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CHAPTER 74 PROCEEDINGS SUPPLEMENTAL TO EMINENT DOMAIN

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74.011 Scope.—In any eminent domain action, properly instituted by and in the name of the state; the Department of Transportation; any county, school board, municipality, expressway authority, regional water supply authority, transportation authority, flood control district, or drainage or subdrainage district; the ship canal authority; any lawfully constituted housing, port, or aviation authority; or any rural electric cooperative, telephone cooperative corporation, or public utility corporation, the petitioner may avail itself of the provisions of this chapter to take possession and title in advance of the entry of final judgment.

History.—s. 4, ch. 65-369; ss. 23, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 78-422; s. 1, ch. 83-113; s. 55, ch. 90-136; s. 4, ch. 90-303; s. 9, ch. 91-265; s. 1, ch. 2002-183; s. 51, ch. 2006-60.

74.021 Rights under this chapter; additional.—The right to take possession and title in advance of final judgment in eminent domain actions, as provided by this law, shall be in addition to any right, power or authority conferred by laws of the state under which proceedings may be conducted and shall not be construed as abrogating, limiting or modifying any such right, power or authority.

History.—s. 4, ch. 65-369.

74.031 Declaration of taking; contents.—Those having the right to take possession and title in advance of the entry of final judgment in eminent domain actions, as provided by law, may file, either with the petition or at any time prior to the entry of final judgment, a declaration of taking signed by the petitioner, or its duly authorized agent or attorney, stating that the property sought to be appropriated is thereby taken for the use set forth in the petition. The petitioner shall make a good faith estimate of value, based upon a valid appraisal of each parcel in the proceeding, which shall be made a part of the declaration of taking.

History.—s. 4, ch. 65-369.

74.041 Process; service and publication.—

(1) Upon the filing of the declaration of taking, the clerk of the court shall issue a summons to show cause to the defendants, containing the names of all defendants named in the petition, notifying them that the petitioner will petition for an order of taking on a specified date. A copy of the summons to show cause and the declaration of taking shall be served upon all resident defendants in the manner provided by law for service of original process in eminent domain actions, and not less than 20 days prior to the date specified.

(2) If any defendant is alleged to be a nonresident of the state, or if the name or address of any defendant is alleged to be unknown, or if personal service cannot be had upon any defendant for any other reason, the clerk of the court shall cause the summons to show cause to be published one time, not less than 20 days prior to the date specified in the petition, in some newspaper published in the county; however, if the petitioner is a municipality and a newspaper is published therein, the summons shall be published in such a newspaper. The clerk shall mail a copy of the summons to show cause and the declaration of taking to each out-of-state defendant at the address set forth in the petition. The clerk shall file a certificate of mailing, which, together with proof of publication, shall constitute effective service as to these defendants. The failure of any party to receive the summons by mail shall not invalidate the proceedings of the court or any order made pursuant to this chapter.

(3) The petition date provided in this section may be combined with the summons to show cause and the published summons provided in s. 73.031, but in no event shall the petition date provided in this section be noticed for a date earlier than 1 day following the date specified in the summons to show cause and the published summons provided in s. 73.031 for the defendants to serve written defenses to the petition in eminent domain proceedings and, if a defendant requests, a hearing on the petition for order of taking.

History.—s. 4, ch. 65-369, s. 1, ch. 70-286; s. 38, ch. 85-180.

74.051 Hearing on order of taking.—

(1) If a defendant requests a hearing pursuant to s. 74.041(3), said defendant may appear and be heard on all matters properly before the court which may be determined prior to the entry of the order of taking, including the jurisdiction of the court, the sufficiency of pleadings, whether the petitioner is properly exercising its delegated authority, and the amount to be deposited for the property sought to be appropriated. Any defendant failing to file a request for hearing shall waive any right to object to the order of taking, and title shall be vested in the petitioner, upon deposit as hereinafter provided, which date shall be the date of valuation.

(2) If a hearing is requested, the court shall make such order as it deems proper, securing to all parties the rights to which they may be entitled, not inconsistent with the provisions of this section. The court may make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, amount of the good faith deposit, and other charges, if any, as shall be just and equitable. If the court finds that the petitioner is entitled to possession of the property prior to final judgment, it shall enter an order requiring the petitioner to deposit in the registry of the court such sum of money as will fully secure and fully compensate the persons entitled to compensation as ultimately determined by the final judgment. Said deposit shall not be less than the amount of the petitioner's estimate of value, if the petitioner be the state or any agency thereof, any county, the city, or other public body; otherwise, double the amount of petitioner's estimate of value.

(3) If a defendant requests a hearing pursuant to s. 74.041(3) and the petitioner is an electric utility that is seeking to appropriate property necessary for an electric generation plant, an associated facility of an electric generation plant, an electric substation, or a power line, it is the intent of the Legislature that the court, when practicable, conduct the hearing no more than 120 days after the petition is filed and issue its order of taking no more than 30 days after the conclusion of the hearing.

