

1987

Session Law 87-148

Florida Senate & House of Representatives

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LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Sess. Law # 37-193		Sec. # 7	LOF cite
Prime Bill # HB 18		Comp./Sim. Bills SF 109	
JLMC Hist. Cites	Senate	Comms. of Ref.	Senate
	House		House

COMMITTEE RECORDS					
H/S	Committee	Year	Record Series: Folder title, etc.	Loc. Cite	✓
H	JUDICIARY	89	BILL FILE HB 18	91-01	
			- sub comm. (COURT SYS, etc) 3/4/87	" "	
			" 4/9/87	"	
			- Full com. 4/15/87	"	
H	APPROPS	89	BILL FILE CS/HB 18	19/1507	
			Full com. 9/30/87		
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Senate/House Journals					
Page #	?	Date	Page #	?	Date

Committee/Floor Tapes					
H/S	c/f	Committee/subcommittee name	Date	#	Location Cite
H	C	Judiciary/COURT SYS.	3/4/87 + 4/9	2	414/618
H		Judiciary/Full		2	414/618

Other Documentation	
Record Series Title, folder title, etc.	Location Cite

By Representative Bell

1 A bill to be entitled
2 An act relating to land acquisition; amending
3 s. 73.092, F.S.; revising language with respect
4 to attorney's fees in eminent domain
5 proceedings; providing for an offer of judgment
6 by the petitioner; providing that a condemning
7 authority shall be considered the party
8 defending against a claim in the event of an
9 appeal of the judgment order; amending s.
10 337.271, F.S.; providing that the Department of
11 Transportation shall pay all reasonable costs
12 and attorney's fees incurred pursuant to a
13 prelitigation settlement; providing that any
14 disagreement of the parties as to the
15 reasonableness of costs and attorney's fees
16 shall be resolved pursuant to the
17 Administrative Procedure Act; providing an
18 effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Subsections (1) and (6) of section 73.092,
23 Florida Statutes, are amended, and subsections (7) and (8) are
24 added to said section, to read:

25 73.092 Attorney's fees.--In assessing attorney's fees
26 in eminent domain proceedings, the court shall consider:

27 (1) Benefits resulting to the client from the services
28 rendered. However, under no circumstances shall the
29 attorney's fees be based solely on a percentage of the award.

30 (6) The attorney's time and labor reasonably required
31 adequately to represent the client.

This publication was produced at an average cost of 1.5 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

1	(a) The condemnee's attorney shall submit to the	1.22
2	condemning authority and to the court complete time records	1.23
3	and a detailed statement of services rendered by date, nature	
4	of services performed, time spent performing such services,	1.24
5	and costs incurred at least 30 days prior to a hearing to	1.25
6	assess attorney's fees under this section.	
7	(b) This subsection shall apply to all proceedings	1.26
8	filed after July 1, 1985.	
9		
10	However, under no circumstances shall the attorney's fees be	1.29
11	based solely on a percentage of the award.	
12	<u>(7) Where an offer of judgment made by the petitioner,</u>	1.1us
13	<u>pursuant to the Florida Rules of Civil Procedure, is either</u>	1.31
14	<u>rejected or expires, and the verdict or judgment is less than</u>	
15	<u>or equal to the offer of judgment, no attorney's fees or costs</u>	1.32
16	<u>shall be awarded for time spent by the attorney or costs</u>	1.34
17	<u>incurred after the time of rejection or expiration of the</u>	
18	<u>offer. Where an offer of judgment is accepted or the verdict</u>	1.35
19	<u>exceeds the offer of judgment, attorney's fees and costs shall</u>	1.36
20	<u>be determined in accordance with subsection (1). An offer of</u>	1.37
21	<u>judgment shall not be made by the petitioner until the</u>	
22	<u>expiration of 180 days from the filing date of a petition</u>	1.38
23	<u>under this chapter or chapter 74.</u>	
24	<u>(8) For the purposes of Florida Rule of Civil</u>	1.1us
25	<u>Procedure 1.442, a condemning authority shall be considered a</u>	1.40
26	<u>party defending against a claim at any time after the entry of</u>	
27	<u>an order of taking in any condemnation action.</u>	1.41
28	Section 2. Subsection (6) of section 337.271, Florida	1.42
29	Statutes, is amended to read:	
30	337.271 Negotiations for acquisitions.--	1.43
31		

(6) Upon submission of an invoice which complies with
the requirements of this subsection ~~from the fee-owner's~~
~~appraiser~~, the department shall pay all reasonable costs,
including reasonable attorney's fees, incurred on behalf of a
property owner who proceeds to prelitigation negotiation
settlement pursuant to the provisions of this section. The
attorney's fees shall be based upon the criteria of s. 73.092
~~the reasonable cost of obtaining the appraisal report provided~~
~~for in subsection (4) and the reasonable cost of an estimate~~
~~of business damages prepared by a certified public accountant~~
~~provided for in subsection (5).~~ The invoice shall state the
nature of the services performed by date, the number of hours
expended by date, and the hourly rate for such services.
Reasonable costs or attorney's appraisal or accountant fees as
authorized by this section shall not exceed the general or
customary hourly rate for such services appraisal or
~~accounting fees~~ in the community. Any disagreement of the
parties as to reasonableness of such costs and attorney's fees
shall be resolved pursuant to chapter 120, the Administrative
Procedure Act.

Section 3. This act shall take effect upon becoming a
law.

HOUSE SUMMARY

Revises language with respect to attorney's fees in
eminent domain proceedings to provide for fees with
respect to an offer of judgment by the petitioner and to
provide that a condemning authority shall be considered
the party defending against a claim in the event of an
appeal of the judgment order. Provides that the
Department of Transportation shall pay all reasonable
costs and attorney's fees incurred pursuant to certain
prelitigation settlements. Provides that any
disagreement of the parties as to the reasonableness of
costs and attorney's fees shall be resolved pursuant to
the Administrative Procedure Act.

By the Committee on Judiciary and Representatives Bell and Jennings

This publication was produced at an average cost of 1.5 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

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A bill to be entitled

An act relating to land acquisition; creating s. 73.0511, F.S.; providing for prelitigation negotiation procedures with respect to eminent domain; providing for costs and attorney's fees in prelitigation proceedings; providing for apportionment of a settlement in prelitigation proceedings; amending s. 73.092, F.S.; revising language with respect to attorney's fees in eminent domain proceedings; providing for an offer of judgment by the petitioner; providing that a condemning authority shall be considered the party defending against a claim in the event of an appeal of the judgment order; amending s. 73.131, F.S.; revising language with respect to appeals costs; amending s. 337.271, F.S.; providing that the Department of Transportation shall pay all reasonable costs and attorney's fees incurred pursuant to a prelitigation settlement; providing that if the parties cannot agree on the amount of costs and attorney's fees to be paid by the department the property owner may file a complaint in circuit court; providing for the application of the act; providing an effective date.

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

Section 1. Section 73.0511, Florida Statutes, is created to read:

1	<u>73.0511 Prelitigation negotiation proceedings; costs</u>	1:1us
2	<u>and attorney's fees; apportionment of settlement.--</u>	1.19
3	<u>(1) Any person who intends to exercise the power of</u>	1:1us
4	<u>eminent domain shall negotiate in good faith with the fee</u>	1.21
5	<u>owner of the property to be acquired, the lessee, mortgagee,</u>	
6	<u>judgment creditor, lienholder, and any other person having an</u>	1.22
7	<u>interest in the property and shall attempt to arrive at an</u>	1.23
8	<u>agreed amount of compensation to be paid for the property.</u>	
9	<u>(2) At the inception of negotiation for acquisition,</u>	1:1us
10	<u>the condemning authority shall notify the persons specified in</u>	1.25
11	<u>subsection (1) whose interest and address is ascertainable</u>	
12	<u>through diligent search of the following:</u>	1.26
13	<u>(a) That all or a portion of his property is necessary</u>	1.27
14	<u>for a particular project;</u>	
15	<u>(b) The nature of the project for which the parcel is</u>	1.28
16	<u>deemed necessary;</u>	
17	<u>(c) The fee owner's statutory rights under ss. 73.091</u>	1.29
18	<u>and 73.092; and</u>	
19	<u>(d) The fee owner's rights and responsibilities under</u>	1.30
20	<u>subsections (4), (5), and (6).</u>	
21	<u>(3) The notice shall be sent by certified mail, return</u>	1:1us
22	<u>receipt requested. The return of the notice as undeliverable</u>	1.32
23	<u>by the postal authorities constitutes compliance with this</u>	1.33
24	<u>provision. The condemning authority is not required to give</u>	1.34
25	<u>notice to a person who acquires title to the property</u>	1.35
26	<u>subsequent to the notice required by this section.</u>	
27	<u>(4) The fee owner may, within 120 days after receipt</u>	1:1us
28	<u>of the notice required by subsection (2) or at a later date</u>	1.37
29	<u>specified by the condemning authority, submit a complete</u>	
30	<u>appraisal report relating to the parcel to be acquired. The</u>	1.39
31	<u>report submitted shall contain all data and information upon</u>	

1	<u>which the appraiser's conclusions are based and shall be</u>	1.40
2	<u>prepared by an appraiser who has been qualified and accepted</u>	
3	<u>as an expert real estate appraiser in an eminent domain</u>	1.41
4	<u>proceeding in this state within the prior 3 years. Such</u>	1.42
5	<u>appraiser shall be actively registered with the Florida Real</u>	
6	<u>Estate Commission as a real estate broker or salesman. On</u>	1.44
7	<u>property subject to multiple ownership interests, there shall</u>	
8	<u>be submitted only one appraisal report which shall be the</u>	1.45
9	<u>appraisal report submitted by the fee owner.</u>	
10	<u>(5) A person who intends to claim business damages</u>	1:lus
11	<u>pursuant to s. 73.071(3)(b) may, within 120 days after receipt</u>	1.47
12	<u>of the notice required by subsection (2) or at a later time</u>	
13	<u>specified by the condemning authority, submit to the condemnor</u>	1.48
14	<u>a complete estimate of business damages to the property. The</u>	1.50
15	<u>estimate shall explain the nature and extent of such damages</u>	
16	<u>and shall be prepared by either the business owner or a</u>	1.51
17	<u>certified public accountant. The business owner shall permit</u>	1.52
18	<u>the condemning authority to copy and examine, at the business</u>	
19	<u>owner's convenience, such of his business records as the</u>	1.53
20	<u>condemnor determines to be necessary for it to arrive at an</u>	1.54
21	<u>estimate of business damages.</u>	
22	<u>(6) Within 30 days after receipt of the fee owner's</u>	1:lus
23	<u>appraisal report and the estimate of business damages if</u>	1.56
24	<u>submitted, the condemnor shall submit to the fee owner all</u>	
25	<u>appraisal reports prepared for it which relate to the owner's</u>	1.57
26	<u>parcel and submit to the business owner any estimate of</u>	1.58
27	<u>business damages prepared.</u>	
28	<u>(7) Any statement by the condemnor's or fee owner's</u>	1:lus
29	<u>appraiser or accountant relating to facts or conclusions used</u>	1.60
30	<u>in arriving at such appraiser's or accountant's estimate of</u>	
31		

1	<u>value or damages may be used by any party during negotiations</u>	1.61
2	<u>under this section.</u>	
3	<u>(8) After receipt of the appraisal report prepared for</u>	1:1us
4	<u>the fee owner and the estimate of business damages if</u>	1.63
5	<u>submitted, the condemnor shall make an offer of purchase to</u>	
6	<u>the fee owner, business owner, and other interested persons,</u>	1.64
7	<u>if any, which includes the value of the land and improvements</u>	1.65
8	<u>taken and any business or severance damages.</u>	
9	<u>(9) When the condemning authority and the fee owners</u>	1:1us
10	<u>agree in prelitigation negotiation to the total amount of a</u>	1.67
11	<u>settlement in the acquisition of property which would</u>	
12	<u>otherwise have been subject to the exercise of eminent domain</u>	1.68
13	<u>except for such settlement, and the amount is subject to</u>	1.69
14	<u>apportionment which cannot be agreed upon between the other</u>	
15	<u>interested parties, the condemnor shall file, in the circuit</u>	1.70
16	<u>court of the county in which the property is located, a</u>	1.71
17	<u>complaint setting forth the details of the acquisition and</u>	
18	<u>settlement, tendering therewith the agreed amount into the</u>	1.72
19	<u>court registry, and requesting immediate entry of a final</u>	
20	<u>judgment against all of the defendants on the property so</u>	1.73
21	<u>acquired. Copies of the complaint and final judgment shall be</u>	1.74
22	<u>served on all interested parties in the manner and form</u>	1.75
23	<u>provided by law. Any defendant who claims an interest in the</u>	1.76
24	<u>award shall, within 20 days after service, file appropriate</u>	1.77
25	<u>pleadings to bring the issue of apportionment before the</u>	
26	<u>court, and the matter shall thereafter proceed according to</u>	1.78
27	<u>the provisions of this chapter.</u>	
28	<u>(10) When a settlement is reached under this section,</u>	1:1us
29	<u>each person who has an interest in the property may submit an</u>	1.80
30	<u>invoice to the condemning authority, which shall pay all</u>	
31	<u>reasonable costs, including reasonable attorney's fees.</u>	1.81

