

By the Committee on Transportation

306-596-02

1 A bill to be entitled
2 An act relating to right-of-way acquisition;
3 amending s. 73.091, F.S.; prohibiting the court
4 from awarding expert witness fees and costs to
5 the defendant in an action in eminent domain if
6 the final judgment is equal to or less than the
7 last written settlement offer; providing
8 requirements for serving the last written
9 settlement offer; amending s. 206.46, F.S.;
10 increasing the amount that may be transferred
11 from the State Transportation Trust Fund to the
12 Right-of-Way Acquisition and Bridge
13 Construction Trust Fund for purposes of paying
14 the debt service on outstanding bonds; amending
15 s. 337.107, F.S.; authorizing the Department of
16 Transportation to include right-of-way services
17 as part of design-build contracts; amending s.
18 337.11, F.S.; expanding the type of project
19 which may be awarded as a design-build
20 contract; prohibiting the construction of any
21 portion of such a project until title to the
22 necessary rights-of-way and easements has
23 vested in the state or a local governmental
24 entity and all railroad crossing and utility
25 agreements have been executed; amending s.
26 338.223, F.S.; eliminating a requirement for
27 the advance acquisition of all rights-of-way
28 for a turnpike project before making a final
29 determination of economic feasibility;
30 providing an effective date.
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1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Subsection (6) is added to section 73.091,
4 Florida Statutes, to read:

5 73.091 Costs of the proceedings.--

6 (6) If a defendant does not accept the last written
7 settlement offer made by the condemning authority and the
8 final judgment, exclusive of any interest accumulated after
9 receipt by the defendant of the last written settlement offer,
10 is equal to or less than the last written settlement offer,
11 the court may not award any expert witness fees or costs
12 incurred by the defendant after the date the last written
13 settlement offer was received by the defendant. For purposes
14 of this subsection, the last written settlement offer may not
15 be received by the defendant any sooner than 120 days after
16 receipt of the written offer required by s. 73.015(1)(b). For
17 purposes of this subsection, the last written settlement offer
18 must be served at least 20 days before either the date set for
19 trial or the first day of the docket on which the case is set
20 for trial, whichever is earlier.

21 Section 2. Subsection (2) of section 206.46, Florida
22 Statutes, is amended to read:

23 206.46 State Transportation Trust Fund.--

24 (2) Notwithstanding any other provisions of law, from
25 the revenues deposited into the State Transportation Trust
26 Fund a maximum of 7 percent in each fiscal year shall be
27 transferred into the Right-of-Way Acquisition and Bridge
28 Construction Trust Fund created in s. 215.605, as needed to
29 meet the requirements of the documents authorizing the bonds
30 issued or proposed to be issued under ss. 215.605 and 337.276
31 or at a minimum amount sufficient to pay for the debt service

1 coverage requirements of outstanding bonds. Notwithstanding
2 the 7 percent annual transfer authorized in this subsection,
3 the annual amount transferred under this subsection shall not
4 exceed an amount necessary to provide the required debt
5 service coverage levels for a maximum debt service not to
6 exceed ~~\$200~~^{\$135} million. Such transfer shall be payable
7 primarily from the motor and diesel fuel taxes transferred to
8 the State Transportation Trust Fund from the Fuel Tax
9 Collection Trust Fund.

10 Section 3. Effective July 1, 2003, section 337.107,
11 Florida Statutes, as amended by section 3 of chapter
12 2001-____, Laws of Florida, is amended to read:

13 337.107 Contracts for right-of-way services.--The
14 department may enter into contracts pursuant to s. 287.055 for
15 right-of-way services on transportation corridors and
16 transportation facilities or the department may include
17 right-of-way services, as defined in this section, as part of
18 the design-build contracts awarded pursuant to s. 337.11.
19 Right-of-way services include negotiation and acquisition
20 services, appraisal services, demolition and removal of
21 improvements, and asbestos-abatement services.

