counteroffer of zero dollars.

20 (b) Costs must be calculated and awarded pursuant to
21 s. 73.091. Reasonable appraisal fees or accountant's fees as
22 authorized by this section must not exceed the general or
23 customary hourly rate for such fees in the community.

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

29 (5) Evidence of negotiations, or of any written or
30 oral statements used in mediation or negotiations between the
31 parties under this section is inadmissible in any condemnation

1 proceeding, except in a proceeding to determine reasonable
2 costs and attorney's fees.

3 Section 2. Section 73.092, Florida Statutes, is
4 amended to read:

5 73.092 Attorney's fees.--

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

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

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

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

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

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

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

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

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

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

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

28 (a) The novelty, difficulty, and importance of the
29 questions involved.

30 (b) The skill employed by the attorney in conducting
31 the cause.

1 (c) The amount of money involved.

2 (d) The responsibility incurred and fulfilled by the
3 attorney.

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

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

9 (g) Any attorney's fee award made under subsection
10 (1).

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

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

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

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

29 127.01 Counties delegated power of eminent domain;
30 recreational purposes, issue of necessity of taking.--

31

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

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

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

15 166.401 Right of eminent domain.--

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

20 Section 5. Subsection (2) of section 337.27, Florida
21 Statutes, section 337.271, Florida Statutes, subsection (2) of
22 section 348.0008, Florida Statutes, subsection (2) of section
23 348.759, Florida Statutes, and subsection (2) of section
24 348.957, Florida Statutes, are repealed.

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

27 479.15 Harmony of regulations.--

28 (3) It is the express intent of the Legislature to
29 limit the state right-of-way acquisition costs in eminent
30 domain proceedings by preempting county and municipal
31 regulation of outdoor advertising signs located adjacent to

1 any part of the state highway system when the state is making
2 improvement to such highways, the provisions of ss. 479.07 and
3 479.155 notwithstanding. Subject to approval by the Federal
4 Highway Administration, whenever public acquisition of land
5 upon which is situated a lawful nonconforming sign occurs, the
6 sign may, at the election of its owner and the department, be
7 relocated or reconstructed adjacent to the new right-of-way at
8 the same station along the roadway, and any administrative
9 rule or local ordinance to the contrary is preempted.

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

11
12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 Senate Bill 940

15 Requires condemning authorities to provide a property owner
16 with a copy of the appraisal report within 15 days of receipt
17 of a request by the owner. Requires newspaper notification for
18 condemnation actions involving business damages where a
19 business does not appear to be operating at the time notice is
20 attempted, and notification by certified mail and personal
21 delivery has failed to locate the business owner.

19 Defines the standard for a court to strike a business damage
20 claim as where the court finds that the business owner has
21 failed to make a showing of a good faith justification for the
22 failure to timely submit a business damage offer.

22 Requires that invoices used to document attorney's fees
23 include the date on which the service was performed, the
24 hourly rate charged for the service, and the person performing
25 the services.

24 Clarifies that the provisions of subsection 4(a) apply to
25 attorney's fees calculated for presuit negotiations conducted
26 under s. 73.015, F.S., and provides that the failure of the
27 condemning authority to respond to a business damage offer
28 must be deemed to be a counteroffer of zero dollars for the
29 purpose of calculating "benefits."

28 Clarifies that evidence of oral statements used in mediation
29 or presuit negotiations between the parties is inadmissible in
30 any condemnation proceedings except a proceeding to determine
31 attorney's fees.

30 Requires that DOT be consulted when an owner of a lawful
31 nonconforming sign located adjacent to new right-of-way elects
to relocate or reconstruct the sign adjacent to the new
right-of-way.