

## CHAPTER 73

## EMINENT DOMAIN

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**73.012 Procedure.**—Actions in eminent domain shall be governed by the rules of civil procedure and the appellate rules unless otherwise provided by this chapter.

**History.**—s. 1, ch. 65-369.

**73.021 Petition; contents.**—Those having the right to exercise the power of eminent domain may file a petition therefor in the circuit court of the county wherein the property lies, which petition shall set forth:

(1) The authority under which and the use for which the property is to be acquired, and that the property is necessary for that use;

(2) A description identifying the property sought to be acquired. The petitioners may join in the same action all properties involved in a planned project whether in the same or different ownership, or whether or not the property is sought for the same use;

(3) The estate or interest in the property which the petitioner intends to acquire;

(4) The names, places of residence, legal disabilities, if any, and interests in the property of all owners, lessees, mortgagees, judgment creditors, and lienholders, so far as ascertainable by diligent search, and all unknown persons having an interest in the property when the petitioner has been unable to ascertain the identity of such persons by diligent search and inquiry. If any interest in the property, or lien thereon, belongs to the unsettled estate of a decedent, the executor or administrator shall be made a defendant without joining the devisee or heir; if a trust estate, the trustee shall be made a defendant without joining the cestui que

trust. The court may appoint an administrator ad litem to represent the estate of a deceased person whose estate is not being administered, and a guardian ad litem for all defendants who are infants or are under other legal disabilities; and for defendants whose names or addresses are unknown. A copy of the order of appointment shall be served on the guardian ad litem at least 10 days before trial unless he or she has entered an appearance;

(5) Whether any mobile home is located on the property sought to be acquired and, if so, whether the removal of that mobile home will be required. If such removal shall be required, the petition shall name the owners of each such mobile home as defendants. This subsection shall not apply to any governmental authority exercising its power of eminent domain when reasonable relocation or removal expenses must be paid to mobile home owners under other provisions of law or agency rule applicable to such exercise of power.

(6) A statement that the petitioner has surveyed and located its line or area of construction, and intends in good faith to construct the project on or over the described property;

(7) A demand for relief that the property be condemned and taken for the uses and purposes set forth in the petition, and that the interest sought be vested in the petitioner.

**History.**—s. 1, ch. 65-369; s. 2, ch. 77-51; s. 358, ch. 95-147.

**73.031 Process; service and publication.**—

(1) Upon the filing of the petition, the clerk of the court shall issue a summons to show cause why the property should not be taken, directed "to all whom it may concern," containing the names of all the defendants named in the petition, commanding them and any other persons claiming any interest in the property described to serve written defenses to the petition on a day specified in the summons not less than 28 nor more than 60 days from the date of the summons. A copy of the summons and the petition shall be served upon all resident defendants in the manner provided by law and not less than 20 days before the return day.

(2) If any defendant is alleged to be a nonresident of the state, or if the name or residence of any defendant is alleged to be unknown, or if personal service cannot be had upon any defendant for any other reason, the clerk shall cause a notice to be published at least once each week for 2 consecutive weeks prior to the return day in some newspaper published in the county; provided, however, that if the petitioner be a municipality and a newspaper is published therein, the notice shall be published in such a newspaper. This notice shall contain the names of the defendants to whom it is directed, a description of the property sought to be appropriated, the nature of the action, and the name of the court in which it is pending. The clerk shall mail a copy of the summons and the petition to each out-of-state defendant at the address as set forth in the petition. The clerk shall file a certificate of mailing which, together with

proof of publication, shall constitute effective service as though the defendant had been personally served with process within this state.

(3) The failure of any party to receive notice by mail shall not invalidate the proceedings of the court or any order made pursuant to this chapter.

**History.**—s. 1, ch. 65-369; s. 2, ch. 90-279; s. 359, ch. 95-147.

### **173.032 Offer of judgment.—**

(1) This section shall provide the exclusive offer of judgment provisions for eminent domain actions.

(2) The petitioner may serve a defendant with 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.

