As Introduced

133rd General Assembly
Regular Session

Representatives Manning, D., Hambley

Cosponsors: Representatives Becker, Ginter, Jones, Kick, Lang, Merrin, Stoltzfus, Cross, McClain, Wiggam, Scherer, Jordan

A BILL

To amend sections 163.021 and 163.041 and to enact section 163.022 of the Revised Code to amend the law regarding eminent domain and to declare an emergency.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 163.021 and 163.041 be amended and section 163.022 of the Revised Code be enacted to read as follows:

Sec. 163.021. (A) No agency shall appropriate real property except as necessary and for a public use. In any appropriation, the taking agency shall show by a preponderance of the evidence that the taking is necessary and for a public use.

(B) Before an agency appropriates property based on a finding that the area is a blighted area or a slum, the agency shall do both of the following:

(1) Adopt a comprehensive development plan that describes the public need for the property. The plan shall include at
least one study documenting the public need. All of the costs of developing the plan shall be publicly financed.

(2) If the agency is governed by a legislative body, obtain a resolution from that legislative body affirming the public need for the property.

(C) No park board, park district, board of directors of a conservancy district, incorporated association with a purpose of establishing or preserving public parks and memorial sites, or similar park authority shall exercise any power of eminent domain to appropriate real property outside the county or counties in which the park authority is located unless the appropriation has the written approval of the legislative authority of each county in which the property is located, other than the county or counties in which the park authority is located.

(D) No agency shall appropriate property based on a finding that the parcel is a blighted parcel or that the area is a blighted area or slum by making that finding in, or in conjunction with, an emergency ordinance or resolution.

(E) If an appropriation is by a public agency that is not elected and an owner has provided the public agency with a written objection to the appropriation, the elected officials of the public agency or elected individual that appointed the unelected agency may veto that appropriation. If the unelected public agency was appointed by more than one public agency or elected individual, a majority vote of the elected officials of the appointing public agencies or elected individuals is required to veto the appropriation. If the public agency that is not elected is a state agency or instrumentality such as a university, the governor has the veto authority. The governor—
may delegate that authority but may not delegate that authority to the unelected agency that seeks the appropriation.

Sec. 163.022. (A) If an appropriation is by a public agency that is not elected and an owner has provided the public agency with a written objection to the appropriation, the elected officials of the public agency or elected individual that appointed the unelected agency may veto that appropriation. If the unelected public agency was appointed by more than one public agency or elected individual, a majority vote of the elected officials of the appointing public agencies or elected individuals is required to veto the appropriation. If the public agency that is not elected is a state agency or instrumentality such as a university, the governor has the veto authority. The governor may delegate that authority but may not delegate that authority to the unelected agency that seeks the appropriation.

(B)(1) Except as provided in division (B)(3) of this section, if an appropriation is for the purpose of providing a recreational trail, the legislative authority of the municipal corporation where the real property is located, or board of township trustees for the township where the real property is located, may veto the appropriation after receiving a written objection from an owner.

(2) Except as provided in division (B)(3) of this section, if the real property to be appropriated for the purpose of providing a recreational trail is located in both a municipal corporation and township, a written objection from an owner may be made to, and a veto may be issued by, either the legislative authority of the municipal corporation or the board of township trustees, or both.

(3) Divisions (B)(1) and (2) of this section do not apply
to an appropriation of real property that is located in a county
with more than one probate judge, as provided by Chapter 2101.
of the Revised Code.

(C) An owner's remedies under divisions (A) and (B) of
this section are cumulative, and the owner may elect to pursue
them simultaneously.

(D) As used in this section, "recreational trail" means a
public trail that is used for hiking, bicycling, horseback
riding, ski touring, canoeing, or other nonmotorized forms of
recreational travel.

Sec. 163.041. Before initiating an appropriation action,
an agency shall provide notice to each property owner as
required by division (A) of section 163.04 of the Revised Code.
The notice shall be substantially in the following form:

NOTICE OF INTENT TO ACQUIRE

TO: ____________________ (owner(s)) DATE: _____________

_______ (agency) needs your property for a ________
(description of the project) and will need to acquire the
following from you:

____________________ (general description of the property or
easement to be acquired).

Ohio law authorizes _______ (agency) to obtain your property
or an easement across your property for certain public purposes.
The legal description of your property that _________ (agency)
needs is: (is attached:)

We will be presenting you with a written offer based on
our determination of the fair market value of your property. You
will have _____ days (minimum of ten) from the time you receive
that offer to accept or reject the offer. We will be willing to discuss the offer with you during that time. **You are not required to accept that offer.** If you reject the offer or we are unable to come to an agreement, we may have to exercise our eminent domain authority to appropriate your property, which requires a court procedure. In a court proceeding, you may disagree with any of the following: whether the project is necessary (except in quick takes), whether the project is a public use (except in quick takes), whether your property is blighted (if applicable), and whether our offer reflects the fair market value of the property.

