

**As Introduced**

**134th General Assembly**

**Regular Session**

**2021-2022**

**H. B. No. 698**

**Representatives Kick, Creech**

**Cosponsors: Representatives Click, Cutrona, Edwards, Ferguson, Loychik,  
Manchester, Miller, K., Schmidt, Stoltzfus, West**

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**A BILL**

To amend sections 163.01, 163.021, 163.04, 163.09, 1  
163.16, 163.19, 163.21, 163.52, 163.59, and 2  
163.62 and to enact section 163.221 of the 3  
Revised Code to amend the law regarding eminent 4  
domain. 5

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

**Section 1.** That sections 163.01, 163.021, 163.04, 163.09, 6  
163.16, 163.19, 163.21, 163.52, 163.59, and 163.62 be amended 7  
and section 163.221 of the Revised Code be enacted to read as 8  
follows: 9

**Sec. 163.01.** As used in sections 163.01 to 163.22 of the 10  
Revised Code: 11

(A) "Public agency" means any governmental corporation, 12  
unit, organization, instrumentality, or officer authorized by 13  
law to appropriate property in the courts of this state. 14

(B) "Private agency" means any corporation, firm, 15  
partnership, voluntary association, joint-stock association, or 16  
company that is not a public agency and that is authorized by 17

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|---|----------------------------------|
| law to appropriate property in the courts of this state.  | 18                               |
| (C) "Agency" means any public agency or private agency.   | 19                               |
| (D) "Court" means the court of common pleas or the probate court of any county in which the property sought to be appropriated is located in whole or in part.  | 20<br>21<br>22                   |
| (E) "Owner" means any individual, partnership, association, or corporation having any estate, title, or interest in any real property sought to be appropriated.  | 23<br>24<br>25                   |
| (F) "Real property," "land," or "property" includes any estate, title, or interest in any real property that is authorized to be appropriated by the agency in question, unless the context otherwise requires.   | 26<br>27<br>28<br>29             |
| (G) "Public utility" has the same meaning as in section 4905.02 of the Revised Code and also includes a public utility owned or operated by one or more municipal corporations, an electric cooperative, and an agency holding a certificate of public convenience and necessity granted by the federal energy regulatory commission. | 30<br>31<br>32<br>33<br>34<br>35 |
| (H) (1) "Public use" does not include any taking that is for conveyance to a private commercial enterprise, economic development, or solely for the purpose of increasing public revenue, unless the property is conveyed or leased to one of the following:  | 36<br>37<br>38<br>39<br>40       |
| (a) A public utility, municipal power agency, or common carrier;  | 41<br>42                         |
| (b) A private entity that occupies a port authority transportation facility or an incidental area within a publicly owned and occupied project;   | 43<br>44<br>45                   |

(c) A private entity when the agency that takes the 46  
property establishes by a preponderance of the evidence that the 47  
property is a blighted parcel or is included in a blighted area. 48

(2) "Public use" does not include the use of property for 49  
recreational trails, which are trails used for hiking, 50  
bicycling, horseback riding, ski touring, canoeing, or other 51  
nonmotorized forms of recreational travel. 52

(3) All of the following are presumed to be public uses: 53  
utility facilities, roads, sewers, water lines, public schools, 54  
public institutions of higher education, private institutions of 55  
higher education that are authorized to appropriate property 56  
under section 3333.08 of the Revised Code, public parks, 57  
government buildings, port authority transportation facilities, 58  
projects by an agency that is a public utility, and similar 59  
facilities and uses of land. 60

(I) "Electric cooperative" has the same meaning as in 61  
section 4928.01 of the Revised Code. 62

(J) "Good faith offer" means the written offer that an 63  
agency that is appropriating property must make to the owner of 64  
the property pursuant to division (B) of section 163.04 of the 65  
Revised Code before commencing an appropriation proceeding. 66

(K) "Goodwill" means the calculable benefits that accrue 67  
to a business as a result of its location, reputation for 68  
dependability, skill or quality, and any other circumstances 69  
that result in probable retention of old, or acquisition of new, 70  
patronage. 71

(L) "Municipal power agency" has the same meaning as in 72  
section 3734.058 of the Revised Code. 73

(M) "Port authority transportation facility" means any 74

facility developed, controlled, or operated by a port authority 75  
for the purpose of providing passenger, cargo, or freight 76  
transportation services, such as airports, maritime ports, rail 77  
facilities, transit facilities, and support facilities directly 78  
related to any airport, maritime port, rail facility, or transit 79  
facility. 80