1	<u>incurred on behalf of any owner or interested person who</u>	1.02
2	<u>proceeds to prelitigation negotiation settlement pursuant to</u>	
3	<u>this section. The attorney's fees shall be based on the</u>	1.03
4	<u>criteria of s. 73.092. The invoice shall state the nature of</u>	1.84
5	<u>the services performed by date, the number of hours expended</u>	
6	<u>by date, and the hourly rate for such services. Reasonable</u>	2.2
7	<u>appraisal or accountant fees as authorized by this section</u>	
8	<u>shall not exceed the general or customary hourly rate in the</u>	2.4
9	<u>community. If the condemnor cannot agree with the fee owner</u>	2.5
10	<u>and other interested persons to the amount of costs and</u>	2.6
11	<u>attorney's fees, the circuit court in the county where the</u>	
12	<u>property is located shall have original jurisdiction over an</u>	2.7
13	<u>action to recover reasonable fees and costs.</u>	
14	<u>(11) An offer of purchase not accepted within 30 days</u>	1:lus
15	<u>shall be considered withdrawn.</u>	2.9
16	<u>(12) If the judgment ultimately entered at trial is</u>	1:lus
17	<u>less than or equal to the offer of purchase, attorney's fees</u>	2.11
18	<u>may not be awarded to the property owner for services rendered</u>	
19	<u>by his attorney after the time of rejection or expiration of</u>	2.12
20	<u>the offer.</u>	
21	<u>(13) The offer of purchase procedure described above</u>	1:lus
22	<u>does not preclude the award of attorney's fees in a legitimate</u>	2.14
23	<u>contest of the plaintiff's right to take or in apportionment</u>	
24	<u>proceedings between multiple owners.</u>	2.15
25	<u>(14) Evidence of negotiations conducted by the parties</u>	1:lus
26	<u>pursuant to this section shall not be admissible in any</u>	2.17
27	<u>subsequent proceeding.</u>	
28	Section 2. Subsections (1) and (6) of section 73.092,	2.19
29	Florida Statutes, are amended, and subsections (7) and (8) are	
30	added to said section, to read:	2.20
31		

1	73.092 Attorney's fees.--In assessing attorney's fees	2.21
2	in eminent domain proceedings, the court shall consider:	2.22
3	(1) Benefits resulting to the client from the services	2.23
4	rendered. <u>However, under no circumstances shall the</u>	1:lus
5	<u>attorney's fees be based solely on a percentage of the award.</u>	2.26
6	(6) The attorney's time and labor reasonably required	2.27
7	adequately to represent the client.	2.28
8	(a) The condemnee's attorney shall submit to the	1:lom
9	condemning authority and to the court complete time records	2.31
10	and a detailed statement of services rendered by date, nature	
11	of services performed, time spent performing such services,	2.32
12	and costs incurred at least 30 days prior to a hearing to	2.33
13	assess attorney's fees under this section.	
14	(b)--This subsection shall apply to all proceedings	1:lom
15	filed after July 1, 1985.	2.35
16		
17	However, under no circumstances shall the attorney's fees be	2.38
18	based solely on a percentage of the award.	
19	(7) Where an offer of judgment made by the petitioner,	1:lus
20	<u>pursuant to the Florida Rules of Civil Procedure, is either</u>	2.40
21	<u>rejected or expires, and the verdict or judgment is less than</u>	
22	<u>or equal to the offer of judgment, no attorney's fees or costs</u>	2.41
23	<u>shall be awarded for time spent by the attorney or costs</u>	2.43
24	<u>incurred after the time of rejection or expiration of the</u>	
25	<u>offer. Where an offer of judgment is accepted or the verdict</u>	2.44
26	<u>exceeds the offer of judgment, attorney's fees and costs shall</u>	2.45
27	<u>be determined in accordance with subsection (1). An offer of</u>	2.46
28	<u>judgment shall not be made by the petitioner until the</u>	
29	<u>expiration of 180 days from the filing date of a petition</u>	2.47
30	<u>under this chapter or chapter 74.</u>	
31		

1	<u>(8) For the purposes of Florida Rule of Civil</u>	1:1us
2	<u>Procedure 1.442, a condemning authority shall be considered a</u>	2.49
3	<u>party defending against a claim at any time after the entry of</u>	
4	<u>an order of taking in any condemnation action.</u>	2.50
5	Section 3. Subsection (2) of section 73.131, Florida	2.51
6	Statutes, is amended to read:	
7	73.131 Appeals; costs.--	2.52
8	(2) The petitioner shall pay all reasonable costs of	2.53
9	the proceedings in the appellate court, including a reasonable	2.54
10	attorney's fee to be assessed by that court, except upon an	2.55
11	appeal taken by a defendant in which the judgment of the <u>lower</u>	2.56
12	<u>trial</u> court shall be affirmed.	
13	Section 4. Subsection (6) of section 337.271, Florida	2.57
14	Statutes, is amended to read:	
15	337.271 Negotiations for acquisitions.--	2.58
16	(6) Upon submission of an invoice <u>which complies with</u>	2.59
17	<u>the requirements of this subsection from the fee owner's</u>	2.61
18	<u>appraiser, the department shall pay all reasonable costs,</u>	2.62
19	<u>including reasonable attorney's fees, incurred on behalf of a</u>	
20	<u>property owner who proceeds to prelitigation negotiation</u>	2.63
21	<u>settlement pursuant to the provisions of this section. The</u>	2.65
22	<u>attorney's fees shall be based upon the criteria of s. 73.092</u>	
23	the reasonable cost of obtaining the appraiser report provided	2.67
24	for in subsection (4) and the reasonable cost of an estimate	2.69
25	of business damages prepared by a certified public accountant	
26	provided for in subsection (5). The invoice shall state the	2.72
27	nature of the services performed by date, the number of hours	
28	expended by date, and the hourly rate for such services.	2.73
29	Reasonable appraisal or accountant fees as authorized by this	2.75
30	section shall not exceed the general or customary hourly rate	2.76
31	for appraisal or accounting fees in the community. <u>If the</u>	1:1us

1	<u>parties cannot agree on the amount of costs and attorney's</u>	
2	<u>fees to be paid by the department, the property owner may file</u>	2.79
3	<u>a complaint in the circuit court in the county where the</u>	
4	<u>property is located to recover reasonable attorney's fees and</u>	2.80
5	<u>costs.</u>	
6	Section 5. This act shall take effect upon becoming a	2.81
7	law, provided that the provisions of section 2 of this act	2.82
8	shall apply only to actions filed after the effective date of	
9	this act.	2.83
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By the Committees on Appropriations and Judiciary and Representatives Bell, Jennings, Northam

This publication was produced at an average cost of 15 cents per printing page in compliance with the Rules and for the information of members of the Legislature and the public.

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A bill to be entitled
An act relating to land acquisition; creating s. 73.0511, F.S.; providing for prelitigation notice; amending s. 73.092, F.S.; revising language with respect to attorney's fees in eminent domain proceedings; providing for an offer of judgment by the petitioner; providing that a condemning authority shall be considered the party defending against a claim in the event of an appeal of the judgment order; amending s. 73.131, F.S.; revising language with respect to appeals costs; amending s. 337.271, F.S.; providing that the Department of Transportation shall pay all reasonable costs and attorney's fees incurred pursuant to a prelitigation settlement; providing that if the parties cannot agree on the amount of costs and attorney's fees to be paid by the department the property owner may file a complaint in circuit court; providing for the application of the act; providing an effective date.

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

Section 1. Section 73.0511, Florida Statutes, is created to read:

73.0511 Prelitigation notice.--Prior to instituting litigation, the condemning authority shall notify the fee owners of statutory rights under s. 73.091.

1	Section 2. Subsections (1) and (6) of section 73.092,	1.19
2	Florida Statutes, are amended, and subsections (7) and (8) are	
3	added to said section, to read:	1.20
4	73.092 Attorney's fees.--In assessing attorney's fees	1.21
5	in eminent domain proceedings, the court shall consider:	1.22
6	(1) Benefits resulting to the client from the services	1.23
7	rendered. <u>However, under no circumstances shall the</u>	1:1us
8	<u>attorney's fees be based solely on a percentage of the award.</u>	1.26
9	(6) The attorney's time and labor reasonably required	1.27
10	adequately to represent the client.	1.28
11	(a) The condemnee's attorney shall submit to the	1:1oe
12	condemning authority and to the court complete time records	1.31
13	and a detailed statement of services rendered by date, nature	
14	of services performed, time spent performing such services,	1.32
15	and costs incurred at least 30 days prior to a hearing to	1.33
16	assess attorney's fees under this section.	
17	(b)--This subsection shall apply to all proceedings	1:1os
18	filed after July 17, 1985.	1.35
19		
20	However, under no circumstances shall the attorney's fees be	1.38
21	based solely on a percentage of the award.	
22	(7) <u>Where an offer of judgment made by the petitioner,</u>	1:1us
23	<u>pursuant to the Florida Rules of Civil Procedure, is either</u>	1.40
24	<u>rejected or expires, and the verdict or judgment is less than</u>	
25	<u>or equal to the offer of judgment, no attorney's fees or costs</u>	1.41
26	<u>shall be awarded for time spent by the attorney or costs</u>	1.43
27	<u>incurred after the time of rejection or expiration of the</u>	
28	<u>offer. Where an offer of judgment is accepted or the verdict</u>	1.44
29	<u>exceeds the offer of judgment, attorney's fees and costs shall</u>	1.45
30	<u>be determined in accordance with subsection (1). An offer of</u>	1.46
31	<u>judgment shall not be made by the petitioner until the</u>	

1	<u>expiration of 180 days from the filing date of a petition</u>	1.47
2	<u>under this chapter or chapter 74.</u>	
3	<u>(8) For the purposes of Florida Rule of Civil</u>	1.1us
4	<u>Procedure 1.442, a condemning authority shall be considered a</u>	1.49
5	<u>party defending against a claim at any time after the entry of</u>	
6	<u>an order of taking in any condemnation action.</u>	1.50
7	Section 3. Subsection (2) of section 73.131, Florida	1.51
8	Statutes, is amended to read:	
9	73.131 Appeals; costs.--	1.52
10	(2) The petitioner shall pay all reasonable costs of	1.53
11	the proceedings in the appellate court, including a reasonable	1.54
12	attorney's fee to be assessed by that court, except upon an	1.55
13	appeal taken by a defendant in which the judgment of the <u>lower</u>	1.56
14	trial court shall be affirmed.	
15	Section 4. Subsection (6) of section 337.271, Florida	1.57
16	Statutes, is amended to read:	
17	337.271 Negotiations for acquisitions.--	1.58
18	(6) Upon submission of an invoice <u>which complies with</u>	1.59
19	<u>the requirements of this subsection from the fee owner's</u>	1.61
20	<u>appraiser, the department shall pay all reasonable costs,</u>	1.62
21	<u>including reasonable attorney's fees, incurred on behalf of a</u>	
22	<u>property owner who proceeds to prelitigation negotiation.</u>	1.63
23	<u>settlement pursuant to the provisions of this section. The</u>	1.65
24	<u>attorney's fees shall be based upon the criteria of s. 73.092</u>	
25	the reasonable cost of obtaining the appraisal report provided	1.67
26	for in subsection (4) and the reasonable cost of an estimate	1.69
27	of business damages prepared by a certified public accountant	
28	provided for in subsection (5). The invoice shall state the	1.72
29	nature of the services performed by date, the number of hours	
30	expended by date, and the hourly rate for such services.	1.73
31	Reasonable appraisal or accountant fees as authorized by this	1.75

1	section shall not exceed the general or customary hourly rate	1.76
2	for appraisal or accounting fees in the community. <u>If the</u>	1.1us
3	<u>parties cannot agree on the amount of costs and attorney's</u>	
4	<u>fees to be paid by the department, the property owner may file</u>	1.79
5	<u>a complaint in the circuit court in the county where the</u>	
6	<u>property is located to recover reasonable attorney's fees and</u>	1.80
7	<u>costs.</u>	
8	Section 5. This act shall take effect upon becoming a	1.81
9	law, provided that the provisions of section 2 of this act	1.82
10	shall apply only to actions filed after the effective date of	
11	this act,	1.83
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By Senator Brown

A bill to be entitled

An act relating to land acquisition; amending s. 73.092, F.S.; revising language with respect to attorney's fees in eminent domain proceedings; providing for an offer of judgment by the petitioner; providing that a condemning authority shall be considered the party defending against a claim in the event of an appeal of the judgment order; amending s. 337.271, F.S.; providing that the Department of Transportation shall pay all reasonable costs and attorney's fees incurred pursuant to a prelitigation settlement; providing that any disagreement of the parties as to the reasonableness of costs and attorney's fees shall be resolved pursuant to the Administrative Procedure Act; providing an effective date.

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

Section 1. Subsections (1) and (6) of section 73.092, Florida Statutes, are amended, and subsections (7) and (8) are added to said section, to read:

73.092 Attorney's fees.--In assessing attorney's fees in eminent domain proceedings, the court shall consider:

(1) Benefits resulting to the client from the services rendered. However, under no circumstances shall the attorney's fees be based solely on a percentage of the award.

(6) The attorney's time and labor reasonably required adequately to represent the client.

This publication was produced at an average cost of 1.5 cents per page for the information of members of the Legislature and the public.

1 (a) The condemnee's attorney shall submit to the
2 condemning authority and to the court complete time records
3 and a detailed statement of services rendered by date, nature
4 of services performed, time spent performing such services,
5 and costs incurred at least 30 days prior to a hearing to
6 assess attorney's fees under this section.

7 (b) This subsection shall apply to all proceedings
8 filed after July 1, 1985.

9
10 ~~However, under no circumstances shall the attorney's fees be~~
11 ~~based solely on a percentage of the award.~~

12 (7) Where an offer of judgment made by the petitioner,
13 pursuant to the Florida Rules of Civil Procedure, is either
14 rejected or expires, and the verdict or judgment is less than
15 or equal to the offer of judgment, no attorney's fees or costs
16 shall be awarded for time spent by the attorney or costs
17 incurred after the time of rejection or expiration of the
18 offer. Where an offer of judgment is accepted or the verdict
19 exceeds the offer of judgment, attorney's fees and costs shall
20 be determined in accordance with subsection (1). An offer of
21 judgment shall not be made by the petitioner until the
22 expiration of 180 days from the filing date of a petition
23 under this chapter or chapter 74.

24 (8) For the purposes of Florida Rule of Civil
25 Procedure 1.442, a condemning authority shall be considered a
26 party defending against a claim at any time after the entry of
27 an order of taking in any condemnation action.

