

May 22, 2023

The Honorable Brett Hudson Hillyer
Chair, House Civil Justice Committee
77 S. High Street
11th Floor
Columbus, OH 43215
Rep51@ohiohouse.gov

Re: H.B. 64 – Opponent Testimony

Dear Chairman Hillyer and Committee Members:

Thank you for the opportunity to express the City of Cincinnati's ("City") strong opposition to H.B. 64 ("Bill") which governs the use of eminent domain within Ohio. Local governments are responsible for building and maintaining critical public infrastructure such as roads, sewers, and water mains, and they rely on the current eminent domain process to timely and fairly acquire private property necessary to maintain or replace its aging infrastructure. H.B. 64 will significantly reduce the ability of local governments to provide safe, dependable, and accessible infrastructure by disincentivizing the municipality to replace and maintain infrastructure due to the substantial increase in cost and risk if a project requires acquisition of private property. More specifically, H.B. 64 is objectionable because:

1. **It increases cost and timelines to construct public infrastructure.** The Bill increases the cost of purchasing private property for public improvements by substantially increasing risk associated with negotiations with property owners and the likelihood these negotiations will result in litigation. The Bill makes any offer to a property owner admissible in an appropriation cause of action. This results in inflated purchase prices in order to avoid litigation or an increase in the likelihood a property owner may force an appropriation action. These appropriation hearings will now linger for longer due to the increased appropriation proceeding timelines set forth in the Bill. Increased appropriation timelines may result in longer project timelines. Generally, the longer a project takes the more it costs. These costs would inevitably be passed on to taxpayers and/or ratepayers in the form of increased bills or loss of important services.
2. **It discourages negotiation by the municipality and incentivizes litigation by property owners.** A stated purpose of O.R.C. 163.59 is "to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts..." but the Bill has the opposite effect. At times, to acquire property quickly, efficiently, and fairly, municipalities provide a reasonable, but generous offer or offers to property owners to avoid the administrative costs associated with litigation. The Bill discourages those offers as any offer made to a property owner is no longer considered confidential and is, as mentioned above, admissible in an appropriation hearing. This

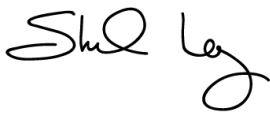
encourages property owners to hold out for increased offers and force appropriation actions. In addition to the increased offers, property owners are also incentivized to challenge the public purpose, necessity, and ability to agree on a sale of those actions. That is because the Bill makes those items harder for municipalities to prove and provides for an expansion of mandated attorney fees and other expenses and costs should the property owner secure even a partial finding in its favor. In addition to these risks, the City will be at risk of additional suits due to a new cause of action created by the Bill – inverse condemnation. The heightened risk associated with property acquisition and appropriation discourages innovation of design and construction of new public infrastructure which could result in increased safety, connectivity, and efficiency – which are in the best interest of the municipality. Without the Bill, the municipality can balance innovation, public safety, and efficiency to keep its community and citizens safe, thriving, and unburdened by additional cost. With it, the municipality is restrained from exploring public infrastructure solutions that can increase safety without significant cost increase.

- 3. It may limit funding opportunities and the ability to create inclusive and accessible road infrastructure.** The Bill specifically excludes recreational trails, bike paths, or shared-use paths as a public purpose for which the municipality can appropriate private property. If the municipality is unable to appropriate property for the purpose of constructing shared-use paths, bike paths or recreational trails, it could result in less funding opportunities where funding encourages a broad range of transportation methods. Further, the Bill may allow a municipality to appropriate property for a shared-use path if it is being done in conjunction with acquisition of property for roadway improvements. But if a shared-use path needs to be constructed later for safety reasons, this Bill may prevent the City from acquiring the private property needed to do so. The City is currently constructing robust bike and pedestrian paths and civic entities around the region have designated these projects as top priorities. If appropriation is no longer available as a tool in its toolbox, these transformative projects, which lead to economic development along the paths, may be unable to continue or, if they do continue, will do so at a substantially increased cost due to redesign or acquisition cost.

The City is nearing completion of property acquisition for the Western Hills Viaduct bridge project, a project that involves construction of a new viaduct to connect the west side of the City to downtown and Interstate 75, replacing the current viaduct, which is structurally obsolete and failing. If H.B. 64 was in place prior to the property acquisition for this project, it is possible this critical transportation project, which is spurring economic development conversations in the area, would look substantially different, cost significantly more, and/or not happen at all. Road, bridge, water, and sewer infrastructure is already expensive to build and maintain but we are in a time where funding these improvements is prioritized. Passage of the Bill would hinder that progress and leave taxpayers and ratepayers with depleted infrastructure, safety concerns, and additional costs.

Thank you for your consideration. We urge you not to pass H.B. 64 out of committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheryl Long". The signature is fluid and cursive, with the first name "Sheryl" written in a larger, more prominent script than the last name "Long".

Sheryl M.M. Long
City Manager