

As Introduced

133rd General Assembly

Regular Session

2019-2020

H. B. No. 476

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 1
section 163.022 of the Revised Code to amend the 2
law regarding eminent domain and to declare an 3
emergency. 4

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

Section 1. That sections 163.021 and 163.041 be amended 5
and section 163.022 of the Revised Code be enacted to read as 6
follows: 7

Sec. 163.021. (A) No agency shall appropriate real 8
property except as necessary and for a public use. In any 9
appropriation, the taking agency shall show by a preponderance 10
of the evidence that the taking is necessary and for a public 11
use. 12

(B) Before an agency appropriates property based on a 13
finding that the area is a blighted area or a slum, the agency 14
shall do both of the following: 15

(1) Adopt a comprehensive development plan that describes 16
the public need for the property. The plan shall include at 17

least one study documenting the public need. All of the costs of 18
developing the plan shall be publicly financed. 19

(2) If the agency is governed by a legislative body, 20
obtain a resolution from that legislative body affirming the 21
public need for the property. 22

(C) No park board, park district, board of directors of a 23
conservancy district, incorporated association with a purpose of 24
establishing or preserving public parks and memorial sites, or 25
similar park authority shall exercise any power of eminent 26
domain to appropriate real property outside the county or 27
counties in which the park authority is located unless the 28
appropriation has the written approval of the legislative 29
authority of each county in which the property is located, other 30
than the county or counties in which the park authority is 31
located. 32

(D) No agency shall appropriate property based on a 33
finding that the parcel is a blighted parcel or that the area is 34
a blighted area or slum by making that finding in, or in 35
conjunction with, an emergency ordinance or resolution. 36

~~(E) If an appropriation is by a public agency that is not 37
elected and an owner has provided the public agency with a 38
written objection to the appropriation, the elected officials of 39
the public agency or elected individual that appointed the 40
unelected agency may veto that appropriation. If the unelected 41
public agency was appointed by more than one public agency or 42
elected individual, a majority vote of the elected officials of 43
the appointing public agencies or elected individuals is 44
required to veto the appropriation. If the public agency that is 45
not elected is a state agency or instrumentality such as a 46
university, the governor has the veto authority. The governor 47~~

~~may delegate that authority but may not delegate that authority~~ 48
~~to the unelected agency that seeks the appropriation.~~ 49

Sec. 163.022. (A) If an appropriation is by a public 50
agency that is not elected and an owner has provided the public 51
agency with a written objection to the appropriation, the 52
elected officials of the public agency or elected individual 53
that appointed the unelected agency may veto that appropriation. 54
If the unelected public agency was appointed by more than one 55
public agency or elected individual, a majority vote of the 56
elected officials of the appointing public agencies or elected 57
individuals is required to veto the appropriation. If the public 58
agency that is not elected is a state agency or instrumentality 59
such as a university, the governor has the veto authority. The 60
governor may delegate that authority but may not delegate that 61
authority to the unelected agency that seeks the appropriation. 62

(B) (1) Except as provided in division (B) (3) of this 63
section, if an appropriation is for the purpose of providing a 64
recreational trail, the legislative authority of the municipal 65
corporation where the real property is located, or board of 66
township trustees for the township where the real property is 67
located, may veto the appropriation after receiving a written 68
objection from an owner. 69

(2) Except as provided in division (B) (3) of this section, 70
if the real property to be appropriated for the purpose of 71
providing a recreational trail is located in both a municipal 72
corporation and township, a written objection from an owner may 73
be made to, and a veto may be issued by, either the legislative 74
authority of the municipal corporation or the board of township 75
trustees, or both. 76

(3) Divisions (B) (1) and (2) of this section do not apply 77

to an appropriation of real property that is located in a county 78
with more than one probate judge, as provided by Chapter 2101. 79
of the Revised Code. 80

(C) An owner's remedies under divisions (A) and (B) of 81
this section are cumulative, and the owner may elect to pursue 82
them simultaneously. 83

(D) As used in this section, "recreational trail" means a 84
public trail that is used for hiking, bicycling, horseback 85
riding, ski touring, canoeing, or other nonmotorized forms of 86
recreational travel. 87

Sec. 163.041. Before initiating an appropriation action, 88
an agency shall provide notice to each property owner as 89
required by division (A) of section 163.04 of the Revised Code. 90
The notice shall be substantially in the following form: 91

NOTICE OF INTENT TO ACQUIRE 92

TO: _____ (owner(s)) DATE: _____ 93

_____ (agency) needs your property for a _____ 94
(description of the project) and will need to acquire the 95
following from you: 96

