

I_135_2143-1

135th General Assembly
Regular Session
2023-2024

Sub. H. B. No. 64

A BILL

To amend sections 163.04, 163.09, 163.16, 163.19, 1
163.21, 163.52, 163.59, 163.62, 307.08, 511.23, 2
511.24, 755.08, and 1545.11 and to enact section 3
163.221 of the Revised Code to modify the law 4
regarding eminent domain. 5

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

Section 1. That sections 163.04, 163.09, 163.16, 163.19, 6
163.21, 163.52, 163.59, 163.62, 307.08, 511.23, 511.24, 755.08, 7
and 1545.11 be amended and section 163.221 of the Revised Code 8
be enacted to read as follows: 9

Sec. 163.04. (A) At least thirty days before filing a 10
petition pursuant to section 163.05 of the Revised Code, an 11
agency shall provide notice to the owner of the agency's intent 12
to acquire the property. The notice shall be substantially in 13
the form set forth in section 163.041 of the Revised Code. The 14
notice shall be delivered personally on, or by certified mail 15
to, the owner of the property or the owner's designated 16
representative. 17



cgqwzto7hueh2ckm4xpgfs

(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 written good faith offer or if the agency and the owner exchange appraisals prior to the filing of the petition. No agency shall make an offer that is not in writing, including any offers made by any employee, agent, or third-party contractor of the agency.

(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 ascertained. When the appraisal indicates that the property is worth less than ten thousand dollars, the agency need only provide an owner, guardian, or trustee with a summary of the appraisal. The agency shall provide the copy or summary of the appraisal to an owner, guardian, or trustee at or before the time the agency makes its first offer to purchase the property. A public utility or the head of a public agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a fair market value of ten thousand dollars or less.

(D) An agency may appropriate real property only after the 49
agency is unable to agree on a conveyance or the terms of a 50
conveyance, for any reason, with any owner or the guardian or 51
trustee of any owner unless each owner is incapable of 52
contracting in person or by agent to convey the property and has 53
no guardian or trustee, each owner is unknown, or the residence 54
of each owner is unknown to the agency and the residence of no 55
owner can with reasonable diligence be ascertained. 56

(E) An agency may appropriate real property for projects 57
that will disrupt the flow of traffic or impede access to 58
property only after the agency makes reasonable efforts to plan 59
the project in a way that will limit those effects. This 60
division does not apply to an agency if it initiated the project 61
for which it appropriates the property under Title LV of the 62
Revised Code. 63

Sec. 163.09. (A) If no answer is filed pursuant to section 64
163.08 of the Revised Code, and no approval ordered by the court 65
to a settlement of the rights of all necessary parties, the 66
court, on motion of a public agency, shall declare the value of 67
the property taken and the damages, if any, to the residue to be 68
as set forth in any document properly filed with the clerk of 69
the court of common pleas by the public agency. In all other 70
cases, the court shall fix a time, within ~~twenty~~ninety days 71
from the last date that the answer could have been filed, for 72
the assessment of compensation by a jury. 73

(B) (1) When an answer is filed pursuant to section 163.08 74
of the Revised Code and any of the matters relating to the right 75
to make the appropriation, the inability of the parties to 76
agree, or the necessity for the appropriation are specifically 77
denied in the manner provided in that section, the court shall 78

set a day, not less than ~~five or more than fifteen~~ thirty days 79
from the date the answer was filed, to hear those matters. Upon 80
those matters, the burden of proof is upon the agency by a 81
preponderance of the evidence except as follows: 82

(a) A resolution or ordinance of the governing or 83
controlling body, council, or board of the agency declaring the 84
necessity for the appropriation creates a rebuttable presumption 85
of the necessity for the appropriation if the agency is not 86
appropriating the property because it is a blighted parcel or 87
part of a blighted area or slum. 88

(b) The presentation by a public utility or common carrier 89
of evidence of the necessity for the appropriation creates a 90
rebuttable presumption of the necessity for the appropriation. 91

(c) Approval by a state or federal regulatory authority of 92
an appropriation by a public utility or common carrier creates 93
~~an irrebuttable~~ a rebuttable presumption of the necessity for 94
the appropriation. 95

