

Bill No. CS for CS for SB 972

Amendment No. ____

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
---------------	----------------	--------------

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

.
.
.
.
.

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

Bill No. CS for CS for SB 972

Amendment No. ____

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; and
16 that the condemning authority shall provide any additional
17 plan sheets within 15 days of the request;

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

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.

Bill No. CS for CS for SB 972

Amendment No. ____

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 property 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

Bill No. CS for CS for SB 972

Amendment No. ____

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; and

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

Bill No. CS for CS for SB 972

Amendment No. ____

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

Bill No. CS for CS for SB 972

Amendment No. ____

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

Bill No. CS for CS for SB 972

Amendment No. ____

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 73.091, 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 accordance with s. 73.092(1) unless the parties
19 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.

Bill No. CS for CS for SB 972

Amendment No. ____

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

Bill No. CS for CS for SB 972

Amendment No. ____

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. The amendments to subsection (3) of
29 section 73.071, Florida Statutes, as contained in this act
30 shall stand repealed effective January 1, 2003.

31 Section 40. Effective January 1, 2000, subsection (1)

Bill No. CS for CS for SB 972

Amendment No. ____

1 of section 73.091, Florida Statutes, is amended to read:

2 73.091 Costs of the proceedings.--

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

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

12 73.092 Attorney's fees.--

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

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

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

Bill No. CS for CS for SB 972

Amendment No. ____

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

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

Bill No. CS for CS for SB 972

Amendment No. ____

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

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

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

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

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

17 3. Twenty percent of any portion of the benefit
18 exceeding \$1 million.

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

21 127.01 Counties delegated power of eminent domain;
22 recreational purposes, issue of necessity of taking.--

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

30 (b) Each county is further authorized to exercise the
31 eminent domain power ~~powers~~ granted to the Department of

Bill No. CS for CS for SB 972

Amendment No. ____

1 Transportation by s. 337.27(1) ~~and (2)~~, the transportation
2 corridor protection provisions of s. 337.273, and the right of
3 entry onto property pursuant to s. 337.274.

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

6 166.401 Right of eminent domain.--

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

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

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

20 479.15 Harmony of regulations.--

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

Bill No. CS for CS for SB 972

Amendment No. ____

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

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

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

Bill No. CS for CS for SB 972

Amendment No. ____

1 this section shall be deemed to cause a nonconforming sign to
2 become conforming solely as a result of the relocation allowed
3 in this section.

4
5 (Redesignate subsequent sections.)

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

9 And the title is amended as follows:

10 On page 5, line 21, delete that line

11
12 and insert:

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

Bill No. CS for CS for SB 972

Amendment No. ____

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