

1 HB98  
2 197868-5  
3 By Representative Ellis  
4 RFD: County and Municipal Government  
5 First Read: 05-MAR-19



1           "(3) BUSINESS. A lawful activity, whether or not for  
2 profit, other than a farm operation, conducted primarily for  
3 the purchase, sale, lease, rental, manufacture, processing, or  
4 marketing of products, commodities, or other property, or for  
5 providing services.

6           "(4) CONDEMN. To take property under the power of  
7 eminent domain.

8           "(5) CONDEMNATION ACTION. Includes all acts incident  
9 to the process of condemning property after commencement of  
10 suit until the entry of final judgment.

11           "(6) CONDEMNEE. A person who has or claims an  
12 interest in property that is the subject of a prospective or  
13 pending condemnation action.

14           "(7) CONDEMNOR. A person empowered to condemn.

15           "(8) CROPS. Any form of vegetation intended to be  
16 removed and used or sold for commercial purposes, including  
17 grass, flowers, fruits, vegetables, trees, vines, and nursery  
18 stock.

19           "(9) FARM OPERATION. Any activity conducted  
20 primarily for the production of one or more agricultural  
21 products or commodities, including timber, for sale or home  
22 use, and customarily producing those products or commodities  
23 in sufficient quantity to be capable of contributing  
24 materially to the operator's support.

25           "(10) IMPROVEMENT. Includes any building or  
26 structure and any facility, machinery, or equipment that  
27 cannot be removed from the real property on which it is

1 situated without substantial damage to the real property or  
2 improvement.

3 "(11) LIEN. A security interest in property arising  
4 from contract, mortgage, deed ~~or~~ of trust, statute, common  
5 law, equity, or creditor action.

6 "(12) LITIGATION EXPENSES. The sum of the costs,  
7 disbursements, and expenses, including reasonable attorney,  
8 appraisal, and engineering fees, necessary to prepare for  
9 anticipated or participation in actual probate or circuit  
10 court proceedings.

11 "(13) LOCAL PUBLIC ENTITY. A public entity other  
12 than the state.

13 "(14) PERSON. Includes a natural individual,  
14 partnership, corporation, association, other legal or  
15 fiduciary entity, and a public entity.

16 "(15) PERSONAL PROPERTY. Any property other than  
17 real property which is affixed or directly related to the real  
18 property proposed to be acquired.

19 "(16) PROPERTY. An interest in real or personal  
20 property under the law of this state.

21 "(17) REAL PROPERTY. Land and any improvements upon  
22 or connected with land; and includes an easement, servitude,  
23 or other interest therein.

24 "(18) WORK. Includes construction, alteration,  
25 repair, remodeling, excavation, demolition, rehabilitation,  
26 relocation, and landscaping.

1           "(19) VALUATION DATE. Shall be the date on which the  
2 application for order of condemnation is filed in the probate  
3 court or the date of taking of or damage to property by the  
4 condemnor whichever date first occurs.

5           "(20) WAIVER VALUATION. The valuation process  
6 utilized and the product produced by the state or a political  
7 subdivision thereof, in lieu of an appraisal, to acquire real  
8 property as specifically authorized by Section 18-1A-22.

9           "§18-1A-22.

10          "(a) (1) Before commencing a condemnation action, the  
11 condemnor shall establish an amount based on an appraisal,  
12 except as otherwise provided in subsection (e), which it  
13 believes to be just compensation therefor and promptly shall  
14 submit to the owner an offer to acquire the property for the  
15 full amount so established.

16          "(2) The amount ~~shall~~ may not be less than the  
17 condemnor's established amount of just compensation for the  
18 property.

19          "(b) In a total taking, the condemnor shall  
20 disregard any decrease or increase in the fair market value of  
21 the property caused by the project for which the property is  
22 to be acquired or by the reasonable likelihood that the  
23 property will be acquired for that project, other than normal  
24 depreciation.

25          "(c) (1) The amount of compensation to which the  
26 owners and other parties interested therein are entitled ~~must~~  
27 may not be reduced or diminished because of any incidental

1 benefits which may accrue to them or to their remaining lands  
2 in consequence of the uses to which the lands to be taken or  
3 in which the easement is to be acquired will be appropriated~~7.~~

4 ~~"provided, that in~~ (2) In the condemnation of lands  
5 for ways and rights-of-way for public highways, water or sewer  
6 lines, the commissioners ~~may,~~ in fixing the amount of  
7 compensation to be awarded the owner for lands taken for this  
8 use, may take into consideration the value of the enhancement  
9 to the remaining lands of ~~such~~ the owner that ~~such~~ the  
10 highway, water or sewer lines may cause~~7.~~

11 ~~"and provided further, that in~~ (3) In proceedings  
12 instituted by water conservancy districts and water management  
13 districts, benefits accruing to the landowner from an  
14 improvement may be considered and allowed as a setoff against  
15 the damages to be awarded, but benefits derived from  
16 improvements other than the improvement for which the land is  
17 condemned ~~cannot~~ may not be considered.

18 "(d) (1) The condemnor shall provide the owner of the  
19 property with a written statement and summary, showing the  
20 basis for the amount it established as just compensation for  
21 the property.

22 "(2) If appropriate, the compensation for the  
23 property to be acquired and for the damages to remaining  
24 property shall be separately stated.

25 "(e) (1) The state or a political subdivision thereof  
26 may use a waiver valuation, in lieu of an appraisal, to  
27 acquire real property if either of the following apply:

1           "a. The owner of the real property to be acquired is  
2 donating the property and releases the state or a political  
3 subdivision thereof from its obligation to appraise the  
4 property.

5           "b. The state or a political subdivision thereof,  
6 with the written consent of the owner of the real property to  
7 be acquired, determines that an appraisal is unnecessary and  
8 the anticipated value of the proposed acquisition, based upon  
9 a review of available valuation data, is equal to or less than  
10 the amount provided for in 49 CFR Section 24.102(c)(2)(ii), or  
11 the appropriate replacement federal regulation.

12           "(2) When an appraisal is determined to be  
13 unnecessary pursuant to this subsection, the state or a  
14 political subdivision thereof shall prepare the waiver  
15 valuation. The person preparing the waiver valuation shall  
16 make his or her determination based on the available evidence  
17 of the value of the real property in the local real estate  
18 market."

19           Section 2. This act shall become effective  
20 immediately following its passage and approval by the  
21 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on County and Mu-  
nicipal Government..... 05-MAR-19

Read for the second time and placed  
on the calendar with 1 substitute  
and..... 20-MAR-19

Read for the third time and passed  
as amended..... 04-APR-19

Yeas 101, Nays 0, Abstains 0

Jeff Woodard  
Clerk