(3) A defendant may make an offer to have judgment entered against defendant for payment of compensation by petitioner only for an amount that is 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.

(4)(a) The offer of judgment must:

1. Be in writing;
2. Settle all pending claims with that party or parties exclusive of attorney's fees and costs;
3. State that the offer is made pursuant to this section;
4. Name the parties to whom the offer is made;
5. Briefly summarize any relevant conditions;
6. State the total amount of the offer; and
7. Include a certificate of service.

(b) The offer of judgment must be served in the same manner as other pleadings upon the parties to whom it is made, but may not be filed with the court unless it is accepted or unless filing is necessary to enforce this section.

(c) The offer of judgment shall be 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. Upon proper filing of both the offer and acceptance, the court shall enter judgment thereon. A rejection of an offer terminates the offer.

(d) The party making the offer may withdraw the offer in a writing served on the opposing party before a written acceptance is filed with the court. Once withdrawn in this manner, an offer is void.

(e) An offer of judgment which is rejected or which is withdrawn does not preclude the making of a subsequent offer of judgment; however, any such subsequent offer of judgment shall automatically void the prior offer of judgment as if the same had never been made.

(5) If a defendant does not accept the offer of judgment made by the petitioner and the judgment obtained by the defendant, exclusive of any interest accumulated after the offer of judgment was initially made, is equal to or less than such offer, then the court shall not award any costs incurred by the defendant after the date the offer of judgment was rejected.

(6) If the petitioner rejects the offer of judgment made by defendant and the judgment obtained by defendant, exclusive of any interest accumulated after the offer of judgment was initially made, is equal to or

is more than such offer, then the court shall award a reasonable attorney's fee to the defendant based on the factors set forth in s. 73.092(2) and (3).

(7) At the time an offer of judgment is made by the petitioner, the petitioner shall identify and make available to the defendant the construction plans, if any, for the project on which the offer is based.

(8) Evidence of an offer of judgment is admissible only in proceedings to enforce an accepted offer or to determine the costs to be awarded a defendant pursuant to subsection (5) or a reasonable attorney's fee pursuant to subsection (6).

**History.**—s. 53, ch. 90-136; s. 2, ch. 90-303; s. 1, ch. 94-162.

**1Note.**—Section 4, ch. 94-162, provides for applicability only to actions filed after October 1, 1994.

### **73.041 Acquiring or perfecting title after appropriation.—**

In any instance, where the petitioner has not acquired the title to or a necessary interest in any lands which it is using, or if at any time after an attempt to acquire such title or interest, it is found to be defective, the petitioner may proceed under this chapter to acquire or perfect such title or interest; provided, however, that the compensation to be allowed the defendants shall be determined as of the date of appropriation.

**History.**—s. 1, ch. 65-369.

**73.051 Returns; defaults.—**Any person interested in or having a lien upon the property, whether named as a defendant or not, may file his or her written defenses to the petition, as a matter of right, on or before the return date set in the notice or thereafter by leave of court. If a defendant does not file his or her defenses on or before the return date, defaults may be entered against the defendant, but nothing shall prevent any person who is shown by the record to be interested in the property from appearing before the jury to claim the amount of compensation that he or she conceives to be due for the property.

**History.**—s. 1, ch. 65-369; s. 1, ch. 70-285; s. 27, ch. 73-333; s. 360, ch. 95-147.

**73.0511 Prelitigation notice.—**Prior to instituting litigation, the condemning authority shall notify the fee owners of statutory rights under s. 73.091.

**History.**—s. 1, ch. 87-148.

### **73.061 Pretrial hearing.—**

(1) Prior to the date of trial, the court may hold a hearing, in limine, to settle all disputed matters properly before it which must be determined prior to trial. Should it appear that the causes of action joined cannot be conveniently disposed of together, the court may order separate trials; provided, however, that any such actions shall be tried in the county in which the lands are located.

