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3 HOUSE COUNTY AND MUNICIPAL GOVERNMENT SUBSTITUTE FOR HB98  
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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.  
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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 condemner 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 condemner 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 written consent of the owner of the real property to  
24          be acquired, determines that an appraisal is unnecessary and  
25          the anticipated value of the proposed acquisition, based upon  
26          a review of available valuation data, is equal to or less than

1 the amount provided for in 49 CFR Section 24.102(c)(2)(ii), or  
2 the appropriate replacement federal 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. The person preparing the waiver valuation shall  
7 make his or her determination based on the available evidence  
8 of the value of the real property in the local real estate  
9 market."

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