(2) ~~Subject to the irrebuttable presumption in division~~ 96
~~(B) (1) (c) of this section, only~~ Only the judge may determine the 97
necessity of the appropriation. If, as to any or all of the 98
property or other interests sought to be appropriated, the court 99
determines the matters in favor of the agency, the court shall 100
set a time for the assessment of compensation by the jury not 101
less than ~~sixty~~ ninety days from the date of the journalization 102
of that determination, subject to the right of the parties to 103
request mediation under section 163.051 of the Revised Code and 104
the right of the owner to an immediate appeal under division (B) 105
(3) of this section. Except as provided in division (B) (3) of 106
this section, an order of the court in favor of the agency on 107
any of the matters or on qualification under section 163.06 of 108

the Revised Code shall not be a final order for purposes of 109
appeal. An order of the court against the agency on any of the 110
matters or on the question of qualification under section 163.06 111
of the Revised Code shall be a final order for purposes of 112
appeal. If a public agency has taken possession prior to such an 113
order and such an order, after any appeal, is against the agency 114
on any of the matters, the agency shall restore the property to 115
the owner in its original condition or respond in damages, which 116
may include the items set forth in division (A) (2) of section 117
163.21 of the Revised Code, recoverable by civil action, to 118
which the state consents. 119

(3) An owner has a right to an immediate appeal if the 120
order of the court is in favor of the agency in any of the 121
matters the owner denied in the answer, unless the agency is 122
appropriating property in time of war or other public exigency 123
imperatively requiring its immediate seizure, for the purpose of 124
making or repairing roads which shall be open to the public 125
without charge, for the purpose of implementing rail service 126
under Chapter 4981. of the Revised Code, or under section 127
307.08, 504.19, 6101.181, 6115.221, 6117.39, or 6119.11 of the 128
Revised Code or by a public utility owned and operated by a 129
municipal corporation as the result of a public exigency. 130

The court shall not set a time for nor proceed with a 131
determination of the assessment of compensation until the 132
owner's immediate appeal is final. 133

(C) When an answer is filed pursuant to section 163.08 of 134
the Revised Code, and none of the matters set forth in division 135
(B) of this section is specifically denied, the court shall fix 136
a time ~~within twenty~~ not sooner than ninety days from the date 137
the answer was filed for the assessment of compensation by a 138

jury. 139

(D) If answers are filed pursuant to divisions (B) and (C) 140
of this section, or an answer is filed on behalf of fewer than 141
all the named owners, the court shall set the hearing or 142
hearings at such times as are reasonable under all the 143
circumstances, ~~but in no event later than twenty days after the~~ 144
~~issues are joined as to all necessary parties or twenty days~~ 145
~~after rule therefor, whichever is earlier.~~ 146

(E) The court, with the consent of the parties, may order 147
two or more cases to be consolidated and tried together, but the 148
rights of each owner to compensation, damages, or both shall be 149
separately determined by the jury in its verdict. 150

(F) If an answer is filed under section 163.08 of the 151
Revised Code with respect to the value of property, the trier of 152
fact shall determine that value based on the evidence presented, 153
with neither party having the burden of proof with respect to 154
that value. 155

(G) If the court determines the matter in the favor of the 156
owner as to the necessity of the appropriation or whether the 157
use for which the agency seeks to appropriate the property is a 158
public use, in a final, unappealable order, the court shall 159
award the owner reasonable attorney's fees, expenses, and costs. 160

(H) If the owner demonstrates by clear and convincing 161
evidence that the agency used coercive actions, including but 162
not limited to those listed in section 163.59 of the Revised 163
Code, at any point during the appropriations process against the 164
owner, the court shall award the owner damages that the court 165
considers appropriate. The state hereby waives its immunity from 166
liability for such claims, and, notwithstanding Chapter 2743. of 167

the Revised Code, such actions shall be brought in the court of 168
common pleas in the county where the property in question is 169
located. 170

Sec. 163.16. (A) If, in an action brought under this 171
chapter, the court is required to award the owner reasonable 172
attorney's fees, expenses, and costs, or the agency is required 173
to pay the owner reasonable attorney's fees, expenses, and 174
costs, that award or payment shall include any fees, expenses, 175
and costs incurred by the owner in the pursuit of the award of 176
fees, expenses, and costs, including costs of mediation or 177
appeal. 178

(B) The court costs, including jury fees, of any 179
proceeding shall be paid by the agency as the court directs, 180
except as may be provided for in cases subject to division (A) 181
(2) or (B) (1) of section 163.21 of the Revised Code. ~~The agency~~ 182
~~may offer to confess judgment for the amount to be stated and~~ 183
~~the court costs then made in favor of any owner who in any~~ 184
~~manner enters an appearance or upon whom service has been made.~~ 185
~~If such owner refuses to accept such offer and as a result of~~ 186
~~the trial does not receive more, he shall pay all court costs~~ 187
~~accruing after the offer.~~ 188

Sec. 163.19. Subject to sections 163.07 and 163.09 of the 189
Revised Code, any party may prosecute appeals as in other civil 190
actions from the judgment of the court. 191

The owner may request, and the court may grant, a stay on 192
appeal, provided that the owner posts a supersedeas bond in an 193
amount the court determines. 194

If the agency appeals from a judgment of the court and the 195
judgment is affirmed in whole, the court shall award the owner 196

reasonable attorney's fees, expenses, and costs incurred in 197
defending the appeal. 198