(2) The court in which an action in eminent domain is pending shall have jurisdiction and authority over any and all taxes and assessments encumbering the lands involved in such actions, and may stay or defer the enforcement of such taxes and assessments, including all applications for tax deeds, foreclosures and other enforcement proceedings, until final termination of such eminent domain actions. The said court may make such orders concerning such taxes and assessments as may be equitable and proper; provided, however, that ad

valorem taxes levied upon any such lands shall be pro-rated against the owner to the date of taking.

**History.**—s. 1, ch. 65-369.

**73.071 Jury trial; compensation; severance damages.—**

(1) When the action is at issue, and only upon notice and hearing to set the cause for trial, the court shall impanel a jury of 12 persons as soon as practical considering the reasonable necessities of the court and of the parties, and giving preference to the trial of eminent domain cases over other civil actions, and submit the issue of compensation to them for determination, which issue shall be tried in the same manner as other issues of fact are tried in the circuit courts.

(2) The amount of such compensation shall be determined as of the date of trial, or the date upon which title passes, whichever shall occur first.

(3) The jury shall determine solely the amount of compensation to be paid, which compensation shall include:

(a) The value of the property sought to be appropriated;

(b) Where less than the entire property is sought to be appropriated, any damages to the remainder caused by the taking, including, when the action is by the Department of Transportation, county, municipality, board, district or other public body for the condemnation of a 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, owned by the party whose lands are being so taken, located upon adjoining lands owned or held by such party, the probable damages to such business which the denial of the use of the property so taken may reasonably cause; any person claiming the right to recover such special damages shall set forth in his or her written defenses the nature and extent of such damages; and

(c) Where the appropriation is of property upon which a mobile home, other than a travel trailer as defined in s. 320.01, is located, whether or not the owner of the mobile home is an owner or lessee of the property involved, and the effect of the taking of the property involved requires the relocation of such mobile home, the reasonable removal or relocation expenses incurred by such mobile home owner, not to exceed the replacement value of such mobile home. The compensation paid to a mobile home owner under this paragraph shall preclude an award to a mobile home park owner for such expenses of removal or relocation. Any mobile home owner claiming the right to such removal or relocation expenses shall set forth in his or her written defenses the nature and extent of such expenses. This paragraph shall not apply to any governmental authority exercising its power of eminent domain when reasonable removal or relocation expenses must be paid to mobile home owners under other provisions of law or agency rule applicable to such exercise of power.

(4) When the action is by the Department of Transportation, county, municipality, board, district, or other public body for the condemnation of a road, canal, levee, or water control facility right-of-way, the enhancement, if any, in value of the remaining adjoining property of the

defendant property owner by reason of the construction or improvement made or contemplated by the petitioner shall be offset against the damage, if any, resulting to such remaining adjoining property of the defendant property owner by reason of the construction or improvement. However, such enhancement in the value shall not be offset against the value of the property appropriated, and if such enhancement in value shall exceed the damage, if any, to the remaining adjoining property, there shall be no recovery over against such property owner for such excess.

(5) Any increase or decrease in the value of any property to be acquired which occurs after the scope of the project for which the property is being acquired is known in the market, and which is solely a result of the knowledge of the project location, shall not be considered in arriving at the value of the property acquired. For the purpose of this section, the scope of the project for which the property is being acquired shall be presumed to be known in the market on or after the condemnor executes a resolution which depicts the location of the project.

(6) The jury shall view the subject property upon demand by any party or by order of the court.

(7) If the jury cannot agree on a verdict the court shall discharge them, impanel a new jury, and proceed with the trial.

**History.**—s. 1, ch. 65-369; ss. 23, 35, ch. 69-106; s. 1, ch. 70-283; s. 1, ch. 77-51; s. 19, ch. 79-400; s. 36, ch. 85-180; s. 361, ch. 95-147.

**73.0715 Valuation of electric utility property.—**

When any person having the right to exercise the power of eminent domain seeks the appropriation of property used for the generation, transmission, or distribution of electric energy, the jury shall determine solely the amount of compensation to be paid. Such compensation shall include the reproduction cost of the property sought to be appropriated less depreciation, together with going concern value, and, when less than the entire property is sought to be appropriated, any damages to the remainder caused by the taking.

