



**Testimony of the Ohio Gas Association  
Ohio House Civil Justice Committee  
H.B. 64  
May 23, 2023**

Chair Hillyer, Vice-chair Mathews, Ranking Member Galonski and Members of the Ohio House Civil Justice Committee, my name is Jimmy Stewart and I am the President of the Ohio Gas Association. Thank you for the opportunity to testify today in opposition to H.B. 64.; legislation that would impose unnecessary and harmful expansions to Ohio's eminent domain statutes.

The OGA is Ohio's natural gas trade organization comprised of more than 30 local distribution companies, municipally owned natural gas distribution systems, member cooperatives, and the majority of Ohio's intra and inter-state gas transmission companies. The OGA also includes Ohio natural gas producers, midstream companies and other affiliate members from various industries. Together, the member companies of the OGA serve more than 3.6 million customers across the state.

Ohio's current eminent domain laws relative to determining the necessity for land acquisition are already more landowner friendly than many states, including the states contiguous to Ohio. Over time, these already abundant property owner rights have caused numerous important public utility projects to be significantly stalled and also allow landowners to demand greater than market rates for land acquisition. In many states, public utilities are afforded "quick take" authority. In Ohio, this efficiency does not exist for public utilities, and acquisition negotiations between landowners and utilities go to court and to a jury. As such, attorneys are able to challenge every specific provision and word of a potential taking in order to delay the process. Upon losing an initial proceeding, Ohio landowners further have a right to appeal and upon that appeal the entire case is stayed, meaning that the eminent domain proceeding and taking of the property can't move forward until the appeal is complete. All of this takes years to unfold, delaying important economic development, and safety and system reliability projects while also creating opportunity for landowners to demand above market payments from utilities that are under regulatory deadlines to get projects constructed and into service. The original intent of eminent domain laws was to ensure that land acquisition necessity happened efficiently for the public good while also ensuring that landowners were compensated fairly for their property. In Ohio, the notion that landowners need more protection could not be further from the truth.

The experience of the members of the Ohio Gas Association is that eminent domain proceedings in Ohio take at least two years to complete. This is compared to 18 months or less in many other states. Our members speculate that passage of H.B. 64 would add at least another year to the already unreasonably long existing process.

H.B. 64 would provide additional opportunity for landowners and their attorneys to take advantage of Ohio's friendly environment to further delay proceedings. Increasing the timeline for a compensation determination from 20 to 90 days; doubling the time between an property owner's answer to an agency's petition and a date of hearing; lengthening the allowed time for the fixation of compensation when the court finds in favor of the acquisition; prohibiting the determination of compensation until



appeals of need determinations are final; more than tripling the time under which compensation may be fixed by a jury; and removing the 20 day deadline for setting hearings, thereby giving a court unfettered discretion in setting hearings, all will add significant delays to a process that already simply takes too long.

In addition to delaying and obstructing needed infrastructure projects by doubling down on Ohio's elongated landowner and land lawyer friendly legal timelines, H.B. 64 would intentionally insert hurdles into Ohio law that would increase the likelihood that projects would not be feasible. One provision of the legislation represents a complete reversal of present-day law regarding acquisition status and fees and establishes an entirely new cause of action for landowners. Additionally, increasing the burden of proof from *preponderance* to *clear and convincing*, making the presumption of necessity for the appropriation of a property arising from state or federal regulatory approval from *irrebuttable* to *rebuttable*, and providing numerous opportunities for land owners to be awarded fees, costs and expenses surrounding the legal process, all will add increased risk for utility projects moving forward, further advantage property owners, and make it more difficult for utilities to provide infrastructure where it is needed for growth and reliability.

Finally, there are a series of provisions in H.B.64 that will make it even more unlikely and difficult than it is today for landowners and utilities to negotiate in good faith on the fair market value of property. For example, the legislation requires that all offers must be made in writing and that no matter what else occurs in a proceeding the initial offer shall be the minimum that a property owner will receive. Further it prohibits an offer less than an initial offer. The bill would award additional compensation to a property owner if the final award is more than 110% of the initial offer and strikes existing language that would prevent awarding of compensation in the event that both parties exchanged appraisals and the final award was not more than 110% of the initial offer. The legislation further applies conditions to agricultural land when the award is greater than 150% of the initial offer. All of these provisions make it nearly impossible to conduct a good faith negotiation between parties.

This testimony is in no way an exhaustive explanation of the negative impact that passage of H.B. 64 would have on Ohio's natural gas industry and its ability to deploy infrastructure to unserved and underserved communities, to sites for continued growth and economic development, and for the purpose of system investments that increase availability and reliability as well as keep energy prices lower. In sharp contrast to H.B. 64, the OGA firmly believes that the legislature should pursue changes to Ohio law that make Ohio's current eminent domain law work more efficiently, faster, and on a more even playing field between property owners and utilities. It is these changes that would promote economic opportunity and community vitality across Ohio.

For all of these reasons, the Ohio Gas Association respectfully opposes the passage of H.B.64.