Sec. 163.21. (A) (1) If it has not taken possession of 199
property that is appropriated, an agency may abandon 200
appropriation proceedings under sections 163.01 to 163.22 of the 201
Revised Code at any time after the proceedings are commenced but 202
not later than ninety days after the final determination of the 203
cause. 204

(2) In all cases of abandonment as described in division 205
(A) (1) of this section, the court shall enter a judgment against 206
the agency for costs, including jury fees, and shall enter a 207
judgment in favor of each affected owner, in amounts that the 208
court considers to be just, for each of the following that the 209
owner incurred: 210

(a) Witness fees, including expert witness fees; 211

(b) Attorney's fees; 212

(c) Other actual expenses. 213

(B) (1) In appropriation proceedings under sections 163.01 214
to 163.22 of the Revised Code or as authorized by divisions (A) 215
and (B) of section 163.02 of the Revised Code for appropriation 216
proceedings in time of a public exigency under other sections of 217
the Revised Code, if the court determines that an agency is not 218
entitled to appropriate particular property, the court shall 219
enter both of the following: 220

(a) A judgment against the agency for costs, including 221
jury fees; 222

(b) A judgment in favor of each affected owner, in amounts 223
that the court considers to be just, for the owner's reasonable 224

disbursements and expenses, to include witness fees, expert 225
witness fees, attorney's fees, appraisal and engineering fees, 226
and for other actual expenses that the owner incurred in 227
connection with the proceedings. 228

(2) Any award to an owner pursuant to this section shall 229
be paid by the head of the agency for whose benefit the 230
appropriation proceedings were initiated. 231

(C) (1) Except as otherwise provided in division (C) (2) ~~or~~ 232
~~(3)~~ of this section and subject to division ~~(C) (5)~~ (C) (3) of 233
this section, when an agency appropriates property and the final 234
award of compensation is greater than one hundred ~~twenty five~~
ten per cent of the agency's last written good faith offer for 235
the property ~~or, if before commencing the appropriation~~ 236
~~proceeding the agency made a revised offer based on conditions~~ 237
~~indigenous to the property that could not reasonably have been~~ 238
~~discovered at the time of the good faith offer, one hundred~~ 239
~~twenty five per cent of the revised offer~~ made pursuant to 240
section 163.04 of the Revised Code and provided prior to the 241
commencement of a necessity hearing, or, if no necessity hearing 242
is held, prior to the beginning of the compensation trial, the 243
court shall enter judgment in favor of the owner, in amounts the 244
court considers just, for all costs and expenses, including 245
attorney's and appraisal fees, that the owner actually incurred. 246
247

(2) The court shall not enter judgment for costs and 248
expenses, including attorney's fees and appraisal fees, if the 249
agency is appropriating property in time of war or other public 250
exigency imperatively requiring its immediate seizure, for the 251
purpose of making or repairing roads that shall be open to the 252
public without charge, for the purpose of implementing rail 253
service under Chapter 4981. of the Revised Code, or under 254

section 307.08, 504.19, 6101.181, 6115.221, 6117.39, or 6119.11 255
of the Revised Code as the result of a public exigency, or the 256
agency is a municipal corporation that is appropriating property 257
as a result of a public exigency, except that the court shall 258
enter judgment in favor of the owner for costs and expenses, 259
including attorney's and appraisal fees, that the owner actually 260
incurred only if the property being appropriated is land used 261
for agricultural purposes as defined in section 303.01 or 519.01 262
of the Revised Code, or the county auditor of the county in 263
which the land is located has determined under section 5713.31 264
of the Revised Code that the land is "land devoted exclusively 265
to agricultural use" as defined in section 5713.30 of the 266
Revised Code and the final award of compensation is more than 267
one hundred fifty per cent of the agency's last written good 268
faith offer or a revised offer made by the agency under division 269
(C) (1) or (3) of this section made pursuant to section 163.04 of 270
the Revised Code. 271

~~(3) The court shall not enter judgment for costs and~~ 272
~~expenses, including attorney's fees and appraisal fees, that the~~ 273
~~owner actually incurred if the owner and the agency exchanged~~ 274
~~appraisals prior to the filing of the petition and the final~~ 275
~~award of compensation was not more than one hundred twenty five~~ 276
~~per cent of the agency's first offer for the property made~~ 277
~~subsequent to the exchange of appraisals and at least thirty~~ 278
~~days before the filing of the petition.~~ 279

~~(4) An award of costs and expenses, including attorney's~~ 280
~~and appraisal fees, that the owner actually incurred, under~~ 281
~~division (C) of this section shall not exceed the lesser of~~ 282
~~twenty five per cent of the amount by which the final award of~~ 283
~~compensation exceeds the agency's initial good faith offer or~~ 284
~~revised offer or twenty five per cent of the amount by which the~~ 285