**History.**—s. 2, ch. 82-53.

**73.072 Mobile home parks; compensation for permanent improvements by mobile home owners.—**

(1) When all or a portion of a mobile home park as defined in s. 723.003(6) is appropriated under this chapter, the condemning authority shall separately determine the compensation for any permanent improvements made to each site. This compensation shall be awarded to the mobile home owner leasing the site if:

(a) The effect of the taking includes a requirement that the mobile home owner remove or relocate his or her mobile home from the site;

(b) The mobile home owner currently leasing the site has paid for the permanent improvements to the site; and

(c) The value of the permanent improvements on the site exceeds \$1,000 as of the date of taking.

(2) "Permanent improvement" means any addition or improvement to the site upon which a mobile home is located, which addition or improvement cannot be detached and removed from the site without destroying its practical utility at another site. If capable of removal

to another site, compensation for the expense of removal and relocation shall be as provided by law.

(3) A mobile home owner who is the lessee of the site and is required to remove his or her mobile home as the result of a taking of all or a part of a mobile home park may petition to intervene as a party defendant in proceedings under this chapter, for purposes of asserting his or her right to the separate compensation to be determined and awarded under this section. Failure to intervene shall not constitute a waiver of the right of a mobile home owner to institute a separate action to recover from a mobile home park owner the compensation awarded to such park owner for the permanent improvements made by the mobile home owner to the site on which his or her mobile home is located.

**History.**—s. 1, ch. 78-315; s. 4, ch. 84-80; s. 9, ch. 87-224; s. 362, ch. 95-147.

### **73.073 Eminent domain procedure with respect to condominium common elements.—**

(1) Any other provision of this chapter or any other provision of the Florida Statutes to the contrary notwithstanding, the procedure for the exercise of eminent domain with respect to the taking of a portion of the common elements of a condominium shall comply with the provisions of this section.

(2) With respect to the exercise of eminent domain or a negotiated sale for the purchase or taking of a portion of the common elements of a condominium, the condemning authority shall have the responsibility of contacting the condominium association and acquiring the most recent rolls indicating the names of the unit owners or contacting the appropriate taxing authority to obtain the names of the owners of record on the tax rolls. Notification shall thereupon be sent by certified mail, return receipt requested, to the unit owners of record of the condominium units by the condemning authority indicating the intent to purchase or take the required property and requesting a response from the unit owner. The condemning authority shall be responsible for the expense of sending notification pursuant to this section. Such notice shall, at a minimum, include:

(a) The name and address of the condemning authority.

(b) A written or visual description of the property.

(c) The public purpose for which the property is needed.

(d) The appraisal value of the property.

(e) A clear, concise statement relating to the unit owner's right to object to the taking or appraisal value and the procedures and effects of exercising that right.

(f) A clear, concise statement relating to the power of the association to convey the property on behalf of the unit owners if no objection to the taking or appraisal value is raised, and the effects of this alternative on the unit owner.

The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation may adopt, by rule, a standard form for such notice and may require the notice to include any additional relevant information.

(3) In the absence of a response by the unit owner within 30 days, the unit owner shall be deemed to have

acquiesced to the association acting as the unit owner's representative in any subsequent proceeding relating to the parcel at issue. Unit owners who object to the purchase or taking or the appraisal of value within 30 days after the date the notice is received shall have all of their legal rights preserved with regard to the taking, the appraisal of value, and all other rights which appertain to unit ownership. Failure to raise an objection within the 30-day period shall only constitute an acquiescence by the unit owner to the association acting as the unit owner's representative in any subsequent proceeding relating to the parcel at issue and shall not affect any other rights of the unit owner. In the event that no unit owners shall so object, the condemning authority may rely upon a power of sale vested in the condominium association. The condemning authority shall only be required to name as defendants, should eminent domain proceedings be necessitated, the association and those owners of units which shall have objected to the taking or appraisal value within the 30-day period.