(N) "Making or repairing roads" does not include the 81  
making or repairing of, or access management for, shared-use 82  
paths, bike paths, or recreational trails. 83

**Sec. 163.021.** (A) No agency shall appropriate real 84  
property except as necessary and for a public use. In any 85  
appropriation, the taking agency shall show by ~~a preponderance~~ 86  
~~of the~~ clear and convincing evidence that the taking is 87  
necessary and for a public use. 88

(B) Before an agency appropriates property based on a 89  
finding that the area is a blighted area or a slum, the agency 90  
shall do both of the following: 91

(1) Adopt a comprehensive development plan that describes 92  
the public need for the property. The plan shall include at 93  
least one study documenting the public need. All of the costs of 94  
developing the plan shall be publicly financed. 95

(2) If the agency is governed by a legislative body, 96  
obtain a resolution from that legislative body affirming the 97  
public need for the property. 98

(C) No park board, park district, board of directors of a 99  
conservancy district, incorporated association with a purpose of 100  
establishing or preserving public parks and memorial sites, or 101  
similar park authority shall exercise any power of eminent 102  
domain to appropriate real property outside the county or 103

counties in which the park authority is located unless the 104  
appropriation has the written approval of the legislative 105  
authority of each county in which the property is located, other 106  
than the county or counties in which the park authority is 107  
located. 108

(D) No agency shall appropriate property based on a 109  
finding that the parcel is a blighted parcel or that the area is 110  
a blighted area or slum by making that finding in, or in 111  
conjunction with, an emergency ordinance or resolution. 112

(E) If an appropriation is by a public agency that is not 113  
elected and an owner has provided the public agency with a 114  
written objection to the appropriation, the elected officials of 115  
the public agency or elected individual that appointed the 116  
unelected agency may veto that appropriation. If the unelected 117  
public agency was appointed by more than one public agency or 118  
elected individual, a majority vote of the elected officials of 119  
the appointing public agencies or elected individuals is 120  
required to veto the appropriation. If the public agency that is 121  
not elected is a state agency or instrumentality such as a 122  
university, the governor has the veto authority. The governor 123  
may delegate that authority but may not delegate that authority 124  
to the unelected agency that seeks the appropriation. 125

**Sec. 163.04.** (A) At least thirty days before filing a 126  
petition pursuant to section 163.05 of the Revised Code, an 127  
agency shall provide notice to the owner of the agency's intent 128  
to acquire the property. The notice shall be substantially in 129  
the form set forth in section 163.041 of the Revised Code. The 130  
notice shall be delivered personally on, or by certified mail 131  
to, the owner of the property or the owner's designated 132  
representative. 133

(B) Together with the notice that division (A) of this section requires, or after providing that notice but not less than thirty days before filing a petition pursuant to section 163.05 of the Revised Code, an agency shall provide an owner with a an initial written good faith offer to purchase the property. ~~The agency may revise that offer if before commencing an appropriation proceeding the agency becomes aware of conditions indigenous to the property that could not reasonably have been discovered at the time of the initial good faith offer or if the agency and the owner exchange appraisals prior to the filing of the petition.~~ Such initial written good faith offer shall be the minimum award of compensation to the owner and may not be later reduced or revoked by the agency nor shall the agency present evidence or argument of a lesser compensation amount at the compensation jury trial. Nothing in this division prohibits the agency from making a subsequent offer that is in excess of the initial good faith offer. If the agency makes a subsequent offer that is in excess of the initial good faith offer, then that subsequent offer becomes the minimum award of compensation to the owner, the agency shall not later reduce or revoke the subsequent offer, and the agency shall not present evidence or argument of a lesser compensation amount than the subsequent offer at the compensation jury trial. No agency shall make an offer that is not in writing.

