

**STORAGE NAME:** h3583s1.tr

**DATE:** April 22, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
TRANSPORTATION  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** Committee Substitute for House Bill 3583

**RELATING TO:** Eminent Domain/Business Damages and Local Fuel Tax Revenues

**SPONSOR(S):** Committee on Transportation and Rep. Pruitt and others.

**COMPANION BILL(S):** CS/CS/SB 92 (s), HB 1889 (c), HB 3595 (c), and SB 2654 (c)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) TRANSPORTATION YEAS 7 NAYS 1
  - (2) REAL PROPERTY & PROBATE
  - (3) COMMUNITY AFFAIRS
  - (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
  - (5)
- 

**I. SUMMARY:**

The bill makes a number of changes to eminent domain laws that will become effective July 1, 1999. The bill creates a dispute resolution process applicable to eminent domain actions. The process created by the bill provides for: notice to property and business owners of statutory rights; exchange of information among the parties (such as right-of-way maps, construction plans, appraisals and business records); and written offers of compensation and business damages. The process includes communication of owners' concerns about projects, and conferences to discuss these concerns. After an offer by the condemning authority to an owner, either party may request mediation. If settlement is reached through mediation, the owner may recover costs and attorney fees.

The bill also changes how compensation for agricultural property is determined, so that when the income approach is used to value agricultural property, income from agriculture is attributable to the real estate. The bill also provides that business damages will be available when the condemning authority takes the whole parcel of property. The bill further provides for business damages due to "substantial diminution of access." In addition, the bill provides that business damages will be available when a business has been operating for 4 years, instead of the current 5 year requirement. However, under the bill business damages will not be compensable when the taking is by a public utility or when an entire parcel is taken for public transit intermodal or multimodal terminals and centers.

The bill modifies requirement for the payment of owners' fees and costs for business damage claims and for appeals. The authority of the Department of Transportation and certain expressway authorities to take whole parcels rather than a portion of a parcel when it is less expensive to do so is repealed by the bill. The bill establishes a working group to analyze and report on the feasibility of establishing programs for assisting businesses adversely affected by transportation projects. The working group's report must be submitted to the Governor, to the Senate President, and to the House Speaker by January 1, 1999. The bill also requires a report in 2002 by the department on the impacts of the changes to eminent domain laws.

The bill also provides that the 7.3 percent service charge for the cost of general government which is deducted from the proceeds of the county fuel tax and from the Local Option Fuel Tax Trust Fund, will be reduced over a specified period and will be eliminated for those funds on July 1, 2004.

Effective upon becoming law, the bill revises provisions relating to common law and statutory easements of necessity to increase the availability of such easements.

The fiscal impact of the bill is indeterminate, see FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT.]

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Constitutional Requirements:

Eminent domain is the power of the state to take private property for public use. Under both the federal and state constitutions that power is restricted. The Fifth Amendment to the U.S. Constitution provides that private property may not be taken for public use without just compensation. Article X, s. (6)(a), of the State Constitution, prohibits the government from taking property through the exercise of eminent domain without the payment of full compensation, as follows:

*No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.*

The payment of compensation for intangible losses and incidental or consequential damages, however, is not required by the constitution, but is granted or withheld simply as a matter of legislative grace. *Tampa-Hillsborough County Expressway Authority v. K.E. Morris Alignment Service, Inc.*, 444 So.2d 926, 928 (Fla. 1983). As such, the statutes authorizing these damages must be strictly construed and any ambiguity in these statutes must be construed against the claim of damages, with such damages to be awarded only when such an award appears clearly consistent with legislative intent.

Eminent Domain Process

Chapters 73 & 74, F.S., provide for eminent domain and proceedings supplemental to eminent domain, respectively. Condemnation proceedings are begun by filing a petition for eminent domain. Upon the filing of a petition, the clerk of court is to issue a summons to show cause why the property described in the petition should not be taken. The summons requires all defendants named in the petition and all others who claim an interest in the property to serve written defenses on a day specified in the summons. Nonresident and unknown or unlocated defendants are to be served by publication.