28 Section 2. Subsection (6) of section 337.271, Florida
29 Statutes, is amended to read.

30 337.271 Negotiations for acquisitions.--
31

1 (6) Upon submission of an invoice ~~which complies with~~
2 the requirements of this subsection from the fee owner's
3 appraiser, the department shall pay all reasonable costs,
4 including reasonable attorney's fees, incurred on behalf of a
5 property owner who proceeds to prelitigation negotiation
6 settlement pursuant to the provisions of this section. The
7 attorney's fees shall be based upon the criteria of s. 73.092
8 ~~the reasonable cost of obtaining the appraisal report provided~~
9 ~~for in subsection (4) and the reasonable cost of an estimate~~
10 ~~of business damages prepared by a certified public accountant~~
11 ~~provided for in subsection (5).~~ The invoice shall state the
12 nature of the services performed by date, the number of hours
13 expended by date, and the hourly rate for such services.
14 Reasonable costs or attorney's appraisal or accountant fees as
15 authorized by this section shall not exceed the general or
16 customary hourly rate for such services appraisal or
17 accounting fees in the community. Any disagreement of the
18 parties as to reasonableness of such costs and attorney's fees
19 shall be resolved pursuant to chapter 120, the Administrative
20 Procedure Act.

21 Section 3. This act shall take effect upon becoming a
22 law.

23 *****

24 HOUSE SUMMARY

25 Revises language with respect to attorney's fees in
26 eminent domain proceedings to provide for fees with
27 respect to an offer of judgment by the petitioner and to
28 provide that a condemning authority shall be considered
29 the party defending against a claim in the event of an
30 appeal of the judgment order. Provides that the
31 Department of Transportation shall pay all reasonable
costs and attorney's fees incurred pursuant to certain
prelitigation settlements. Provides that any
disagreement of the parties as to the reasonableness of
costs and attorney's fees shall be resolved pursuant to
the Administrative Procedure Act.

By the Committee on Judiciary-Civil and Senators Brown, Beard and Dudley

This publication was produced at
for the information of members of
Legislature and the public.
verage cost of 1.5 cents per page

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A bill to be entitled
An act relating to land acquisition; creating
s. 73.0511, F.S.; providing for prelitigation
notice; amending s. 73 092, F.S.; revising
language with respect to attorney's fees in
eminent domain proceedings; providing for an
offer of judgment by the petitioner, providing
that the offer must be accepted or rejected
within a certain period of time; amending s.
73.131, F.S., revising language with respect to
appeals costs; amending s. 337.271, F.S ;
providing that the Department of Transportation
shall pay all reasonable costs and attorney's
fees incurred pursuant to a prelitigation
settlement; providing that if the parties
cannot agree on the amount of costs and
attorney's fees to be paid by the department
the property owner may file a complaint in
circuit court; providing for the application of
the act; providing an effective date.

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

Section 1. Section 73.0511, Florida Statutes, is
created to read:

73.0511 Prelitigation notice.--Prior to instituting
litigation, the condemning authority shall notify the fee
owners of statutory rights under s. 73.091.

Section 2. Section 73.092, Florida Statutes, is
amended to read:

73.092 Attorney's fees.--

1 (1) In assessing attorney's fees in eminent domain
2 proceedings, the court shall consider:

3 (a)†1 Benefits resulting to the client from the
4 services rendered. However, under no circumstances shall the
5 attorney's fees be based solely on a percentage of the award.

6 (b)†2 The novelty, difficulty, and importance of the
7 questions involved.

8 (c)†3 The skill employed by the attorney in
9 conducting the cause

10 (d)†4 The amount of money involved

11 (e)†5 The responsibility incurred and fulfilled by
12 the attorney.

13 (f)†6 The attorney's time and labor reasonably
14 required adequately to represent the client.

15 †a The condemnee's attorney shall submit to the
16 condemning authority and to the court complete time records
17 and a detailed statement of services rendered by date, nature
18 of services performed, time spent performing such services,
19 and costs incurred at least 30 days prior to a hearing to
20 assess attorney's fees under this section.

21 ~~†b) -- This subsection shall apply to all proceedings~~
22 ~~filed after July 17, 1985.~~

23
24 ~~However, under no circumstances shall the attorney's fees be~~
25 ~~based solely on a percentage of the award.~~

26 (2) If an offer of judgment made by the petitioner,
27 pursuant to the Florida Rules of Civil Procedure, is either
28 rejected or expires, and the verdict or judgment is less than
29 or equal to the offer of judgment, no attorney's fees or costs
30 shall be awarded for time spent by the attorney or costs
31 incurred after the time of rejection or expiration of the

1 offer. If an offer of judgment is accepted or the verdict
 2 exceeds the offer of judgment, attorney's fees and costs shall
 3 be determined in accordance with subsection (1). An offer of
 4 judgment shall not be made by the petitioner until the
 5 expiration of 180 days from the filing date of a petition
 6 under this chapter or chapter 74.

7 (3) The offer of judgment shall be accepted or
 8 rejected within 30 days, or at such other time as the court
 9 shall provide, or it shall be deemed to be rejected.

10 Section 3. Subsection (2) of section 73.131, Florida
 11 Statutes, is amended to read:

12 73.131 Appeals, costs.--

13 (2) The petitioner shall pay all reasonable costs of
 14 the proceedings in the appellate court, including a reasonable
 15 attorney's fee to be assessed by that court, except upon an
 16 appeal taken by a defendant in which the judgment of the lower
 17 ~~trial~~ court shall be affirmed.

18 Section 4. Subsection (6) of section 337.271, Florida
 19 Statutes, is amended to read

20 337.271 Negotiations for acquisitions.--

21 (6) Upon submission of an invoice which complies with
 22 the requirements of this subsection from the fee owner's
 23 appraiser, the department shall pay all reasonable costs,
 24 including reasonable attorney's fees, incurred on behalf of a
 25 property owner who proceeds to prelitigation negotiation
 26 settlement pursuant to the provisions of this section. The
 27 attorney's fees shall be based on the criteria of s. 73 092.
 28 ~~the reasonable cost of obtaining the appraisal report provided~~
 29 ~~for in subsection (4) and the reasonable cost of an estimate~~
 30 ~~of business damages prepared by a certified public accountant~~
 31 ~~provided for in subsection (5);~~ The invoice shall state the

1 nature of the services performed by date, the number of hours
 2 expended by date, and the hourly rate for such services.
 3 Reasonable appraisal or accountant fees as authorized by this
 4 section shall not exceed the general or customary hourly rate
 5 for appraisal or accounting fees in the community If the
 6 parties cannot agree on the amount of costs and attorney's
 7 fees to be paid by the department, the property owner may file
 8 a complaint in the circuit court in the county where the
 9 property is located to recover reasonable attorney's fees and
 10 costs.

11 Section 5. This act shall take effect upon becoming a
 12 law, provided that the provisions of section 2 of this act
 13 shall apply only to actions filed after the effective date of
 14 this act.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
 COMMITTEE SUBSTITUTE FOR
Senate Bill 109

1. The offer of judgment would have to be accepted or rejected within 30 days, or within such other time as the court may provide, or it would be deemed rejected.
2. Any disagreement as to the amount of attorney fees or costs would be resolved in circuit court.

BILL VOTE SHEET

(VS-87: File with Secretary of Senate)

BILL NO. CS/SB 109

COMMITTEE ON Appropriations

DATE May 26, 1987

FINAL ACTION:

TIME 2:00 p.m.

Favorably with 0 amendments

PLACE Committee Room "A"

Favorably with Committee Substitute

OTHER COMMITTEE REFERENCES:
(In order shown)

Unfavorably

OTHER: Temporarily Passed

Reconsidered

Not Considered

THE VOTE WAS:

FINAL BILL VOTE		SENATORS										
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
x		Beard										
x		Brown										
		W.D. Childers										
x		Grant										
x		Grizzle										
x		Hair										
	x	Hollingsworth										
x		Jennings										
		Kirkpatrick										
x		Langley										
x		Lehtinen										
x		Margolis										
x		Myers										
x		Peterson										
x		Thomas										
x		VICE CHAIRMAN D. Childers										
x		CHAIRMAN Scott										
14*	1	TOTAL										
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

* Present at the table without objection (Attach additional page if necessary)

Please Complete: The key sponsor appeared (x)
 A Senator appeared ()
 Sponsor's aide appeared ()
 Other appearance (x)

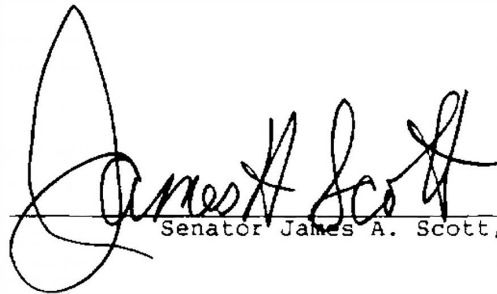
May 26, 1987

REPORTS OF COMMITTEES

The Committee on Appropriations recommends
the following pass:

- SB 33
- SB 58 with 1 amendment
- SB 102 with 2 amendments
- CS/SB 109
- CS/SB 182 with 2 amendments
- SB 269 with 1 amendment
- SB 272
- CS/SB 385 & 122 with 2 amendments
- CS/SB 413
- SB 544
- CS/SB 663 with 4 amendments
- CS/SB 715 & 664 & 850 with 1 amendment
- CS/SB 733
- CS/SB 799 & 132 with 1 amendment
- CS/SB 805 & 1127 & 751 with 2 amendments
- CS/SB 976
- CS/SB 982
- CS/SB 1247
- CS/SB 1256

18 1659



Senator James A. Scott, Chairman

Next reference: Calendar

COMMITTEE INFORMATION RECORD

House of Representatives

Committee on Appropriations

Bill No. CS/HB 18

Date of meeting April 30, 1987

Time 10:30 a.m.

Place 21 HOB - Morris Hall

FINAL ACTION: FAVORABLE
 FAVORABLE WITH AMENDMENTS
 FAVORABLE WITH SUBSTITUTE
 UNFAVORABLE

VOTE:

YEA	MEMBER	NAY
X	BANKHEAD	
X	BASS	
X	BROWN	
X	BURKE	
X	BURNS	
X	CARLTON	
X	CARPENTER	
X	CRADY	
X	CROTTY	
X	DAVIS	
X	FRIEDMAN	
X	GARDNER	
X	GOODE	
X	GORDON	
	GUSTAFSON	
X	HAWKINS	
X	JAMERSON	
X	JOHNSON, B.L.	
X	JOHNSON, R.C.	

YEA	MEMBER	NAY
X	JONES, C.F.	
X	JONES, D.L.	
X	KELLY	
X	LIBERTI	
X	LIPPMAN	
X	MARTIN	
X	MARTINEZ	
	MESSERSMITH	
X	METCALF	
X	MITCHELL	
X	OGDEN	
	PEEPLES	
X	REDDICK	
X	SILVER	
X	SOUTO	
X	TOBIN	
X	UPCHURCH	
X	WETHERELL	
X	BELL (CH.)	

19 1579

Yeas 35 Nays 0

 Chairman

COMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

Name Representing Address

NOTE: Please indicate by an "X" any State employee appearing at the request of Committee Chairman.

(If additional persons, enter on reverse side and check here)

KEYPOINTS CS/CS/HB 18

DATE: 05/29/87

#1 TECHNICAL CORRECTION OF A REFERENCE.

#2 ADD A PROVISION WHICH WAS ADOPTED BY THE SENATE JUDICIARY
CIVIL COMMITTEE TO PROVIDE THAT THE OFFER OF JUDGMENT MUST
BE ACCEPTED OR REJECTED WITHIN 30 DAYS OR AT SUCH OTHER
TIME AS THE COURT PROVIDES, OR IT WILL BE DEEMED TO BE
REJECTED.

#3 CLARIFIES THAT ACCOUNTING FEES MUST BE PAID AS A COST FOR
COMPENSABLE BUSINESS DAMAGES IN AN EMINENT DOMAIN
PROCEEDING.

#4 TITLE AMENDMENT.

18 1634

**GENERAL ACTS
RESOLUTIONS AND MEMORIALS
ADOPTED BY THE
TENTH LEGISLATURE OF FLORIDA
UNDER THE CONSTITUTION
AS REVISED IN 1968
During the Regular Session
April 7, 1987 through June 6, 1987
and the Special Session
February 4, 1987**



**Volume I, Part One
Published by Authority of Law
Under Direction of the
JOINT LEGISLATIVE MANAGEMENT
COMMITTEE
TALLAHASSEE**

1987

Approved by the Governor June 30, 1987.

Filed in Office Secretary of State June 30, 1987.

CHAPTER 87-148

Committee Substitute for Committee Substitute
for House Bill No. 18

An act relating to land acquisition; creating s. 73.0511, F.S.; providing for prelitigation notice; amending s. 73.092, F.S.; revising language with respect to attorney's fees in eminent domain proceedings; providing for an offer of judgment by the petitioner; providing that a condemning authority shall be considered the party defending against a claim in the event of an appeal of the judgment order; providing that the offer must be accepted or rejected within a certain period of time; amending s. 73.131, F.S.; revising language with respect to appeals costs; amending s. 337.271, F.S.; providing that the Department of Transportation shall pay all reasonable costs and attorney's fees incurred pursuant to a prelitigation settlement; providing that if the parties cannot agree on the amount of costs and attorney's fees to be paid by the department the property owner may file a complaint in circuit court; providing for the application of the act; providing an effective date.

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

Section 1. Section 73.0511, Florida Statutes, is created to read:

73.0511 Prelitigation notice.--Prior to instituting litigation, the condemning authority shall notify the fee owners of statutory rights under s. 73.091.

Section 2. Section 73.091, Florida Statutes, is amended to read:

73.091 Costs of the proceedings.--Except as provided in s. 73.092(7), the petitioner shall pay all reasonable costs of the proceedings in the circuit court, including, but not limited to, a reasonable attorney's fee, reasonable appraisal fees, and when business damages are compensable, a reasonable accountant's fee, to be assessed by that court.

Section 3. Subsections (1) and (6) of section 73.092, Florida Statutes, are amended, and subsections (7), (8), and (9) are added to said section, to read:

73.092 Attorney's fees.--In assessing attorney's fees in eminent domain proceedings, the court shall consider:

(1) Benefits resulting to the client from the services rendered. However, under no circumstances shall the attorney's fees be based solely on a percentage of the award.

(6) The attorney's time and labor reasonably required adequately to represent the client.