22 Section 4. Effective July 1, 2003, paragraph (a) of
23 subsection (7) of section 337.11, Florida Statutes, as amended
24 by section 4 of chapter 2001-____, Laws of Florida, is amended
25 to read:

26 337.11 Contracting authority of department; bids;
27 emergency repairs, supplemental agreements, and change orders;
28 combined design and construction contracts; progress payments;
29 records; requirements of vehicle registration.--

30 (7)(a) If the head of the department determines that
31 it is in the best interests of the public, the department may

1 combine the right-of-way services and design and construction
2 phases of any a building, a major bridge, or a rail corridor
3 project into a single contract, except for resurfacing or
4 minor bridge projects that may be combined under s. 337.025.
5 Such contract is referred to as a design-build contract.
6 Design-build contracts may be advertised and awarded
7 notwithstanding the requirements of paragraph (3)(c). However,
8 construction activities may not begin on any portion of such
9 projects until title to the necessary rights-of-way and
10 easements for the construction of that portion of the project
11 has vested in the state or a local governmental entity, and
12 all railroad crossing and utility agreements have been
13 executed. Title to rights-of-way vests in the state when the
14 title has been dedicated to the public or acquired by
15 prescription.

16 Section 5. Subsection (2) of section 338.223, Florida
17 Statutes, is amended to read:

18 338.223 Proposed turnpike projects.--

19 (2)(a) Subject to the provisions of s. 338.228, the
20 department is authorized to expend, out of any funds available
21 for the purpose, such moneys as may be necessary for studies,
22 preliminary engineering, construction, right-of-way
23 acquisition, and construction engineering inspection of any
24 turnpike project and is authorized to use its engineering and
25 other resources for such purposes.

26 ~~(b) In accordance with the legislative intent~~
27 ~~expressed in s. 337.273, and after the requirements of~~
28 ~~paragraph (1)(c) have been met, the department may acquire~~
29 ~~lands and property before making a final determination of the~~
30 ~~economic feasibility of a project. The requirements of~~
31 ~~paragraph (1)(c) do not apply to hardship and protective~~

1 ~~purchases of advance right-of-way by the department. The cost~~
2 ~~of advance acquisition of right-of-way may be paid from bonds~~
3 ~~issued under s. 337.276 or from turnpike revenues. For~~
4 ~~purposes of this paragraph, the term "hardship purchase" means~~
5 ~~purchase from a property owner of a residential dwelling of~~
6 ~~not more than four units who is at a disadvantage due to~~
7 ~~health impairment, job loss, or significant loss of rental~~
8 ~~income. For purposes of this paragraph, the term "protective~~
9 ~~purchase" means that a purchase to limit development,~~
10 ~~building, or other intensification of land uses within the~~
11 ~~area right-of-way is needed for transportation facilities. The~~
12 ~~department shall give written notice to the Department of~~
13 ~~Environmental Protection 30 days before final agency~~
14 ~~acceptance as set forth in s. 119.07(3)(n), which notice shall~~
15 ~~allow the Department of Environmental Protection to comment.~~
16 ~~Hardship and protective purchases of right-of-way shall not~~
17 ~~influence the environmental feasibility of a project,~~
18 ~~including the decision relative to the need to construct the~~
19 ~~project or the selection of a specific location. Costs to~~
20 ~~acquire and dispose of property acquired as hardship and~~
21 ~~protective purchases are considered costs of doing business~~
22 ~~for the department and are not to be considered in the~~
23 ~~determination of environmental feasibility for the project.~~

24 Section 6. This act shall take effect July 1, 2002.

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SENATE SUMMARY

Provides that a defendant may not be awarded expert witness fees or certain costs in an eminent domain proceeding if the final judgment is equal to or less than the last written settlement offer made to the defendant. Increases, from \$135 million to \$200 million, the amount that may be transferred from the State Transportation Trust Fund to the Right-of-Way Acquisition and Bridge Construction Trust Fund for purposes of paying debt service on outstanding bonds. Provides for the Department of Transportation to include right-of-way services as part of certain design-build contracts. Provides that a project may not be constructed until title to the necessary rights-of-way and easements has vested in the state or a local governmental entity and all railroad crossing and utility agreements have been executed. Provides that, with respect to a turnpike project, the rights-of-way need not be acquired before the final determination of economic feasibility. (See bill for details.)