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

The offer of judgment must: be in writing; settle all pending claims with that party or parties exclusive of attorney's fees and costs; state that the offer is made pursuant to this section; name the parties to whom the offer is made; briefly summarize any relevant conditions; state the total amount of the offer; and include a certificate of service. The offer of judgment is deemed rejected unless accepted by filing both a written acceptance and the written offer with the court within 30 days after service of the offer, or before the trial begins if less than 30 days. At the time an offer of judgment is made by the petitioner, the petitioner must identify and make available to the defendant the construction plans, if any, for the project on which the offer is based.

Prior to instituting litigation, the condemning authority must notify the fee owners of their statutory rights concerning attorney's fees and costs.

At trial, the court impanels a jury of 12 persons as soon as practical; giving preference to the trial of eminent domain cases over other civil actions. The amount of compensation is to be determined as of the date of trial, or the date upon which title passes, whichever shall occur first. The jury is to determine the amount of compensation to be paid, with compensation to include, in part, the following:

1. The value of the property sought to be appropriated;
2. Where less than the entire property is sought to be appropriated, any damages to the remainder caused by the taking; these are known as severance damages; and,
3. When the action is by specified condemning authorities for taking right-of-way and the effect of the taking of the property involved may damage or destroy an established business of more than 5 years' standing, then severance damages also include the probable damages to the business which may reasonably be caused by denial of the use of the condemned property. Any person claiming the right to recover business damages must state the nature and extent of the damages in their written defenses to the action.

#### Attorney's Fees

In an eminent domain proceeding, an award of attorney's fees is based on the benefits achieved for the client. The term "benefits" means the difference, exclusive of interest, between the final judgment or settlement and the last written offer made by the condemning authority before the defendant hires an attorney. If an attorney is hired before a written offer is made, benefits must be measured from the first written offer after the attorney is hired. Attorney's fees based on benefits achieved are to be awarded according to the following schedule:

1. 33 percent of any benefit up to \$250,000; plus
2. 25 percent of any portion of the benefit between \$250,000 and \$1 million; plus
3. 20 percent of any portion of the benefit exceeding \$1 million.

#### Cost of Partial Taking versus Whole Taking

Subsection 337.27(2), F.S., enacted in 1984, provides:

*In the acquisition of lands and property, the department may acquire an entire lot, block, or tract of land if, by doing so, the acquisition costs to the department will be equal to or less than the cost of acquiring a portion of the property. This subsection shall be construed as a specific recognition by the Legislature that this means of limiting the rising costs to the state of property acquisition is a public purpose and that, without this limitation, the viability of many public projects will be threatened.*

In 1988, the Florida Supreme Court heard a case in which a property owner challenged the constitutionality of this subsection, claiming that a whole taking under these circumstances violated the public purpose requirement for takings of private property. *Department of Transportation v. Fortune Federal Savings and Loan Association*, 532

So.2d 1267 (Fla. 1988). The Court upheld the minimization of acquisition costs as a valid public purpose for taking the whole property where doing so was less expensive than a partial taking.

#### Department of Transportation Negotiation Statute

There is an additional statute [s. 337.271, F.S.] regulating real property acquisition negotiations conducted by the Department of Transportation (DOT). This statute requires DOT to negotiate with the property owner in good faith and to attempt to arrive at an agreed amount of compensation for the property. At the inception of the negotiation, DOT must notify the owner of the acquisition sought, provide specified information about the project and inform the property owner of their statutory rights. This notice must be sent by certified mail to the property owner at the address on the ad valorem tax roll.

Within 120 days after receipt of the notice, the property owner may submit a complete appraisal report related to the parcel to be acquired and, if business damages are to be claimed, submit a complete estimate of those damages. Within 30 days of the date on which DOT receives the property owner's appraisal report or business damages report, DOT is to provide to the property owner all department appraisal reports and business expense estimates related to the property. Under these circumstances, DOT also must make a written offer of purchase to the property owner and the business owner, if any, which includes the value of the land and improvements taken and any business or severance damages.