(a) The condemnee's attorney shall submit to the condemning authority and to the court complete time records and a detailed statement of services rendered by date, nature of services performed, time spent performing such services, and costs incurred at least 30 days prior to a hearing to assess attorney's fees under this section.

~~(b) This subsection shall apply to all proceedings filed after July 1, 1985.~~

~~However, under no circumstances shall the attorney's fees be based solely on a percentage of the award.~~

(7) Where an offer of judgment made by the petitioner, pursuant to the Florida Rules of Civil Procedure, is either rejected or expires, and the verdict or judgment is less than or equal to the offer of judgment, no attorney's fees or costs shall be awarded for time spent by the attorney or costs incurred after the time of rejection or expiration of the offer. Where an offer of judgment is accepted or the verdict exceeds the offer of judgment, attorney's fees and costs shall be determined in accordance with subsections (1)-(6). An offer of judgment shall not be made by the petitioner until the expiration of 180 days from the filing date of a petition under this chapter or chapter 74.

(8) The offer of judgment shall be accepted or rejected within 30 days, or at such other time as the court shall provide, or it shall be deemed to be rejected.

(9) For the purposes of Florida Rule of Civil Procedure 1.442, a condemning authority shall be considered a party defending against a claim at any time after the entry of an order of taking in any condemnation action.

Section 4. Subsection (2) of section 73.131, Florida Statutes, is amended to read:

73.131 Appeals; costs.--

(2) The petitioner shall pay all reasonable costs of the proceedings in the appellate court, including a reasonable attorney's fee to be assessed by that court, except upon an appeal taken by a defendant in which the judgment of the lower trial court shall be affirmed.

Section 5. Subsection (6) of section 337.271, Florida Statutes, is amended to read:

337.271 Negotiations for acquisitions.--

(6) Upon submission of an invoice which complies with the requirements of this subsection from the fee owner's appraiser, the department shall pay all reasonable costs, including reasonable attorney's fees, incurred on behalf of a property owner who proceeds to prelitigation negotiation settlement pursuant to the provisions of this section. The attorney's fees shall be based upon the criteria of s. 73.092 the reasonable cost of obtaining the appraisal report provided for in subsection (4) and the reasonable cost of an estimate of business damages prepared by a certified public accountant provided for in subsection (5). The invoice shall state the nature of the services performed by date, the number of hours expended by

date, and the hourly rate for such services. Reasonable appraisal or accountant fees as authorized by this section shall not exceed the general or customary hourly rate for appraisal or accounting fees in the community. If the parties cannot agree on the amount of costs and attorney's fees to be paid by the department, the property owner may file a complaint in the circuit court in the county where the property is located to recover reasonable attorney's fees and costs.

Section 6. This act shall take effect upon becoming a law, provided that the provisions of section 2 of this act shall apply only to actions filed after the effective date of this act.

Approved by the Governor June 30, 1987.

Filed in Office Secretary of State June 30, 1987.

CHAPTER 87-149

Committee Substitute for House Bill No. 26

An act relating to the Florida Retirement System; amending s. 121.091, F.S., providing a minimum retirement benefit for disabled retirees after return to employment and subsequent retirement; providing retroactive coverage; providing an effective date.

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

Section 1. Paragraph (e) of subsection (4) of section 121.091, Florida Statutes, 1986 Supplement, is amended to read:

121.091 Benefits payable under the system.--

(4) DISABILITY RETIREMENT BENEFIT.--

(e) Recovery from disability.--The administrator may require periodic reexaminations at the expense of the retirement fund, and:

1. If the administrator finds that a member who is receiving disability benefits is, at any time prior to his normal retirement date, no longer disabled, the administrator shall direct that the benefits be discontinued. The decision of the administrator on this question shall be final and binding.

2. If the member, described in subparagraph 1., who recovers from such disability prior to his normal retirement date does not reenter the employ of an employer and had not completed 10 years of creditable service as of his disability retirement date, he shall be entitled to the excess, if any, of his accumulated contributions over the total disability benefits received up to his date of recovery.

3. If the member, described in subparagraph 1., who recovers from such disability prior to his normal retirement date does not reenter the employ of an employer but had completed 10 or more years of creditable service as of his disability retirement date, he may elect to receive:

a. The excess, if any, of his accumulated contributions over the total disability benefits received up to his date of recovery, or

FLORIDA LEGISLATURE

History of Legislation 1987 Regular Session 1987 Special Session A



prepared by:

Joint Legislative Management Committee

Legislative Information Division
Capitol Building, Room 826 — 488-4371

HISTORY OF SENATE BILLS

S 108 (CONTINUED)

- vices, output, capacity, or energy of electric projects, saves such exemption from repeal, etc Amends 163 01 Effective Date 10/01/87
- 01/08/87 SENATE Prefiled
- 01/20/87 SENATE Referred to Governmental Operations, On Committee agenda—Governmental Operations, 02/03/87, 2 00 pm, Room-H
- 02/03/87 SENATE Comm Report Favorable by Governmental Operations, placed on Calendar
- 04/07/87 SENATE Introduced, referred to Governmental Operations -SJ 13, Comm Report Favorable by Governmental Operations, placed on Calendar -SJ 61
- 04/15/87 SENATE Placed on Special Order Calendar -SJ 79
- 04/16/87 SENATE Placed on Special Order Calendar -SJ 112 & -SJ 113, Iden /Sim House Bill substituted, Laid on Table under Rule, Iden /Sim /Compare Bill passed, refer to HB 190 (Ch 87-9) -SJ 119

S 109 GENERAL BILL/CS by Judiciary-Civil; Brown and others (Similar CS/CS/ENG/H 18)

- Land Acquisition/Eminent Domain, provides for prelitigation notice; revises language re attorney's fees in eminent domain proceedings, provides for offer of judgment by petitioner, provides that offer must be accepted or rejected within certain time, provides that DOT shall pay all reasonable costs & attorney's fees incurred pursuant to prelitigation settlement, provides for application of act, etc Amends 73 092, 131, 337 271, creates 73 0511 Effective Date Upon becoming law.
- 01/08/87 SENATE Prefiled
- 01/20/87 SENATE Referred to Judiciary-Civil, Transportation, Appropriations
- 04/07/87 SENATE Introduced, referred to Judiciary-Civil; Transportation, Appropriations -SJ 13
- 04/22/87 SENATE Extension of time granted Committee Judiciary-Civil
- 05/01/87 SENATE Extension of time granted Committee Judiciary-Civil
- 05/05/87 SENATE On Committee agenda—Judiciary-Civil, 05/07/87, 2 00 pm, Room-B
- 05/07/87 SENATE Comm Report CS by Judiciary-Civil -SJ 273
- 05/11/87 SENATE CS read first time -SJ 274, Now in Transportation -SJ 273, On Committee agenda—Transportation, 05/12/87, 2 00 pm, Room-C
- 05/12/87 SENATE Comm Report Favorable with 3 amendment(s) by Transportation -SJ 324
- 05/13/87 SENATE Now in Appropriations -SJ 324
- 05/21/87 SENATE On Committee agenda—Appropriations, 05/22/87, 9 00 am, Room-A—Temporarily postponed, Extension of time granted Committee Appropriations
- 05/22/87 SENATE On Committee agenda—Appropriations, 05/26/87, 2 00 pm, Room-A
- 05/26/87 SENATE Comm Report Favorable by Appropriations, placed on Calendar -SJ 417
- 05/29/87 SENATE Placed on Special Order Calendar -SJ 500
- 06/01/87 SENATE Placed on Special Order Calendar -SJ 530 & -SJ 531, Iden /Sim House Bill substituted -SJ 559; Laid on Table under Rule, Iden /Sim /Compare Bill passed, refer to CS/CS/HB 18 (Ch 87-148) -SJ 560

S 110 GENERAL BILL/CS by Natural Resources and Conservation; McPherson (Identical H 1471)

- Vessels/Title Fees, provides for additional fee for late title transfer application, increases fee for issuing duplicate title certificate & provides for expedited service for issuing such certificate Amends 328 03, 11 Effective Date, 10/01/87
- 01/08/87 SENATE Prefiled
- 01/20/87 SENATE Referred to Natural Resources and Conservation, Finance, Taxation and Claims, Appropriations
- 04/07/87 SENATE Introduced, referred to Natural Resources and Conservation, Finance, Taxation and Claims, Appropriations -SJ 13
- 04/17/87 SENATE Extension of time granted Committee Natural Resources and Conservation
- 05/01/87 SENATE Extension of time granted Committee Natural Resources and Conservation
- 05/05/87 SENATE On Committee agenda—Natural Resources and Conservation, 05/07/87, 2 00 pm, Room-H
- 05/07/87 SENATE Comm Report CS by Natural Resources and Conservation -SJ 273
- 05/08/87 SENATE CS read first time -SJ 274, Now in Finance, Taxation and Claims -SJ 273
- 05/19/87 SENATE Extension of time granted Committee Finance, Taxation and Claims
- 05/25/87 SENATE On Committee agenda—Finance, Taxation and Claims, 05/26/87, 2 00 pm, Room 1C -SJ 414
- 05/26/87 SENATE Comm Report Favorable by Finance, Taxation and Claims -SJ 416
- 05/27/87 SENATE Now in Appropriations -SJ 417
- 06/03/87 SENATE Withdrawn from Appropriations -SJ 628, Placed on Calendar

S 110 (CONTINUED)

- 06/05/87 SENATE Placed on Special Order Calendar -SJ 787, Iden /Sim House Bill substituted, Laid on Table under Rule, Iden /Sim /Compare Bill passed, refer to HB 1471 (Ch 87-291) -SJ 854

S 111 GENERAL BILL by Meek

- Postsecondary Equipment Authority, establishes said authority, provides for trust fund, authorizes authority to acquire equipment to support academic instruction & research & to lease or sell it to state universities & community colleges, provides for repossession & sale upon default of lease or sale agreement; prescribes general powers & duties of authority & special powers & duties re equipment acquisition & disposition Effective Date 07/01/87 or upon becoming law, whichever occurs later
- 01/09/87 SENATE Prefiled
- 01/20/87 SENATE Referred to Education, Governmental Operations, Finance, Taxation and Claims, Appropriations
- 04/07/87 SENATE Introduced, referred to Education, Governmental Operations, Finance, Taxation and Claims, Appropriations -SJ 13
- 04/16/87 SENATE Withdrawn from Education, Governmental Operations, Finance, Taxation and Claims, Appropriations, Indefinitely postponed -SJ 114

S 112 GENERAL BILL/ENG by Myers (Similar H 77)

- Controlled Substance/Schedule I & II, adds 2-amino-4-methyl-5-phenylloxazoline to list of Schedule I controlled substances, revises description of dronabinol listed as Schedule II controlled substance; provides penalties for certain acts involving such substances Amends 893 03 Effective Date 07/10/87
- 01/09/87 SENATE Prefiled
- 01/20/87 SENATE Referred to Judiciary-Criminal, Appropriations
- 02/13/87 SENATE On Committee agenda—Judiciary-Criminal, 03/03/87, 9 00 am, Room-C
- 03/03/87 SENATE Comm Report: Favorable with 1 amendment(s) by Judiciary-Criminal, Now in Appropriations
- 04/07/87 SENATE Introduced, referred to Judiciary-Criminal, Appropriations -SJ 13, Comm Report: Favorable with 1 amendment(s) by Judiciary-Criminal -SJ 61, Now in Appropriations -SJ 61
- 04/28/87 SENATE Withdrawn from Appropriations -SJ 217; Placed on Calendar
- 05/06/87 SENATE Placed on Special Order Calendar -SJ 254
- 05/12/87 SENATE Placed on Special Order Calendar -SJ 270 & -SJ 271, Passed as amended, YEAS 39 NAYS 0 -SJ 286
- 05/13/87 HOUSE In Messages
- 05/19/87 HOUSE Received, placed on Calendar -HJ 479
- 05/28/87 HOUSE Placed on Special Order Calendar
- 06/01/87 HOUSE Substituted for HB 77, Read second time, Read third time, Passed, YEAS 117 NAYS 0 -HJ 892
- 06/01/87 Ordered enrolled -SJ 554
- 06/25/87 Signed by Officers and presented to Governor
- 07/10/87 Approved by Governor; Chapter No 87-299

S 113 GENERAL BILL/CS by Economic, Community and Consumer Affairs; Economic, Community and Consumer Affairs (Similar H 489)

- Energy Research/Repeals (SUNDOWN) requires Executive Office of Governor to develop & maintain energy research index, repeals provisions re development of research plan for energy programs & establishment of Energy Research & Development Task Force Amends 377 703, repeals 377 703(3)(k), 706 Effective Date 10/01/87
- 01/09/87 SENATE Prefiled
- 01/20/87 SENATE Referred to Economic, Community and Consumer Affairs, On Committee agenda—Economic, Community and Consumer Affairs, 02/03/87, 9 00 am, Room-H
- 02/03/87 SENATE Comm Report CS by Economic, Community and Consumer Affairs, placed on Calendar
- 04/07/87 SENATE Introduced, referred to Economic, Community and Consumer Affairs -SJ 13, Comm Report CS by Economic, Community and Consumer Affairs, placed on Calendar -SJ 62, CS read first time -SJ 59
- 04/15/87 SENATE Placed on Special Order Calendar -SJ 79
- 04/16/87 SENATE Placed on Special Order Calendar -SJ 112 & -SJ 113, CS passed, YEAS 34 NAYS 0 -SJ 118
- 04/21/87 HOUSE In Messages
- 05/15/87 HOUSE Received, referred to Regulatory Reform -HJ 446
- 06/06/87 HOUSE Died in Committee on Regulatory Reform

S 114 GENERAL BILL by Agriculture (Similar H 293)

- Foliage Plant Marketing (SUNDOWN) repeals provisions re marketing of foliage plants effective 10/01/88, revives & readopts provisions re advisory council, etc Repeals 573 50-62, 66-76, revives & readopts 573 63-65 Effective Date 10 01 87
- 01/09/87 SENATE Prefiled
- 01/20/87 SENATE Referred to Agriculture, On Committee agenda—Agriculture, 02/03/87, 2 00 pm, Room-B
- 02/03/87 SENATE Comm Report Favorable by Agriculture, placed on Calendar

