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135th General Assembly
Regular Session
2023-2024

Sub. H. B. No. 64

A BILL

To amend sections 163.01, 163.021, 163.04, 163.09,
163.16, 163.19, 163.21, 163.52, 163.59, and
163.62 and to enact section 163.221 of the
Revised Code to modify the law regarding eminent
domain.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 163.01, 163.021, 163.04, 163.09,
163.16, 163.19, 163.21, 163.52, 163.59, and 163.62 be amended
and section 163.221 of the Revised Code be enacted to read as
follows:

Sec. 163.01. As used in sections 163.01 to 163.22 of the
Revised Code:

(A) "Public agency" means any governmental corporation,
unit, organization, instrumentality, or officer authorized by
law to appropriate property in the courts of this state.

(B) "Private agency" means any corporation, firm,
partnership, voluntary association, joint-stock association, or
company that is not a public agency and that is authorized by



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law to appropriate property in the courts of this state. 18

(C) "Agency" means any public agency or private agency. 19

(D) "Court" means the court of common pleas or the probate 20
court of any county in which the property sought to be 21
appropriated is located in whole or in part. 22

(E) "Owner" means any individual, partnership, 23
association, or corporation having any estate, title, or 24
interest in any real property sought to be appropriated. 25

(F) "Real property," "land," or "property" includes any 26
estate, title, or interest in any real property that is 27
authorized to be appropriated by the agency in question, unless 28
the context otherwise requires. 29

(G) "Public utility" has the same meaning as in section 30
4905.02 of the Revised Code and also includes a public utility 31
owned or operated by one or more municipal corporations, an 32
electric cooperative, and an agency holding a certificate of 33
public convenience and necessity granted by the federal energy 34
regulatory commission. 35

(H) (1) "Public use" does not include any taking that is 36
for conveyance to a private commercial enterprise, economic 37
development, or solely for the purpose of increasing public 38
revenue, unless the property is conveyed or leased to one of the 39
following: 40

(a) A public utility, municipal power agency, or common 41
carrier; 42

(b) A private entity that occupies a port authority 43
transportation facility or an incidental area within a publicly 44
owned and occupied project; 45

(c) A private entity when the agency that takes the 46
property establishes by a preponderance of the evidence that the 47
property is a blighted parcel or is included in a blighted area. 48

(2) "Public use" does not include the primary use of 49
property for recreational trails, which are trails used for 50
hiking, bicycling, horseback riding, ski touring, canoeing, or 51
other nonmotorized forms of recreational travel and that are not 52
adjacent to a public road and within its right of way. 53

(3) All of the following are presumed to be public uses: 54
utility facilities, roads, sewers, water lines, public schools, 55
public institutions of higher education, private institutions of 56
higher education that are authorized to appropriate property 57
under section 3333.08 of the Revised Code, public parks, 58
government buildings, port authority transportation facilities, 59
projects by an agency that is a public utility, and similar 60
facilities and uses of land. 61

(I) "Electric cooperative" has the same meaning as in 62
section 4928.01 of the Revised Code. 63

(J) "Good faith offer" means the written offer that an 64
agency that is appropriating property must make to the owner of 65
the property pursuant to division (B) of section 163.04 of the 66
Revised Code before commencing an appropriation proceeding. 67

(K) "Goodwill" means the calculable benefits that accrue 68
to a business as a result of its location, reputation for 69
dependability, skill or quality, and any other circumstances 70
that result in probable retention of old, or acquisition of new, 71
patronage. 72

(L) "Municipal power agency" has the same meaning as in 73
section 3734.058 of the Revised Code. 74

(M) "Port authority transportation facility" means any 75
facility developed, controlled, or operated by a port authority 76
for the purpose of providing passenger, cargo, or freight 77
transportation services, such as airports, maritime ports, rail 78
facilities, transit facilities, and support facilities directly 79
related to any airport, maritime port, rail facility, or transit 80
facility. 81

(N) "Making or repairing roads" does not include the 82
making or repairing of, or access management for, shared-use 83
paths, bike paths, or recreational trails, unless such uses are 84
adjacent to a public road and within its right of way. 85