~~final award of compensation exceeds the agency's last written~~ 286
~~offer made not less than forty five days before the date~~ 287
~~initially designated for trial by the court.~~ 288

~~(5)(a)-(3)(a)~~ An award of costs and expenses, including 289
attorney's and appraisal fees, that the owner actually incurred, 290
made under division (G) of section 163.09 of the Revised Code is 291
not subject to the conditions and limitations set forth in 292
divisions (C) (1), and (2), ~~(3), and (4)~~ of this section. 293

(b) The court shall not enter judgment for costs and 294
expenses, including attorney's fees and appraisal fees, under 295
division (C) of this section unless not less than fifty days 296
prior to the date initially designated by the court for trial 297
the owner provided the agency with an appraisal or summary 298
appraisal of the property being appropriated or with the owner's 299
sworn statement setting forth the value of the property and an 300
explanation of how the owner arrived at that value. The court 301
shall enter judgment for costs and expenses, including 302
attorney's fees and appraisal fees under this section unless the 303
award of compensation is equal to or less than seventy-five per 304
cent of the compensation stated in the owner's appraisal of the 305
property being appropriated or the owner's sworn statement. 306

Sec. 163.221. (A) An owner who alleges that the owner's 307
property has been acquired for a public use by an appropriating 308
authority and that the authority has not followed the procedures 309
required by sections 163.02 to 163.22 of the Revised Code, or 310
any prior appropriation procedures, may bring a direct action 311
against the appropriating authority for inverse condemnation. 312

(B) The owner shall file the action in the court of common 313
pleas in the county where the property is located. 314

(C) The owner who brings the action has the burden to 315
prove by a preponderance of the evidence that the appropriating 316
authority has appropriated the owner's property and that the 317
appropriating authority did not follow the procedures required 318
by sections 163.02 to 163.22 of the Revised Code, or any prior 319
appropriation procedures. An owner who meets the burden of proof 320
shall be awarded reasonable compensation and damages for the 321
appropriation. 322

(D) If the court renders judgment in favor of the owner 323
who brought the action, or the appropriating authority effects a 324
settlement of the action, the court shall award the owner 325
reasonable attorney's fees, costs, and expenses, including 326
appraisal fees and engineering fees incurred in the action. 327

Sec. 163.52. (A) The failure of an acquiring agency to 328
satisfy a requirement of section 163.59 of the Revised Code does 329
not affect the validity of any property acquisition by purchase 330
or condemnation. 331

(B) An owner has a cause of action against an agency for a 332
violation of section 163.59 of the Revised Code. If the owner 333
proves a violation of section 163.59 of the Revised Code by 334
clear and convincing evidence, the agency shall pay the owner 335
reasonable attorney's fees, costs, and expenses. Such cause of 336
action may only be brought during the pendency of an 337
appropriation proceeding or an inverse condemnation action under 338
section 163.221 of the Revised Code and shall be consolidated 339
and heard with the underlying action. 340

(C) Nothing in sections 163.51 to 163.62 of the Revised 341
Code shall be construed as creating, in any condemnation 342
proceeding brought under the power of eminent domain, any 343
element of value or damage not in existence immediately prior to 344

June 11, 1971. 345

Sec. 163.59. In order to encourage and expedite the 346
acquisition of real property by agreements with owners, to avoid 347
litigation and relieve congestion in the courts, to assure 348
consistent treatment for owners in the many state and federally 349
assisted programs, and to promote public confidence in public 350
land acquisition practices, heads of acquiring agencies shall do 351
or ensure the acquisition satisfies all of the following: 352

(A) The head of an acquiring agency shall make every 353
reasonable effort to acquire expeditiously real property by 354
negotiation. 355

(B) In order for an acquiring agency to acquire real 356
property, the acquisition shall be for a defined public purpose 357
that is to be achieved in a defined and reasonable period of 358
time. An acquisition of real property that complies with section 359
5501.31 of the Revised Code satisfies the defined public purpose 360
requirement of this division. 361

(C) Real property to be acquired shall be appraised before 362
the initiation of negotiations, and the owner or the owner's 363
designated representative shall be given a reasonable 364
opportunity to accompany the appraiser during the appraiser's 365
inspection of the property, except that the head of the lead 366
agency may prescribe a procedure to waive the appraisal in cases 367
involving the acquisition by sale or donation of property with a 368
low fair market value. If the appraisal values the property to 369
be acquired at more than ten thousand dollars, the head of the 370
acquiring agency concerned shall make every reasonable effort to 371
provide a copy of the appraisal to the owner. As used in this 372
section, "appraisal" means a written statement independently and 373
impartially prepared by a qualified appraiser, or a written 374

statement prepared by an employee of the acquiring agency who is 375
a qualified appraiser, setting forth an opinion of defined value 376
of an adequately described property as of a specified date, 377
supported by the presentation and analysis of relevant market 378
information. 379