HISTORY OF HOUSE BILLS

H 14 (CONTINUED)
 04/07/87 HOUSE Introduced, referred to Retirement, Personnel & Collective Bargaining, Appropriations -HJ 7, Comm Report. Favorable by Retirement, Personnel & Collective Bargaining -HJ 73, Now in Appropriations -HJ 73
 04/21/87 HOUSE Withdrawn from Appropriations -HJ 205, Placed on Calendar
 04/29/87 HOUSE Placed on Special Order Calendar, Read second time -HJ 316
 05/06/87 HOUSE Read third time -HJ 368, Iden/Sim Senate Bill substituted, Laid on Table under Rule, Iden/Sim/Compare Bill passed, refer to SB 213 (Ch 87-29) -HJ 368

H 15 GENERAL BILL/ENG by Davis and others (Similar H 329, S 532, S 836, Compare CS/H 328)
Paternity Leave/State Employees, provides legislative intent; revises current provisions on maternity leave to include paternity leave. Amends 110.221 Effective Date 10/01/87
 11/10/86 HOUSE Prefiled
 12/01/86 HOUSE Referred to Retirement, Personnel & Collective Bargaining; Appropriations
 02/13/87 HOUSE On Committee agenda—Retirement, Personnel & Collective Bargaining, 03/04/87, 2:00 pm, 317C
 03/04/87 HOUSE Preliminary Committee Action by Retirement, Personnel & Collective Bargaining—Favorable with 1 amendment
 03/09/87 HOUSE Comm Report Favorable with 1 amendment(s) by Retirement, Personnel & Collective Bargaining; Now in Appropriations
 04/07/87 HOUSE Introduced, referred to Retirement, Personnel & Collective Bargaining, Appropriations -HJ 7; Comm Report Favorable with 1 amendment(s) by Retirement, Personnel & Collective Bargaining -HJ 73, Now in Appropriations -HJ 73; On Committee agenda—Appropriations, 04/09/87, 3:30 pm, 21 HOB
 04/13/87 HOUSE Comm Report Favorable by Appropriations, placed on Calendar -HJ 122
 04/29/87 HOUSE Placed on Special Order Calendar; Read second time, Amendments adopted -HJ 317
 05/05/87 HOUSE Read third time, Amendment adopted; Passed as amended, YEAS 64 NAYS 53 -HJ 351, Motion to reconsider laid on table -HJ 351, Immediately certified -HJ 351
 05/05/87 SENATE In Messages
 05/13/87 SENATE Received, referred to Personnel, Retirement and Collective Bargaining, Appropriations -SJ 300
 05/25/87 SENATE Extension of time granted Committee Personnel, Retirement and Collective Bargaining
 06/06/87 SENATE Died in Committee on Personnel, Retirement and Collective Bargaining

H 16 GENERAL BILL by Shelley; Stone and others (Identical S 375)
Special Risk/Emerg. Medical Staff, includes certain emergency medical technicians & paramedics within Special Risk Class of membership of system Amends 121.0615 Effective Date 10/01/87
 11/10/86 HOUSE Prefiled
 12/01/86 HOUSE Referred to Retirement, Personnel & Collective Bargaining; Appropriations
 04/06/87 HOUSE Subreferred to Subcommittee on Retirement
 04/07/87 HOUSE Introduced, referred to Retirement, Personnel & Collective Bargaining, Appropriations -HJ 7, Subreferred to Subcommittee on Retirement, On subcommittee agenda—Retirement, Personnel & Collective Bargaining, 04/08/87, 10:00 am, 317 HOB
 04/08/87 HOUSE Subcommittee Recommendation pending ratification by full Committee Favorable, On Committee agenda, pending subcommittee action—Retirement, Personnel & Collective Bargaining, 04/09/87, 8:30 am, 317C
 04/09/87 HOUSE Preliminary Committee Action by Retirement, Personnel & Collective Bargaining Favorable
 04/15/87 HOUSE Comm Report Favorable by Retirement, Personnel & Collective Bargaining -HJ 138, Now in Appropriations -HJ 138
 05/12/87 HOUSE Subreferred to Subcommittee on General Government, On Committee agenda—Appropriations, 05/14/87, 8:00 am, 21 HOB, for ratification of subreferral
 06/06/87 HOUSE Died in Committee on Appropriations

H 17 GENERAL BILL by Davis (Compare CS/CS/ENG/H 47, S 122)
Baccalaureate Education System Trust, (THIS BILL COMBINED IN CS/H 47,17) create Fla Baccalaureate Education System Trust, provides for contracts for advance payment of tuition, provides contract requirements & types of contracts, creates advance tuition payment fund, provides for board of directors, terms, procedures, & powers, requires annual accounting, provides tax exemption, provides for contract for provision of services, etc Effective Date 07/01/87
 11/10/86 HOUSE Prefiled
 12/01/86 HOUSE Referred to Higher Education, Appropriations

H 17 (CONTINUED)
 01/07/87 HOUSE Subcommittee Recommendation pending ratification by full Committee Favorable, as Committee Substitute for HB 47 and 17
 01/16/87 HOUSE On Committee agenda—Higher Education, 02/03/87, 1:30 pm, 212 HOB—Temporarily passed
 02/13/87 HOUSE On Committee agenda—Higher Education, 03/03/87, 1:30 pm, 212 HOB
 03/03/87 HOUSE Preliminary Committee Action by Higher Education Favorable, as Committee Substitute for HB 47 and 17
 03/16/87 HOUSE CS combines this bill and 47, Comm Report CS by Higher Education, Original bill laid on Table under Rule, refer to combined CS/ HB 47
 04/07/87 HOUSE Introduced, referred to Higher Education, Appropriations -HJ 7, CS combines this bill and 47, Comm Report. CS by Higher Education -HJ 73; Original bill laid on Table under Rule, refer to combined CS/ HB 47 (Ch 87-132) -HJ 73

H 18 GENERAL BILL/CS/CS/ENG by Appropriations; Judiciary; Bell and others (Similar CS/S 109)
Land Acquisition/Eminent Domain, provides for prelitigation notice, revises language re attorney's fees in eminent domain proceedings, provides for an offer of judgment by petitioner, provides that condemning authority shall be considered party defending against claim in event of appeal of judgment order; provides that D O T shall pay all reasonable costs & attorney's fees incurred pursuant to prelitigation settlement, etc Amends Ch 73, 337 271 Effective Date 06/30/87
 11/19/86 HOUSE Prefiled
 12/01/86 HOUSE Referred to Judiciary; Appropriations
 02/13/87 HOUSE Subreferred to Subcommittee on Court Systems, Probate and Consumer Law, On subcommittee agenda—Judiciary, 03/04/87, 8:30 am, 214C
 03/04/87 HOUSE Subcommittee Recommendation pending ratification by full Committee Favorable
 04/07/87 HOUSE Introduced, referred to Judiciary, Appropriations -HJ 7, Subreferred to Subcommittee on Court Systems, Probate and Consumer Law, On subcommittee agenda—Judiciary, 04/09/87, 10:00 am, 16 HOB
 04/09/87 HOUSE Subcommittee Recommendation pending ratification by full Committee Favorable, with 1 amendment
 04/13/87 HOUSE On Committee agenda—Judiciary, 04/15/87, 1:15 pm, 214C
 04/15/87 HOUSE Preliminary Committee Action by Judiciary Favorable, as a Committee Substitute
 04/24/87 HOUSE Comm. Report: CS by Judiciary -HJ 279; CS read first time -HJ 277, Now in Appropriations -HJ 279
 04/28/87 HOUSE On Committee agenda—Appropriations, 04/30/87, 3:30 pm, 21 HOB—Time changed to 10:30 AM
 04/30/87 HOUSE Preliminary Committee Action by Appropriations. Favorable, as a Committee Substitute, to Calendar
 05/04/87 HOUSE Comm Report. CS/CS by Appropriations, placed on Calendar -HJ 348, CS read first time -HJ 345
 05/20/87 HOUSE Placed on Special Order Calendar
 05/27/87 HOUSE Read second time, Amendment adopted, Read third time, CS passed as amended, YEAS 109 NAYS 6 -HJ 647
 05/27/87 SENATE In Messages
 05/29/87 SENATE Received, referred to Judiciary—Civil, Transportation, Appropriations -SJ 501
 06/01/87 SENATE Withdrawn from Judiciary—Civil, Transportation, Appropriations, Substituted for CS/SB 109, CS passed as amended, YEAS 34 NAYS 1 -SJ 559
 06/01/87 HOUSE In Messages
 06/03/87 HOUSE Concurred, CS passed as further amended, YEAS 119 NAYS 1 -HJ 1109
 06/03/87 Ordered engrossed, then enrolled
 06/16/87 Signed by Officers and presented to Governor
 06/30/87 Approved by Governor, Chapter No 87-148

H 19 GENERAL BILL by Shelley; Lippman, Gonzalez-Quevedo, Morse, Casas; Souto (Similar H 853, S 328, Compare H 163, ENG/H 688, H 990, H 1201, CS/CS/ENG/H 1247, S 12, CS/CS/ENG/S 400, CS/ENG/S 727)
Florida State Lottery Act, creates said act, provides for State Lottery Commission to administer act, provides for state lottery director, operation of state lottery, lottery game retailers, lottery vendors & lottery contractors, provides for State Lottery Fund, prohibits imposition of state or local taxes upon sale of tickets or shares or the award of prizes under state lottery, provides for temporary line of credit in General Revenue Fund for start-up of lottery, etc Appropriation Effective Date Upon becoming law
 11/19/86 HOUSE Prefiled
 12/05/86 HOUSE Referred to Regulated Industries & Licensing, Finance & Taxation, Appropriations
 12/15/86 HOUSE Subreferred to Subcommittee on Pari-mutuels and the Lottery
 01/16/87 HOUSE On Committee agenda—Regulated Industries & Licensing, 02/04/87, 8:30 am, Morris Hall, for ratification of subreferral

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Wiehle</u> <i>fw</i>	<u>Lester</u> <i>13</i>	1. <u>JCI</u>	_____
2. _____	_____	2. <u>TR</u>	_____
3. _____	_____	3. <u>AP</u>	_____
4. _____	_____	4. _____	_____

SUBJECT:

Land Acquisition

BILL NO. AND SPONSOR:

SB 109 by
Senator Brown

I. SUMMARY:

A. Present Situation:

Present s. 73.092, F.S., provides the factors a court is to consider in assessing attorney's fees in eminent domain proceedings.

Present s. 337.271, F.S., provides for negotiation for acquisition during eminent domain proceedings by the Department of Transportation. These provisions include: at subsection (4), regulations concerning a property appraisal obtained by the property owner; at subsection (5), regulations concerning an estimate of business damages obtained by the property owner; and, at subsection (6), regulations concerning reimbursement to the property owner for expenses incurred in obtaining the appraisal and estimate of business damage.

18 1626

B. Effect of Proposed Changes:

The bill would amend s. 73.092, F.S., by inserting a new factor for the court to consider in assessing attorney's fees. The new factor would concern assessment of fees subsequent to an offer of judgement. If an offer of judgement made by the petitioner was made pursuant to the Florida Rules of Civil Procedure, and was either rejected or allowed to expire, and the subsequent judgement was either less than or equal to the offer of judgement, no attorney's fees or costs would be awarded for expenses incurred after the offer was rejected or expired. If, however, either the offer of judgement was accepted or the judgement were to exceed the offer, attorneys fees would be awarded in accordance with subsection (1) of section 73.092, F.S. The bill would, for purposes of Florida Rule of Civil Procedure 1.442, make the petitioning condemning authority a "party defending against a claim" at any time after the entry of an order of taking.

The bill would also amend subsection 337.271(6), F.S., which relates specifically to negotiations for acquisitions by the Department of Transportation and which provides for reimbursement of the cost of appraisals and estimate of business damages obtained by the property owner. The bill would delete all references to appraisals or estimates and replace them with language concerning all reasonable costs, including attorney's fees, incurred during prelitigation settlement negotiations. This would appear to expand the reimbursement provisions in that the existing reimbursement of appraisal and estimate costs would seem to be included by the "all reasonable costs" language and the provisions would also then include attorney's fees. The bill provides that any disagreement as to the reasonableness of the cost and attorney's fees would be resolved pursuant to the Administrative Procedure Act.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Land owners would have to pay their own attorney fees in some situations when a settlement offer is rejected.

B. Government:

The Department of Transportation estimates that the state would save the following amounts:

	Amount Year 1	Amount Year 2	Amount Year 3
1. Reduction in amounts of administrative and legal settlements over appraised value for right-of-way lands	\$5.0 Million	\$10.0 Million	\$15.0 Million
2. Reduction in defendant attorney fees.	1.0	1.5	2.0
3. Reduction in defendant court costs.	0.5	0.7	1.0
4. Reduction in DOT operating costs and overhead for litigation support.	0.3	0.5	0.5
	<u>\$6.8 Million</u>	<u>\$12.7 Million</u>	<u>\$18.5 Million</u>

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Wiehle</u>	<u>Lester</u>	1. <u>JCI</u>	<u>FAV/CS</u>
2. _____	_____	2. <u>TR</u>	_____
3. _____	_____	3. <u>AP</u>	_____
4. _____	_____	4. _____	_____

SUBJECT:

Land Acquisition

BILL NO. AND SPONSOR:

SB 109 by Judiciary-Civil
Committee and Senator Brown

I. SUMMARY:

A. Present Situation:

Section 73.092, F.S., provides the factors a court is to consider in assessing attorney's fees in eminent domain proceedings.

Section 73.131, F.S., provides that the condemning authority is to pay all reasonable costs of proceedings in an appellate court, including attorney fees, except upon an appeal taken by the land owner in which the judgment of the trial court is affirmed.

Section 337.271, F.S., provides statutory procedure for the Department of Transportation in prelitigation negotiations for acquisition. Among these procedures, at subsection (6), are provisions for payment of the land owner's costs. Upon submission of an invoice from the land owner's appraiser, the Department is to pay the reasonable cost of obtaining the appraisal report and the reasonable cost of the estimate of business damages prepared by a certified public accountant.