(4) The court may fix the time within which and the terms upon which the defendants shall be required to surrender possession to the petitioner, which time of possession shall be upon deposit for those defendants failing to file a request for hearing as provided herein. The order of taking shall not become effective unless the deposit of the required sum is made in the registry of the court. If the deposit is not made within 20 days from the date of the order of taking, the order shall be void and of no further effect. The clerk is authorized to invest such deposits so as to earn the highest interest obtainable under the circumstances in state or national financial institutions in

Florida insured by the Federal Government. Ninety percent of the interest earned shall be allocated in accordance with the ultimate ownership in the deposit.

History.—s. 4, ch. 65-369; s. 1, ch. 67-34; ss. 1, 3, ch. 67-370; s. 1, ch. 70-365; s. 2, ch. 82-117; s. 39, ch. 85-180; s. 1, ch. 2008-227; s. 1, ch. 2013-23.

74.061 Vesting of title or interest sought.—Immediately upon the making of the deposit, the title or interest specified in the petition shall vest in the petitioner, and the said lands shall be deemed to be condemned and taken for the use of the petitioner, and the right to compensation for the same shall vest in the persons entitled thereto. Compensation shall be determined in accordance with the provisions of chapter 73, except that interest shall be allowed at the same rate as provided in all circuit court judgments from the date of surrender of possession to the date of payment on the amount that the verdict exceeds the estimate of value set forth in the declaration of taking.

History.—s. 4, ch. 65-369; ss. 1, 2, ch. 67-277; s. 28, ch. 73-333; s. 4, ch. 78-315.

74.071 Paying over funds in court.—At any time, prior to the entry of final judgment, and upon motion by the proper defendants, the court may direct that the sum of money set forth in the declaration of taking be paid forthwith to such defendants from the money deposited in the registry of the court. If the compensation awarded for the property by the final judgment shall exceed the amount withdrawn by the defendant, the court shall enter judgment against the petitioner for the deficiency. If the amount withdrawn exceeds the compensation awarded for the property by the final judgment, the court shall enter a judgment against such defendant for the excess, and such judgment shall be a lien against any of the defendant's property except his or her homestead.

History.—s. 4, ch. 65-369; s. 365, ch. 95-147.

74.081 Proceedings as evidence.—Neither the declaration of taking, nor the amount of the deposit, shall be admissible in evidence in any action.

History.—s. 4, ch. 65-369.

74.091 Effect of failure to pay final judgment.—Where an order of taking has been entered and deposit made, the failure of the petitioner to pay into the court the compensation ascertained by the jury shall not invalidate said judgment or the title of the petitioner, and such failure shall not authorize any person to molest, interfere with, enter or trespass upon said property; provided, however, persons lawfully entitled to compensation may sue out execution, in the event a timely appeal has not been filed, and such execution may be levied upon the property so condemned and any other property of the petitioner in the same manner as executions are levied in common-law actions.

History.—s. 4, ch. 65-369.

74.101 Rights of housing authority after taking.—In any action in which any housing authority created under the laws of Florida has taken or may take possession of any real property in advance of final judgment therein, and the said petitioner has become irrevocably committed to pay the amount ultimately to be awarded as compensation, then it is lawful to expend moneys duly appropriated for that purpose in demolishing existing structures on said land, and in erecting buildings or public works thereon, or in improving said land or erecting and constructing buildings or works thereon, authorized by law to be constructed by any petitioner.

History.—s. 4, ch. 65-369.

74.111 Drainage districts and housing authorities.—In any action instituted by a drainage or subdrainage district, or housing authority wherein the petitioner seeks to avail itself of the provisions of this chapter:

(1) Action under this chapter shall not be taken unless the chair or other legally constituted head of the petitioning authority empowered to acquire the land shall be of the opinion that the ultimate award probably will be within the limits of the authority's ability to pay.

(2) It shall be lawful for the petitioner to expend moneys duly appropriated for the purpose of availing itself of the provisions of this chapter in going forward with the project for which the land was taken; provided that, in the opinion of the attorney representing the taking authority, the title has been vested in the authority taking, or all

persons having an interest therein have been made parties to such proceeding and will be bound by the final judgment therein.

(3) No money shall be paid nor contracts made for payment for any construction or maintenance proposed by the petitioner under this chapter in excess of the amount specifically appropriated therefor by the Legislature of the state, or procured by and secured to the petitioner under contracts with private persons, firms, or corporations in accordance with the laws authorizing such taking authority to negotiate contracts with private persons, firms, or corporations, or by the issuance of bonds and other debentures pursuant to tax levies duly made, all in accordance with the law in such cases made and provided.

(4) The attorney representing the petitioner is authorized to stipulate or agree in behalf of the taking authority to exclude any property, or any part thereof, or any interest therein, that may have been, or may be taken by or on behalf of the authority taking by the declaration of taking, or otherwise.

History.—s. 4, ch. 65-369; s. 366, ch. 95-147.