(D) Before the initiation of negotiations for real 380
property, the head of the acquiring agency concerned shall 381
establish an amount that the head of the acquiring agency 382
believes to be just compensation for the property and shall make 383
a prompt offer to acquire the property for no less than the full 384
amount so established. In no event shall that amount be less 385
than the agency's approved appraisal of the fair market value of 386
the property. Any decrease or increase in the fair market value 387
of real property prior to the date of valuation caused by the 388
public improvement for which the property is acquired, or by the 389
likelihood that the property would be acquired for that 390
improvement, other than that due to physical deterioration 391
within the reasonable control of the owner, will be disregarded 392
in determining the compensation for the property. 393

The head of the acquiring agency concerned shall provide 394
the owner of real property to be acquired with a written 395
statement of, and summary of the basis for, the amount that the 396
head of the acquiring agency established as just compensation. 397
Where appropriate, the just compensation for real property 398
acquired and for damages to remaining real property shall be 399
separately stated. 400

The owner shall be given a reasonable opportunity to 401
consider the offer of the acquiring agency for the real 402
property, to present material that the owner believes is 403
relevant to determining the fair market value of the property, 404

and to suggest modification in the proposed terms and conditions 405
of the acquisition. The acquiring agency shall consider the 406
owner's presentation and suggestions. 407

(E) If information presented by the owner or a material 408
change in the character or condition of the real property 409
indicates the need for new appraisal information, or if a period 410
of more than two years has elapsed since the time of the 411
appraisal of the property, the head of the acquiring agency 412
concerned shall have the appraisal updated or obtain a new 413
appraisal. If updated appraisal information or a new appraisal 414
indicates that a change in the acquisition offer is warranted, 415
the head of the acquiring agency shall promptly reestablish the 416
amount of the just compensation for the property and offer that 417
amount to the owner in writing. 418

(F) No owner shall be required to surrender possession of 419
real property before the acquiring agency concerned pays the 420
agreed purchase price, or deposits with the court for the 421
benefit of the owner an amount not less than the agency's 422
approved appraisal of the fair market value of the property, or 423
the amount of the award of compensation in the condemnation 424
proceeding for the property. 425

(G) The construction or development of a public 426
improvement shall be so scheduled that no person lawfully 427
occupying real property shall be required to move from a 428
dwelling, or to move the person's business or farm operation, 429
without at least ninety days' written notice from the head of 430
the acquiring agency concerned of the date by which the move is 431
required. 432

(H) If the head of an acquiring agency permits an owner or 433
tenant to occupy the real property acquired on a rental basis 434

for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(I) In no event shall the head of an acquiring agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the real property. For claims of coercive actions, the state hereby waives its immunity from liability, 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.

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

(K) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the acquiring agency concerned shall offer to acquire that remnant. For the purposes of this division, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the head of the agency concerned has determined has little or no value or utility to the owner.

An acquisition of real property may continue while an acquiring agency carries out the requirements of divisions (A)

to (K) of this section. 465

This section applies only when the acquisition of real 466
property may result in an exercise of the power of eminent 467
domain. 468

Sec. 163.62. (A) The court having jurisdiction of a 469
proceeding instituted by a state agency to acquire real property 470
by condemnation shall award the owner of any right, or title to, 471
or interest in, such real property such sum as will in the 472
opinion of the court reimburse such owner for the owner's 473
reasonable costs, disbursements, and expenses, including 474
reasonable attorney, appraisal, and engineering fees actually 475
incurred because of the condemnation proceeding, as provided in 476
division (G) of section 163.09 or division (A) or (C) of section 477
163.21 of the Revised Code, as applicable. 478

(B) The court having jurisdiction of an inverse 479
condemnation proceeding shall award the owner of any right, or 480
title to, or interest in, such real property such sum as will in 481
the opinion of the court reimburse such owner for the owner's 482
reasonable costs, disbursements, and expenses, including 483
reasonable attorney, appraisal, and engineering fees actually 484
incurred because of the inverse condemnation proceeding, if the 485
court renders a judgment in favor of the owner or the agency 486
effects a settlement of the proceeding. As used in this 487
division, "court" means the court of common pleas, the court of 488
appeals, or the supreme court. 489

(C) Any award made pursuant to division (A) or (B) of this 490
section shall be paid by the head of the agency for whose 491
benefit the condemnation proceeding was instituted. 492