B. Effect of Proposed Changes:

The Committee Substitute for Senate Bill 109 would create a new s. 73.0511, F.S., which would require the condemning authority to notify the land owner of his statutory rights.

The bill would amend s. 73.092, F.S., to provide that attorney fees cannot under any circumstance be based solely on a percentage of the award. The bill would further provide that if an offer of judgment is made by the condemning authority and is either rejected or expires and the judgment at trial is less than or equal to the offer, no attorney's fees or costs would be awarded for services rendered by the land owner's attorney or costs incurred subsequent to the rejection or expiration of the offer. Where either the offer is accepted or the judgment exceeds the offer, attorney fees and costs would be awarded. The offer of judgment could not be made until 180 days after the filing of a petition of taking. The offer would have to be accepted or rejected within 30 days, or within such other time as the court may provide, or it would be deemed rejected.

Section 73.131, F.S., would be amended to require that the condemning authority pay the costs of appeal of the land owner unless the appeal was made by the land owner and the decision of the lower court was affirmed.

Section 337.271, F.S., would be amended to provide for payment of the land owner's attorney fees. The bill would further provide that if the parties could not agree on the amount of attorney fees and costs to be paid, the land owner could petition the circuit court to recover the fees and costs.

REVISED: _____

BILL NO. CS/SB 109

DATE: May 8, 1987

Page 2

II. ECONOMIC IMPACT AND FISCAL NOTE:

- A. Public:
Undetermined.
- B. Government:
Undetermined.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 109

1. The offer of judgment would have to be accepted or rejected within 30 days, or within such other time as the court may provide, or it would be deemed rejected.
2. Any disagreement as to the amount of attorney fees or costs would be resolved in circuit court.

Committee on Judiciary-Civil

Bob Lester
Staff Director

(FILE THREE COPIES WITH THE SECRETARY OF THE SENATE)

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Wiehle</u>	<u>Lester</u>	1. <u>JCI</u>	<u>FAV/CS</u>
2. <u>Gargiulo</u>	<u>Gargiulo</u>	2. <u>TR</u>	<u>FAV/3 Amends.</u>
3. _____	_____	3. <u>AP</u>	_____
4. _____	_____	4. _____	_____

SUBJECT:

Eminent Domain

BILL NO. AND SPONSOR:

CS/SB 109 by
Judiciary Civil and
Senator Brown

I. SUMMARY:

18 1634

A. Present Situation:

Section 73.091, F.S., requires the condemning authority in an eminent domain proceeding to pay all reasonable costs of the proceedings in circuit court, including a reasonable attorney's fee to be assessed by the court.

Section 73.092, F.S., provides six criteria a court is to consider in assessing attorney's fees in eminent domain proceedings.

Section 73.131, F.S., provides that the condemning authority is to pay all reasonable costs of proceedings in an appellate court, including attorney fees, except upon an appeal taken by the land owner in which the judgment of the trial court is affirmed.

Section 337.271, F.S., provides the statutory procedure to be used by the Department of Transportation in acquisition through prelitigation negotiations. Among these procedures, at subsection (6), are provisions for payment of the land owner's costs. Upon submission of an invoice from the land owner's appraiser, the Department is to pay the reasonable cost of obtaining the appraisal report and the reasonable cost of the estimate of business damages prepared by a certified public accountant.

B. Effect of Proposed Changes:

The bill would create a new s. 73.0511, F.S., which would require the condemning authority to notify the land owner of his statutory rights.

The bill would amend s. 73.092, F.S., to provide that if an offer of judgment is made by the condemning authority and is either rejected or expires and the verdict or judgment is less than or equal to the offer, no attorney's fees or costs would be awarded for services rendered by the land owner's attorney or costs incurred subsequent to the rejection or expiration of the offer. Where either the offer is accepted or the judgment exceeds the offer, attorney's fees and costs would be awarded. The offer of judgment could not be made until 180 days after the filing of a petition. The offer would have to be accepted or rejected within 30 days, or within such other time as the court may provide, or it would be deemed rejected.

Section 73.131, F.S., would be amended to require that the condemning authority pay the costs of appeal of the land owner unless the appeal was made by the land owner and the decision of the lower court was affirmed.

Section 337.271, F.S., would be amended to provide for payment of the land owner's attorney's fees in negotiated acquisitions. The bill would further provide that if the parties could not agree on the amount of attorney's fees and costs to be paid, the land owner could petition the circuit court to recover the fees and costs.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Those persons not obtaining a court award which is greater than the offer of judgment may be required to pay that portion of the fees and costs incurred after the offer of judgment was made.

B. Government:

According to the Department of Transportation, the following savings would inure to the State Transportation Trust Fund:

Reduction in amounts of administrative and legal settlements over appraised value for right-of-way lands	\$ 5.0 Million	\$10.0 Million	\$15.0 Million
Reduction in defendant attorney fees	1.0	1.5	2.0
Reduction in defendant court costs	0.5	0.7	1.0
Reduction in DOT operating costs and overhead for litigation support	0.3	0.5	0.5
TOTAL	\$ 6.8 Million	\$12.7 Million	\$18.5 Million

Local governments would also experience substantial cost savings, however, the amount of the savings cannot be determined.

III. COMMENTS:

None.

IV. AMENDMENTS:

#1 by Transportation: Provides that for purposes of the Florida Rule of Civil Procedure relating to offers of judgment, the condemning authority is considered to be a party defending against a claim at any time after entry of an order of taking in a condemnation action.

#2 by Transportation: Technical amendment.

#3 by Transportation: Title amendment.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Wiehle</u>	<u>Lester</u>	1. <u>JCI</u>	<u>FAV/CS</u>
2. <u>Garquilo</u>	<u>Garquilo</u>	2. <u>TR</u>	<u>FAV/3 Amends.</u>
3. <u>Easterling</u> ^(A)	<u>Smith</u> ^{MS}	3. <u>AP</u>	<u>Favorable</u>
4. _____	_____	4. _____	_____

SUBJECT:

Eminent Domain

BILL NO. AND SPONSOR:

CS/SB 109 by
Judiciary Civil and
Senator BrownI. SUMMARY:

A. Present Situation:

Section 73.091, F.S., requires the condemning authority in an eminent domain proceeding to pay all reasonable costs of the proceedings in circuit court, including a reasonable attorney's fee to be assessed by the court.

Section 73.092, F.S., provides six criteria a court is to consider in assessing attorney's fees in eminent domain proceedings.

Section 73.131, F.S., provides that the condemning authority is to pay all reasonable costs of proceedings in an appellate court, including attorney fees, except upon an appeal taken by the land owner in which the judgment of the trial court is affirmed.

Section 337.271, F.S., provides the statutory procedure to be used by the Department of Transportation in acquisition through prelitigation negotiations. Among these procedures, at subsection (6), are provisions for payment of the land owner's costs. Upon submission of an invoice from the land owner's appraiser, the Department is to pay the reasonable cost of obtaining the appraisal report and the reasonable cost of the estimate of business damages prepared by a certified public accountant.

B. Effect of Proposed Changes:

The bill would create a new s. 73.0511, F.S., which would require the condemning authority to notify the land owner of his statutory rights.

The bill would amend s. 73.092, F.S., to provide that if an offer of judgment is made by the condemning authority and is either rejected or expires and the verdict or judgment is less than or equal to the offer, no attorney's fees or costs would be awarded for services rendered by the land owner's attorney or costs incurred subsequent to the rejection or expiration of the offer. Where either the offer is accepted or the judgment exceeds the offer, attorney's fees and costs would be awarded. The offer of judgment could not be made until 180 days after the filing of a petition. The offer would have to be accepted or rejected within 30 days, or within such other time as the court may provide, or it would be deemed rejected.

Section 73.131, F.S., would be amended to require that the condemning authority pay the costs of appeal of the land owner unless the appeal was made by the land owner and the decision of the lower court was affirmed.

Section 337.271, F.S., would be amended to provide for payment of the land owner's attorney's fees in negotiated acquisitions. The bill would further provide that if the parties could not agree on the amount of attorney's fees and costs to be paid, the land owner could petition the circuit court to recover the fees and costs.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Those persons not obtaining a court award which is greater than the offer of judgment may be required to pay that portion of the fees and costs incurred after the offer of judgment was made.

B. Government:

According to the Department of Transportation, the following savings would inure to the State Transportation Trust Fund:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Reduction in amounts of administrative and legal settlements over appraised value for right-of-way lands	\$ 5.0 Million	\$10.0 Million	\$15.0 Million
Reduction in defendant attorney fees	1.0	1.5	2.0
Reduction in defendant court costs	0.5	0.7	1.0
Reduction in DOT operating costs and overhead for litigation support	0.3	0.5	0.5
TOTAL	\$ 6.8 Million	\$12.7 Million	\$18.5 Million

Local governments would also experience substantial cost savings; however, the amount of the savings cannot be determined.

III. COMMENTS:

None.

IV. AMENDMENTS:

#1 by Transportation:

Provides that for purposes of the Florida Rule of Civil Procedure relating to offers of judgment, the condemning authority is considered to be a party defending against a claim at any time after entry of an order of taking in a condemnation action.

#2 by Transportation:

Technical amendment.

#3 by Transportation:

Title amendment.

MEMORANDUM

DATE: May 6, 1987

TO: The Honorable Pat Frank, Senator 23rd District

FROM: Don Young, Legislative Programs Director

COPIES TO: Secretary Kaye Henderson

SUBJECT: INFORMATION ON EMINENT DOMAIN (SB 109)

18 1626

Senator, during your meeting with Secretary Henderson today, you asked several questions to which we are providing information.

1. What effect would SB 109 have on the amount of time the property owner has to obtain information and assistance and negotiate with the Department before going to court?

SB 109 has no effect, statutorily, on the prelitigation time period. At a point, 180 days after eminent domain suit is instituted, however, the property owner must decide whether to proceed with further litigation at his option, if an "offer of judgment" has been filed by the condemning authority. To help you understand the Department of Transportation acquisition process, the attached sketch shows the major steps in the acquisition process. As can be seen, SB 109 does not affect the timing of the process. In a typical DOT acquisition, the property owner has over twelve months from the initial official notice to obtain information and negotiate with the Department before the offer of judgment can be made.

All costs incurred by the property owner in the first 180 days of the litigation, up to the offer of judgment, are paid by the Department; SB 109 has no effect on this situation. In fact, SB 109 provides that the Department will also pay attorney fees during the negotiation period prior to filing suit if settlement is achieved, as an incentive for the property owner to reach a fair, negotiated settlement.

SB 109 would change the current process by requiring the property owner to pay his own attorney fees and costs after the offer of judgment is made, if the value determined at trial is less than, or equal to the offer of judgment. The 180 day period from the date of suit is designed to give the property owner more than adequate time from the time suit is initiated, if he has not already done so, to seek the advice of counsel, secure an appraisal, business damage report or any other data necessary to make an informed decision. Attorney fees and costs during this 180 day period will be paid by the condemning authority in all instances.

2. What problems are we trying to solve? Are attorney fees and court costs becoming a larger percentage of the Department's work program?

No, eminent domain attorney fees and costs and the incentive toward litigation has been a major problem in Florida for many years. A 1982 House Transportation Committee report developed through a national research organization listed Florida as litigating more parcels in eminent domain than any other state in the country as far back as 1973. The real cost of the existing law and the problem needing solution is the extremely high administrative settlements and legal settlements that the Department must agree to in order to avoid extended litigation. The condemning authority is "held up" by exorbitant demands since the landowner has no risk in the litigation and will have attorney fees and costs paid even if he loses.

Listed below are the amounts of administrative settlements (prelitigation) over the last three years, the amounts of final judgments (legal settlements and verdicts) and the amount of attorney fees and costs paid. "Administrative settlements" are negotiated prelitigation settlements in amounts above the approved appraisal. Administrative settlements usually occur within the same year as the appraisal and initial offer. "Legal settlements" are settlements made by lawyers after eminent domain suits have been filed. These usually occur one to four years after the suit is filed.

The amount of attorney fees and court costs, as well as amounts of administrative and legal settlements paid, vary more with the complexity of a project than as a result of any other single issue. A project with large "severance damage" and "business damage" issues generates greater differences of opinion between appraisers and accountants, and will usually generate higher administrative settlements, legal settlements, and attorney fees and costs. Therefore, annual trends in attorney fees and costs vary significantly from year to year because of variances in project complexity. Example: High administrative settlements in 1984 and 1985 were a result of heavy acquisition on I-595 in Fort Lauderdale, a complex industrial/commercial acquisition project. The 1986 results for administrative settlements are misleading because they reflect a large number of settlements on rural properties on Alligator Alley and less complex jobs. Many of the parcels on the complicated projects, such as U.S. 19 in Pinellas County are not being settled prior to litigation. On U.S. 19 we are having to place 65% of the parcels in suit. Legal settlements in 1986 reflect the same project, which is just now beginning to come to trial and final judgment from suits filed in 1984 and 1985.

ADMINISTRATIVE SETTLEMENTS

	<u>1984</u>	<u>1985</u>	<u>1986</u>
Original Appraisal	\$53,259,370	\$48,834,132	\$51,319,233
Administrative Settlement	<u>69,564,517</u>	<u>70,344,089</u>	<u>57,032,649</u>
<u>DIFFERENCE</u>	\$16,305,147(30%)	\$21,509,957(44%)	\$ 5,713,416(10%)

The Department settles approximately 43% of all parcels at the Department's approved appraisal value. The remainder must be settled at amounts above the appraised value or litigated.