Sec. 163.021. (A) No agency shall appropriate real 86
property except as necessary and for a public use. In any 87
appropriation, the taking agency shall show by ~~a preponderance~~ 88
~~of the~~ clear and convincing evidence that the taking is 89
necessary and for a public use. 90

(B) Before an agency appropriates property based on a 91
finding that the area is a blighted area or a slum, the agency 92
shall do both of the following: 93

(1) Adopt a comprehensive development plan that describes 94
the public need for the property. The plan shall include at 95
least one study documenting the public need. All of the costs of 96
developing the plan shall be publicly financed. 97

(2) If the agency is governed by a legislative body, 98
obtain a resolution from that legislative body affirming the 99
public need for the property. 100

(C) No park board, park district, board of directors of a 101
conservancy district, incorporated association with a purpose of 102
establishing or preserving public parks and memorial sites, or 103

similar park authority shall exercise any power of eminent domain to appropriate real property outside the county or counties in which the park authority is located unless the appropriation has the written approval of the legislative authority of each county in which the property is located, other than the county or counties in which the park authority is located.

(D) No agency shall appropriate property based on a finding that the parcel is a blighted parcel or that the area is a blighted area or slum by making that finding in, or in conjunction with, an emergency ordinance or resolution.

(E) If an appropriation is by a public agency that is not elected and an owner has provided the public agency with a written objection to the appropriation, the elected officials of the public agency or elected individual that appointed the unelected agency may veto that appropriation. If the unelected public agency was appointed by more than one public agency or elected individual, a majority vote of the elected officials of the appointing public agencies or elected individuals is required to veto the appropriation. If the public agency that is not elected is a state agency or instrumentality such as a university, the governor has the veto authority. The governor may delegate that authority but may not delegate that authority to the unelected agency that seeks the appropriation.

Sec. 163.04. (A) At least thirty days before filing a petition pursuant to section 163.05 of the Revised Code, an agency shall provide notice to the owner of the agency's intent to acquire the property. The notice shall be substantially in the form set forth in section 163.041 of the Revised Code. The notice shall be delivered personally on, or by certified mail

to, the owner of the property or the owner's designated 134
representative. 135

(B) Together with the notice that division (A) of this 136
section requires, or after providing that notice but not less 137
than thirty days before filing a petition pursuant to section 138
163.05 of the Revised Code, an agency shall provide an owner 139
with ~~a~~an initial written good faith offer to purchase the 140
property. ~~The agency may revise that offer if before commencing~~ 141
~~an appropriation proceeding the agency becomes aware of~~ 142
~~conditions indigenous to the property that could not reasonably~~ 143
~~have been discovered at the time of the initial good faith offer~~ 144
~~or if the agency and the owner exchange appraisals prior to the~~ 145
~~filing of the petition~~No agency shall make an offer that is not 146
in writing, including any offers made by any employee, agent, or 147
third-party contractor of the agency. All written offers shall 148
be admissible as evidence in the appropriation proceeding and 149
shall not be considered confidential settlement communications. 150

(C) An agency may appropriate real property only after the 151
agency obtains an appraisal of the property and provides a copy 152
of the appraisal to the owner or, if more than one, each owner 153
or to the guardian or trustee of each owner. The agency need not 154
provide an owner with a copy of the appraisal when that owner is 155
incapable of contracting in person or by agent to convey the 156
property and has no guardian or trustee or is unknown, or the 157
residence of the owner cannot with reasonable diligence be 158
ascertained. When the appraisal indicates that the property is 159
worth less than ten thousand dollars, the agency need only 160
provide an owner, guardian, or trustee with a summary of the 161
appraisal. The agency shall provide the copy or summary of the 162
appraisal to an owner, guardian, or trustee at or before the 163
time the agency makes its first offer to purchase the property. 164

A public utility or the head of a public agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a fair market value of ten thousand dollars or less.