After exchanging appraisal and business damages reports, the parties may jointly agree to nonbinding mediation. Upon submission of an invoice, DOT must pay all reasonable costs, including reasonable attorney's fees, incurred on behalf of a property owner who proceeds to prelitigation negotiation settlement pursuant to this section. The attorney's fees are to be based on the percentage of benefit as provided in s. 73.092. Reasonable appraisal or accountant fees cannot 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 DOT, the property owner may recover reasonable attorney's fees and costs in the circuit court.

#### Right of Access Case Law

When a governmental action causes a substantial loss of access to real property without a taking of the property, there is a right to compensation through an inverse condemnation action. *Palm Beach County v. Tessler*, 538 So.2d 846, 849 (Fla. 1989). However, the fact that a portion or even all of the access to an abutting road is destroyed does not constitute a taking unless, in light of the remaining access to the property, the property owner's right of access was substantially diminished. Damages recoverable are limited to the reduction in the value of the property which was caused by the loss of access.

Business damages are controlled by statute. Current law does not authorize compensation for business damages based on a theory of diminution of access; business damages are compensable only when there is a partial taking of land. *Weaver Oil Co. v. City of Tallahassee*, 647 So.2d 819, 822 (Fla. 1994). Thus, when a governmental action reduces access but the reduction in access is not substantial, there

is no taking of access. Additionally, even if a reduction in access does rise to the level of a taking, if the governmental action does not involve a taking of a part of the property on which the business is located, there can be no statutory business damages.

#### Common Law and Statutory Easements of Necessity

A common law easement of necessity arises from an implied grant or implied reservation. It results from the principle that whenever a party conveys property, the party conveys whatever is necessary for use of the property and retains whatever is necessary for use of the property that is retained. Florida has codified the common-law rule of an implied grant of a way of necessity. Section 704.01, F.S., provides that an implied grant exists where a person grants lands to which there is no accessible right of way except over that person's land, or where a person retains land which is inaccessible except over the land which was conveyed. In such instances a right of way is presumed to have been granted or reserved. The implied grant or easement exists where there is no other reasonable and practicable way of egress or ingress and the easement is reasonably necessary for the use or enjoyment of the property granted or reserved. Section 704.03, F.S., provides that the word "practicable" means "without the use of bridge, ferry, turnpike road, embankment or substantial fill."

A statutory way of necessity exists when any land outside of a municipality is being used as a dwelling, or for agriculture, timber or stock-raising, and is hemmed-in by another person's lands, fencing, or other improvements so that no practicable route of egress or ingress is available to the nearest practicable public or private road. The statute provides for compensation with respect to a statutory way of necessity. A statutory way of necessity applies only where land does not qualify for a common-law easement of necessity.

#### General Revenue Service Charge: Local Option and County Fuel Taxes

Section 215.20, F.S., provides that the county fuel tax and the local option fuel tax are collected and deposited into the Fuel Tax Collection Trust Fund. A 7.3 percent general revenue service charge is then assessed on the county fuel tax and the remaining funds from the county fuel tax are distributed to the counties to primarily fund transportation projects. In the case of the local option fuel tax, all funds are transferred from the Fuel Tax Collection Trust Fund to the Local Option Fuel Tax Trust Fund where the 7.3 percent general revenue service charge is assessed, and the remaining funds are distributed to the counties and municipalities to fund transportation projects.

Section 215.22, F.S., exempts certain income and certain trust funds from the 7.3 percent general revenue service charge. These exemptions do not include the county or local option fuel taxes.

#### B. EFFECT OF PROPOSED CHANGES:

##### Legislative Intent

The bill provides that the intent of the Legislature is for condemning authorities to minimize damage or disruption to businesses during construction, and to resolve business damage disputes prior to eminent domain litigation.

Dispute Resolution, Offers to Property and Business Owner, Exchange of Information

Effective July 1, 1999, the bill amends s. 73.0511, F.S., which currently provides for prelitigation notice to property owners, to create a dispute resolution process applicable to eminent domain actions filed on or after July 1, 1999. The process created by the bill provides that:

Before an eminent domain action is begun the condemning authority must notify the fee owners of their statutory rights, and make a written offer of full compensation to the fee owner. The condemning authority and the owner then exchange appraisals, and the authority provides the owner with right-of-way maps and construction plans. The owner provides the condemning authority with a letter of initial concerns about the project; either party may request a conference to discuss these concerns.