(C) An agency may appropriate real property only after the agency obtains an appraisal of the property and provides a copy of the appraisal to the owner or, if more than one, each owner or to the guardian or trustee of each owner. The agency need not provide an owner with a copy of the appraisal when that owner is incapable of contracting in person or by agent to convey the property and has no guardian or trustee or is unknown, or the

residence of the owner cannot with reasonable diligence be 165  
ascertained. When the appraisal indicates that the property is 166  
worth less than ten thousand dollars, the agency need only 167  
provide an owner, guardian, or trustee with a summary of the 168  
appraisal. The agency shall provide the copy or summary of the 169  
appraisal to an owner, guardian, or trustee at or before the 170  
time the agency makes its first offer to purchase the property. 171  
A public utility or the head of a public agency may prescribe a 172  
procedure to waive the appraisal in cases involving the 173  
acquisition by sale or donation of property with a fair market 174  
value of ten thousand dollars or less. 175

(D) An agency may appropriate real property only after the 176  
agency is unable to agree on a conveyance or the terms of a 177  
conveyance, for any reason, with any owner or the guardian or 178  
trustee of any owner unless each owner is incapable of 179  
contracting in person or by agent to convey the property and has 180  
no guardian or trustee, each owner is unknown, or the residence 181  
of each owner is unknown to the agency and the residence of no 182  
owner can with reasonable diligence be ascertained. 183

(E) An agency may appropriate real property for projects 184  
that will disrupt the flow of traffic or impede access to 185  
property only after the agency makes reasonable efforts to plan 186  
the project in a way that will limit those effects. This 187  
division does not apply to an agency if it initiated the project 188  
for which it appropriates the property under Title LV of the 189  
Revised Code. 190

**Sec. 163.09.** (A) If no answer is filed pursuant to section 191  
163.08 of the Revised Code, and no approval ordered by the court 192  
to a settlement of the rights of all necessary parties, the 193  
court, on motion of a public agency, shall declare the value of 194

the property taken and the damages, if any, to the residue to be 195  
as set forth in any document properly filed with the clerk of 196  
the court of common pleas by the public agency. In all other 197  
cases, the court shall fix a time, within ~~twenty~~ ninety days 198  
from the last date that the answer could have been filed, for 199  
the assessment of compensation by a jury. 200

(B) (1) When an answer is filed pursuant to section 163.08 201  
of the Revised Code and any of the matters relating to the right 202  
to make the appropriation, the inability of the parties to 203  
agree, or the necessity for the appropriation are specifically 204  
denied in the manner provided in that section, the court shall 205  
set a day, not less than ~~five or more than fifteen~~ thirty days 206  
from the date the answer was filed, to hear those matters. Upon 207  
those matters, the burden of proof is upon the agency by a ~~a~~ 208  
~~preponderance of the clear and convincing evidence,~~ except as ~~as~~ 209  
~~follows:~~ 210

~~(a) A resolution or ordinance of the governing or 211  
controlling body, council, or board of the agency declaring the 212  
necessity for the appropriation creates a rebuttable presumption 213  
of the necessity for the appropriation if the agency is not 214  
appropriating the property because it is a blighted parcel or 215  
part of a blighted area or slum. 216~~

~~(b) The presentation by a public utility or common carrier 217  
of evidence of the necessity for the appropriation creates a 218  
rebuttable presumption of the necessity for the appropriation. 219~~

~~(c) Approval that approval by a state or federal 220  
regulatory authority of an the appropriation of all interests 221  
sought specific to an owner's property by a public utility or 222  
common carrier creates an irrebuttable a rebuttable presumption 223  
of the necessity for the appropriation regarding the specific 224~~



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| <u>interests reviewed and approved by the regulatory authority.</u>                  | 225 |
| (2) <del>Subject to the irrebuttable presumption in division</del>                   | 226 |
| <del>(B) (1) (c) of this section, only</del> <u>Only</u> the judge may determine the | 227 |
| necessity of the appropriation. If, as to any or all of the                          | 228 |
| property or other interests sought to be appropriated, the court                     | 229 |
| determines the matters in favor of the agency, the court shall                       | 230 |
| set a time for the assessment of compensation by the jury not                        | 231 |
| less than <del>sixty-ninety</del> days from the date of the journalization           | 232 |
| of that determination, subject to the right of the parties to                        | 233 |
| request mediation under section 163.051 of the Revised Code and                      | 234 |
| the right of the owner to an immediate appeal under division (B)                     | 235 |
| (3) of this section. Except as provided in division (B) (3) of                       | 236 |
| this section, an order of the court in favor of the agency on                        | 237 |
| any of the matters or on qualification under section 163.06 of                       | 238 |
| the Revised Code shall not be a final order for purposes of                          | 239 |
| appeal. An order of the court against the agency on any of the                       | 240 |
| matters or on the question of qualification under section 163.06                     | 241 |
| of the Revised Code shall be a final order for purposes of                           | 242 |
| appeal. If a public agency has taken possession prior to such an                     | 243 |
| order and such an order, after any appeal, is against the agency                     | 244 |
| on any of the matters, the agency shall restore the property to                      | 245 |
| the owner in its original condition or respond in damages, which                     | 246 |
| may include the items set forth in division (A) (2) of section                       | 247 |
| 163.21 of the Revised Code, recoverable by civil action, to                          | 248 |
| which the state consents.  | 249 |
| (3) An owner has a right to an immediate appeal if the                               | 250 |
| order of the court is in favor of the agency in any of the                           | 251 |
| matters the owner denied in the answer, unless the agency is                         | 252 |
| appropriating property <del>in</del> <u>under any of the following</u>               | 253 |
| <u>circumstances:</u>  | 254 |