(4) It is the intent of the Legislature, through the adoption of this section, to provide a mechanism to either eliminate or minimize the necessity for naming individual unit owners in eminent domain proceedings for the acquisition of a portion of the common elements of a condominium and the necessity of incidental title searches and legal actions necessitated by naming multiple unit owners as defendants.

**History.**—s. 1, ch. 94-336.

**73.081 Form of verdict.**—The verdict of the jury shall state an accurate description of each parcel of the property sought to be appropriated and the amount to be paid therefor, together with any damage to the remainder caused by the taking and including business damages when allowable by statute. When severance damages, business damages, moving costs, separate compensation for permanent improvements made by a mobile home owner under s. 73.072, or other special damages are sought, the verdict shall state the amount of such damages separately from the amounts of other damages awarded.

**History.**—s. 1, ch. 65-369; s. 1, ch. 70-284; s. 2, ch. 78-315.

### **173.091 Costs of the proceedings.—**

(1) The petitioner shall pay attorney's fees as provided in s. 73.092 as well as all reasonable costs incurred in the defense of the proceedings in the circuit court, including, but not limited to, reasonable appraisal fees and, when business damages are compensable, a reasonable accountant's fee, to be assessed by that court.

(2) At least 30 days prior to a hearing to assess costs under this section, the condemnee's attorney shall submit to the condemning authority for each expert witness complete time records and a detailed statement of services rendered by date, nature of services performed, time spent performing such services, and costs incurred, and a copy of any fee agreement which may exist between the expert and the condemnee or the condemnee's attorney.

(3) In assessing costs, the court shall consider all factors relevant to the reasonableness of the costs, including, but not limited to, the fees paid to similar

experts retained in the case by the condemning authority or other parties and the reasonable costs of similar services by similarly qualified persons.

(4) In assessing costs to be paid by the petitioner, the court shall be guided by the amount the defendant would ordinarily have been expected to pay for the services rendered if the petitioner were not responsible for the costs.

(5) The court shall make specific findings that justify each sum awarded as an expert witness fee.

**History.**—s. 1, ch. 65-369; s. 2, ch. 87-148; s. 52, ch. 90-136; s. 1, ch. 90-303; s. 2, ch. 94-162.

**Note.**—Section 4, ch. 94-162, provides for applicability only to actions filed after October 1, 1994.

### 173.092 Attorney's fees.—

(1) Except as otherwise provided in this section, the court, in eminent domain proceedings, shall award attorney's fees based solely on the benefits achieved for the client.

(a) As used in this section, 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 no written offer is made by the condemning authority before the defendant hires an attorney, benefits must be measured from the first written offer after the attorney is hired.

1. In determining attorney's fees in prelitigation negotiations, benefits do not include amounts awarded for business damages unless the business owner provided to the condemning authority, upon written request, prior to litigation, those financial and business records kept by the owner in the ordinary course of business.

2. In determining attorney's fees subsequent to the filing of litigation, if financial and business records kept by the owner in the ordinary course of business were not provided to the condemning authority prior to litigation, benefits for amounts awarded for business damages must be based on the first written offer made by the condemning authority within 120 days after the filing of the eminent domain action. In the event the petitioner makes a discovery request for a defendant's financial and business records kept in the ordinary course of business within 45 days after the filing of that defendant's answer, then the 120-day period shall be extended to 60 days after receipt by petitioner of those records. If the condemning authority makes no written offer to the defendant for business damages within the time period provided in this section, benefits for amounts awarded for business damages must be based on the difference between the final judgment or settlement and the last written offer made by the condemning authority before the defendant hired an attorney.

(b) The court may also consider nonmonetary benefits obtained for the client through the efforts of the attorney, to the extent such nonmonetary benefits are specifically identified by the court and can, within a reasonable degree of certainty, be quantified.

