

Bill No. CS for CS for SB 972

Amendment No.

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Carlton moved the following amendment:

Senate Amendment (with title amendment)

On page 80, between lines 10 and 11,

insert:

Section 37. 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:

1. That all or a portion of his or her property is

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

18 4. The fee owner's statutory rights under ss. 73.091
19 and 73.092.

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

22 (b) The condemning authority must provide a written
23 offer of compensation to the fee owner as to the value of the
24 property sought to be appropriated and, where less than the
25 entire property is sought to be appropriated, any damages to
26 the remainder caused by the taking. The owner must be given at
27 least 30 days after either receipt of the notice or the date
28 the notice is returned as undeliverable by the postal
29 authorities to respond to the offer, before the condemning
30 authority files a condemnation proceeding for the parcel
31 identified in the offer.

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

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

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

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

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

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

31 3. That, within 15 business days after receipt of a

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

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

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

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

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

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

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

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1 information is needed beyond data that may be obtained from
2 business records existing at the time of the offer, the
3 business owner and condemning authority may agree on a
4 schedule for the submission of such information.

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

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

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

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

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

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

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

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

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

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

19 Section 38. Effective January 1, 2000, subsection (3)
20 of section 73.071, Florida Statutes, is amended to read:

21 73.071 Jury trial; compensation; severance damages;
22 business damages.--

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

25 (a) The value of the property sought to be
26 appropriated;

27 (b) Where less than the entire property is sought to
28 be appropriated, any damages to the remainder caused by the
29 taking, including, when the action is by the Department of
30 Transportation, county, municipality, board, district or other
31 public body for the condemnation of a right-of-way, and the

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1 effect of the taking of the property involved may damage or
2 destroy an established business of more than 4 5 years'
3 standing, owned by the party whose lands are being so taken,
4 located upon adjoining lands owned or held by such party, the
5 probable damages to such business which the denial of the use
6 of the property so taken may reasonably cause; any person
7 claiming the right to recover such special damages shall set
8 forth in his or her written defenses the nature and extent of
9 such damages; and

10 (c) Where the appropriation is of property upon which
11 a mobile home, other than a travel trailer as defined in s.
12 320.01, is located, whether or not the owner of the mobile
13 home is an owner or lessee of the property involved, and the
14 effect of the taking of the property involved requires the
15 relocation of such mobile home, the reasonable removal or
16 relocation expenses incurred by such mobile home owner, not to
17 exceed the replacement value of such mobile home. The
18 compensation paid to a mobile home owner under this paragraph
19 shall preclude an award to a mobile home park owner for such
20 expenses of removal or relocation. Any mobile home owner
21 claiming the right to such removal or relocation expenses
22 shall set forth in his or her written defenses the nature and
23 extent of such expenses. This paragraph shall not apply to
24 any governmental authority exercising its power of eminent
25 domain when reasonable removal or relocation expenses must be
26 paid to mobile home owners under other provisions of law or
27 agency rule applicable to such exercise of power.

28 Section 39. Effective January 1, 2000, the amendments
29 to subsection (3) of section 73.071, Florida Statutes, as
30 contained in this act shall stand repealed effective January
31 1, 2003.

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1 Section 40. Effective January 1, 2000, subsection (1)
2 of section 73.091, Florida Statutes, is amended to read:

3 73.091 Costs of the proceedings.--

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

11 Section 41. Effective January 1, 2000, subsection (1)
12 of section 73.092, Florida Statutes, is amended to read:

13 73.092 Attorney's fees.--

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

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

25 1. In determining attorney's fees, if business records
26 as defined in s. 73.015(2)(c)2. and kept by the owner in the
27 ordinary course of business were provided to the condemning
28 authority to substantiate the business damage offer in s.
29 73.015(2)(c), benefits for amounts awarded for business
30 damages must be based on the difference between the final
31 judgment or settlement and the written counteroffer made by