(a) In time of war or other public exigency imperatively 255  
requiring its immediate seizure,~~for;~~ 256

(b) For the sole purpose of making or repairing roads 257  
which shall be open to the public without charge,~~for;~~ 258

(c) For the purpose of implementing rail service under 259  
Chapter 4981. of the Revised Code, or under section 307.08, 260  
504.19, 6101.181, 6115.221, 6117.39, or 6119.11 of the Revised 261  
Code or by a public utility owned and operated by a municipal 262  
corporation as the result of a public exigency. 263

The court shall not set a time for nor proceed with a 264  
determination of the assessment of compensation until the 265  
owner's immediate appeal is final. 266

(C) When an answer is filed pursuant to section 163.08 of 267  
the Revised Code, and none of the matters set forth in division 268  
(B) of this section is specifically denied, the court shall fix 269  
a time ~~within twenty~~ not sooner than ninety days from the date 270  
the answer was filed for the assessment of compensation by a 271  
jury. 272

(D) If answers are filed pursuant to divisions (B) and (C) 273  
of this section, or an answer is filed on behalf of fewer than 274  
all the named owners, the court shall set the hearing or 275  
hearings at such times as are reasonable under all the 276  
circumstances, ~~but in no event later than twenty days after the~~ 277  
~~issues are joined as to all necessary parties or twenty days~~ 278  
~~after rule therefor, whichever is earlier.~~ 279

(E) The court, with the consent of the parties, may order 280  
two or more cases to be consolidated and tried together, but the 281  
rights of each owner to compensation, damages, or both shall be 282  
separately determined by the jury in its verdict. 283

(F) If an answer is filed under section 163.08 of the Revised Code with respect to the value of property, the trier of fact shall determine that value based on the evidence presented, with neither party having the burden of proof with respect to that value.

(G) If the court determines the matter wholly or partially in the favor of the owner as to the necessity of the appropriation or whether the use for which the agency seeks to appropriate the property is a public use, in a final, unappealable order, the court shall award the owner reasonable attorney's fees, expenses, and costs.

(H) If the owner demonstrates by a preponderance of the evidence that the agency used coercive actions, including but not limited to those listed in section 163.59 of the Revised Code, at any point during the appropriations process against the owner, the court shall award the owner damages that the court considers appropriate. The state hereby waives its immunity from liability for such claims, and, notwithstanding Chapter 2743. of the Revised Code, such actions shall be brought in the court of common pleas in the county where the property in question is located.

**Sec. 163.16.** (A) If, in an action brought under this chapter, the court is required to award the owner reasonable attorney's fees, expenses, and costs, or the agency is required to pay the owner reasonable attorney's fees, expenses, and costs, that award or payment shall include any fees, expenses, and costs incurred by the owner in the pursuit of the award of fees, expenses, and costs, including costs of mediation or appeal.