(c) Attorney's fees based on benefits achieved shall be awarded in accordance with the following schedule:

1. Thirty-three percent of any benefit up to \$250,000; plus

2. Twenty-five percent of any portion of the benefit between \$250,000 and \$1 million; plus

3. Twenty percent of any portion of the benefit exceeding \$1 million.

(2) In assessing attorney's fees incurred in defeating an order of taking, or for apportionment, or other supplemental proceedings, when not otherwise provided for, the court shall consider:

(a) The novelty, difficulty, and importance of the questions involved.

(b) The skill employed by the attorney in conducting the cause.

(c) The amount of money involved.

(d) The responsibility incurred and fulfilled by the attorney.

(e) The attorney's time and labor reasonably required adequately to represent the client in relation to the benefits resulting to the client.

(f) The fee, or rate of fee, customarily charged for legal services of a comparable or similar nature.

(g) Any attorney's fee award made under subsection (1).

(3) In determining the amount of attorney's fees to be paid by the petitioner under subsection (2), the court shall be guided by the fees the defendant would ordinarily be expected to pay for these services if the petitioner were not responsible for the payment of those fees.

(4) At least 30 days prior to a hearing to assess attorney's fees under subsection (2), the condemnee's attorney shall submit to the condemning authority and to the court complete time records and a detailed statement of services rendered by date, nature of services performed, time spent performing such services, and costs incurred.

(5) The defendant shall provide to the court a copy of any fee agreement that may exist between the defendant and his or her attorney, and the court must reduce the amount of attorney's fees to be paid by the defendant by the amount of any attorney's fees awarded by the court.

**History.**—s. 1, ch. 76-158; s. 37, ch. 85-180; s. 3, ch. 87-148; s. 54, ch. 90-136; s. 3, ch. 90-303; s. 3, ch. 94-162; s. 1370, ch. 95-147.

**Note.**—Section 4, ch. 94-162, provides for applicability only to actions filed after October 1, 1994.

**73.101 Form of judgment.**—The judgment shall recite the verdict in full and shall state that the estate or interest in the property described in the petition and sought to be appropriated by the petitioner shall vest in the petitioner upon the payment of, or securing by deposit of money, the amount found by the verdict of the jury. Where there are conflicting claims to the amount awarded for any parcel, the court, upon appropriate motion, shall determine the rights of the interested parties with respect to the amount awarded for each parcel and the method of apportionment, together with the disposition of any other matters arising from the taking.

**History.**—s. 1, ch. 65-369.

**73.111 Deposit and possession.**—Within 20 days after the rendition of the judgment, the petitioner shall deposit the amount set forth therein into the registry of the court for the use of the defendants, or the proceeding shall be null and void, unless for good cause further

time, not exceeding 60 days, is allowed by the court. Upon such deposit and the entry in the proper records in the clerk's office of the judgment and the clerk's certificate that the compensation has been paid into the court, the estate or interest sought shall vest in the petitioner. The court may fix the time within which, and the terms upon which, the defendants shall be required to surrender possession to the petitioner.

**History.**—s. 1, ch. 65-369; s. 3, ch. 78-315.

### **73.121 Writs of assistance and possession.—**

Whenever the judge is satisfied that any person, whether holding under the defendant or not, is preventing or obstructing the petitioner from entering upon or taking possession of the property after the petitioner is entitled to do so, the judge may grant such writs as he or she may think necessary, or the judge may proceed for contempt of court.

**History.**—s. 1, ch. 65-369; s. 363, ch. 95-147.

### **73.131 Appeals; costs.—**

(1) Appeals in eminent domain actions shall be taken in the manner prescribed by law and in accordance with the appellate rules, except that an appeal shall not prevent appropriation of the property by the petitioner where the amount awarded by the judgment has been deposited with the court as aforesaid. If, at any time after entry of the judgment, a defendant shall take out of the court the amount due him or her, any pending appeal taken by the defendant shall be dismissed by the appellate court upon the filing of a certificate by the clerk of the circuit court stating that the defendant taking the appeal has withdrawn the amount due him or her.