(D) An agency may appropriate real property only after the agency is unable to agree on a conveyance or the terms of a conveyance, for any reason, with any owner or the guardian or trustee of any owner unless each owner is incapable of contracting in person or by agent to convey the property and has no guardian or trustee, each owner is unknown, or the residence of each owner is unknown to the agency and the residence of no owner can with reasonable diligence be ascertained.

(E) An agency may appropriate real property for projects that will disrupt the flow of traffic or impede access to property only after the agency makes reasonable efforts to plan the project in a way that will limit those effects. This division does not apply to an agency if it initiated the project for which it appropriates the property under Title LV of the Revised Code.

Sec. 163.09. (A) If no answer is filed pursuant to section 163.08 of the Revised Code, and no approval ordered by the court to a settlement of the rights of all necessary parties, the court, on motion of a public agency, shall declare the value of the property taken and the damages, if any, to the residue to be as set forth in any document properly filed with the clerk of the court of common pleas by the public agency. In all other cases, the court shall fix a time, within ~~twenty~~ninety days from the last date that the answer could have been filed, for the assessment of compensation by a jury.

(B) (1) When an answer is filed pursuant to section 163.08

of the Revised Code and any of the matters relating to the right 195
to make the appropriation, the inability of the parties to 196
agree, or the necessity for the appropriation are specifically 197
denied in the manner provided in that section, the court shall 198
set a day, not less than ~~five or more than fifteen~~ thirty days 199
from the date the answer was filed, to hear those matters. Upon 200
those matters, the burden of proof is upon the agency by a- 201
~~preponderance of the~~ clear and convincing evidence, except as- 202
~~follows:~~ 203

~~(a) A resolution or ordinance of the governing or 204
controlling body, council, or board of the agency declaring the 205
necessity for the appropriation creates a rebuttable presumption 206
of the necessity for the appropriation if the agency is not 207
appropriating the property because it is a blighted parcel or 208
part of a blighted area or slum. 209~~

~~(b) The presentation by a public utility or common carrier 210
of evidence of the necessity for the appropriation creates a 211
rebuttable presumption of the necessity for the appropriation. 212~~

~~(c) Approval that approval by a state or federal 213
regulatory authority of ~~an~~ the appropriation of all interests 214
sought specific to an owner's property by a public utility or 215
common carrier creates ~~an irrebuttable~~ a rebuttable presumption 216
of the necessity for the appropriation regarding the specific 217
interests reviewed and approved by the regulatory authority. 218~~

~~(2) Subject to the irrebuttable presumption in division 219
~~(B) (1) (c) of this section, only~~ Only the judge may determine the 220
necessity of the appropriation. If, as to any or all of the 221
property or other interests sought to be appropriated, the court 222
determines the matters in favor of the agency, the court shall 223
set a time for the assessment of compensation by the jury not 224~~

less than ~~sixty-ninety~~ days from the date of the journalization 225
of that determination, subject to the right of the parties to 226
request mediation under section 163.051 of the Revised Code and 227
the right of the owner to an immediate appeal under division (B) 228
(3) of this section. Except as provided in division (B) (3) of 229
this section, an order of the court in favor of the agency on 230
any of the matters or on qualification under section 163.06 of 231
the Revised Code shall not be a final order for purposes of 232
appeal. An order of the court against the agency on any of the 233
matters or on the question of qualification under section 163.06 234
of the Revised Code shall be a final order for purposes of 235
appeal. If a public agency has taken possession prior to such an 236
order and such an order, after any appeal, is against the agency 237
on any of the matters, the agency shall restore the property to 238
the owner in its original condition or respond in damages, which 239
may include the items set forth in division (A) (2) of section 240
163.21 of the Revised Code, recoverable by civil action, to 241
which the state consents. 242

(3) An owner has a right to an immediate appeal if the 243
order of the court is in favor of the agency in any of the 244
matters the owner denied in the answer, unless the agency is 245
appropriating property ~~in~~ under any of the following 246
circumstances: 247

(a) In time of war or other public exigency imperatively 248
requiring its immediate seizure, ~~for;~~ 249

(b) For the sole purpose of making or repairing roads 250
which shall be open to the public without charge, ~~for;~~ 251