_____ (general description of the property or 97
easement to be acquired). 98

Ohio law authorizes _____ (agency) to obtain your property 99
or an easement across your property for certain public purposes. 100
The legal description of your property that _____ (agency) 101
needs is: (is attached:) 102

We will be presenting you with a written offer based on 103
our determination of the fair market value of your property. You 104
will have _____ days (minimum of ten) from the time you receive 105

that offer to accept or reject the offer. We will be willing to 106
discuss the offer with you during that time. **You are not** 107
required to accept that offer. If you reject the offer or we are 108
unable to come to an agreement, we may have to exercise our 109
eminent domain authority to appropriate your property, which 110
requires a court procedure. In a court proceeding, you may 111
disagree with any of the following: whether the project is 112
necessary (except in quick takes), whether the project is a 113
public use (except in quick takes), whether your property is 114
blighted (if applicable), and whether our offer reflects the 115
fair market value of the property. 116

HERE IS A BRIEF SUMMARY OF YOUR OPTIONS AND LEGALLY 117
PROTECTED RIGHTS: 118

1. By law, _____ (agency) is required to make a good 119
faith effort to purchase (your property) (an easement across 120
your property). 121

2. **You do not have to accept this offer** and _____ 122
(agency) is not required to agree to your demands. 123

3. If you do not accept this offer, and we cannot come to 124
an agreement on the acquisition of (your property) (an easement), 125
_____ (agency) has the right to file suit to acquire the 126
(property) (easement) by eminent domain in the county in which 127
the property is located. 128

4. You have the right to seek the advice of an attorney, 129
real estate appraiser, or any other person of your choice in 130
this matter. 131

5. *(this paragraph does not apply to private agencies or* 132
to municipally owned public utilities) You have a right to 133
appeal this decision and may object to this project's public 134

purpose, necessity, designation of blight (if applicable), or 135
valuation by writing, within ten business days of receiving this 136
notice, to: 137

_____ (name(s) and address(es) of the 138
taking agency, as well as to the elected official(s) who 139
appointed the taking agency if the taking agency is not 140
elected). 141

(The elected official) (A majority of the elected 142
officials) that appointed _____ (unelected agency) has/have 143
the discretion to veto this project, and if they do so, it will 144
not proceed. (This applies only if the taking agency is a public 145
agency composed of officials who were not elected.) 146

6. If this taking is for the purpose of providing a 147
recreational trail, and your county does not have more than one 148
probate judge, the legislative authority of the municipal 149
corporation (village or city) or board of township trustees of 150
the township in which your property sits has the discretion to 151
veto this taking by a majority vote, upon your written objection 152
to the appropriation. If they do so, the taking will not 153
proceed. That veto authority is in addition to any veto 154
authority discussed in paragraph 5, and you may pursue either or 155
both if they are applicable. 156

If your property sits in both a township and municipal 157
corporation, and in a county with not more than one probate 158
judge, a veto by either the legislative authority of the 159
municipal corporation or the board of township trustees is 160
effective to stop the taking. A veto from both is not required, 161
though you may request that both veto the project if you choose. 162

If you wish to object to the legislative authority of a 163

municipal corporation or a board of township trustees such that 164
they may veto the appropriation, you must send your objection, 165
in writing, to the legislative authority of the municipal 166
corporation or the board of township trustees. If you do not 167
send a written objection, the legislative authority or board of 168
township trustees will not have veto authority on the grounds 169
that the appropriation is for the purpose of providing a 170
recreational trail. 171

7. We are required by law to provide you with a written 172
offer and the appraisal or summary appraisal on which we base 173
that offer (public agencies and public utilities may delete this 174
phrase for properties valued at less than \$10,000 if they have 175
adopted alternate procedures). 176

After a trial, a jury will decide the amount you are to be 177
awarded for your property that is taken, for the damage that is 178
caused by the taking, if applicable, and for other damages 179
permitted by law, which could either exceed or be less than our 180
offer. During the court proceeding, you have the right to 181
testify as to the value of your property, and you and the agency 182
are entitled to present evidence of the fair market value of the 183
property (easement). 184

You may employ, at your own expense, appraisers and 185
attorneys to represent you at this time or at any time during 186
the proceedings described in this notice. 187

If we go to court to determine the amount we pay for your 188
property and the jury awards you an amount that is significantly 189
in excess of a good faith offer, revised offer, or offer made 190
after an exchange of appraisals, as provided by law, you may be 191
entitled to recover attorney's fees, costs, and expenses, 192
subject to certain statutory limits. 193

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.