



County Engineers Association of Ohio

The Ohio House of Representatives – Civil Justice Committee

HB. 64 Eminent Domain – Opposition Testimony

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Chairman Hillyer, Vice Chairman Mathews, Ranking Member Galonski, and members of the House Civil Justice Committee. Thank you for the opportunity to share opposition testimony regarding HB 64, legislation dealing with Ohio's Eminent Domain Laws. I am Dean Ringle, P.E., P.S., Executive Director of the County Engineers Association of Ohio (CEAO).

County engineers are responsible for planning, designing, and implementing various infrastructure projects, including roads, bridges, utilities, and public facilities. In some cases, acquiring private property through eminent domain may be necessary to facilitate the construction, expansion, or improvement of essential infrastructure that benefits the community as a whole. Additionally, when constructing or widening roads, they may require additional land for right-of-way to accommodate traffic flow, safety improvements, or future expansion. Eminent domain can be utilized to acquire the necessary land from private property owners, ensuring the efficient and safe operation of transportation systems.

In cases of public safety, they may identify properties that pose safety risks due to their proximity to hazardous areas, such as flood-prone zones or landslide-prone areas. Acquiring these properties through eminent domain can help protect public safety by preventing or mitigating potential risks.

It's important to note that county engineers judiciously and in accordance with legal requirements and procedures only use eminent domain when they professional view it necessary for a project. A county engineer's decision to utilize eminent domain involves a careful balancing of the public interest and the rights of property owners, ensuring that fair and reasonable processes are followed throughout the acquisition process.

House Bill 64, in its current form, poses multiple issues of concern:

Recreational trails

The bill narrows an existing provision of law that presumes that making and repairing roads is a public use. Under the bill, making and repairing roads specifically excludes the making or repairing of, or access management for, shared-use paths, bike paths, or recreational trails. This can be problematic for a local government.

Sec. 163.01 (N) "Making or repairing roads" does not include the making or repairing of, or access management for, shared-use paths, bike paths, or recreational trails.

An exception should be made when a trail is not a standalone improvement and is a mandatory component of a simultaneous road improvement under federal "complete street" requirements. As proposed, this restriction on public use could jeopardize federal funding for necessary road improvement projects, which would then result in a higher financial burden on local government or cancelation of a necessary project altogether if a funding gap cannot be closed.

When local governments seek federal funding for transportation projects, incorporating the principles of "complete streets" can have a positive impact on their eligibility and competitiveness. A "complete street" is a concept that aims to design streets and transportation networks to accommodate the needs of all users, including pedestrians, cyclists, public transit users, and motorists. It involves creating a balanced and safe transportation system that prioritizes the mobility and accessibility of all individuals.

In recent years, federal transportation programs have increasingly emphasized the importance of complete streets, offering funding opportunities specifically dedicated to promoting and implementing these principles. Local governments that demonstrate a clear plan for integrating complete streets in their projects are more likely to attract federal support and secure funding to enhance their transportation systems.

The initial offer

Negotiating a settlement before proceeding to trial can offer several benefits for a county engineer in an eminent domain case:

- **Time and Cost Savings:** Going to trial can be a lengthy and costly process. By negotiating a settlement, the county engineer can avoid the expenses associated with a trial, such as legal fees, expert witness fees, court costs, and the potential for lengthy litigation.
- **Certainty and Risk Mitigation:** Trials can be unpredictable, with outcomes that are uncertain. By reaching a settlement, the county engineer can eliminate the uncertainty and mitigate the risk. Settlements provide a level of certainty regarding the outcome, allowing the county engineer to plan and move forward with the project without delay.
- **Preservation of Relationships:** Eminent domain cases can strain relationships between the county engineer and property owners. Negotiating a settlement allows for the potential preservation of relationships and the avoidance of adversarial proceedings. It can promote a more cooperative and amicable resolution, fostering goodwill between the county engineer and the affected property owners.
- **Flexibility in Project Implementation:** Settling the case allows the county engineer to regain control over the timeline and implementation of the project. It provides the opportunity to proceed with the planned project without being tied up in lengthy legal proceedings, potentially leading to delays and additional costs.

Sec. 163.04 (B) ... 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.

This provision will make it very difficult or impossible to successfully negotiate settlements short of proceeding to trial. This change severely impacts a county engineer's ability to engage in settlement discussions currently permitted in Ohio law. Parties have many reasons for choosing to settle that have nothing to do with the value of the property. Parties should have the freedom to negotiate in good faith without those offers being binding even if rejected.