(c) For the purpose of implementing rail service under 252
Chapter 4981. of the Revised Code, or under section 307.08, 253
504.19, 6101.181, 6115.221, 6117.39, or 6119.11 of the Revised 254

Code or by a public utility owned and operated by a municipal 255
corporation as the result of a public exigency. 256

The court shall not set a time for nor proceed with a 257
determination of the assessment of compensation until the 258
owner's immediate appeal is final. 259

(C) When an answer is filed pursuant to section 163.08 of 260
the Revised Code, and none of the matters set forth in division 261
(B) of this section is specifically denied, the court shall fix 262
a time ~~within twenty~~ not sooner than ninety days from the date 263
the answer was filed for the assessment of compensation by a 264
jury. 265

(D) If answers are filed pursuant to divisions (B) and (C) 266
of this section, or an answer is filed on behalf of fewer than 267
all the named owners, the court shall set the hearing or 268
hearings at such times as are reasonable under all the 269
circumstances, ~~but in no event later than twenty days after the~~ 270
~~issues are joined as to all necessary parties or twenty days~~ 271
~~after rule therefor, whichever is earlier. 272~~

(E) The court, with the consent of the parties, may order 273
two or more cases to be consolidated and tried together, but the 274
rights of each owner to compensation, damages, or both shall be 275
separately determined by the jury in its verdict. 276

(F) If an answer is filed under section 163.08 of the 277
Revised Code with respect to the value of property, the trier of 278
fact shall determine that value based on the evidence presented, 279
with neither party having the burden of proof with respect to 280
that value. 281

(G) If the court determines the matter wholly or partially 282
in the favor of the owner as to the necessity of the 283

appropriation or whether the use for which the agency seeks to 284
appropriate the property is a public use, in a final, 285
unappealable order, the court shall award the owner reasonable 286
attorney's fees, expenses, and costs. 287

(H) If the owner demonstrates by a preponderance of the 288
evidence that the agency used coercive actions, including but 289
not limited to those listed in section 163.59 of the Revised 290
Code, at any point during the appropriations process against the 291
owner, the court shall award the owner damages that the court 292
considers appropriate. The state hereby waives its immunity from 293
liability for such claims, and, notwithstanding Chapter 2743. of 294
the Revised Code, such actions shall be brought in the court of 295
common pleas in the county where the property in question is 296
located. 297

Sec. 163.16. (A) If, in an action brought under this 298
chapter, the court is required to award the owner reasonable 299
attorney's fees, expenses, and costs, or the agency is required 300
to pay the owner reasonable attorney's fees, expenses, and 301
costs, that award or payment shall include any fees, expenses, 302
and costs incurred by the owner in the pursuit of the award of 303
fees, expenses, and costs, including costs of mediation or 304
appeal. 305

(B) The court costs, including jury fees, of any 306
proceeding shall be paid by the agency as the court directs, 307
except as may be provided for in cases subject to division (A) 308
(2) or (B) (1) of section 163.21 of the Revised Code. ~~The agency~~ 309
~~may offer to confess judgment for the amount to be stated and~~ 310
~~the court costs then made in favor of any owner who in any~~ 311
~~manner enters an appearance or upon whom service has been made.~~ 312
~~If such owner refuses to accept such offer and as a result of~~ 313

~~the trial does not receive more, he shall pay all court costs-~~ 314
~~accruing after the offer.~~ 315

Sec. 163.19. Subject to sections 163.07 and 163.09 of the 316
Revised Code, any party may prosecute appeals as in other civil 317
actions from the judgment of the court. 318

The owner may request, and the court may grant, a stay on 319
appeal, provided that the owner posts a supersedeas bond in an 320
amount the court determines. 321

If the agency appeals from a judgment of the court and the 322
judgment is affirmed in whole or in part, the court shall award 323
the owner reasonable attorney's fees, expenses, and costs 324
incurred in defending the appeal. 325