LEGAL SETTLEMENTS

	<u>1984</u>	<u>1985</u>	<u>1986</u>
Legal Final Judgments*	<u>\$28,412,349</u>	<u>\$34,241,231</u>	<u>\$55,770,013</u>

ATTORNEY FEES AND COURT COSTS

	<u>1984</u>	<u>1985</u>	<u>1986</u>
Attorney Fees	\$4,254,811	\$3,916,459	\$6,208,102
Court Costs	<u>1,391,992</u>	<u>1,687,275</u>	<u>2,660,057</u>
<u>TOTAL:</u>	\$5,646,803	\$5,603,734	\$8,868,159

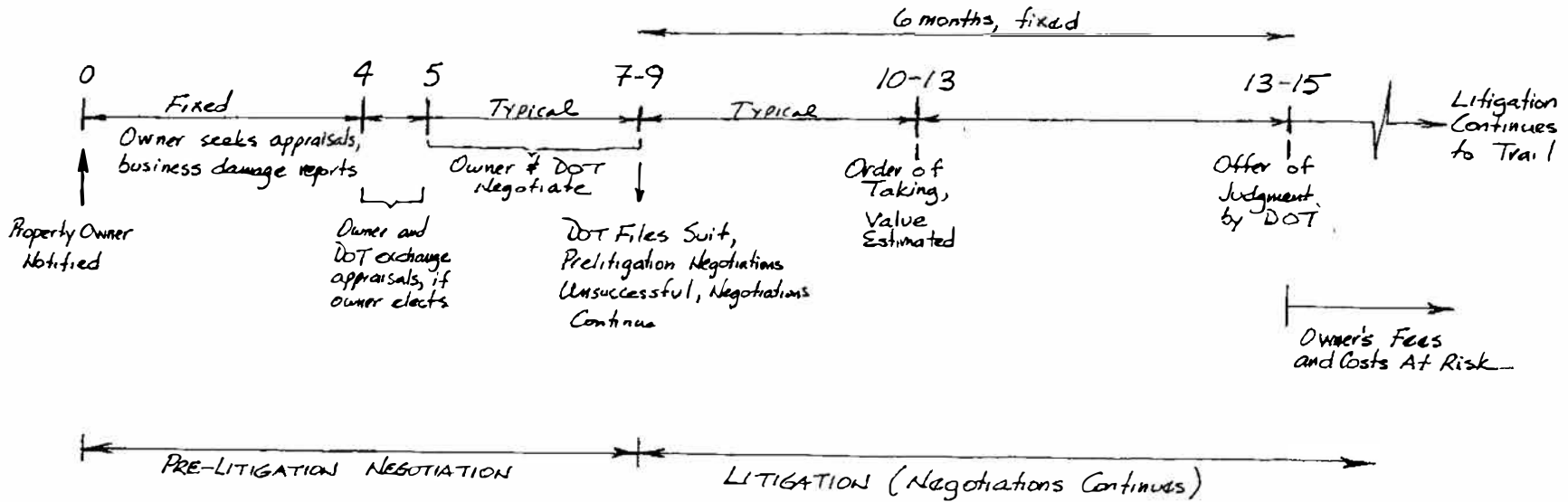
*Appraisals must be updated for inflation over time at least two, and sometimes three times during the litigation process. Property owner's attorneys take credit for this "benefit" and so delay is favorable to the defendants in order to let inflation run its normal course.

I hope this meets your needs, but please call me at 488-7950 if I can be of further help. Thanks for your consideration.

DY:ehf

DOT TYPICAL ACQUISITION TIMEFRAME

TIME, months →



LEIBY AND ELDER
ATTORNEYS AT LAW

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DAVID R ELDER
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FEDERAL EXPRESS

May 6, 1987

18 1626

The Honorable Richard H. Langley
Chairman, Senate Judiciary - Civil Committee
336 Senate Office Building
Tallahassee, Florida 32399-1100

Re: SB159/HB1393

Dear Senator Langley:

As I mentioned to you on May 5, 1987, the mechanics lien amendments in subject bills are the product of several meetings resulting in agreed compromise among the various roles in the construction industry: Contractors (Associated Builders and Contractors and Underground Contractors Association), Lenders (Florida Bankers Association), Subcontractors (American Subcontractors Association, Plumbing Contractors), Sureties (Southeastern Insurance Group, Land Title Insurers (Florida Land Title Insurance Association), and Suppliers (Florida Credit Council). I am further advised that the Florida Home Builders Association has also given its blessing to the bill in its current form (HB1393).

The response to Mr. Trawick's concerns expressed in his letter of May 1, 1987 is as follows:

1. Mr. Trawick agrees with Sections 1 and 3 of the bill.

2. There is no objection to Section 2 as proposed. The "proposed amendment" to the bill mentioned by Mr. Trawick is not known. It appears that we have agreement on Section 2 in its current form.

The Honorable Richard H. Langley
May 6, 1987
Page 2

3. From my reading of Mr. Trawick's comments on Section 4, it appears that the comments are misdirected. There is no changing of the time of the notice of nonpayment directed to the contractor by the nonprivity bond claimant.

What this bill proposes is to have an additional notice go to the surety within 90 days of the first amount unpaid for which a claim is made, exclusive of retainage. The sureties have requested this change to solve the following problem:

A contractor gets a bond from a surety. Subsequently the contractor suffers financial problems and diverts payments received by the owner such that payments do not get made to subcontractors and suppliers. The contractor has a special affinity for a particular supplier or subcontractor and induces him or her to continue working on the job (even though payments are not timely made) because at the end of the job the bonding company will be on the hook for the payment. The bonding company, under current law has no statutory notice protection until a period of within 90 days of last work by the unpaid subcontractor or supplier. Under the bill as proposed, the unpaid subcontractor or supplier would have to give notice to the surety within 90 days of when their unpaid claim starts to accrue (aside from retainage). Thus if the surety starts to receive these notices in quantity, the surety is alerted to the contractor's diversion of funds within 90 days of when that activity starts, not some later time after the job is finished and the payments converted.

There is no elimination of any of the existing notices to contractor. Mr. Trawick makes reference to the early 45 day notice. The problem is that the 45 day notice is sent as a matter of course. They are sent in such volume that sureties overlook them. They do not indicate the existence of a problem. The new notice to be sent would be a notice giving cause for concern.

The reason that retainage is excluded from the calculation of 90 days from the first unpaid amount is that retainage, by its very nature, is unpaid from early stages. If notice had to be given within 90 days of the first unpaid sums without excluding retainage, then the alarming nature of the notice would be reduced because the notices would be served at an early stage - before a bona fide problem arises.

The Honorable Richard H. Langley
May 6, 1987
Page 3

The recording of the bond will be done by the owner or by the surety. The sureties want this provision in order to minimize the occurrence of unreported bonds unauthorizably issued by agents. Further, subcontractors and suppliers want the recording in order to:

- a) Know that the bond exists, and
- b) Help eliminate the issue of whether the bond is a statutory bond or common law bond.

Mr. Trawick approves of Section 5. The concern over the use of the word "costs" is not understood since that portion of the statute is unchanged.

The language in Section 6 is the result of the House staff study of Section 713.34, the Florida Supreme Court opinion, holding the statute constitutional and the federal Eleventh Circuit opinion holding the statute unconstitutional. I am advised that the wording chosen was plucked from the opinions in order to be in compliance therewith.

Section 7, the trust provisions, solves two problems. First, if an owner, contractor, subcontractor or sub-sub goes bankrupt, funds for those unpaid under them will be segregated from the general assets of the bankrupt estate.

Secondly, imposing a fiduciary duty or position of trust on monies that are being collected for the purpose of paying for subcontract labor and supplies is appropriate to recognize what the realities are in the construction setting. Contractors and subcontractors collect monies for work done by those under them. Monies paid and collected in that fashion should be properly accounted for. By requiring that the funds be held for the benefit of the unpaid suppliers and subcontractors, a law will be enacted which, if broken, will give licensing authorities a basis for disciplinary action.

Finally, a law setting forth that the funds that are paid for specific work are required to be held in trust for the ultimate recipient should, by compliance with the law, reduce payment problems.

The Honorable Richard H. Langley
May 6, 1987
Page 4

Contractors, subcontractors and suppliers in the construction industry have been dropping like flies due to lack of payment. This bill, when enacted, will be a positive step to correct current abuses. It is not a complete panacea, but a positive step. While further positive steps may be pursued next year, or the next, the current bill, as the product of work by the various factions of the construction industry is needed now.

Sincerely,

LARRY R. LEIBY

LRL:vrh

bcc: Rick Sisser, c/o Senator Gwen Marqolis
William Benson
American Subcontractors Association
Paul W. Parcell

STORAGE NAME: 87 SS HB 0018

Date: February 20, 1987

Revised: _____

Final: _____

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

19 1601

BILL #: HB 0018

RELATING TO: Eminent Domain

SPONSOR(S): Representative Bell

EFFECTIVE DATE: Upon becoming law

COMPANION BILL(S): SB 109

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2) _____

I. SUMMARY:

A. Present Situation:

Pursuant to Article X, Section 6 of the Florida Constitution, property may not be taken through the exercise of eminent domain without the payment of full compensation. The Florida Supreme Court has interpreted the phrase "full compensation" to include the costs of the private property owner incurred in an eminent domain proceeding, including attorneys' fees. Tosohatchee Game Preserve, Inc. v. Central and Southern Florida Flood Control Dist., 265 So.2d 681 (1972)

Section 73.091, Florida Statutes, provides that the petitioner shall pay all reasonable costs, including attorneys' fees. The attorneys' fees are to be assessed in accord with the criteria established in Section 73.092, Florida Statutes, which include the benefits received by the client, the novelty, difficulty, and importance of the issues involved, the skill of the attorney, the amount of money involved, the responsibility incurred by counsel, and the amount of time reasonably required of the attorney to adequately represent the client. The amount of the fee may not be based solely on a percentage of the award.

Section 337.271, Florida Statutes, directs the Department of Transportation to enter into negotiations for the purpose of acquiring property for road construction prior to the filing of an action in eminent domain. As part of the negotiation process, the property owner is authorized to obtain at the expense of the department, an appraisal of the property and an estimate of business damages. No provision is made for the payment of the property owner's attorneys' fees unless a subsequent eminent domain proceeding is filed.

B. Effect of Proposed Changes:

This legislation, if enacted, would specifically prohibit an award of attorneys' fees which is based solely on a percentage of the amount of damages awarded in an eminent domain proceeding. The amount of the award would however continue to be one of several factors to be considered in arriving at an appropriate award of fees.

The legislation further provides for the making of an offer of judgment in accordance with the Florida Rules of Civil Procedure, after the expiration of 180 days from the filing of an eminent domain petition. If an offer which is equal to or greater than the final award is rejected or expires, costs and attorneys' fees incurred after the rejection of the offer shall not be awarded to the property owner. An offer of judgment would expire by operation of rule ten days after service on the property owner. (Rule 1.442, F.R.C.P.)

The bill further provides that a property owner shall be entitled to recover all reasonable costs, including attorneys' fees, incurred during the negotiation process authorized for the Department of Transportation. While the language referring to the right to recover appraisers' fees and the costs of obtaining an estimate of business damages is deleted, such costs should fall within the purview of reasonable costs to be recovered under this legislation. Disagreements as to the award of costs and attorneys' fees would be resolved pursuant to chapter 120, the Administrative Procedure Act.

II. ECONOMIC IMPACT:

A. Public:

This legislation should result in a decrease in the amount of costs to be awarded to property owners in eminent domain proceedings in those cases in which a reasonable offer of judgment has been awarded. Additionally, as the award of fees would no longer be guaranteed in all cases, property owners might be more inclined to accept preliminary offers, which could result in a lower payment. Theoretically, the property owner may also be encouraged to accept an offer which he otherwise would have rejected which exceeds the amount which would have been awarded by the jury.

B. Government:

This legislation is intended as a tax savings proposal in that it would encourage more rapid resolution of eminent domain proceedings, thus avoiding the additional costs and attorneys' fees which the government must pay, both on its own behalf and on behalf of the property owner. The amount of the savings cannot be readily determined, but should be substantial.

In requiring that disputes relating to costs and attorneys fees arising from the acquisition negotiation process be resolved pursuant to chapter 120, this legislation would likely result in an increased caseload before the Division of Administrative Hearings. Whether the caseload increase would be sufficient to require the appointment of additional hearing officers can not be determined at this time.

III. STATE COMPREHENSIVE PLAN IMPACT:

To the extent that this legislation would result in a decrease in compensation to private property owners for land taken by the government, the legislation could be interpreted to be inconsistent with the protection of private property rights. (Section 187.201(15), Florida Statutes) However, it may equally be argued that this legislation is designed not to infringe on private property rights but to insure that the owner not be unreasonably compensated for such rights.


The bill appears to be designed as an effort to further the goal of encouraging governmental economy in the provision of services. (Section 187.201(20), Florida Statutes)

IV. COMMENTS:

While this legislation is in part designed to extend the provisions of the Florida Rules of Civil Procedure to eminent domain proceedings, the legislation provides an exception to the rule by requiring the expiration of 180 days from the filing of the petition before the offer of judgment may be made. This additional requirement could be interpreted to be procedural rather than substantive and would thus violate the separation of powers doctrine. However, prior provisions of Florida law which have been found to be procedural have eventually resulted in an appropriate rule amendment by the Florida Supreme Court.

V. AMENDMENTS:

None.

VI. PREPARED BY: Thomas R. Tedcastle 

VII. STAFF DIRECTOR: Richard Hixson 

File with Parent Committee

To Chairman, Committee on Judiciary

Subcommittee on Court Systems, Probate & Consumer Law

Date of meeting March 4, 1987

Time 8:30 a.m.

Place 214 Capitol

Bill No. HB 16

FINAL ACTION: FAVORABLE
 FAVORABLE WITH AMENDMENTS
 UNFAVORABLE

VOTE:

YEA	MEMBER	NAY
X	Cosgrove	
X	Davis	
X	Diaz-Balart	
X	Drage	
X	Lawson	
X	Press	

YEA	MEMBER	NAY
X	Saunders	
X	Webster	
X	Titone, Chmn.	