(B) The court costs, including jury fees, of any

proceeding shall be paid by the agency as the court directs, 314  
except as may be provided for in cases subject to division (A) 315  
(2) or (B) (1) of section 163.21 of the Revised Code. ~~The agency~~ 316  
~~may offer to confess judgment for the amount to be stated and~~ 317  
~~the court costs then made in favor of any owner who in any~~ 318  
~~manner enters an appearance or upon whom service has been made.~~ 319  
~~If such owner refuses to accept such offer and as a result of~~ 320  
~~the trial does not receive more, he shall pay all court costs~~ 321  
~~accruing after the offer.~~ 322

**Sec. 163.19.** Subject to sections 163.07 and 163.09 of the 323  
Revised Code, any party may prosecute appeals as in other civil 324  
actions from the judgment of the court. 325

The owner may request, and the court may grant, a stay on 326  
appeal, provided that the owner posts a supersedeas bond in an 327  
amount the court determines. 328

If the agency appeals from a judgment of the court and the 329  
judgment is affirmed in whole or in part, the court shall award 330  
the owner reasonable attorney's fees, expenses, and costs 331  
incurred in defending the appeal. 332

**Sec. 163.21.** (A) (1) If it has not taken possession of 333  
property that is appropriated, an agency may abandon 334  
appropriation proceedings under sections 163.01 to 163.22 of the 335  
Revised Code at any time after the proceedings are commenced but 336  
not later than ninety days after the final determination of the 337  
cause. 338

(2) In all cases of abandonment as described in division 339  
(A) (1) of this section, the court shall enter a judgment against 340  
the agency for costs, including jury fees, and shall enter a 341  
judgment in favor of each affected owner, in amounts that the 342

court considers to be just, for each of the following that the owner incurred:

- (a) Witness fees, including expert witness fees;
- (b) Attorney's fees;
- (c) Other actual expenses.

(B) (1) In appropriation proceedings under sections 163.01 to 163.22 of the Revised Code or as authorized by divisions (A) and (B) of section 163.02 of the Revised Code for appropriation proceedings in time of a public exigency under other sections of the Revised Code, if the court determines that an agency is not entitled to appropriate particular property, the court shall enter both of the following:

- (a) A judgment against the agency for costs, including jury fees;
- (b) A judgment in favor of each affected owner, in amounts that the court considers to be just, for the owner's reasonable disbursements and expenses, to include witness fees, expert witness fees, attorney's fees, appraisal and engineering fees, and for other actual expenses that the owner incurred in connection with the proceedings.

(2) Any award to an owner pursuant to this section shall be paid by the head of the agency for whose benefit the appropriation proceedings were initiated.

(C) (1) Except as otherwise provided in division (C) (2) ~~or~~ ~~(3)~~ of this section and subject to division ~~(C) (5)~~ (C) (4) of this section, when an agency appropriates property and the final award of compensation is greater than one hundred twenty-five per cent of the agency's initial good faith offer for the

~~property or, if before commencing the appropriation proceeding~~ 371  
~~the agency made a revised offer based on conditions indigenous~~ 372  
~~to the property that could not reasonably have been discovered~~ 373  
~~at the time of the good faith offer, one hundred twenty five per~~ 374  
~~cent of the revised offer made pursuant to section 163.04 of the~~ 375  
Revised Code, the court shall enter judgment in favor of the 376  
owner, in amounts the court considers just, for all costs and 377  
expenses, including attorney's and appraisal fees, that the 378  
owner actually incurred. 379

(2) The court shall not enter judgment for costs and 380  
expenses, including attorney's fees and appraisal fees, if the 381  
agency is appropriating property in time of war or other public 382  
exigency imperatively requiring its immediate seizure, for the 383  
purpose of making or repairing roads that shall be open to the 384  
public without charge, for the purpose of implementing rail 385  
service under Chapter 4981. of the Revised Code, or under 386  
section 307.08, 504.19, 6101.181, 6115.221, 6117.39, or 6119.11 387  
of the Revised Code as the result of a public exigency, or the 388  
agency is a municipal corporation that is appropriating property 389  
as a result of a public exigency, except that the court shall 390  
enter judgment in favor of the owner for costs and expenses, 391  
including attorney's and appraisal fees, that the owner actually 392  
incurred only if the property being appropriated is land used 393  
for agricultural purposes as defined in section 303.01 or 519.01 394  
of the Revised Code, or the county auditor of the county in 395  
which the land is located has determined under section 5713.31 396  
of the Revised Code that the land is "land devoted exclusively 397  
to agricultural use" as defined in section 5713.30 of the 398  
Revised Code and the final award of compensation is more than 399  
one hundred fifty per cent of the agency's initial good faith 400  
~~offer or a revised offer made by the agency under division (C)~~ 401