(D) (1) The General Assembly finds that the amendment to 493

this section by this act is remedial in nature in order to 494
ensure that Ohio is in compliance with the "Uniform Relocation 495
Assistance and Real Property Acquisitions Policies for Federal 496
and Federally Assisted Programs Act," 42 U.S.C. 4601, et seq., 497
and its implementing regulations, 49 C.F.R. 24.1, et seq. 498
Therefore, the General Assembly hereby declares its purpose in 499
amending this section in this act is that the amendment apply to 500
any judgment in favor of the owner in an inverse condemnation 501
proceeding or settlement effectuated by the agency in such a 502
proceeding that occurred on or after January 1, 2019. 503

(2) The amendment to this section by this act is in 504
response to the Supreme Court's opinion in *State ex rel. New* 505
Wen, Inc. v. Marchbanks, 163 Ohio St.3d 14, 2020-Ohio-4865. 506
There, the Supreme Court declared ineffective a provision in the 507
Administrative Code that authorized certain litigation expenses, 508
including reasonable attorney fees, to owners of real property 509
who prevailed in inverse condemnation proceedings. In a 510
concurring opinion, Justice Fischer, as joined by Justice 511
DeWine, wrote "separately to point out that the General Assembly 512
should examine the issue whether a property owner in Ohio who is 513
forced to file a lawsuit, in this case for a writ of mandamus, 514
to get a court order when the state has taken that owner's 515
property without filing a proper appropriation case, should or 516
should not be entitled to an award of attorney fees." In 517
amending this section, the General Assembly agrees with Justices 518
Fischer and DeWine that Ohioans "who have had property 519
improperly taken by any government—and who must go to court to 520
correct that problem caused by the government—should be entitled 521
to their attorney fees, which they incurred to uphold their 522
constitutionally protected property rights." 523

Sec. 307.08. (A) Except as provided in division (B) of 524

this section, when, in the opinion of the board of county 525
commissioners, it is necessary to procure real estate, a right- 526
of-way, or an easement (1) for a courthouse, a jail, or public 527
offices, (2) for a bridge and the approaches to it, ~~or~~ (3) for 528
another structure, public market place, or market house, or (4) 529
for the use of a park district established under Chapter 511. or 530
Chapter 1545. of the Revised Code or a board of park 531
commissioners established under Chapter 755. of the Revised 532
Code, proceedings shall be had in accordance with sections 533
163.01 to 163.22 of the Revised Code. 534

(B) (1) For the purposes of division (B) of this section, 535
either of the following constitutes a public exigency: 536

(a) A finding by the director of environmental protection 537
that a public health nuisance caused by an occasion of 538
unavoidable urgency and suddenness due to unsanitary conditions 539
compels the immediate construction of sewers for the protection 540
of the public health and welfare; 541

(b) The issuance of an order by the board of health of a 542
health district to mitigate or abate a public health nuisance 543
that is caused by an occasion of unavoidable urgency and 544
suddenness due to unsanitary conditions and compels the 545
immediate construction of sewers for the protection of the 546
public health and welfare. 547

(2) If the board of county commissioners is unable to 548
purchase property for the purpose of the construction of sewers 549
to mitigate or abate the public health nuisance that is the 550
subject of a finding of the director or an order of the board of 551
health, the board of county commissioners may adopt a resolution 552
finding that it is necessary for the protection of the public 553
health and welfare to appropriate property that the board of 554

county commissioners considers needed for that purpose. The 555
resolution shall contain a definite, accurate, and detailed 556
description of the property and the name and place of residence, 557
if known or with reasonable diligence ascertainable, of the 558
owners of the property to be appropriated. 559

The board of county commissioners shall fix in its 560
resolution what it considers to be the value of the property to 561
be appropriated, which shall be the board's determination of the 562
compensation for the property and shall be supported by an 563
independent appraisal, together with any damages to the residue. 564
The board shall deposit the compensation so determined, together 565
with an amount for the damages to the residue, with the probate 566
court or the court of common pleas of the county in which the 567
property, or a part of it, is situated. Except as otherwise 568
provided in this division, the power to appropriate property for 569
the purposes of this division shall be exercised in the manner 570
provided in sections 163.01 to 163.22 of the Revised Code for an 571
appropriation in time of public exigency. The board's resolution 572
and a written copy of the independent appraisal shall accompany 573
the petition filed under section 163.05 of the Revised Code. 574

Sec. 511.23. (A) When the vote under section 511.22 of the 575
Revised Code is in favor of establishing one or more public 576
parks, the board of park commissioners shall constitute a board, 577
to be called the board of park commissioners of that township 578
park district, and they shall be a body politic and corporate. 579
Their office is not a township office within the meaning of 580
section 703.22 of the Revised Code but is an office of the 581
township park district. The members of the board shall serve 582
without compensation but shall be allowed their actual and 583
necessary expenses incurred in the performance of their duties. 584