Sec. 163.21. (A) (1) If it has not taken possession of 326
property that is appropriated, an agency may abandon 327
appropriation proceedings under sections 163.01 to 163.22 of the 328
Revised Code at any time after the proceedings are commenced but 329
not later than ninety days after the final determination of the 330
cause. 331

(2) In all cases of abandonment as described in division 332
(A) (1) of this section, the court shall enter a judgment against 333
the agency for costs, including jury fees, and shall enter a 334
judgment in favor of each affected owner, in amounts that the 335
court considers to be just, for each of the following that the 336
owner incurred: 337

(a) Witness fees, including expert witness fees; 338

(b) Attorney's fees; 339

(c) Other actual expenses. 340

(B) (1) In appropriation proceedings under sections 163.01 341

to 163.22 of the Revised Code or as authorized by divisions (A) 342
and (B) of section 163.02 of the Revised Code for appropriation 343
proceedings in time of a public exigency under other sections of 344
the Revised Code, if the court determines that an agency is not 345
entitled to appropriate particular property, the court shall 346
enter both of the following: 347

(a) A judgment against the agency for costs, including 348
jury fees; 349

(b) A judgment in favor of each affected owner, in amounts 350
that the court considers to be just, for the owner's reasonable 351
disbursements and expenses, to include witness fees, expert 352
witness fees, attorney's fees, appraisal and engineering fees, 353
and for other actual expenses that the owner incurred in 354
connection with the proceedings. 355

(2) Any award to an owner pursuant to this section shall 356
be paid by the head of the agency for whose benefit the 357
appropriation proceedings were initiated. 358

(C) (1) Except as otherwise provided in division (C) (2) ~~or~~ 359
~~(3)~~ of this section and subject to division ~~(C) (5)~~ (C) (3) of 360
this section, when an agency appropriates property and the final 361
award of compensation is greater than one hundred ~~twenty-five~~ 362
ten per cent of the agency's last written good faith offer for 363
the property or, if before commencing the appropriation 364
proceeding the agency made a revised offer based on conditions 365
indigenous to the property that could not reasonably have been 366
discovered at the time of the good faith offer, one hundred 367
twenty-five per cent of the revised offer made pursuant to 368
section 163.04 of the Revised Code and provided prior to the 369
commencement of a necessity hearing, or, if no necessity hearing 370
is held, prior to the beginning of the compensation trial, the 371

court shall enter judgment in favor of the owner, in the 372
following amounts: 373

(a) In addition to the award of compensation, an amount 374
the court considers just, for all costs and expenses, including 375
attorney's and appraisal fees, that the owner actually incurred; 376

(b) If the award of compensation is greater than one 377
hundred twenty-five per cent of the offer, an additional amount 378
equal to ten per cent of the jury's award. 379

(2) The court shall not enter judgment for costs and 380
expenses, including attorney's fees and appraisal fees, if the 381
agency is appropriating property in time of war or other public 382
exigency imperatively requiring its immediate seizure, for the 383
purpose of making or repairing roads that shall be open to the 384
public without charge, for the purpose of implementing rail 385
service under Chapter 4981. of the Revised Code, or under 386
section 307.08, 504.19, 6101.181, 6115.221, 6117.39, or 6119.11 387
of the Revised Code as the result of a public exigency, or the 388
agency is a municipal corporation that is appropriating property 389
as a result of a public exigency, except that the court shall 390
enter judgment in favor of the owner for costs and expenses, 391
including attorney's and appraisal fees, that the owner actually 392
incurred only if the property being appropriated is land used 393
for agricultural purposes as defined in section 303.01 or 519.01 394
of the Revised Code, or the county auditor of the county in 395
which the land is located has determined under section 5713.31 396
of the Revised Code that the land is "land devoted exclusively 397
to agricultural use" as defined in section 5713.30 of the 398
Revised Code and the final award of compensation is more than 399
one hundred fifty per cent of the agency's initial good faith 400
~~offer or a revised offer made by the agency under division (C)~~ 401

