REPRESENTATIVES DON MANNING AND STEVE HAMBLEY

Representative Steve Hambley

Chairman Wiggam, Vice Chair Stephens, Ranking Member Kelly, and members of the House State and Local Government Committee; we are pleased to present to you today House Bill 476 amending the law regarding the exercise of eminent domain and to declare an emergency.

The taking of private property for public use is one of the most serious powers of any governmental body. As a City Council person for 5 years and County Commissioner for 18 years, I have had to use that fearsome power more than once. Always mindful of the fearfulness of that power – an appropriation of privately owned land for public use – it continues to challenge one of the cornerstones of our freedoms. There is an inalienable right to own private property and defend it. The underlying principle is that government should not unreasonably interfere with the use of one's property.

In the Declaration of Colonial Rights, the First Continental Congress explicitly stated that, "[Americans] are entitled to life, liberty, and property, and they have never ceded to any sovereign power … a right to dispose of either without their consent." This served as the foundation for the Fifth Amendment to the United States Constitution, which states, "No person shall be deprived of … property, without due process of law." This provision, known as the Takings Clause, helps protect citizens from unreasonable government seizure of private property.

The framers of the Ohio Constitution recognized the paramount role of property rights in a free society. The very first section of the Ohio Constitution, Section 1, Article 1, paraphrases the Declaration of Independence by recognizing that all of us have certain inalienable rights, among them "life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety." Further on it reads: Article 1, Section 19: Inviolability of private property (1851) "Private property shall ever be held inviolate, but subservient to the public welfare." It

places property rights on par with life and liberty, therefore making it clear that it is the foremost duty of government to secure and protect those fundamental rights.

At various times, the Ohio General Assembly has sought to temper the use of that fearful power. Back in 2006-7, the Ohio General Assembly formed a Legislative Task Force to review the eminent domain issue. Subsequently, Senate Bill 7 by Sen. Timothy Grendell, (a.k.a., HB 5, Rep. Bob Gibbs) made a number of changes to the statutes providing for significant protections of private property rights, refinement in the due process proceedings and constraints of public authority in land appropriations.

Hence under Current Law – "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."

Note the words necessary and for a public use. Both conditions must be met in the land appropriation. Under current law, a non-elected government entity can use that authority to make those judgements. However, that land appropriation can be nullified by their elected appointing authority if the property owner so objects. In the case of county park districts, for example, that appeal would go to their appointing authority, the county probate judge.

This bill does not reduce that land appropriation authority of the park districts, or diminish the authority of the probate judge to nullify it. It does, however, extend the ability for an aggrieved property owner to appeal to another relevant authority to intervene in the use of the taking, as an additional safeguard. In effect, the aggrieved property owner can dispute the "necessity" or the "public use" conditions of the taking to an authority that is likely better suited to make those judgements.

That legislative authority is elected by voters of the township or municipality to exercise powers and responsibilities related to land use planning and transportation. I contend that these community land use and transportation plans would be materially related to any proposed construction, maintenance and public use of recreational trails, therefore relevant to extending their jurisdictional interest to these kinds of projects.

Townships, cities and park districts have similar land appropriation authority for public purposes and the same burden of proving upon the preponderance of the

evidence that the taking is necessary. However, in a dispute with property holders the township trustees or city council members are quite likely in a better position to evaluate the proposed taking than a single probate judge. Since they are typically engaged in land use planning as well as transportation planning, the trustees or council members are in a better position to evaluate possible alternatives to an undesirable or controversial land taking for recreational trail purposes.

Frankly, from a practical and political standpoint, encouraging the cooperation between park districts, township trustees and city councils in developing proposed recreational trail routes should be the goal of state policy, not an afterthought. Their mutual involvement in a recreational trail system should provide the best, most productive way and maybe the most economical way to accomplish what by statute must provide a public benefit. This proposed additional safeguard against the abuse of eminent domain, actually should help ensure that these projects are cooperative, as well as necessary, before government takes the land from private property owners.

With the permission of the Chair, I would ask your indulgence to turn over the remaining testimony to my joint sponsor, Representative Don Manning, who can better speak to the origins of this legislation and the urgent need for immediate action.