

1 A bill to be entitled
 2 An act relating to eminent domain; repealing s. 73.092,
 3 F.S., relating to attorney's fees; amending ss. 73.015,
 4 73.032, and 73.091, F.S.; removing cross references and
 5 provisions relating to attorney's fees, to conform;
 6 providing an effective date.

7

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

9

10 Section 1. Section 73.015, Florida Statutes, is amended to
 11 read:

12 73.015 Presuit negotiation.--

13 (1) Effective July 1, 2000, before an eminent domain
 14 proceeding is brought under this chapter or chapter 74, the
 15 condemning authority must attempt to negotiate in good faith
 16 with the fee owner of the parcel to be acquired, must provide
 17 the fee owner with a written offer and, if requested, a copy of
 18 the appraisal upon which the offer is based, and must attempt to
 19 reach an agreement regarding the amount of compensation to be
 20 paid for the parcel.

21 (a) No later than the time the initial written or oral
 22 offer of compensation for acquisition is made to the fee owner,
 23 the condemning authority must notify the fee owner of the
 24 following:

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

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

30 3. That, within 15 business days after receipt of a
 31 request by the fee owner, the condemning authority will provide
 32 a copy of the appraisal report upon which the offer to the fee
 33 owner is based; copies, to the extent prepared, of the right-of-
 34 way maps or other documents that depict the proposed taking; and
 35 copies, to the extent prepared, of the construction plans that
 36 depict project improvements to be constructed on the property
 37 taken and improvements to be constructed adjacent to the
 38 remaining property, including, but not limited to, plan,
 39 profile, cross-section, drainage, and pavement marking sheets,
 40 and driveway connection detail. The condemning authority shall
 41 provide any additional plan sheets within 15 days of request.

42 4. The fee owner's statutory rights under s. ss. 73.091
 43 ~~and 73.092~~, or alternatively provide a copy of that provision
 44 ~~copies of these provisions~~ of law.

45 5. The fee owner's rights and responsibilities under
 46 paragraphs (b) and (c) and subsection (4), or alternatively
 47 provide copies of these provisions of law.

48 (b) The condemning authority must provide a written offer
 49 of compensation to the fee owner as to the value of the property
 50 sought to be appropriated and, where less than the entire
 51 property is sought to be appropriated, any damages to the
 52 remainder caused by the taking. The owner must be given at least
 53 30 days after either receipt of the notice or the date the
 54 notice is returned as undeliverable by the postal authorities to

55 respond to the offer, before the condemning authority files a
56 condemnation proceeding for the parcel identified in the offer.

57 (c) The notice and written offer must be sent by certified
58 mail, return receipt requested, to the fee owner's last known
59 address listed on the county ad valorem tax roll. Alternatively,
60 the notice and written offer may be personally delivered to the
61 fee owner of the property. If there is more than one owner of a
62 property, notice to one owner constitutes notice to all owners
63 of the property. The return of the notice as undeliverable by
64 the postal authorities constitutes compliance with this
65 provision. The condemning authority is not required to give
66 notice or a written offer to a person who acquires title to the
67 property after the notice required by this section has been
68 given.

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

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

80 (a) The condemning authority must notify the business
81 owner of the following:

82 1. That all or a portion of his or her property is
 83 necessary for a project.

84 2. The nature of the project for which the parcel is
 85 considered necessary, and the parcel designation of the property
 86 to be acquired.

87 3. That, within 15 business days after receipt of a
 88 request by the business owner, the condemning authority will
 89 provide a copy of the appraisal report upon which the offer to
 90 the fee owner is based; copies, to the extent prepared, of the
 91 right-of-way maps or other documents that depict the proposed
 92 taking; and copies, to the extent prepared, of the construction
 93 plans that depict project improvements to be constructed on the
 94 property taken and improvements to be constructed adjacent to
 95 the remaining property, including, but not limited to, plan,
 96 profile, cross-section, drainage, pavement marking sheets, and
 97 driveway connection detail. The condemning authority shall
 98 provide any additional plan sheets within 15 days of request.