~~(1) or (3) of this section made pursuant to section 163.04 of
the Revised Code.~~ 402
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~~(3) The court shall not enter judgment for costs and
expenses, including attorney's fees and appraisal fees, that the
owner actually incurred if the owner and the agency exchanged
appraisals prior to the filing of the petition and the final
award of compensation was not more than one hundred twenty five
per cent of the agency's first offer for the property made
subsequent to the exchange of appraisals and at least thirty
days before the filing of the petition.~~ 404
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~~(4) An award of costs and expenses, including attorney's
and appraisal fees, that the owner actually incurred, under
division (C) of this section shall not exceed the lesser of
twenty five per cent of the amount by which the final award of
compensation exceeds the agency's initial good faith offer or
revised offer or twenty five per cent of the amount by which the
final award of compensation exceeds the agency's last written
offer made not less than forty five days before the date
initially designated for trial by the court.~~ 412
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~~(5) (a) (3) (a) An award of costs and expenses, including
attorney's and appraisal fees, that the owner actually incurred,
made under division (G) of section 163.09 of the Revised Code is
not subject to the conditions and limitations set forth in
divisions (C) (1), and (2), ~~(3), and (4)~~ of this section.~~ 421
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~~(b) The court shall not enter judgment for costs and
expenses, including attorney's fees and appraisal fees, under
division (C) of this section unless not less than fifty days
prior to the date initially designated by the court for trial
the owner provided the agency with an appraisal or summary
appraisal of the property being appropriated or with the owner's~~ 426
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sworn statement setting forth the value of the property and an 432
explanation of how the owner arrived at that value. 433

Sec. 163.221. (A) An owner who alleges that the owner's 434
property has been acquired for a public use by an appropriating 435
authority and that the authority has not followed the procedures 436
required by sections 163.02 to 163.22 of the Revised Code, or 437
any prior appropriation procedures, may bring a direct action 438
against the appropriating authority for inverse condemnation. 439

(B) The owner shall file the action in the court of common 440
pleas in the county where the property is located. 441

(C) The owner who brings the action has the burden to 442
prove by a preponderance of the evidence that the appropriating 443
authority has appropriated the owner's property and that the 444
appropriating authority did not follow the procedures required 445
by sections 163.02 to 163.22 of the Revised Code, or any prior 446
appropriation procedures. An owner who meets the burden of proof 447
shall be awarded reasonable compensation and damages for the 448
appropriation. 449

(D) If the court renders judgment in favor of the owner 450
who brought the action, or the appropriating authority effects a 451
settlement of the action, the court shall award the owner 452
reasonable attorney's fees, costs, and expenses, including 453
appraisal fees and engineering fees incurred in the action. 454

Sec. 163.52. (A) The failure of an acquiring agency to 455
satisfy a requirement of section 163.59 of the Revised Code does 456
not affect the validity of any property acquisition by purchase 457
or condemnation. 458

(B) An owner has a cause of action against an agency for a 459
violation of section 163.59 of the Revised Code. If the owner 460

proves a violation of section 163.59 of the Revised Code by a 461
preponderance of the evidence, the agency shall pay the owner 462
reasonable attorney fees, costs, and expenses. Such cause of 463
action shall be consolidated and heard with the underlying 464
appropriation action. 465

(C) Nothing in sections 163.51 to 163.62 of the Revised 466
Code shall be construed as creating, in any condemnation 467
proceeding brought under the power of eminent domain, any 468
element of value or damage not in existence immediately prior to 469
June 11, 1971. 470

Sec. 163.59. In order to encourage and expedite the 471
acquisition of real property by agreements with owners, to avoid 472
litigation and relieve congestion in the courts, to assure 473
consistent treatment for owners in the many state and federally 474
assisted programs, and to promote public confidence in public 475
land acquisition practices, heads of acquiring agencies shall do 476
or ensure the acquisition satisfies all of the following: 477

(A) The head of an acquiring agency shall make every 478
reasonable effort to acquire expeditiously real property by 479
negotiation. 480

(B) In order for an acquiring agency to acquire real 481
property, the acquisition shall be for a defined public purpose 482
that is to be achieved in a defined and reasonable period of 483
time. An acquisition of real property that complies with section 484
5501.31 of the Revised Code satisfies the defined public purpose 485
requirement of this division. 486