**HERE IS A BRIEF SUMMARY OF YOUR OPTIONS AND LEGALLY PROTECTED RIGHTS:**

1. By law, ________ (agency) is required to make a good faith effort to purchase (your property) (an easement across your property).

2. **You do not have to accept this offer** and ________ (agency) is not required to agree to your demands.

3. If you do not accept this offer, and we cannot come to an agreement on the acquisition of (your property) (an easement), ________ (agency) has the right to file suit to acquire the (property) (easement) by eminent domain in the county in which the property is located.

4. You have the right to seek the advice of an attorney, real estate appraiser, or any other person of your choice in this matter.

5. (This paragraph does not apply to private agencies or to municipally owned public utilities) You have a right to appeal this decision and may object to this project's public
purpose, necessity, designation of blight (if applicable), or valuation by writing, within ten business days of receiving this notice, to:

____________________ (name(s) and address(es) of the taking agency, as well as to the elected official(s) who appointed the taking agency if the taking agency is not elected).

(The elected official) (A majority of the elected officials) that appointed __________ (unelected agency) has/have the discretion to veto this project, and if they do so, it will not proceed. (This applies only if the taking agency is a public agency composed of officials who were not elected.)

6. If this taking is for the purpose of providing a recreational trail, and your county does not have more than one probate judge, the legislative authority of the municipal corporation (village or city) or board of township trustees of the township in which your property sits has the discretion to veto this taking by a majority vote, upon your written objection to the appropriation. If they do so, the taking will not proceed. That veto authority is in addition to any veto authority discussed in paragraph 5, and you may pursue either or both if they are applicable.

If your property sits in both a township and municipal corporation, and in a county with not more than one probate judge, a veto by either the legislative authority of the municipal corporation or the board of township trustees is effective to stop the taking. A veto from both is not required, though you may request that both veto the project if you choose.

If you wish to object to the legislative authority of a_
municipal corporation or a board of township trustees such that they may veto the appropriation, you must send your objection, in writing, to the legislative authority of the municipal corporation or the board of township trustees. If you do not send a written objection, the legislative authority or board of township trustees will not have veto authority on the grounds that the appropriation is for the purpose of providing a recreational trail.

7. We are required by law to provide you with a written offer and the appraisal or summary appraisal on which we base that offer (public agencies and public utilities may delete this phrase for properties valued at less than $10,000 if they have adopted alternate procedures).

After a trial, a jury will decide the amount you are to be awarded for your property that is taken, for the damage that is caused by the taking, if applicable, and for other damages permitted by law, which could either exceed or be less than our offer. During the court proceeding, you have the right to testify as to the value of your property, and you and the agency are entitled to present evidence of the fair market value of the property (easement).

You may employ, at your own expense, appraisers and attorneys to represent you at this time or at any time during the proceedings described in this notice.

If we go to court to determine the amount we pay for your property and the jury awards you an amount that is significantly in excess of a good faith offer, revised offer, or offer made after an exchange of appraisals, as provided by law, you may be entitled to recover attorney's fees, costs, and expenses, subject to certain statutory limits.
If we go to court to determine whether the project is necessary or for a public use, and the court decides that it is not necessary or not for a public use, the judge shall award you your full amount of attorney's fees, costs, and expenses.

You also have the right to request that the issue of the value of your property be submitted to nonbinding mediation. You must submit your written request for mediation within ten business days after you file an answer to the agency's petition for an appropriation proceeding. If a settlement is not reached at mediation, the matter will proceed to a jury valuation trial.

If you have any questions concerning this matter, you may contact us at:

____________________ (full name, mailing, and street address, and phone of the agency)
____________________ (signature of contact person)
____________________ (printed name and title of contact person)

Agent of ____________________ (if different than agency)

Section 2. That existing sections 163.021 and 163.041 of the Revised Code are hereby repealed.

Section 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is the protection of real property and property rights. Therefore, this act goes into immediate effect.