

1 HB98
2 197253-1
3 By Representative Ellis
4 RFD: County and Municipal Government
5 First Read: 05-MAR-19

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8 SYNOPSIS: Under existing law, the state and its
9 political subdivisions must first secure an
10 appraisal to determine the value of real property
11 before acquiring rights-of-way from private
12 landowners.

13 This bill would allow the state and its
14 political subdivisions to utilize the federal
15 concept of waiver valuations, in lieu of an
16 appraisal, to determine the value of real property
17 for the purposes of right-of-way acquisitions.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
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23 To amend Sections 18-1A-3 and 18-1A-22, Code of
24 Alabama 1975, relating to condemnation actions by the state
25 and its political subdivisions; to define terms; and to allow
26 waiver valuations to be used in lieu of appraisals to

1 determine real property values for the purposes of
2 right-of-way acquisitions.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

6 "§18-1A-3.

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

10 "(1) ACTION. Condemnation action.

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

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

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

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

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

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

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

9 "(9) FARM OPERATION. Any activity conducted
10 primarily for the production of one or more agricultural
11 products or commodities, including timber, for sale or home
12 use, and customarily producing those products or commodities
13 in sufficient quantity to be capable of contributing
14 materially to the operator's support.

15 "(10) IMPROVEMENT. Includes any building or
16 structure and any facility, machinery, or equipment that
17 cannot be removed from the real property on which it is
18 situated without substantial damage to the real property or
19 improvement.

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

23 "(12) LITIGATION EXPENSES. The sum of the costs,
24 disbursements, and expenses, including reasonable attorney,
25 appraisal, and engineering fees, necessary to prepare for
26 anticipated or participation in actual probate or circuit
27 court proceedings.

1 "(13) LOCAL PUBLIC ENTITY. A public entity other
2 than the state.

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

6 "(15) PERSONAL PROPERTY. Any property other than
7 real property which is affixed or directly related to the real
8 property proposed to be acquired.

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

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

14 "(18) WORK. Includes construction, alteration,
15 repair, remodeling, excavation, demolition, rehabilitation,
16 relocation, and landscaping.

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

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

25 "§18-1A-22.

26 "(a) (1) Before commencing a condemnation action, the
27 condemnor shall establish an amount based on an appraisal,

1 except as otherwise provided in subsection (e), which it
2 believes to be just compensation therefor and promptly shall
3 submit to the owner an offer to acquire the property for the
4 full amount so established.

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

8 "(b) In a total taking, the condemnor shall
9 disregard any decrease or increase in the fair market value of
10 the property caused by the project for which the property is
11 to be acquired or by the reasonable likelihood that the
12 property will be acquired for that project, other than normal
13 depreciation.

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

20 "~~provided, that in~~ (2) In the condemnation of lands
21 for ways and rights-of-way for public highways, water or sewer
22 lines, the commissioners ~~may~~, in fixing the amount of
23 compensation to be awarded the owner for lands taken for this
24 use, may take into consideration the value of the enhancement
25 to the remaining lands of ~~such~~ the owner that ~~such~~ the
26 highway, water or sewer lines may cause~~7.~~

1 ~~"and provided further, that in~~ (3) In proceedings
2 instituted by water conservancy districts and water management
3 districts, benefits accruing to the landowner from an
4 improvement may be considered and allowed as a setoff against
5 the damages to be awarded, but benefits derived from
6 improvements other than the improvement for which the land is
7 condemned ~~cannot~~ may not be considered.

8 "(d) (1) The condemnor shall provide the owner of the
9 property with a written statement and summary, showing the
10 basis for the amount it established as just compensation for
11 the property.

12 "(2) If appropriate, the compensation for the
13 property to be acquired and for the damages to remaining
14 property shall be separately stated.

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

18 "a. The owner of the real property to be acquired is
19 donating the property and releases the state or a political
20 subdivision thereof from its obligation to appraise the
21 property.

22 "b. The state or a political subdivision thereof,
23 with the consent of the owner of the real property to be
24 acquired, determines that an appraisal is unnecessary and the
25 anticipated value of the proposed acquisition is equal to or
26 less than the amount provided for in 49 CFR Section

1 24.102(c)(2)(ii), or the appropriate replacement federal
2 regulation.

3 "(2) When an appraisal is determined to be
4 unnecessary pursuant to this subsection, the state or a
5 political subdivision thereof shall prepare the waiver
6 valuation based on the assessed value of the real property for
7 the purpose of calculating ad valorem tax."

8 Section 2. This act shall become effective
9 immediately following its passage and approval by the
10 Governor, or its otherwise becoming law.