(2) The petitioner shall pay all reasonable costs of the proceedings in the appellate court, including a reasonable attorney's fee to be assessed by that court, except upon an appeal taken by a defendant in which the judgment of the lower court shall be affirmed.

**History.**—s. 1, ch. 65-369; s. 4, ch. 87-148; s. 364, ch. 95-147.

### **73.141 Payment.—**

(1) In the event that no appeal has been taken within the time and in the manner provided by the Florida Rules of Appellate Procedure, the clerk shall pay each judgment creditor the sum necessary to satisfy the judgment from the funds on deposit, and upon order of the court shall refund to the petitioner all the funds not necessary for the satisfaction of the judgment, costs and attorney fees.

(2) In the event that a timely appeal is taken and the judgment of the trial court is affirmed, the clerk of the court shall pay each judgment creditor as hereinabove provided.

**History.**—s. 1, ch. 65-369; s. 1, ch. 69-267.

### **73.151 Railroads and canal companies.—**

(1) Whenever land sought to be condemned to the use of a railroad or canal company is in the possession, under any law of this state, of another railroad or canal company which is using the same in the construction or operation of its railroad or canal, the use of no more land than is necessary to furnish to the petitioner a right-of-way 105 feet in width across such railroad or canal shall be condemned for such use.

(2) If it shall be necessary for any railroad company organized under any law of this state to use, for the purpose of its road, any lands over which any other railroad company shall have previously acquired the right-of-way for its road, the right to use such lands may be acquired as in other cases. Such lands shall not be taken in a manner to interfere with the main track of the railroad first established except for crossing, as provided by law.

**History.**—s. 1, ch. 65-345; s. 1, ch. 65-369.

### **73.161 Right-of-way for telephone and telegraph over railroad right-of-way.—**

(1) Any telegraph or telephone company fails to secure the consent of any railroad or railway company for the construction of its lines along and upon the right-of-way of any railroad in this state, the same may be acquired by eminent domain. If the defendant railroad or railway company has a principal office or place of business in this state, and any portion of the right-of-way sought to be condemned extends into the county wherein such principal office or place of business is located, then the eminent domain action shall be had in such county. No map need be filed with the petition, but it shall state about how many poles per mile will be erected on such right-of-way, and about how far from each other, and from the centers of the main track of the railroad, their length and size, the depth they will be planted in the ground, and the amount of land that will be occupied by them. No pole shall be set at a greater distance than 10 feet from the outer edge of the right-of-way. In such action, the petitioner shall give bond for costs in the penalty of \$200, payable to the defendant, with surety to be approved by the clerk.

(2) The judgment shall authorize the petitioner to enter upon the right-of-way of the defendant and construct its lines thereon. Said judgment shall further provide that such lines shall be constructed so as not to interfere with the operation of the trains of said defendant or any telephone or telegraph line already upon such right-of-way; and, furthermore, that if, at any time, the railroad or railway company shall desire, for railway purposes, the immediate use of any land occupied by said petitioner, then the petitioner shall, upon reasonable notice in writing, at its own expense, remove its line to some other place adjacent thereto on such right-of-way so as not to interfere with the track or use of said railway or any telephone or telegraph line already on said right-of-way, and that the said line shall not be erected on any embankment or slope of any cut of such right-of-way, and if at any time the said railroad or railway company shall require for railroad purposes its entire right-of-way at any point occupied by said line, the said petitioner shall, at such point, remove said line entirely off such right-of-way.

(3) The telegraph or telephone company by such action shall acquire only an easement in and to said railroad right-of-way for the purpose of constructing, maintaining, and operating its telegraph or telephone line thereon, and only the interests of such parties as are brought before the court shall be condemned in such action. If the easement or right-of-way claimed extends in or through more counties than one, the whole right

and controversy may be heard and determined in any county into or through which such right-of-way

extends, except as herein otherwise provided.  
**History.**—s. 1, ch. 65-369.