Before an eminent domain action is begun, a governmental condemning authority must notify the business owners of their statutory rights. The condemning authority provides the business owner with the current appraisal, right-of-way maps and construction plans. The business owner provides the condemning authority with a letter of initial concerns about the project; either party may request a conference to discuss these concerns.

After making an offer to the fee owner and notifying the business owner of their rights, the condemning authority may obtain business records from the business owner. The bill defines "business records" to mean copies of federal income tax returns, federal income tax withholding statements, federal miscellaneous income tax statements, state sales tax returns, balance sheets, profit and loss statements, and state corporate income tax returns attributable to the business for the preceding three years. Failure of a business owner to timely provide a copy of the business records precludes the owner from recovery of any accountant's fee for estimating business damages.

After the business records are provided, the condemning authority may request a conference to discuss the acquisition, issues and problems caused to the remaining property, and potential resolution or settlement. If the business owner provides copies of business records, the condemning authority must make an offer to settle the business damages. The business owner must either accept the offer or make a counteroffer. If the condemning authority is proceeding with a "quick take" under Chapter 74, F.S., the amount of the business damage offer must be deposited into the court registry and be available for withdrawal by the business owner.

The condemning authority and property and business owners are required by the bill to negotiate in good faith. After an offer by the condemning authority to a property or business owner, either party may request mediation, which must take place within 60 days of the request. If settlement is reached through mediation, the property or business owner may recover costs and attorney fees in the same manner as for litigation costs and fees.

The bill provides that all notices, offers, counteroffers, requests and letters of concern must be sent by certified mail, return receipt requested. Further, before a business owner can begin an inverse condemnation suit for business damages, the condemning authority must be given a written notice of intent to file the action. After

the notice, the parties must then go through the dispute resolution process as described above for business damage claims.

### Compensation, Including Business Damages and Right of Access

Effective July 1, 1999, the bill amends s. 73.071, F.S., to change how compensation for agricultural property is determined. The bill provides that when the income approach to value is used to value property, and when the highest and best use of the property is agriculture, income from agriculture is attributable to real estate for purposes of compensation and for severance damages.

Effective July 1, 1999, the bill also amends this section to extensively modify provisions related to business damages. The bill provides that business damages will be available when the condemning authority takes the whole parcel of property, as well as when there is a partial taking of the property as authorized under current law. The bill also provides for business damages due to "substantial diminution of access." The bill further provides that business damages will be available when a business has been operating for 4 years, instead of the current 5 year standing requirement. However, business damages will not be compensable when the taking is by a public utility or when an entire parcel is taken for public transit intermodal or multimodal terminals and centers. In such instances, businesses which would otherwise be qualified for business damages will be entitled to relocation costs and downtime losses for relocation of the business. The total compensation awarded for business damages may not exceed the value of the business.

Evidence of the ability to mitigate business damages on site or by relocating all or part of the business to an adjacent property or to another comparable location in the same market trade area may be considered when the cost of mitigation is less than the total business damages claimed. Any increased costs of operation and reasonable expenses of mitigation resulting from the onsite mitigation plan or from the relocation of the business to another location, together with moving costs, downtime losses, and unmitigated damages, may be included when determining business damages.

### Fees and Costs: Business Damage Claims and Appeals

Effective July 1, 1999, the bill amends s. 73.091, F.S., to provide that condemning authorities must pay reasonable expert fees and costs for business damage proceedings only when business damages are awarded.

Section 73.131, F.S., provides for payment of appellate fees and costs. Under current law the condemning authority is required to pay the fees and costs of a property or business owner except when the owner appeals the trial court's decision and that decision is affirmed by the appellate court. The bill amends this section effective July 1, 1999, to provide that the condemning authority is not required to pay fees and costs when the authority appeals the trial court's decision and the decision is reversed. Further, the bill provides that no attorney fees are paid on an appeal of a business damage claim unless the owner prevails.

