

*Office of the Lucas County Engineer*

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May 22, 2023

Hon. Brett Hudson Hillyer, Chair  
Hon. Adam Matthews, Vice Chair  
Hon. Tavia Galonski, Ranking Member  
Civil Justice Committee  
Ohio House of Representatives

Re: Opponent Party Testimony of Mike Pniewski, P.E., P.S.  
Substitute House Bill 64 – Eminent Domain Legislation

Dear Chair Hillyer, Vice Chair Matthews, Ranking Member Galonski and Members of the House Civil Justice Committee:

I thank the Committee for the opportunity to present testimony in opposition to Substitute House Bill 64 (Sub. H.B. 64).

The Office of the Lucas County Engineer is responsible for the care and maintenance of over 280 miles of roadway, 250 bridges and culverts, and hundreds of miles of drainage in Lucas County, Ohio. In order to maintain and upgrade our highway system, we often utilize Federal, State and local outside funding sources in order to leverage our main funding source of license plate fees and gas taxes. In addition, the Office is often looking for ways to fund multi-modal transportation projects, such as widened shoulders, bike paths, and sidewalks in order to direct slower moving traffic off highways. Through the creation of these "Complete Streets" multi-modal systems, Lucas County and other counties and municipalities in the State have been able to enhance the safety and traffic conditions for our residents.

**Complete Streets/ Recreational Trails**

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.

When Lucas County seeks federal funding for transportation projects, incorporating the principles of complete streets can have a positive impact on their eligibility and

competitiveness. The Federal Highway Administration (FHWA) and other federal agencies encourage the integration of complete streets in transportation planning and project design.

By aligning with the complete streets approach, Lucas County can demonstrate their commitment to creating inclusive, safe, and sustainable transportation infrastructure. This can enhance their chances of obtaining federal funding for projects such as road improvements, sidewalks, bike lanes, transit facilities, and other related initiatives.

### **Changes To Eminent Domain and Court Proceedings**

Upon its introduction, I and many other interested parties expressed our concerns with the proposed provisions to H.B. 64 to the Sponsors. To their credit, they held meetings where many interested parties expressed their concerns. I am disappointed to share with you that our concerns were largely not addressed in the substitute bill before you today.

The adverse impacts this bill would create are the following:

- 1) Sub. H.B. 64 changes the litigation standard from "preponderance of the evidence" to "clear and convincing evidence". The only standard which is higher is the criminal standard of "beyond a reasonable doubt". This new clear and convincing burden puts a heavy requirement on the government to show a trier of fact that a taking is necessary for public use. This will allow any trier of fact who does not prefer the actions of the government to shut down an otherwise well-coordinated and transparent project which is favored or desired by the community. In most cases, by the time a case results in trial, millions of taxpayer dollars have already been spent on planning and design.
- 2) Sub. H.B. 64 removes incentives to settle real estate acquisition cases. Sub. H.B. 64 currently does not permit an entity to lower an amount of compensation for settlement once an offer is made. This removes the incentive for parties to negotiate for an equitable settlement, and will likely result in the parties turning to litigation.

For example, in many cases, once the government and a land owner sit down to negotiate, there is often items the landowner desires the government to provide which is not monetary in nature. For instance, a landowner may want a driveway to be reconstructed, a better culvert installed on their land, or may desire earth materials from the job site. In this case, the costs of these improvements are often part or all of the settlement, and often result in no cash compensation. We are often familiar with the phrase "and other valuable considerations" when dealing with real estate and the sales price for land. Sub. H.B. 64 will remove any other valuable considerations from the settlement equation.

In addition, often after an initial settlement is made, there are often other conditions which are identified after an offer is made which devalues the land. Sub. H.B. 64 will remove the ability of the government to lower the amount of the offer to address these often unforeseen issues. Unlike other property owners, the government doesn't have the

ability to “walk away” from the need for the land, but they will have real costs to mitigate the problems.

Sub. H.B. 64 could also result in what is a confidential settlement communication to be admissible as evidence in an eminent domain case.

- 3) Sub. H.B. 64 serves to codify inverse condemnation actions which are already available to a land owner under legal common law actions. Currently, any land owner who feels that the government has not properly followed legal requirements for an eminent domain action may file a mandamus action in the appropriate legal venue. While codification of these actions may not seem dangerous as a concept, it risks throwing out established federal and state legal precedents. Sub. H.B. 64 seeks to line the pockets of the legal community through provisions for awarding attorney fees throughout the bill, which would reduce the motivation for equitable settlement and drive the motivation to litigate as far as possible.
- 4) Sub. H.B. 64 seeks to make its provisions retroactive to January 1, 2019. A key legal concept is that one must rely on the legal precedents established at the time actions occur. If parties are currently looking over their shoulder wondering if the rules can change in the future, no business could be conducted due to the risk of rules changing the results of established actions. It would be akin to changing the value of an extra point in football from 1 to 3 points, retroactively changing the scores of all the games, determine different winners, and awarding a new championship trophy. Changing the rules after the result looks better if it results in my team getting the trophy. Sub. H.B. 64 is no different, except instead we would be looking 4.5 years in the past and deciding whether or not to bring a settled case back before the courts with attorney fees driving litigation.
- 5) Sub. H.B. 64 attacks recreational trails by stating in the Ohio Revised Code that a “public use” does not include the primary use of property for recreational trails. This wording is very limiting and removes the power of local jurisdictions, and if a case goes to trial, the triers of fact to decide what is and is not a “public use”. I acknowledge that in many places, local communities may not consider the construction of a recreational trail to be an appropriate public use. However, what I do know is that in Lucas County, our citizens through their tax dollars and their vote signaled that they feel that recreational trails enhance our quality of life and is certainly a public use. This type of decision is best left to the people in the communities where trails are to be established. The current eminent domain process provides the safeguard necessary for reasonable people to make reasonable decisions.

If enacted as written, the ability of our Office and other highway agencies to obtain outside funding to enhance our transportation system would be greatly diminished. We believe this legislation as currently written is overly broad in its restriction of the use of eminent domain powers and would have a significant negative impact on future development of transportation

infrastructure in Ohio. It should be noted that the last revisions to eminent domain legislation over 15 years ago was the result of a large working group of interested parties that thoughtfully considered the impacts of eminent domain actions on all parties. The resulting legislation has worked well in balancing the interests of land owners as well as the needs of the public. This legislation was not developed with that sense of partnership.

We agree that eminent domain powers should be used as a last resort to obtain real estate required for implementation of transportation projects. However, the proper remedy for the merits of whether or not any project is considered a public use should remain with the courts.

Thank you again for the opportunity to testify in opposition to Sub. House Bill 64.

Yours very truly,

Mike Pniewski, P.E., P.S.  
Lucas County Engineer