

By Senator Smith

14-1329-05

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A bill to be entitled  
An act relating to attorney's fees in eminent domain actions; amending s. 73.032, F.S.; deleting the monetary limitation on payment of compensation by a petitioner in an eminent domain action; repealing s. 73.092, F.S., relating to attorney's fees in such proceedings; amending ss. 73.015 and 73.091, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsections (3) and (6) of section 73.032, Florida Statutes, are amended to read:

73.032 Offer of judgment.--

(3) A defendant may make an offer to have judgment entered against the defendant for payment of compensation by the petitioner ~~only for an amount that is under \$100,000~~, and such offer may be served on the petitioner no sooner than 120 days after the defendant has filed an answer and no later than 20 days prior to trial.

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

Section 2. Section 73.092, Florida Statutes, is repealed.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1           Section 3. Paragraph (a) of subsection (1), paragraphs  
2 (a) and (d) of subsection (2), and subsection (4) of section  
3 73.015, Florida Statutes, are amended to read:

4           73.015 Presuit negotiation.--

5           (1) Effective July 1, 2000, before an eminent domain  
6 proceeding is brought under this chapter or chapter 74, the  
7 condemning authority must attempt to negotiate in good faith  
8 with the fee owner of the parcel to be acquired, must provide  
9 the fee owner with a written offer and, if requested, a copy  
10 of the appraisal upon which the offer is based, and must  
11 attempt to reach an agreement regarding the amount of  
12 compensation to be paid for the parcel.

13           (a) No later than the time the initial written or oral  
14 offer of compensation for acquisition is made to the fee  
15 owner, the condemning authority must notify the fee owner of  
16 the following:

17           1. That all or a portion of his or her property is  
18 necessary for a project.

19           2. The nature of the project for which the parcel is  
20 considered necessary, and the parcel designation of the  
21 property to be acquired.

22           3. That, within 15 business days after receipt of a  
23 request by the fee owner, the condemning authority will  
24 provide a copy of the appraisal report upon which the offer to  
25 the fee owner is based; copies, to the extent prepared, of the  
26 right-of-way maps or other documents that depict the proposed  
27 taking; and copies, to the extent prepared, of the  
28 construction plans that depict project improvements to be  
29 constructed on the property taken and improvements to be  
30 constructed adjacent to the remaining property, including, but  
31 not limited to, plan, profile, cross-section, drainage, and

1 pavement marking sheets, and driveway connection detail. The  
2 condemning authority shall provide any additional plan sheets  
3 within 15 days of request.

4 4. The fee owner's statutory rights under s. ss-  
5 73.091 ~~and 73.092~~, or alternatively provide copies of these  
6 provisions of law.

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

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

17 (a) The condemning authority must notify the business  
18 owner of the following:

19 1. That all or a portion of his or her property is  
20 necessary for a project.

21 2. The nature of the project for which the parcel is  
22 considered necessary, and the parcel designation of the  
23 property to be acquired.

24 3. That, within 15 business days after receipt of a  
25 request by the business owner, the condemning authority will  
26 provide a copy of the appraisal report upon which the offer to  
27 the fee owner is based; copies, to the extent prepared, of the  
28 right-of-way maps or other documents that depict the proposed  
29 taking; and copies, to the extent prepared, of the  
30 construction plans that depict project improvements to be  
31 constructed on the property taken and improvements to be

1 constructed adjacent to the remaining property, including, but  
2 not limited to, plan, profile, cross-section, drainage,  
3 pavement marking sheets, and driveway connection detail. The  
4 condemning authority shall provide any additional plan sheets  
5 within 15 days of request.

6 4. The business owner's statutory rights under ss.  
7 73.071 and, 73.091, ~~and 73.092~~.

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

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

18 (4) If a settlement is reached between the condemning  
19 authority and a property or business owner prior to a lawsuit  
20 being filed, the property or business owner who settles  
21 compensation claims in lieu of condemnation shall be entitled  
22 to recover costs in the same manner as provided in s. 73.091  
23 and attorney's fees. ~~in the same manner as provided in s.~~  
24 ~~73.092, more specifically as follows:~~

25 ~~(a) Attorney's fees for presuit negotiations under~~  
26 ~~this section regarding the amount of compensation to be paid~~  
27 ~~for the land, severance damages, and improvements must be~~  
28 ~~calculated in the same manner as provided in s. 73.092(1)~~  
29 ~~unless the parties otherwise agree.~~

30 ~~(b) If business damages are recovered by the business~~  
31 ~~owner based on the condemning authority accepting the business~~

1 ~~owner's initial offer or the business owner accepting the~~  
2 ~~condemning authority's initial counteroffer, attorney's fees~~  
3 ~~must be calculated in accordance with s. 73.092(2), (3), (4),~~  
4 ~~and (5) for the attorney's time incurred in presentation of~~  
5 ~~the business owner's good faith offer under paragraph (2)(c).~~  
6 ~~Otherwise, attorney's fees for the award of business damages~~  
7 ~~must be calculated as provided in s. 73.092(1), based on the~~  
8 ~~difference between the final judgment or settlement of~~  
9 ~~business damages and the counteroffer to the business owner's~~  
10 ~~offer by the condemning authority.~~

11 (a)(e) Presuit costs must be presented, calculated,  
12 and awarded in the same manner as provided in s. 73.091, after  
13 submission by the business or property owner to the condemning  
14 authority of all appraisal reports, business damage reports,  
15 or other work products for which recovery is sought, and upon  
16 transfer of title of the real property by closing, upon  
17 payment of any amounts due for business damages, or upon final  
18 judgment.

19 (b)(d) If the parties cannot agree on the amount of  
20 costs and attorney's fees to be paid by the condemning  
21 authority, the business or property owner may file a complaint  
22 in the circuit court in the county in which the property is  
23 located to recover attorney's fees and costs.

24  
25 This shall only apply when the action is by the Department of  
26 Transportation, county, municipality, board, district, or  
27 other public body for the condemnation of a road right-of-way.

28 Section 4. Subsection (1) of section 73.091, Florida  
29 Statutes, is amended to read:

30 73.091 Costs of the proceedings.--  
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1           (1) The petitioner shall pay attorney's fees ~~as~~  
2 ~~provided in s. 73.092~~ as well as all reasonable costs incurred  
3 in the defense of the proceedings in the circuit court,  
4 including, but not limited to, reasonable appraisal fees and,  
5 when business damages are compensable, a reasonable  
6 accountant's fee, to be assessed by that court. ~~No~~ Prejudgment  
7 interest may not ~~shall~~ be paid on costs or attorney's fees.

8           Section 5. This act shall take effect upon becoming a  
9 law.

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12                                   SENATE SUMMARY

13           Deletes the monetary limitation on payment of  
14           compensation by a petitioner in an eminent domain action.  
15           Repeals statutory provisions related to attorney's fees  
16           in eminent domain actions.  
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