### Whole Takes Repeal

The bill repeals subsection (2) of s. 337.27, F.S., effective July 1, 1999. This subsection currently applies to situations where the Department of Transportation is acquiring land for a project and needs only a portion of a particular parcel of land for that project. The subsection provides that if the costs of acquiring the entire parcel will be equal to or less than the cost of acquiring only that portion of the property which is needed for the project, the Department may acquire the entire parcel. The bill also eliminates the authority of expressway authorities in Chapter 348, F.S., and of counties and cities to condemn such whole parcels.

#### Eminent Domain Report and Business Damage Working Group

The bill provides that by January 1, 2002, the Department of Transportation shall submit a report to the Governor, to the Senate President, and to the House Speaker on the cost and effectiveness of the act's statutory changes to eminent domain laws contained in ss. 73.0511, 73.071, 73.091, and 73.131, F.S.

The bill also establishes a working group composed of a representative of the Department of Transportation, the Department of Banking and Finance, the Florida Association of Counties, the Florida Farm Bureau, the Florida Chamber of Commerce, the Florida Petroleum Marketers Association, the Florida Retail Federation, the Florida Restaurant Association, the Florida United Businesses Association, and the National Federation of Independent Businesses to analyze and report on the feasibility of establishing programs for assisting businesses adversely affected by transportation projects. The working group will also make recommendations on establishing alternative methods of identifying business damage entitlements subsequent to completion of project construction to more accurately assess business damages.

The working group's report must be submitted to the Governor, to the Senate President, and to the House Speaker by January 1, 1999, and may address business loan and grant programs; credits for, and exemptions from, taxes or fees for impacted businesses; use of state surcharges on local fuel tax revenues to fund local business assistance programs; and use of alternative dispute resolution approaches to resolving business damage claims. The bill directs that such programs should only be available when a business can demonstrate actual revenue losses based on a comparison of business records before and after the acquisition and completion of construction.

#### General Revenue Service Charge: Local Option and County Fuel Taxes

The bill amends s 215.20, F.S., to reduce the 7.3 percent general revenue service charge from the county fuel tax and the Local Option Fuel Trust Fund by one percent annually beginning July 1, 1998, and ending July 1, 2004, when the service charge will be eliminated.

The bill also amends s 215.22, F.S., to provide that beginning July 1, 2004, the proceeds from the county fuel tax and the Local Option Fuel Tax Trust Fund would be exempt from the general revenue service charge.

#### Common Law and Statutory Easements of Necessity

The bill revises s. 704.01, F.S. relating to common law easement of necessity to provide that such an easement arises when there is "no reasonable legal access" rather than



when there is no "reasonable and practicable access." The easement still arises from an implied grant or implied reservation. That is, where a person grants lands to which there is no accessible right of way except over that person's land, or where a person retains land which is inaccessible except over the land which was conveyed.

"Reasonable legal access" is defined to mean:

- ▶When the property is within a municipality, legal access over land which reasonably provides for the beneficial use and enjoyment of the property, and
- ▶When the property is outside of a municipality, legal access over land other than by a bridge, turnpike road, embankment, or substantial fill.

The bill repeals s. 704.03, F.S., which provides the definition for "practicable."

The bill expands the availability of statutory ways of necessity. The bill deletes the requirement that the land be located outside of a municipality and the requirement that the land is being used, or will be used, for dwellings or for agriculture, timber or stock-raising purposes. Under the bill, such easements will be available for more parcels that are hemmed-in by another person's lands, fencing, or other improvements. The bill also provides that judicially enforced statutory ways of necessity must be recorded and must contain a description of the easement and property involved.

These changes to Chapter 704, F.S., related to easements become effective upon becoming law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, the bill requires condemning authorities, including cities and counties, to take part in a prelitigation dispute resolution process and to make written offers to settle eminent domain cases. Only DOT is currently required to negotiate prior to litigation and to make such offers.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. STATUTE(S) AFFECTED:**

This bill amends sections 73.0511, 73.071, 73.091, 73.131, 127.01, 166.401, 215.20, 215.22, 337.27, 348.759, 348.957, 704.01, 704.03, and 704.04, F.S.