~~(1) or (3) of this section made pursuant to section 163.04 of  
the Revised Code.~~ 402  
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~~(3) The court shall not enter judgment for costs and  
expenses, including attorney's fees and appraisal fees, that the  
owner actually incurred if the owner and the agency exchanged  
appraisals prior to the filing of the petition and the final  
award of compensation was not more than one hundred twenty five  
per cent of the agency's first offer for the property made  
subsequent to the exchange of appraisals and at least thirty  
days before the filing of the petition.~~ 404  
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~~(4) An award of costs and expenses, including attorney's  
and appraisal fees, that the owner actually incurred, under  
division (C) of this section shall not exceed the lesser of  
twenty-five per cent of the amount by which the final award of  
compensation exceeds the agency's initial good faith offer ~~or  
revised offer~~ or twenty-five per cent of the amount by which the  
final award of compensation exceeds the agency's last written  
offer made not less than forty-five days before the date  
initially designated for trial by the court.~~ 412  
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~~(5) (a) (4) (a) An award of costs and expenses, including  
attorney's and appraisal fees, that the owner actually incurred,  
made under division (G) of section 163.09 of the Revised Code is  
not subject to the conditions and limitations set forth in  
divisions (C) (1), (2), and (3), ~~and (4)~~ of this section.~~ 421  
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~~(b) The court shall not enter judgment for costs and  
expenses, including attorney's fees and appraisal fees, under  
division (C) of this section unless not less than fifty days  
prior to the date initially designated by the court for trial  
the owner provided the agency with an appraisal or summary  
appraisal of the property being appropriated or with the owner's~~ 426  
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sworn statement setting forth the value of the property and an 432  
explanation of how the owner arrived at that value. 433

Sec. 163.221. (A) An owner who alleges that the owner's 434  
property has been acquired for a public use by an appropriating 435  
authority and that the authority has not followed the procedures 436  
required by sections 163.02 to 163.22 of the Revised Code, or 437  
any prior appropriation procedures, may bring a direct action 438  
against the appropriating authority for inverse condemnation. 439

(B) The owner shall file the action in the court of common 440  
pleas in the county where the property is located. 441

(C) The owner who brings the action has the burden to 442  
prove by a preponderance of the evidence that the appropriating 443  
authority has appropriated the owner's property and that the 444  
appropriating authority did not follow the procedures required 445  
by sections 163.02 to 163.22 of the Revised Code, or any prior 446  
appropriation procedures. An owner who meets the burden of proof 447  
shall be awarded reasonable compensation and damages for the 448  
appropriation. 449

(D) If the court renders judgment in favor of the owner 450  
who brought the action, or the appropriating authority effects a 451  
settlement of the action, the court shall award the owner 452  
reasonable attorney's fees, costs, and expenses, including 453  
appraisal fees and engineering fees incurred in the action. 454

Sec. 163.52. (A) The failure of an acquiring agency to 455  
satisfy a requirement of section 163.59 of the Revised Code ~~does~~ 456  
~~not affect the validity of voids~~ any property acquisition by 457  
purchase or condemnation. 458

(B) If a property acquisition by purchase or condemnation 459  
is void for failure to satisfy the requirements of section 460



163.59 of the Revised Code, the agency shall pay the owner 461  
reasonable attorney fees, costs, and expenses. 462

(C) An owner has a cause of action against an agency for a 463  
violation of section 163.59 of the Revised Code. 464

(D) Nothing in sections 163.51 to 163.62 of the Revised 465  
Code shall be construed as creating, in any condemnation 466  
proceeding brought under the power of eminent domain, any 467  
element of value or damage not in existence immediately prior to 468  
June 11, 1971. 469

**Sec. 163.59.** In order to encourage and expedite the 470  
acquisition of real property by agreements with owners, to avoid 471  
litigation and relieve congestion in the courts, to assure 472  
consistent treatment for owners in the many state and federally 473  
assisted programs, and to promote public confidence in public 474  
land acquisition practices, heads of acquiring agencies shall do 475  
or ensure the acquisition satisfies all of the following: 476

(A) The head of an acquiring agency shall make every 477  
reasonable effort to acquire expeditiously real property by 478  
negotiation. 479

(B) In order for an acquiring agency to acquire real 480  
property, the acquisition shall be for a defined public purpose 481  
that is to be achieved in a defined and reasonable period of 482  
time. An acquisition of real property that complies with section 483  
5501.31 of the Revised Code satisfies the defined public purpose 484  
requirement of this division. 485