(C) Real property to be acquired shall be appraised before 487
the initiation of negotiations, and the owner or the owner's 488
designated representative shall be given a reasonable 489

opportunity to accompany the appraiser during the appraiser's 490
inspection of the property, except that the head of the lead 491
agency may prescribe a procedure to waive the appraisal in cases 492
involving the acquisition by sale or donation of property with a 493
low fair market value. If the appraisal values the property to 494
be acquired at more than ten thousand dollars, the head of the 495
acquiring agency concerned shall make every reasonable effort to 496
provide a copy of the appraisal to the owner. As used in this 497
section, "appraisal" means a written statement independently and 498
impartially prepared by a qualified appraiser, or a written 499
statement prepared by an employee of the acquiring agency who is 500
a qualified appraiser, setting forth an opinion of defined value 501
of an adequately described property as of a specified date, 502
supported by the presentation and analysis of relevant market 503
information. 504

(D) Before the initiation of negotiations for real 505
property, the head of the acquiring agency concerned shall 506
establish an amount that the head of the acquiring agency 507
believes to be just compensation for the property and shall make 508
a prompt offer to acquire the property for no less than the full 509
amount so established. In no event shall that amount be less 510
than the agency's approved appraisal of the fair market value of 511
the property. Any decrease or increase in the fair market value 512
of real property prior to the date of valuation caused by the 513
public improvement for which the property is acquired, or by the 514
likelihood that the property would be acquired for that 515
improvement, other than that due to physical deterioration 516
within the reasonable control of the owner, will be disregarded 517
in determining the compensation for the property. 518

The head of the acquiring agency concerned shall provide 519
the owner of real property to be acquired with a written 520

statement of, and summary of the basis for, the amount that the 521
head of the acquiring agency established as just compensation. 522
Where appropriate, the just compensation for real property 523
acquired and for damages to remaining real property shall be 524
separately stated. 525

The owner shall be given a reasonable opportunity to 526
consider the offer of the acquiring agency for the real 527
property, to present material that the owner believes is 528
relevant to determining the fair market value of the property, 529
and to suggest modification in the proposed terms and conditions 530
of the acquisition. The acquiring agency shall consider the 531
owner's presentation and suggestions. 532

(E) If information presented by the owner or a material 533
change in the character or condition of the real property 534
indicates the need for new appraisal information, or if a period 535
of more than two years has elapsed since the time of the 536
appraisal of the property, the head of the acquiring agency 537
concerned shall have the appraisal updated or obtain a new 538
appraisal. If updated appraisal information or a new appraisal 539
indicates that a change in the acquisition offer is warranted, 540
the head of the acquiring agency shall promptly reestablish the 541
amount of the just compensation for the property and offer that 542
amount to the owner in writing. No subsequent offers of 543
compensation shall be less than the initial offer, unless based 544
upon conditions indigenous to the property that were not 545
reasonably discoverable at the time of the initial offer. 546

(F) No owner shall be required to surrender possession of 547
real property before the acquiring agency concerned pays the 548
agreed purchase price, or deposits with the court for the 549
benefit of the owner an amount not less than the agency's 550

approved appraisal of the fair market value of the property, or 551
the amount of the award of compensation in the condemnation 552
proceeding for the property. 553

(G) The construction or development of a public 554
improvement shall be so scheduled that no person lawfully 555
occupying real property shall be required to move from a 556
dwelling, or to move the person's business or farm operation, 557
without at least ninety days' written notice from the head of 558
the acquiring agency concerned of the date by which the move is 559
required. 560

(H) If the head of an acquiring agency permits an owner or 561
tenant to occupy the real property acquired on a rental basis 562
for a short term or for a period subject to termination on short 563
notice, the amount of rent required shall not exceed the fair 564
rental value of the property to a short-term occupier. 565