**E. SECTION-BY-SECTION RESEARCH:**

**Section 1.** This section of the bill provides that the intent of the Legislature is for condemning authorities to minimize damage or disruption to businesses during construction, and to resolve business damage disputes prior to eminent domain litigation.

**Section 2.** Effective July 1, 1999, the bill amends s. 73.0511, F.S., which currently provides for prelitigation notice to property owners, to create a dispute resolution process applicable to eminent domain actions filed on or after July 1, 1999.

**Section 3.** Effective July 1, 1999, the bill amends s. 73.071, F.S., to change how compensation for agricultural property is determined; and to modify provisions related to business damages.

**Section 4.** This section provides Legislative findings and declarations relating to the act fulfilling an important state interest.

**Section 5.** Effective July 1, 1999, the bill amends s. 73.091, F.S., to provide that condemning authorities must pay reasonable expert fees and costs for business damage proceedings only when business damages are awarded.

**Section 6.** Section 73.131, F.S., provides for payment of appellate fees and costs. The bill amends this section effective July 1, 1999, to provide that the condemning authority is not required to pay fees and costs when the authority appeals the trial court's decision and the decision is reversed. Further, the bill provides that no attorney fees are paid on an appeal of a business damage claim unless the owner prevails.

**Section 7.** This section provides that the changes to Chapter 73, F.S., apply to eminent domain actions filed after July 1, 1999.

**Section 8.** This section amends s. 215.20, F.S., to reduce the general revenue service charge from the county fuel tax and the Local Option Fuel Trust Fund by one percent annually beginning July 1, 1998, and ending July 1, 2004, when the service charge will be eliminated.

**Section 9.** This section amends s. 215.22, F.S., to provide that beginning July 1, 2004, the proceeds from the county fuel tax and the Local Option Fuel Tax Trust Fund would be exempt from the general revenue service charge.

**Section 10 - 12 & 15.** Upon becoming law, the bill revises s. 704.01, F.S. relating to common law and statutory easements of necessity. "Reasonable legal access" is made the standard for granting of such easements and a definition is created for the term. The bill repeals s. 704.03, F.S., which provides the definition of the term "practicable." The bill amends s. 704.04, F.S. to provide for the form and recordation of judicially enforced statutory ways of necessity. The bill also provides that these changes to Chapter 704, F.S., apply upon becoming law.

**Section 13.** This section provides that by January 1, 2002, the Department of Transportation shall submit a report to the Governor, to the Senate President, and to the House Speaker on the cost and effectiveness of the statutory changes to sections 73.0511, 73.071, 73.091, and 73.131, F.S. of this act.

**Section 14.** This section establishes a working group to analyze and report on the feasibility of establishing programs for assisting businesses adversely affected by transportation projects. The working group will also make recommendations on establishing alternative methods of identifying business damage entitlements subsequent to completion of project construction. The working group's report must be submitted to the Governor, to the Senate President, and to the House Speaker by January 1, 1999.

**Sections 16 - 18.** These sections repeal subsection (2) of 337.27, F.S., effective July 1, 1999, which authorizes whole takes of property by the Department of Transportation when the costs of acquiring the entire parcel will be equal to or less than the cost of acquiring only the needed portion of the property. These sections also eliminate the authority of expressway authorities in Chapter 348, F.S., and counties and cities to condemn such whole parcels.

**Section 19.** Provides that except as otherwise provided, the bill takes effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate, See Fiscal Comment D.

2. Recurring Effects:

Indeterminate, See Fiscal Comment D.

3. Long Run Effects Other Than Normal Growth:

Indeterminate, See Fiscal Comment D.

4. Total Revenues and Expenditures:

Indeterminate, See Fiscal Comment D.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate, See Fiscal Comment D.

2. Recurring Effects:

Indeterminate, See Fiscal Comment D.

3. Long Run Effects Other Than Normal Growth:

Indeterminate, See Fiscal Comment D.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

Indeterminate, See Fiscal Comment D.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate, See Fiscal Comment D.

