

- Greg Wilkens, P.E., P.S.

## House Bill 64 – Opposition Testimony

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Good afternoon, Chair Hillyer, Vice Chair Mathews, Ranking Member Galonski, and respected members of the Ohio House Civil Justice Committee.

My name is Greg Wilkens, and I have served as the County Engineer for Butler County for 22 years. Among other things, I also serve on the Board of the Butler County Transportation Improvement District (“TID”).

Butler County has seen a lot of growth during the 50+ years that I have been observing and working in this field. In 2006, the Butler County Engineer’s Office installed the county’s first modern roundabout. Over 38 roundabouts later, our county continues to see reductions of 100 percent in fatal crashes, 86 percent in injury crashes, and 69 percent in total crashes.

In short, our work helps people and goods travel more safely and more efficiently. It is a critical role of government and one that I take very seriously.

Currently, I am involved in two major projects that could be greatly impacted by this bill. That is why I am here today. Over 4.5 million dollars has been spent on their development that has a high potential of being lost due to this legislation. I believe that this bill – even the “substitute” version – unnecessarily stacks the deck against the government at every turn and its practical impact will substantially harm my constituents in terms of safety, convenience, and taxpayer dollars.

First, by removing certain presumptions in current law - and increasing the burden of proof from “preponderance of the evidence” to “clear and convincing” - you make it a lot harder to acquire property – even that which we believe is truly necessary to increase safety. I believe this change alone could very well take out these two major projects. At the very least, if this legislation were to pass, the right of way cost could increase to the point these projects are not financially feasible, causing Butler County communities to incur a \$4.5 million loss on an uncomplete project held up in the courts.

Next, you remove all incentives for a landowner to work with us. They already can be a part of the process and seek a fair value. But, when you add mandatory lawyer fees into the equation, a mindset to litigate will dominate. And, when (currently confidential) settlement communications can come to light in the courtroom, you freeze all reasonable offers and drive litigation. I want to note as well that the ability to settle is not a bad thing we have in current law. By way of example, maybe we think the landowner is highly overvaluing their land, but we have a deadline to meet. Maybe then we will agree to an inflated price. Not because they are right, but because we have other things to consider. Making all of this public will take away a very powerful tool

that helps minimize costs and doesn't steal valuable docket time from our courts. Courts that are already still digging out from Covid delays.

Yet, under the bill, this litigation can drag on for years, because all appeals have to be extinguished before compensation can be determined. Yet another attack on our ability to improve our roadways and bridges. This delay – and the recent escalating construction costs we have been dealing with – will add an immense expense to these projects.

Perhaps the most concerning aspect of all this is the retroactive nature of this bill. Huge projects that I have already budgeted for and believed to be complete will now be one more place that trial lawyers can show up and litigate. Even projects I closed out in 2019!

This is not a good way to budget, and this is not a good way to govern. The good taxpayers of my county need for more stability than this. They deserve more stability than this.

Before I end, I want to briefly address a narrative about this bill that I don't think is accurate. That is “this is just about farmland and trails. Don't you support the farmers?”

The sad point is, this bill is not all about farmers and trails, it has far more reaching effects. My County is split about half rural and half urban. I have a great relationship with our farming community. The projects I mentioned, that could be devastated by this bill, are in the urban portion of the County.

It's important to strike a balance between encouraging accountability and ensuring access to justice. We all want fairness for landowners, but they are not the only ones in the case. There needs to be standards of fairness for everyone else involved.

I truly believe Representative Creech introduced this thinking he was trying to help them. That is indeed noble. We all want fairness for them. But, we also need fairness for everyone else involved.

The devil is in the details as they say. And, unfortunately, the combined effect of this bill will severely harm my ability to produce and maintain safe roadways for everyone - and trial lawyers will make a lot of money in guaranteed attorney fees. Money that my taxpayers then must pay – even for an urban project. This is because the most concerning provisions of the bill are not limited to farmland. The bill deals with all rights-of-way takes.

So, if there is an issue with the farms and the trails, let's go back to square one – sit down with all affected parties and develop legislation that is not so damning to the safety of our traveling citizens. Let's think about how to solve that issue in a truly fair way for all parties. But this “substitute bill” is not the way to do it.

For these reasons – and others that my State Representative and Joint Sponsor of this bill has already heard me talk about – I ask you to please vote “no” on this bill. Thank you.