Total Yeas 9

Total Nays 0

[Signature]
Subcommittee Chairman

19
1601

SUBCOMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the subcommittee during consideration of this bill:

Name	Representing	Address
<u>Leon Black, Jr.</u>	<u>Committee for Preservation of Property Rights in FL</u>	<u>DuPont Bldg., Miami, FL</u>
<u>Jim Wolf</u>	<u>FL League of Cities</u>	<u>P. O. Box 1757, Tall., FL</u>
<u>Jim Branner</u>	<u>FL Chamber of Commerce</u>	<u>136 S. Bronough, Tall., FL</u>
<u>Doronic Calabro</u>	<u>Florida Taxwatch</u>	<u>111 N. Gadsden St., Tall., FL</u>

(If additional persons, enter on reverse side and check here)

NOTE: Please indicate by an "X" any State employee appearing at the request of Subcommittee Chairman

Received by Parent Committee
Date _____
Received by _____

STORAGE NAME: 87 SS CSHB 0018

Date: April 24, 1987

Revised: _____

Final: _____

AS REPORTED TO CLERK

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

19 165!

BILL #: CS/HB 0018

RELATING TO: Eminent Domain

SPONSOR(S): Committee on Judiciary and Representative Bell

EFFECTIVE DATE: Upon becoming law

COMPANION BILL(S): SB 109, SB 618

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2) _____

I. SUMMARY:

A. Present Situation:

Pursuant to Article X, Section 6 of the Florida Constitution, property may not be taken through the exercise of eminent domain without the payment of full compensation. The Florida Supreme Court has interpreted the phrase "full compensation" to include the costs of the private property owner incurred in an eminent domain proceeding, including attorneys' fees. Tosohatchee Game Preserve, Inc. v. Central and Southern Florida Flood Control Dist., 265 So.2d 681 (1972)

Section 73.091, Florida Statutes, provides that the petitioner shall pay all reasonable costs, including attorneys' fees. The attorneys' fees are to be assessed in accord with the criteria established in Section 73.092, Florida Statutes, which include the benefits received by the client, the novelty, difficulty, and importance of the issues involved, the skill of the attorney, the amount of money involved, the responsibility incurred by counsel, and the amount of time reasonably required of the attorney to adequately represent the client. The amount of the fee may not be based solely on a percentage of the award.

Section 337.271, Florida Statutes, directs the Department of Transportation to enter into negotiations for the purpose of acquiring property for road construction prior to the filing of an action in eminent domain. As part of the negotiation process, the property owner is authorized to obtain at the expense of the department, an appraisal of the property and an estimate of

business damages. No provision is made for the payment of the property owner's attorneys' fees unless a subsequent eminent domain proceeding is filed. Prelitigation provisions are not provided as to local governments or others who exercise eminent domain powers.

B. Effect of Proposed Changes:

This legislation, if enacted, would specifically prohibit an award of attorneys' fees which is based solely on a percentage of the amount of damages awarded in an eminent domain proceeding. The amount of the award would however continue to be one of several factors to be considered in arriving at an appropriate award of fees.

The legislation further provides for the making of an offer of judgment in accordance with the Florida Rules of Civil Procedure, after the expiration of 180 days from the filing of an eminent domain petition. If an offer which is equal to or greater than the final award is rejected or expires, costs and attorneys' fees incurred after the rejection of the offer shall not be awarded to the property owner. An offer of judgment would expire by operation of rule ten days after service on the property owner. (Rule 1.442, F.R.C.P.)

The bill further provides that a property owner shall be entitled to recover all reasonable costs, including attorneys' fees, incurred during the negotiation process authorized for the Department of Transportation. While the language referring to the right to recover appraisers' fees and the costs of obtaining an estimate of business damages is deleted, such costs should fall within the purview of reasonable costs to be recovered under this legislation. Disagreements as to the award of costs and attorneys' fees would be resolved by the circuit court.

The bill extends to other taking entities the provisions regarding prelitigation negotiation now applicable to the Department of Transportation. Under these provisions, the owner of real property to be taken pursuant to eminent domain must receive prior notice, and must be notified of his rights under law, including the right to an attorney and to have an appraisal made of his property and to employ an accountant to estimate business damages, all to be paid by the taking entity. The property owner then has 120 days in which to submit his appraisal if he wishes to enter into the settlement procedures. The entity is required within an additional thirty days to provide the property owner with its appraisal reports. Similar provisions are provided relating to accountant reports where business damages are claimed. If a settlement is reached, the agreement is presented to the circuit court for the entry of judgment, including the payment of the property owner's costs and fees. If the costs and fees have not been agreed upon, that dispute will be settled by the circuit court.

II. ECONOMIC IMPACT:

A. Public:

This legislation should result in a decrease in the amount of costs to be awarded to property owners in eminent domain proceedings in those cases in which a reasonable offer of judgment has been awarded. Additionally, as the award of fees would no longer be guaranteed in all cases, property owners might be more inclined to accept preliminary offers, which could result in a lower payment. Theoretically, the property owner may also be encouraged to accept an offer which he otherwise would have rejected which exceeds the amount which would have been awarded by the jury.

B. Government:

This legislation is intended as a tax savings proposal in that it would encourage more rapid resolution of eminent domain proceedings, thus avoiding the additional costs and attorneys' fees which the government must pay, both on its own behalf and on behalf of the property owner. The amount of the savings cannot be readily determined, but should be substantial.

III. STATE COMPREHENSIVE PLAN IMPACT:

To the extent that this legislation would result in a decrease in compensation to private property owners for land taken by the government, the legislation could be interpreted to be inconsistent with the protection of private property rights. (Section 187.201(15), Florida Statutes) However, it may equally be argued that this legislation is designed not to infringe on private property rights but to insure that the owner not be unreasonably compensated for such rights.

The bill appears to be designed as an effort to further the goal of encouraging governmental economy in the provision of services. (Section 187.201(20), Florida Statutes)

IV. COMMENTS:

While this legislation is in part designed to extend the provisions of the Florida Rules of Civil Procedure to eminent domain proceedings, the legislation provides an exception to the rule by requiring the expiration of 180 days from the filing of the petition before the offer of judgment may be made. This additional requirement could be interpreted to be procedural rather than substantive and would thus violate the separation of powers doctrine. However, prior provisions of Florida law which have been found to be procedural have eventually resulted in an appropriate rule amendment by the Florida Supreme Court.

Page 4
Bill # CS/HB 18
Date: April 24, 1987

V. AMENDMENTS:

None.

VI. PREPARED BY: Thomas R. Tedcastle *TR*

VII. STAFF DIRECTOR: Richard Hixson *RH*

STORAGE NAME: 87 SS CSHB 0018

Date: April 24, 1987

Revised: _____

Final: June 6, 1987

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

19 1601

BILL #: CS/CS/HB 0018 (as passed)

RELATING TO: Eminent Domain

SPONSOR(S): Committee on Judiciary and Representative Bell

EFFECTIVE DATE: Upon becoming law

COMPANION BILL(S): SB 109, SB 618

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2) _____

I. SUMMARY:

A. Present Situation:

Pursuant to Article X, Section 6 of the Florida Constitution, property may not be taken through the exercise of eminent domain without the payment of full compensation. The Florida Supreme Court has interpreted the phrase "full compensation" to include the costs of the private property owner incurred in an eminent domain proceeding, including attorneys' fees. Tosohatchee Game Preserve, Inc. v. Central and Southern Florida Flood Control Dist., 265 So.2d 681 (1972)

Section 73.091, Florida Statutes, provides that the petitioner shall pay all reasonable costs, including attorneys' fees. The attorneys' fees are to be assessed in accord with the criteria established in Section 73.092, Florida Statutes, which include the benefits received by the client, the novelty, difficulty, and importance of the issues involved, the skill of the attorney, the amount of money involved, the responsibility incurred by counsel, and the amount of time reasonably required of the attorney to adequately represent the client. The amount of the fee may not be based solely on a percentage of the award.

Section 337.271, Florida Statutes, directs the Department of Transportation to enter into negotiations for the purpose of acquiring property for road construction prior to the filing of an action in eminent domain. As part of the negotiation process, the property owner is authorized to obtain at the expense of the department, an appraisal of the property and an estimate of

business damages. No provision is made for the payment of the property owner's attorneys' fees unless a subsequent eminent domain proceeding is filed.

B. Effect of Proposed Changes:

This legislation, if enacted, would specifically prohibit an award of attorneys' fees which is based solely on a percentage of the amount of damages awarded in an eminent domain proceeding. The amount of the award would however continue to be one of several factors to be considered in arriving at an appropriate award of fees.

The legislation further provides for the making of an offer of judgment in accordance with the Florida Rules of Civil Procedure, after the expiration of 180 days from the filing of an eminent domain petition. If an offer which is equal to or greater than the final award is rejected or expires, costs and attorneys' fees incurred after the rejection of the offer shall not be awarded to the property owner. An offer of judgment would expire by thirty days after service on the property owner. (Rule 1.442, F.R.C.P.)

The bill further provides that a property owner shall be entitled to recover all reasonable costs, including attorneys' fees, incurred during the negotiation process authorized for the Department of Transportation. While the language referring to the right to recover appraisers' fees and the costs of obtaining an estimate of business damages is deleted, such costs would fall within the purview of reasonable costs to be recovered under this legislation. Disagreements as to the award of costs and attorneys' fees would be resolved by the circuit court.

The bill also requires that any entity filing an eminent domain petition, must notify the owner of his right to attorneys' fees and to appraisal and accounting fees in certain cases. This notice must be provided as a condition precedent to filing the petition.

II. ECONOMIC IMPACT:

A. Public:

This legislation should result in a decrease in the amount of costs to be awarded to property owners in eminent domain proceedings in those cases in which a reasonable offer of judgment has been awarded. Additionally, as the award of fees would no longer be guaranteed in all cases, property owners might be more inclined to accept preliminary offers, which could result in a lower payment. Theoretically, the property owner may also be encouraged to accept an offer which he otherwise would have rejected.

B. Government:

This legislation is intended as a tax savings proposal in that it would encourage more rapid resolution of eminent domain proceedings, thus avoiding the additional costs and attorneys' fees which the government must pay, both on its own behalf and on behalf of the property owner. The amount of the savings cannot be readily determined, but should be substantial.

III. STATE COMPREHENSIVE PLAN IMPACT:

To the extent that this legislation would result in a decrease in compensation to private property owners for land taken by the government, the legislation could be interpreted to be inconsistent with the protection of private property rights. (Section 187.201(15), Florida Statutes). However, it may equally be argued that this legislation is designed not to infringe on private property rights but to insure that the owner be reasonably compensated.

The bill is designed to further the goal of encouraging governmental economy in the provision of services. (Section 187.201(20), Florida Statutes)

IV. COMMENTS:

While this legislation is in part designed to extend the provisions of the Florida Rules of Civil Procedure to eminent domain proceedings, the legislation provides an exception to the rule by requiring the expiration of 180 days from the filing of the petition before the offer of judgment may be made and by providing 30 days for acceptance. This additional requirement could be interpreted to be procedural rather than substantive and would thus violate the separation of powers doctrine. However, prior provisions of Florida law which have been found to be procedural have eventually resulted in an appropriate rule amendment by the Florida Supreme Court.

V. AMENDMENTS:

None.

VI. PREPARED BY: Thomas R. Tedcastle *TR*

VII. STAFF DIRECTOR: Richard Hixson *RH*

As Reported to Clerk

STATE OF FLORIDA
HOUSE OF REPRESENTATIVES

Prepared 04/30/87
by the Committee on
Appropriations

1987
FISCAL NOTE

CS/CS/HB 18
Bill Number

In compliance with Rule 7.16, there is hereby submitted a fiscal note on the above listed bill relative to the effect on revenues, expenditures, or fiscal liability of the State, and of Local Governments as a whole.

I. DESCRIPTION OF BILL

A. Fund or Tax Affected

State Transportation (Primary) Trust Fund

B. Principal Agency Affected

Department of Transportation

C. Narrative Summary

This bill creates pre-litigation negotiation procedures with respect to eminent domain proceedings. The bill provides for costs, attorney's fees, and apportionment of settlements. Also included in the bill is a provision for offer of judgement by the petitioner. The condemning authority shall be considered the party defending against the claim in event of appeal of a judgement order. The Department of Transportation shall pay all reasonable costs and attorney's fees incurred pursuant to a pre-litigation settlement.

Effective Date: Upon becoming law.

II. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS

<u>A. Non-Recurring or First Year Start-up Effects</u>	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>
None			
<u>B. Recurring or Annualized Continuation Effects</u>			
Department of Transportation			
Estimated reduction in amounts of administrative and legal settlements over appraised value for right-of-way lands	\$5,000,000	\$10,000,000	\$15,000,000
Estimated reduction in defendant attorney fees	1,000,000	1,500,000	2,000,000
Estimated reduction in defendant court costs	500,000	700,000	1,000,000
Estimated reduction in department operating costs and overhead for litigation support	<u>300,000</u>	<u>500,000</u>	<u>500,000</u>
Total Estimated Reduction	\$6,800,000	\$12,700,000	\$18,500,000
<u>C. Long Run Effects Other Than Normal Growth</u>			
None			
<u>D. Appropriations Consequences</u>			
State Transportation (Primary) Trust Fund (Potential Savings)	\$6,800,000	\$12,700,000	\$18,500,000

STATE OF FLORIDA
HOUSE OF REPRESENTATIVES

Prepared 04/30/87
by the Committee on
Appropriations


1987
FISCAL NOTE

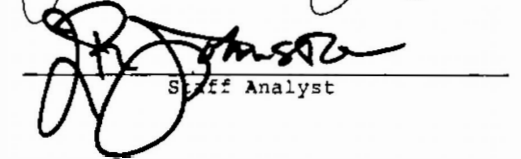
CS/CS/HB 18
Bill Number

III. COMMENTS

Potential savings to the Department of Transportation are difficult to forecast, but estimates included above are considered to be conservative. This bill will act to reduce the amount of eminent domain litigation. The average department settlement above the appraised value should be reduced as a result of eliminating the no-risk litigation system currently in effect. It is estimated that ten percent of the department's annual \$150 million right of way land program could eventually be saved by this bill. Savings are less in prior years due to cases already underway and an assumed lag for the effect of the offer of judgement provision to become known throughout the eminent domain community.

The Appropriations Committee amended the bill to require the condemning authority to notify the fee owners of their statutory rights prior to instituting litigation. The bill was then incorporated as a committee substitute.


Staff Director


Staff Analyst