D. FISCAL COMMENTS:

State Impacts:

The bill makes more businesses eligible for business damages because of the reduction in qualifying time from 5 years to 4 years, and because business damages would have to be paid when certain entire parcels are taken. These changes will require additional payments for business damages and for attorney fees and expert costs associated with the additional business damage claims, but the amount of additional payments is unknown.

There may be considerable litigation over payment of business damages when access is substantially diminished. This will cause an increase in fees paid to the attorneys and experts of business owners, and similar increases in DOT's litigation costs. Depending on how the courts interpret this provision, there could be significant increases in the payments to businesses for changes in access.

Other state agencies that are involved in condemnation activities may be impacted by the bill's changes as well.

Reductions in revenue to the state General Revenue Fund due to phasing out the service charge on county and local option fuel taxes are estimated to be approximately \$6 million for fiscal year 1998-99 increasing up to \$60 million in fiscal year 2004-05.

Local Governmental Impacts:

The bill will have similar effects on local governments as described above for the state. There will be increased costs associated with paying additional business damages, and increased litigation costs resulting from more business damage claims.

Counties and municipalities will receive increases in revenues to the same extent that the General Revenue Fund is reduced due to phasing out the service charge on county and local option fuel taxes. These positive fiscal impacts are estimated to be approximately \$6 million for fiscal year 1998-99 increasing up to \$60 million in fiscal year 2004-05.

Private Sector Impacts:

Business owners would have increased compensation from government under the bill. More businesses would be eligible for business damages because of the reduction in qualifying time from 5 years to 4 years, and because business damages would have to be paid when certain entire parcels are taken and when access is substantially diminished. Because of additional litigation, there would be corresponding increases in government payments to attorneys and experts involved in litigation over these issues.

Owners of property which does not currently have access will benefit from the changes to the provisions relating to common law and statutory easements of necessity to the extent that such parcels qualify for an easement under the new statute. Owners of property that have to provide such easements will also be impacted by these changes.

**IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:**

**A. APPLICABILITY OF THE MANDATES PROVISION:**

Because this bill requires local governments to spend money or to take actions which require the expenditure of money, it appears to be a mandate subject to the constitution's mandate provisions. The bill requires additional payments for business damage claims by local governments, where currently such claims are not allowed. The bill will increase the cost of public works projects involving the condemnation of property which are undertaken by local governments. The provisions of the bill phasing out the general revenue service charge on certain local fuel taxes will make more money available to local governments to partially offset these increased costs.

Because none of the exemptions or exceptions provided for in the state constitution appear to apply to this bill, the bill must be found to fulfill an important state interest and have a two-thirds vote of the membership of the House and Senate to bind cities and counties. Section 4. of the bill contains a statement of important state interest.

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

N/A

**C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

N/A

**V. COMMENTS:**

HB 3595 provides an exemption from public records requirements for business records which are disclosed as part of an eminent domain prelitigation procedure. This legislation is contingent on passage of HB 3583 or similar legislation.

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

The Committee on Transportation considered this bill on April 2 and 16, 1998. A series of amendments were adopted which had the following primary effects:

- Created the dispute resolution process applicable to eminent domain actions;



- ▶ Changed how compensation for agricultural property and business damages will be determined;
- ▶ Modified requirements for the payment of owners' fees and costs for business damage claims and for appeals.
- ▶ Established a working group to analyze and report on the feasibility of establishing programs for assisting businesses adversely affected by transportation projects, and required a DOT report in 2002 on the impacts of changes to eminent domain laws;
- ▶ Revised provisions relating to common law and statutory easements of necessity to increase the availability of such easements
- ▶ Provided that the 7.3 percent service charge which is deducted from the proceeds of the county fuel tax and from the Local Option Fuel Tax Trust Fund, will be reduced over a specified period and will be eliminated for those funds on July 1, 2004.

The bill as amended was reported favorably as a committee substitute.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

Prepared by:

Legislative Research Director:

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Phillip B. Miller

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John R. Johnston