

By the Committees on Fiscal Policy; and Comprehensive
Planning, Local and Military Affairs

309-1994-99

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.; prescribing duties of local
14 governments with respect thereto; providing an
15 effective date.

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

18
19 Section 1. Section 73.015, Florida Statutes, is
20 created to read:

21 73.015 Presuit negotiation.--

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

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

1 owners under this subsection, the condemning authority may
2 file a condemnation proceeding pursuant to chapter 73 or
3 chapter 74 for the 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) Attorney's fees for presuit negotiations under
9 this section regarding the amount of compensation to be paid
10 for the land, severance damages, and improvements must be
11 calculated in accordance with s. 73.092(1). When business
12 damages are paid, attorney's fees incurred in presentation of
13 the business owner's good-faith offer under paragraph (2)(a)
14 must be calculated in accordance with s. 73.092(2), (3), (4),
15 and (5), and any subsequent fees which may be payable must be
16 calculated as provided in s. 73.092(1), based on the
17 difference between the final payment of business damages and
18 the counteroffer to the business owner's offer by the
19 condemning authority. Failure of the condemning authority to
20 respond to a business-damage offer as provided in this section
21 must be deemed to be a counteroffer of zero dollars.

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

30 (c) If the parties cannot agree on the amount of costs
31 and attorney's fees to be paid by the condemning authority,

1 the property owner may file a complaint in the circuit court
2 in the county in which the property is located to recover
3 attorney's fees and costs.

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

9 Section 2. Section 73.092, Florida Statutes, is
10 amended to read:

11 73.092 Attorney's fees.--

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

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

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

29 ~~2. In determining attorney's fees subsequent to the~~
30 ~~filing of litigation, if financial and business records kept~~
31 ~~by the owner in the ordinary course of business were not~~

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

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

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

- 24 1. Thirty-three percent of any benefit up to \$250,000;
25 plus
- 26 2. Twenty-five percent of any portion of the benefit
27 between \$250,000 and \$1 million; plus
- 28 3. Twenty percent of any portion of the benefit
29 exceeding \$1 million.

30 (2) In assessing attorney's fees incurred in defeating
31 an order of taking, or for apportionment, or other

1 supplemental proceedings, when not otherwise provided for, the
2 court shall consider:

3 (a) The novelty, difficulty, and importance of the
4 questions involved.

5 (b) The skill employed by the attorney in conducting
6 the cause.

7 (c) The amount of money involved.

8 (d) The responsibility incurred and fulfilled by the
9 attorney.

10 (e) The attorney's time and labor reasonably required
11 adequately to represent the client in relation to the benefits
12 resulting to the client.

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

15 (g) Any attorney's fee award made under subsection
16 (1).

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

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

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

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

5 127.01 Counties delegated power of eminent domain;
6 recreational purposes, issue of necessity of taking.--

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

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

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

21 166.401 Right of eminent domain.--

22 (2) Each municipality is further authorized to
23 exercise the eminent domain power ~~powers~~ granted to the
24 Department of Transportation in s. 337.27(1) ~~and (2)~~ and the
25 transportation corridor protection provisions of s. 337.273.

26 Section 5. Subsection (2) of section 337.27, Florida
27 Statutes, section 337.271, Florida Statutes, subsection (2) of
28 section 348.0008, Florida Statutes, subsection (2) of section
29 348.759, Florida Statutes, and subsection (2) of section
30 348.957, Florida Statutes, are repealed.

31

1 Section 6. Subsections (3), (4), and (5) are added to
2 section 479.15, Florida Statutes, to read:

3 479.15 Harmony of regulations.--

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

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

24 (5) In the event that relocation is inconsistent with
25 the ordinances of the municipality or county within whose
26 jurisdiction the sign is located, the ordinances of the local
27 government shall prevail, provided that the local government
28 shall assume the responsibility to provide the owner of the
29 sign just compensation for its removal. Further, the
30 provisions of this section shall not impair any agreement or
31 future agreements between a municipality or county and the

1 owner of a sign or signs within the jurisdiction of the
2 municipality or county. Nothing in this section shall be
3 deemed to cause a nonconforming sign to become conforming
4 solely as a result of the relocation allowed in this section.

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

6
7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
8 COMMITTEE SUBSTITUTE FOR
9 CS/SB 940

10 Deletes the express preemption of local government ordinances
11 for the relocation of non-conforming signs. Provides that if
12 local government has an ordinance that prohibits relocation of
13 signs, the local government has to compensate the owner for
14 the sign.

15 Provides a time period, from January 1, 2000, to July 1, 2000,
16 for condemning authorities to phase in the presuit negotiation
17 provisions without being prohibited from filing an eminent
18 domain action.

19 Provides a time period, from January 1, 2000, to July 1, 2000,
20 for condemning authorities to phase in the presuit negotiation
21 business damages provisions without being prohibited from
22 filing an eminent domain action.

23 Clarifies the methodology for determining attorney's fees
24 under the presuit negotiation process.

25 Clarifies when costs should be paid under the presuit
26 negotiation process.