(B) The board may locate, establish, improve, maintain, 585
and operate a public park or parks in accordance with division 586
(B) of section 511.18 of the Revised Code, with or without 587
recreational facilities. Any township park district that 588
contains only unincorporated territory and that operated a 589
public park or parks outside the township immediately prior to 590
July 18, 1990, may continue to improve, maintain, and operate 591
these parks outside the township, but further acquisitions of 592
land shall not affect the boundaries of the park district itself 593
or the appointing authority for the board of park commissioners. 594

The board may lease, accept a conveyance of, or purchase 595
suitable lands for cash, by purchase by installment payments 596
with or without a mortgage, by lease or lease-purchase 597
agreements, or by lease with option to purchase, may acquire 598
suitable lands through an exchange under section 511.241 of the 599
Revised Code, ~~or may appropriate suitable lands and materials~~ 600
~~for park district purposes.~~ The board also may lease facilities 601
from other political subdivisions or private sources. The board 602
shall have careful surveys and plats made of the lands acquired 603
for park district purposes and shall establish permanent 604
monuments on the boundaries of the lands. Those plats, when 605
executed according to sections 711.01 to 711.38 of the Revised 606
Code, shall be recorded in the office of the county recorder, 607
and those records shall be admissible in evidence for the 608
purpose of locating and ascertaining the true boundaries of the 609
park or parks. 610

(C) In furtherance of the use and enjoyment of the lands 611
controlled by it, the board may accept donations of money or 612
other property or act as trustees of land, money, or other 613
property, and may use and administer the land, money, or other 614
property as stipulated by the donor or as provided in the trust 615

agreement. 616

The board may receive and expend grants for park purposes 617
from agencies and instrumentalities of the United States and 618
this state and may enter into contracts or agreements with those 619
agencies and instrumentalities to carry out the purposes for 620
which the grants were furnished. 621

(D) In exercising any powers conferred upon the board 622
under divisions (B) and (C) of this section and for other types 623
of assistance that the board finds necessary in carrying out its 624
duties, the board may hire and contract for professional, 625
technical, consulting, and other special services and may 626
purchase goods and award contracts. The procuring of goods and 627
awarding of contracts with a cost in excess of fifty thousand 628
dollars shall be done in accordance with the procedures 629
established for the board of county commissioners by sections 630
307.86 to 307.91 of the Revised Code. 631

(E) The board may appoint an executive for the park or 632
parks and may designate the executive or another person as the 633
clerk of the board. It may appoint all other necessary officers 634
and employees, fix their compensation, and prescribe their 635
duties, or it may require the executive to appoint all other 636
necessary officers and employees, and to fix their compensation 637
and prescribe their duties, in accordance with guidelines and 638
policies adopted by the board. 639

(F) The board may adopt bylaws and rules that it considers 640
advisable for the following purposes: 641

(1) To prohibit selling, giving away, or using any 642
intoxicating liquors in the park or parks; 643

(2) For the government and control of the park or parks 644

and the operation of motor vehicles in the park or parks; 645

(3) To provide for the protection and preservation of all 646
property and natural life within its jurisdiction. 647

Before the bylaws and rules take effect, the board shall 648
provide for a notice of their adoption to be published once a 649
week for two consecutive weeks or as provided in section 7.16 of 650
the Revised Code, in a newspaper of general circulation in the 651
county within which the park district is located. 652

No person shall violate any of the bylaws or rules. Fines 653
levied and collected for violations shall be paid into the 654
treasury of the township park district. The board may use moneys 655
collected from those fines for any purpose that is not 656
inconsistent with sections 511.18 to 511.37 of the Revised Code. 657

(G) The board may do either of the following: 658

(1) Establish and charge fees for the use of any 659
facilities and services of the park or parks regardless of 660
whether the park or parks were acquired before, on, or after 661
September 21, 2000; 662

(2) Enter into a lease agreement with an individual or 663
organization that provides for the exclusive use of a specified 664
portion of the park or parks within the township park district 665
by that individual or organization for the duration of an event 666
produced by the individual or organization. The board, for the 667
specific portion of the park or parks covered by the lease 668
agreement, may charge a fee to, or permit the individual or 669
organization to charge a fee to, participants in and spectators 670
at the event covered by the agreement. 671

(H) The board may expend moneys from the treasury of the 672
township park district, or revenue derived from property taxes 673

levied for parks and recreational purposes, for the public 674
purpose of presenting community events that are open to the 675
public in the park or parks within the township park district. 676

(I) If the board finds that real or personal property 677
owned by the township park district is not currently needed for 678
park purposes, the board may lease that property to other 679
persons or organizations during any period of time the board 680
determines the property will not be needed. If the board finds 681
that competitive bidding on a lease is not feasible, it may 682
lease the property without taking bids. 683

