

1 HB98
2 197868-6
3 By Representative Ellis
4 RFD: County and Municipal Government
5 First Read: 05-MAR-19

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ENROLLED, An Act,

To amend Sections 18-1A-3 and 18-1A-22, Code of Alabama 1975, relating to condemnation actions by the state and its political subdivisions; to define terms; and to allow waiver valuations to be used in lieu of appraisals to determine real property values for the purposes of right-of-way acquisitions.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 18-1A-3 and 18-1A-22, Code of Alabama 1975, are amended to read as follows:

"§18-1A-3.

"As used in this chapter, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise:

"(1) ACTION. Condemnation action.

"(2) APPRAISAL. An opinion as to the value of or compensation payable for property, prepared by the owner or under the direction of an individual qualified by knowledge, skill, experience, training, or education to express an opinion as to the value of property.

"(3) BUSINESS. A lawful activity, whether or not for profit, other than a farm operation, conducted primarily for the purchase, sale, lease, rental, manufacture, processing, or

1 marketing of products, commodities, or other property, or for
2 providing services.

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

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

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

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

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

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

22 "(10) IMPROVEMENT. Includes any building or
23 structure and any facility, machinery, or equipment that
24 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.

1 "(18) WORK. Includes construction, alteration,
2 repair, remodeling, excavation, demolition, rehabilitation,
3 relocation, and landscaping.

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

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

12 "§18-1A-22.

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

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

22 "(b) In a total taking, the condemnor shall
23 disregard any decrease or increase in the fair market value of
24 the property caused by the project for which the property is
25 to be acquired or by the reasonable likelihood that the

1 property will be acquired for that project, other than normal
2 depreciation.

3 "(c) (1) The amount of compensation to which the
4 owners and other parties interested therein are entitled ~~must~~
5 may not be reduced or diminished because of any incidental
6 benefits which may accrue to them or to their remaining lands
7 in consequence of the uses to which the lands to be taken or
8 in which the easement is to be acquired will be appropriated~~7.~~

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

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

23 "(d) (1) The condemnor shall provide the owner of the
24 property with a written statement and summary, showing the

1 basis for the amount it established as just compensation for
2 the property.

3 "(2) If appropriate, the compensation for the
4 property to be acquired and for the damages to remaining
5 property shall be separately stated.

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

9 "a. The owner of the real property to be acquired is
10 donating the property and releases the state or a political
11 subdivision thereof from its obligation to appraise the
12 property.

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

20 "(2) When an appraisal is determined to be
21 unnecessary pursuant to this subsection, the state or a
22 political subdivision thereof shall prepare the waiver
23 valuation. The person preparing the waiver valuation shall
24 make his or her determination based on the available evidence

1 of the value of the real property in the local real estate
2 market."

3 Section 2. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.