Attorney fee and cost awards

Under current law, if the property owner challenges the necessity of an appropriation or whether the proposed use of the property is a public use and the court makes a determination in favor of the property owner, in a final and unappealable order, the court must award the owner reasonable attorney's fees, expenses, and costs. The bill expands this provision, adding that the ruling may be "wholly or partially" in the property owner's favour to trigger the mandatory fee, cost, and expense award.

Sec. 163.19 If the agency appeals from a judgment of the court and the judgment is affirmed in whole or in part, the court shall award the owner reasonable attorney's fees, expenses, and costs incurred in defending the appeal.

The county engineer could have to bear the cost of the legal expenses incurred by the opposing party. This can strain the resources of the county engineer's office, affecting their budget and potentially diverting funds from other important projects or initiatives. It could also create a deterrent for county engineers to engage in legitimate legal actions, even if they have a strong case, due to the potential financial risks involved. This is an unreasonable burden on a county engineer.

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

This creates waste and inefficiency. The ability to recover damages, fees, expenses, etc., is a sufficient remedy without affecting the validity of the acquisition itself. The court handling an action brought under this section is in a position to correct the county engineer's bad behaviour and give finality to the issue of the acquisition. Voiding the acquisition would in most instances just result in a new appropriation proceeding.

Sec. 163.52. (B) If a property acquisition by purchase or condemnation is void for failure to satisfy the requirements of section 163.59 of the Revised Code, the agency shall pay the owner reasonable attorney fees, costs, and expenses

Payment of fees and expenses should be required for a failure to satisfy the requirements of R.C. 163.59 without voiding the acquisition.

Sec. 163.59 (E) No subsequent offers of compensation shall be less than the initial offer.

This new section would take away the county engineers' ability to adjust the value of a property in specific circumstances, such as:

- **Lack of Supporting Evidence:** If new evidence or information emerges that demonstrates the property's value is lower than initially assessed, a devaluation of the offer may be appropriate. This could include factors like environmental issues, encumbrances, or other conditions that affect the property's worth.
- **Changes in Market Conditions:** If there have been significant changes in the real estate market since the initial offer was made, such as a decline in property values or a shift in demand, it might be necessary to adjust the offer accordingly.
- **Property Condition:** If it is discovered that the property has structural deficiencies, requires significant repairs, or has limitations that were not initially apparent, it may be reasonable to revise the offer to account for these conditions.
- **Unforeseen Liabilities:** If there are unforeseen liabilities associated with the property, such as legal encumbrances or pending lawsuits, that impact its market value, a re-evaluation and potential adjustment of the offer might be appropriate.

Damages for coercive actions

The ambiguity of what coercive action within the current version of HB 64 would cause issues in court regarding the interpretation and application of coercive action. Different parties may have differing opinions on what actions constitute coercion, the extent of coercion required for a violation, or whether the actions taken by a county engineer were justified or exceeded their legal authority.

Case timing

HB 64 adds an indefinite extension in cases where the property owner appeals a court's determination in favor of an agency on questions of authority, inability to agree, or necessity by prohibiting the court from setting a time for, or proceeding with, the determination of compensation until the immediate appeal is final. Indefinite extensions for appeals cases can present several problems and challenges:

- **Delayed justice:** Indefinite extensions can significantly delay the resolution of court cases, causing frustration and impeding the timely administration of justice. Extended court proceedings can lead to prolonged uncertainty for all parties involved, affecting their lives, livelihoods, and access to legal remedies.
- **Increased costs:** Lengthy court proceedings often result in increased legal costs for the parties involved. Attorneys' fees, court expenses, and other associated costs can accumulate over time, placing a financial burden on individuals and organizations involved in the case.
- **Evidentiary challenges:** As time passes, gathering and preserving evidence may become more difficult. Witnesses' memories can fade, evidence can deteriorate, and circumstances can change, potentially affecting the reliability and availability of critical evidence for the case.

To mitigate these problems, it is crucial for courts to establish clear procedures, timelines, and mechanisms to expedite cases and prevent indefinite extensions. Setting reasonable deadlines, prioritizing efficient case management, and ensuring proper allocation of resources can help address the challenges associated with prolonged court proceedings.

Chairman Hillyer and members of the Civil Justice Committee, thank you for the opportunity to present written testimony today. I am available for questions or feedback.