

Bill No. CS for CS for SB 972

Amendment No.

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Carlton moved the following amendment:		
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13	Senate Amendment (with title amendment)		
14	On page 80, between lines 10 and 11,		
15			
16	insert:		
17	Section 37. Effective January 1, 2000, section 73.015,		
18	Florida Statutes, is created to read:		
19	<u>73.015 Presuit negotiation.--</u>		
20	<u>(1) Effective July 1, 2000, before an eminent domain</u>		
21	<u>proceeding is brought under this chapter or chapter 74, the</u>		
22	<u>condemning authority must attempt to negotiate in good faith</u>		
23	<u>with the fee owner of the parcel to be acquired, must provide</u>		
24	<u>the owner with a written offer and, if requested, a copy of</u>		
25	<u>the appraisal upon which the offer is based, and must attempt</u>		
26	<u>to reach an agreement regarding the amount of compensation to</u>		
27	<u>be paid for the parcel.</u>		
28	<u>(a) At the inception of negotiation for acquisition,</u>		
29	<u>the condemning authority must notify the fee owner of the</u>		
30	<u>following:</u>		
31	<u>1. That all or a portion of his or her property is</u>		

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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 38. 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 39. 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 40. 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 41. 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 42. 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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(Redesignate subsequent sections.)

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

And the title is amended as follows:

On page 5, line 21, after the semicolon

insert:

creating s. 73.015, F.S.; requiring presuit negotiation before an action in eminent domain may be initiated under ch. 73, F.S., or ch. 74, F.S.; providing requirements for the condemning authority; requiring the condemning authority to give specified notices; requiring a written offer of purchase and appraisal and specifying the time period during which the owner may respond to the offer before a condemnation lawsuit may be filed; providing procedures; allowing a business owner to claim business damage within a specified time period; providing circumstances under which the court must strike a business-damage defense; providing procedures for business-damage claims; providing for nonbinding mediation; requiring the condemning authority to pay reasonable costs and attorney's fees of a property owner; allowing the property owner to file a complaint in circuit court to recover attorney's fees and costs, if the parties 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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