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1 ~~the condemning authority provided in s. 73.015(2)(d). In~~
2 ~~determining attorney's fees in prelitigation negotiations,~~
3 ~~benefits do not include amounts awarded for business damages~~
4 ~~unless the business owner provided to the condemning~~
5 ~~authority, upon written request, prior to litigation, those~~
6 ~~financial and business records kept by the owner in the~~
7 ~~ordinary course of business.~~

8 2. In determining attorney's fees, if existing business
9 records as defined in s. 73.015(2)(c)2. and kept by the owner
10 in the ordinary course of business were not provided to the
11 condemning authority to substantiate the business damage offer
12 in s. 73.015(2)(c) and those records which were not provided
13 are later deemed material to the determination of business
14 damages, benefits for amounts awarded for business damages
15 must be based upon the difference between the final judgment
16 or settlement and the first written counteroffer made by the
17 condemning authority within 90 days from the condemning
18 authority's receipt of the business records previously not
19 provided. In determining attorney's fees subsequent to the
20 filing of litigation, if financial and business records kept
21 by the owner in the ordinary course of business were not
22 provided to the condemning authority prior to litigation,
23 benefits for amounts awarded for business damages must be
24 based on the first written offer made by the condemning
25 authority within 120 days after the filing of the eminent
26 domain action. In the event the petitioner makes a discovery
27 request for a defendant's financial and business records kept
28 in the ordinary course of business within 45 days after the
29 filing of that defendant's answer, then the 120-day period
30 shall be extended to 60 days after receipt by petitioner of
31 those records. If the condemning authority makes no written

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1 ~~offer to the defendant for business damages within the time~~
2 ~~period provided in this section, benefits for amounts awarded~~
3 ~~for business damages must be based on the difference between~~
4 ~~the final judgment or settlement and the last written offer~~
5 ~~made by the condemning authority before the defendant hired an~~
6 ~~attorney.~~

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

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

- 14 1. Thirty-three percent of any benefit up to \$250,000;
15 plus
16 2. Twenty-five percent of any portion of the benefit
17 between \$250,000 and \$1 million; plus
18 3. Twenty percent of any portion of the benefit
19 exceeding \$1 million.

20 Section 42. Effective January 1, 2000, subsection (1)
21 of section 127.01, Florida Statutes, is amended to read:

22 127.01 Counties delegated power of eminent domain;
23 recreational purposes, issue of necessity of taking.--

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

31 (b) Each county is further authorized to exercise the

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1 eminent domain power ~~powers~~ granted to the Department of
2 Transportation by s. 337.27(1) ~~and (2)~~, the transportation
3 corridor protection provisions of s. 337.273, and the right of
4 entry onto property pursuant to s. 337.274.

5 Section 43. Effective January 1, 2000, subsection (2)
6 of section 166.401, Florida Statutes, is amended to read:

7 166.401 Right of eminent domain.--

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

12 Section 44. Effective January 1, 2000, subsection (2)
13 of section 337.27, section 337.271, subsection (2) of section
14 348.0008, subsection (2) of section 348.759, and subsection
15 (2) of section 348.957, Florida Statutes, are repealed.

16 Section 45. Effective January 1, 2000, subsections
17 (3), (4), and (5) are added to section 479.15, Florida
18 Statutes, to read:

19 479.15 Harmony of regulations.--

20 (3) It is the express intent of the Legislature to
21 limit the state right-of-way acquisition costs on state and
22 federal roads in eminent domain proceedings, the provisions of
23 ss. 479.07 and 479.155 notwithstanding. Subject to approval by
24 the Federal Highway Administration, whenever public
25 acquisition of land upon which is situated a lawful
26 nonconforming sign occurs, as provided in this chapter, the
27 sign may, at the election of its owner and the department, be
28 relocated or reconstructed adjacent to the new right-of-way
29 along the roadway within 100 feet of the current location,
30 provided the nonconforming sign is not relocated on a parcel
31 zoned residential, and provided further that such relocation

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1 shall be subject to applicable setback requirements. The sign
 2 owner shall pay all costs associated with relocating or
 3 reconstructing any sign under this subsection, and neither the
 4 state nor any local government shall reimburse the sign owner
 5 for such costs, unless part of such relocation costs are
 6 required by federal law. If no adjacent property is available
 7 for the relocation, the department shall be responsible for
 8 paying the owner of the sign just compensation for its
 9 removal.