(C) Real property to be acquired shall be appraised before 486  
the initiation of negotiations, and the owner or the owner's 487  
designated representative shall be given a reasonable 488  
opportunity to accompany the appraiser during the appraiser's 489

inspection of the property, except that the head of the lead 490  
agency may prescribe a procedure to waive the appraisal in cases 491  
involving the acquisition by sale or donation of property with a 492  
low fair market value. If the appraisal values the property to 493  
be acquired at more than ten thousand dollars, the head of the 494  
acquiring agency concerned shall make every reasonable effort to 495  
provide a copy of the appraisal to the owner. As used in this 496  
section, "appraisal" means a written statement independently and 497  
impartially prepared by a qualified appraiser, or a written 498  
statement prepared by an employee of the acquiring agency who is 499  
a qualified appraiser, setting forth an opinion of defined value 500  
of an adequately described property as of a specified date, 501  
supported by the presentation and analysis of relevant market 502  
information. 503

(D) Before the initiation of negotiations for real 504  
property, the head of the acquiring agency concerned shall 505  
establish an amount that the head of the acquiring agency 506  
believes to be just compensation for the property and shall make 507  
a prompt offer to acquire the property for no less than the full 508  
amount so established. In no event shall that amount be less 509  
than the agency's approved appraisal of the fair market value of 510  
the property. Any decrease or increase in the fair market value 511  
of real property prior to the date of valuation caused by the 512  
public improvement for which the property is acquired, or by the 513  
likelihood that the property would be acquired for that 514  
improvement, other than that due to physical deterioration 515  
within the reasonable control of the owner, will be disregarded 516  
in determining the compensation for the property. 517

The head of the acquiring agency concerned shall provide 518  
the owner of real property to be acquired with a written 519  
statement of, and summary of the basis for, the amount that the 520

head of the acquiring agency established as just compensation. 521  
Where appropriate, the just compensation for real property 522  
acquired and for damages to remaining real property shall be 523  
separately stated. 524

The owner shall be given a reasonable opportunity to 525  
consider the offer of the acquiring agency for the real 526  
property, to present material that the owner believes is 527  
relevant to determining the fair market value of the property, 528  
and to suggest modification in the proposed terms and conditions 529  
of the acquisition. The acquiring agency shall consider the 530  
owner's presentation and suggestions. 531

(E) If information presented by the owner or a material 532  
change in the character or condition of the real property 533  
indicates the need for new appraisal information, or if a period 534  
of more than two years has elapsed since the time of the 535  
appraisal of the property, the head of the acquiring agency 536  
concerned shall have the appraisal updated or obtain a new 537  
appraisal. If updated appraisal information or a new appraisal 538  
indicates that a change in the acquisition offer is warranted, 539  
the head of the acquiring agency shall promptly reestablish the 540  
amount of the just compensation for the property and offer that 541  
amount to the owner in writing. No subsequent offers of 542  
compensation shall be less than the initial offer. 543

(F) No owner shall be required to surrender possession of 544  
real property before the acquiring agency concerned pays the 545  
agreed purchase price, or deposits with the court for the 546  
benefit of the owner an amount not less than the agency's 547  
approved appraisal of the fair market value of the property, or 548  
the amount of the award of compensation in the condemnation 549  
proceeding for the property. 550

(G) The construction or development of a public 551  
improvement shall be so scheduled that no person lawfully 552  
occupying real property shall be required to move from a 553  
dwelling, or to move the person's business or farm operation, 554  
without at least ninety days' written notice from the head of 555  
the acquiring agency concerned of the date by which the move is 556  
required. 557

(H) If the head of an acquiring agency permits an owner or 558  
tenant to occupy the real property acquired on a rental basis 559  
for a short term or for a period subject to termination on short 560  
notice, the amount of rent required shall not exceed the fair 561  
rental value of the property to a short-term occupier. 562

(I) In no event shall the head of an acquiring agency 563  
either advance the time of condemnation, or defer negotiations 564  
or condemnation and the deposit of funds in court for the use of 565  
the owner, or take any other action coercive in nature, in order 566  
to compel an agreement on the price to be paid for the real 567  
property. For claims of coercive actions, the state hereby 568  
waives its immunity from liability, and, notwithstanding Chapter 569  
2743. of the Revised Code, such actions shall be brought in the 570  
court of common pleas in the county where the property in 571  
question is located. 572