99 4. The business owner's statutory rights under ss. 73.071
 100 and, ~~73.091, and 73.092.~~

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

103 (b) The notice must be made subsequent to or concurrent
 104 with the condemning authority's making the written offer of
 105 compensation to the fee owner pursuant to subsection (1). The
 106 notice must be sent by certified mail, return receipt requested,
 107 to the address of the registered agent for the business located
 108 on the property to be acquired, or if no agent is registered, by
 109 certified mail or personal delivery to the address of the

110 business located on the property to be acquired. Notice to one
111 owner of a multiple ownership business constitutes notice to all
112 business owners of that business. The return of the notice as
113 undeliverable by the postal authorities constitutes compliance
114 with these provisions. The condemning authority is not required
115 to give notice to a person who acquires an interest in the
116 business after the notice required by this section has been
117 given. Once notice has been made to business owners under this
118 subsection, the condemning authority may file a condemnation
119 proceeding pursuant to chapter 73 or chapter 74 for the property
120 identified in the notice.

121 (c) If the business qualifies for business damages
122 pursuant to s. 73.071(3)(b) and the business intends to claim
123 business damages, the business owner must, within 180 days after
124 either receipt of the notice or the date the notice is returned
125 as undeliverable by the postal authorities, or at a later time
126 mutually agreed to by the condemning authority and the business
127 owner, submit to the condemning authority a good faith written
128 offer to settle any claims of business damage. The written offer
129 must be sent to the condemning authority by certified mail,
130 return receipt requested. Absent a showing of a good faith
131 justification for the failure to submit a business damage offer
132 within 180 days, the court must strike the business owner's
133 claim for business damages in any condemnation proceeding. If
134 the court finds that the business owner has made a showing of a
135 good faith justification for the failure to timely submit a
136 business damage offer, the court shall grant the business owner

137 up to 180 days within which to submit a business damage offer,
 138 which the condemning authority must respond to within 120 days.

139 1. The business damage offer must include an explanation
 140 of the nature, extent, and monetary amount of such damage and
 141 must be prepared by the owner, a certified public accountant, or
 142 a business damage expert familiar with the nature of the
 143 operations of the owner's business. The business owner shall
 144 also provide to the condemning authority copies of the owner's
 145 business records that substantiate the good faith offer to
 146 settle the business damage claim. If additional information is
 147 needed beyond data that may be obtained from business records
 148 existing at the time of the offer, the business owner and
 149 condemning authority may agree on a schedule for the submission
 150 of such information.

151 2. As used in this paragraph, the term "business records"
 152 includes, but is not limited to, copies of federal income tax
 153 returns, federal income tax withholding statements, federal
 154 miscellaneous income tax statements, state sales tax returns,
 155 balance sheets, profit and loss statements, and state corporate
 156 income tax returns for the 5 years preceding notification which
 157 are attributable to the business operation on the property to be
 158 acquired, and other records relied upon by the business owner
 159 that substantiate the business damage claim.

160 (d) Within 120 days after receipt of the good faith
 161 business damage offer and accompanying business records, the
 162 condemning authority must, by certified mail, accept or reject
 163 the business owner's offer or make a counteroffer. ~~Failure of~~
 164 ~~the condemning authority to respond to the business damage~~

165 ~~offer, or rejection thereof pursuant to this section, must be~~
 166 ~~deemed to be a counteroffer of zero dollars for purposes of~~
 167 ~~subsequent application of s. 73.092(1).~~

168 (3) At any time in the presuit negotiation process, the
 169 parties may agree to submit the compensation or business damage
 170 claims to nonbinding mediation. The parties shall agree upon a
 171 mediator certified under s. 44.102. In the event that there is a
 172 settlement reached as a result of mediation or other mutually
 173 acceptable dispute resolution procedure, the agreement reached
 174 shall be in writing. The written agreement provided for in this
 175 section shall incorporate by reference the right-of-way maps,
 176 construction plans, or other documents related to the taking
 177 upon which the settlement is based. In the event of a
 178 settlement, both parties shall have the same legal rights that
 179 would have been available under law if the matter had been
 180 resolved through eminent domain proceedings in circuit court
 181 with the maps, plans, or other documents having been made a part
 182 of the record.