10 (4) Such relocation shall be adjacent to the current
 11 site and the face of the sign shall not be increased in size
 12 or height or structurally modified at the point of relocation
 13 in a manner inconsistent with the current building codes of
 14 the jurisdiction in which the sign is located. No permit shall
 15 be issued for the removal, cutting or trimming of existing
 16 trees or vegetation to make visible or ensure future
 17 visibility of any such existing relocated sign that is
 18 inconsistent with s. 479.106.

19 (5) In the event that relocation can be accomplished
 20 but is inconsistent with the ordinances of the municipality or
 21 county within whose jurisdiction the sign is located, the
 22 ordinances of the local government shall prevail, provided
 23 that the local government shall assume the responsibility to
 24 provide the owner of the sign just compensation for its
 25 removal, but in no event shall compensation paid by the local
 26 government exceed the compensation required under state or
 27 federal law. Further, the provisions of this section shall not
 28 impair any agreement or future agreements between a
 29 municipality or county and the owner of a sign or signs within
 30 the jurisdiction of the municipality or county. Nothing in
 31 this section shall be deemed to cause a nonconforming sign to

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1 become conforming solely as a result of the relocation allowed
2 in this section.

3
4 (Redesignate subsequent sections.)

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6
7 ===== T I T L E A M E N D M E N T =====

8 And the title is amended as follows:

9 On page 5, line 21, delete that line

10
11 and insert:

12 creating s. 73.015, F.S.; requiring presuit
13 negotiation before an action in eminent domain
14 may be initiated under ch. 73, F.S., or ch. 74,
15 F.S.; providing requirements for the condemning
16 authority; requiring the condemning authority
17 to give specified notices; requiring a written
18 offer of purchase and appraisal and specifying
19 the time period during which the owner may
20 respond to the offer before a condemnation
21 lawsuit may be filed; providing procedures;
22 allowing a business owner to claim business
23 damage within a specified time period;
24 providing circumstances under which the court
25 must strike a business-damage defense;
26 providing procedures for business-damage
27 claims; providing for nonbinding mediation;
28 requiring the condemning authority to pay
29 reasonable costs and attorney's fees of a
30 property owner; allowing the property owner to
31 file a complaint in circuit court to recover

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1 attorney's fees and costs, if the parties
2 cannot agree on the amount; providing that
3 certain evidence is inadmissible in specified
4 proceedings; amending s. 73.071, F.S.;
5 modifying eligibility requirements for business
6 owners to claim business damages; providing for
7 future repeal; amending s. 73.091, F.S.;
8 providing that no prejudgment interest shall be
9 paid on costs or attorney's fees in eminent
10 domain; amending s. 73.092, F.S.; amending
11 provisions relating to attorney's fees for
12 business-damage claims; amending ss. 127.01,
13 166.401, F.S.; restricting the exercise by
14 counties and municipalities of specified
15 eminent domain powers granted to the Department
16 of Transportation; repealing ss. 337.27(2),
17 337.271, 348.0008(2), 348.759(2), 348.957(2),
18 F.S., relating to limiting the acquisition cost
19 of lands and property acquired through eminent
20 domain proceedings by the Department of
21 Transportation, the Orlando-Orange County
22 Expressway Authority, or the Seminole County
23 Expressway Authority, or under the Florida
24 Expressway Authority Act, and relating to the
25 notice that the Department of Transportation
26 must give to a fee owner at the inception of
27 negotiations to acquire land; amending s.
28 479.15, F.S.; prescribing duties of local
29 governments with respect thereto; providing
30 effective dates.

31