(J) When any interest in real property is acquired by 573  
exercise of the power of eminent domain, the head of the 574  
acquiring agency concerned shall institute the formal 575  
condemnation proceedings. No head of an acquiring agency shall 576  
intentionally make it necessary for an owner to institute legal 577  
proceedings to prove the fact of the taking of the owner's real 578  
property. 579

(K) If the acquisition of only part of a property would 580

leave its owner with an uneconomic remnant, the head of the 581  
acquiring agency concerned shall offer to acquire that remnant. 582  
For the purposes of this division, an uneconomic remnant is a 583  
parcel of real property in which the owner is left with an 584  
interest after the partial acquisition of the owner's property 585  
and which the head of the agency concerned has determined has 586  
little or no value or utility to the owner. 587

An acquisition of real property may continue while an 588  
acquiring agency carries out the requirements of divisions (A) 589  
to (K) of this section. 590

This section applies only when the acquisition of real 591  
property may result in an exercise of the power of eminent 592  
domain. 593

**Sec. 163.62.** (A) The court having jurisdiction of a 594  
proceeding instituted by a state agency to acquire real property 595  
by condemnation shall award the owner of any right, or title to, 596  
or interest in, such real property such sum as will in the 597  
opinion of the court reimburse such owner for the owner's 598  
reasonable costs, disbursements, and expenses, including 599  
reasonable attorney, appraisal, and engineering fees actually 600  
incurred because of the condemnation proceeding, as provided in 601  
division (G) of section 163.09 or division (A) or (C) of section 602  
163.21 of the Revised Code, as applicable. 603

(B) The court having jurisdiction of an inverse 604  
condemnation proceeding shall award the owner of any right, or 605  
title to, or interest in, such real property such sum as will in 606  
the opinion of the court reimburse such owner for the owner's 607  
reasonable costs, disbursements, and expenses, including 608  
reasonable attorney, appraisal, and engineering fees actually 609  
incurred because of the inverse condemnation proceeding, if the 610

court renders a judgment in favor of the owner or the agency 611  
effects a settlement of the proceeding. As used in this 612  
division, "court" means the court of common pleas, the court of 613  
appeals, or the supreme court. 614

(C) Any award made pursuant to division (A) or (B) of this 615  
section shall be paid by the head of the agency for whose 616  
benefit the condemnation proceeding was instituted. 617

(D) (1) The General Assembly finds that the amendment to 618  
this section by this act is remedial in nature in order to 619  
ensure that Ohio is in compliance with the "Uniform Relocation 620  
Assistance and Real Property Acquisitions Policies for Federal 621  
and Federally Assisted Programs Act," 42 U.S.C. 4601, et seq., 622  
and its implementing regulations, 49 C.F.R. 24.1, et seq. 623  
Therefore, the General Assembly hereby declares its purpose in 624  
amending this section in this act is that the amendment apply to 625  
any judgment in favor of the owner in an inverse condemnation 626  
proceeding or settlement effectuated by the agency in such a 627  
proceeding that occurred on or after January 1, 2019. 628

(2) The amendment to this section by this act is in 629  
response to the Supreme Court's opinion in *State ex rel. New* 630  
*Wen, Inc. v. Marchbanks*, 163 Ohio St.3d 14, 2020-Ohio-4865. 631  
There, the Supreme Court declared ineffective a provision in the 632  
Administrative Code that authorized certain litigation expenses, 633  
including reasonable attorney fees, to owners of real property 634  
who prevailed in inverse condemnation proceedings. In a 635  
concurring opinion, Justice Fischer, as joined by Justice 636  
DeWine, wrote "separately to point out that the General Assembly 637  
should examine the issue whether a property owner in Ohio who is 638  
forced to file a lawsuit, in this case for a writ of mandamus, 639  
to get a court order when the state has taken that owner's 640

property without filing a proper appropriation case, should or 641  
should not be entitled to an award of attorney fees." In 642  
amending this section, the General Assembly agrees with Justices 643  
Fischer and DeWine that Ohioans "who have had property 644  
improperly taken by any government—and who must go to court to 645  
correct that problem caused by the government—should be entitled 646  
to their attorney fees, which they incurred to uphold their 647  
constitutionally protected property rights." 648

**Section 2.** That existing sections 163.01, 163.021, 163.04, 649  
163.09, 163.16, 163.19, 163.21, 163.52, 163.59, and 163.62 of 650  
the Revised Code are hereby repealed. 651