183 (4) If a settlement is reached between the condemning
 184 authority and a property or business owner prior to a lawsuit
 185 being filed, the property or business owner who settles
 186 compensation claims in lieu of condemnation shall be entitled to
 187 recover costs in the same manner as provided in s. 73.091 ~~and~~
 188 ~~attorney's fees in the same manner as provided in s. 73.092,~~
 189 more specifically as follows:

190 ~~(a) Attorney's fees for presuit negotiations under this~~
 191 ~~section regarding the amount of compensation to be paid for the~~
 192 ~~land, severance damages, and improvements must be calculated in~~

193 ~~the same manner as provided in s. 73.092(1) unless the parties~~
 194 ~~otherwise agree.~~

195 ~~(b) If business damages are recovered by the business~~
 196 ~~owner based on the condemning authority accepting the business~~
 197 ~~owner's initial offer or the business owner accepting the~~
 198 ~~condemning authority's initial counteroffer, attorney's fees~~
 199 ~~must be calculated in accordance with s. 73.092(2), (3), (4),~~
 200 ~~and (5) for the attorney's time incurred in presentation of the~~
 201 ~~business owner's good faith offer under paragraph (2)(c).~~
 202 ~~Otherwise, attorney's fees for the award of business damages~~
 203 ~~must be calculated as provided in s. 73.092(1), based on the~~
 204 ~~difference between the final judgment or settlement of business~~
 205 ~~damages and the counteroffer to the business owner's offer by~~
 206 ~~the condemning authority.~~

207 (a)(e) Presuit costs must be presented, calculated, and
 208 awarded in the same manner as provided in s. 73.091, after
 209 submission by the business or property owner to the condemning
 210 authority of all appraisal reports, business damage reports, or
 211 other work products for which recovery is sought, and upon
 212 transfer of title of the real property by closing, upon payment
 213 of any amounts due for business damages, or upon final judgment.

214 (b)(d) If the parties cannot agree on the amount of costs
 215 ~~and attorney's fees~~ to be paid by the condemning authority, the
 216 business or property owner may file a complaint in the circuit
 217 court in the county in which the property is located to recover
 218 ~~attorney's fees and costs.~~

219

220 This shall only apply when the action is by the Department of
 221 Transportation, county, municipality, board, district, or other
 222 public body for the condemnation of a road right-of-way.

223 (5) Evidence of negotiations or of any written or oral
 224 statements used in mediation or negotiations between the parties
 225 under this section is inadmissible in any condemnation
 226 proceeding, except in a proceeding to determine reasonable costs
 227 ~~and attorney's fees.~~

228 Section 2. Subsections (6), (7), and (8) of section
 229 73.032, Florida Statutes, are amended to read:

230 73.032 Offer of judgment.--

231 ~~(6) If the petitioner rejects the offer of judgment made~~
 232 ~~by defendant and the judgment obtained by defendant, exclusive~~
 233 ~~of any interest accumulated after the offer of judgment was~~
 234 ~~initially made, is equal to or is more than such offer, then the~~
 235 ~~court shall award a reasonable attorney's fee to the defendant~~
 236 ~~based on the factors set forth in s. 73.092(2) and (3).~~

237 (6)(7) At the time an offer of judgment is made by the
 238 petitioner, the petitioner shall identify and make available to
 239 the defendant the construction plans, if any, for the project on
 240 which the offer is based.

241 (7)(8) Evidence of an offer of judgment is admissible only
 242 in proceedings to enforce an accepted offer or to determine the
 243 costs to be awarded a defendant pursuant to subsection (5) ~~or a~~
 244 ~~reasonable attorney's fee pursuant to subsection (6).~~

245 Section 3. Subsection (1) of section 73.091, Florida
 246 Statutes, is amended to read:

247 73.091 Costs of the proceedings.--

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248 (1) The petitioner shall pay ~~attorney's fees as provided~~
249 ~~in s. 73.092 as well as~~ all reasonable costs incurred in the
250 defense of the proceedings in the circuit court, including, but
251 not limited to, reasonable appraisal fees and, when business
252 damages are compensable, a reasonable accountant's fee, to be
253 assessed by that court. No prejudgment interest shall be paid on
254 costs ~~or attorney's fees~~.

255 Section 4. Section 73.092, Florida Statutes, is repealed.

256 Section 5. This act shall take effect July 1, 2005.