(J) The board may exchange property owned by the township 684
park district for property owned by the state, another political 685
subdivision, or the federal government on terms that it 686
considers desirable, without the necessity of competitive 687
bidding. 688

(K) Any rights or duties established under this section 689
may be modified, shared, or assigned by an agreement pursuant to 690
section 755.16 of the Revised Code. 691

(L) The board may not appropriate property under sections 692
163.01 to 163.22 of the Revised Code. 693

~~**Sec. 511.24.** When the board of park commissioners cannot,~~ 694
~~by deed of gift or by purchase, procure the lands or materials~~ 695
~~desired for park purposes upon terms which it regards as~~ 696
~~reasonable, the board may appropriate such lands or materials~~ 697
~~for that purpose under sections 163.01 to 163.22 of the Revised~~ 698
~~Code. If it is desired the board of park commissioners desires~~ 699
at any time to acquire additional grounds for enlarging and 700
improving ~~such a~~ park or parks, the board may purchase, 701
~~appropriate,~~ or accept a deed of gift for such lands in the 702

manner provided for by sections 511.18 to 511.23 of the Revised Code, and improve them.

The board may accept and receive from any school, college, or university located within its boundaries, funds, land, or property for use in the improvement, expansion, or construction of athletic fields, stadia, or recreational facilities located within said park grounds, and may, upon such terms, conditions, and for such periods of time as it deems advisable, enter into leasing agreements for the use of said athletic fields, stadia, or recreational facilities with those schools, colleges, or universities having contributed such funds, land, or property, provided that the facilities erected upon said park land shall become and remain public property and shall remain open for public use except for the regular admission charge or parking charge levied by such school, college, or university for entrance to an athletic contest or recreational event. Such leasing agreements may provide for the school, college, or university's exclusive use of the necessary portion of the property during the period of an athletic contest or recreational event. The construction on such a facility shall not commence until the board of park commissioners is assured that adequate funds for its completion are available. The terms of each such contribution of funds, land, or property and the terms of each leasing arrangement shall first be approved by the court of common pleas, or by the board of township trustees if the board of park commissioners is appointed by the board of township trustees, before the board of park commissioners may accept such contribution or enter into such leasing arrangement.

When gravel or other material is desired for the construction, improvement, or repair of the roadway or other improvement authorized by sections 511.18 to 511.31 of the

Revised Code, the board may ~~appropriate and take purchase~~ such 734
material, and for this purpose such board may go outside the 735
township. 736

Sec. 755.08. The board of park commissioners may establish 737
or extend parks, parkways, boulevards, connecting viaducts, 738
subways, public comfort stations, children's playgrounds, and 739
public baths located in such parks, within such city or the 740
territory contiguous thereto, and may acquire ~~or appropriate, in~~ 741
~~the manner provided by sections 163.01 to 163.22, inclusive, of~~ 742
~~the Revised Code,~~ the necessary real estate for such purposes, 743
and in the same manner may ~~appropriate~~ acquire, for parkway or 744
boulevard purposes, any street, avenue, or public way of such 745
city. 746

The board may not appropriate property pursuant to 747
sections 163.01 to 163.22 of the Revised Code. 748

Sec. 1545.11. The board of park commissioners may acquire 749
lands either within or without the park district for conversion 750
into forest reserves and for the conservation of the natural 751
resources of the state, including streams, lakes, submerged 752
lands, and swamplands, and to those ends may create parks, 753
parkways, forest reservations, and other reservations and 754
afforest, develop, improve, protect, and promote the use of the 755
same in such manner as the board deems conducive to the general 756
welfare. Such lands may be acquired by such board, on behalf of 757
said district, (1) by gift or devise, or (2) by purchase for 758
cash, by purchase by installment payments with or without a 759
mortgage, by entering into lease-purchase agreements, by lease 760
with or without option to purchase, ~~or, (3) by appropriation.~~ In 761
furtherance of the use and enjoyment of the lands controlled by 762
it, the board may accept donations of money or other property, 763

or may act as trustees of land, money, or other property, and 764
use and administer the same as stipulated by the donor, or as 765
provided in the trust agreement. The terms of each such donation 766
or trust shall first be approved by the probate court before 767
acceptance by the board. 768

~~In case of appropriation, the proceedings shall be 769
instituted in the name of the board, and shall be conducted in 770
the manner provided in sections 163.01 to 163.22, inclusive, of 771
the Revised Code. 772~~

The board of park commissioners may not appropriate 773
property pursuant to sections 163.01 to 163.22 of the Revised 774
Code. 775

This section applies to districts created prior to April 776
16, 1920. 777

Section 2. That existing sections 163.04, 163.09, 163.16, 778
163.19, 163.21, 163.52, 163.59, 163.62, 307.08, 511.23, 511.24, 779
755.08, and 1545.11 of the Revised Code are hereby repealed. 780