(I) In no event shall the head of an acquiring agency 566
either advance the time of condemnation, or defer negotiations 567
or condemnation and the deposit of funds in court for the use of 568
the owner, or take any other action coercive in nature, in order 569
to compel an agreement on the price to be paid for the real 570
property. For claims of coercive actions, the state hereby 571
waives its immunity from liability, and, notwithstanding Chapter 572
2743. of the Revised Code, such actions shall be brought in the 573
court of common pleas in the county where the property in 574
question is located. 575

(J) When any interest in real property is acquired by 576
exercise of the power of eminent domain, the head of the 577
acquiring agency concerned shall institute the formal 578
condemnation proceedings. No head of an acquiring agency shall 579
intentionally make it necessary for an owner to institute legal 580

proceedings to prove the fact of the taking of the owner's real 581
property. 582

(K) If the acquisition of only part of a property would 583
leave its owner with an uneconomic remnant, the head of the 584
acquiring agency concerned shall offer to acquire that remnant. 585
For the purposes of this division, an uneconomic remnant is a 586
parcel of real property in which the owner is left with an 587
interest after the partial acquisition of the owner's property 588
and which the head of the agency concerned has determined has 589
little or no value or utility to the owner. 590

An acquisition of real property may continue while an 591
acquiring agency carries out the requirements of divisions (A) 592
to (K) of this section. 593

This section applies only when the acquisition of real 594
property may result in an exercise of the power of eminent 595
domain. 596

Sec. 163.62. (A) The court having jurisdiction of a 597
proceeding instituted by a state agency to acquire real property 598
by condemnation shall award the owner of any right, or title to, 599
or interest in, such real property such sum as will in the 600
opinion of the court reimburse such owner for the owner's 601
reasonable costs, disbursements, and expenses, including 602
reasonable attorney, appraisal, and engineering fees actually 603
incurred because of the condemnation proceeding, as provided in 604
division (G) of section 163.09 or division (A) or (C) of section 605
163.21 of the Revised Code, as applicable. 606

(B) The court having jurisdiction of an inverse 607
condemnation proceeding shall award the owner of any right, or 608
title to, or interest in, such real property such sum as will in 609

the opinion of the court reimburse such owner for the owner's 610
reasonable costs, disbursements, and expenses, including 611
reasonable attorney, appraisal, and engineering fees actually 612
incurred because of the inverse condemnation proceeding, if the 613
court renders a judgment in favor of the owner or the agency 614
effects a settlement of the proceeding. As used in this 615
division, "court" means the court of common pleas, the court of 616
appeals, or the supreme court. 617

(C) Any award made pursuant to division (A) or (B) of this 618
section shall be paid by the head of the agency for whose 619
benefit the condemnation proceeding was instituted. 620

(D) (1) The General Assembly finds that the amendment to 621
this section by this act is remedial in nature in order to 622
ensure that Ohio is in compliance with the "Uniform Relocation 623
Assistance and Real Property Acquisitions Policies for Federal 624
and Federally Assisted Programs Act," 42 U.S.C. 4601, et seq., 625
and its implementing regulations, 49 C.F.R. 24.1, et seq. 626
Therefore, the General Assembly hereby declares its purpose in 627
amending this section in this act is that the amendment apply to 628
any judgment in favor of the owner in an inverse condemnation 629
proceeding or settlement effectuated by the agency in such a 630
proceeding that occurred on or after January 1, 2019. 631

(2) The amendment to this section by this act is in 632
response to the Supreme Court's opinion in *State ex rel. New* 633
Wen, Inc. v. Marchbanks, 163 Ohio St.3d 14, 2020-Ohio-4865. 634
There, the Supreme Court declared ineffective a provision in the 635
Administrative Code that authorized certain litigation expenses, 636
including reasonable attorney fees, to owners of real property 637
who prevailed in inverse condemnation proceedings. In a 638
concurring opinion, Justice Fischer, as joined by Justice 639

DeWine, wrote "separately to point out that the General Assembly 640
should examine the issue whether a property owner in Ohio who is 641
forced to file a lawsuit, in this case for a writ of mandamus, 642
to get a court order when the state has taken that owner's 643
property without filing a proper appropriation case, should or 644
should not be entitled to an award of attorney fees." In 645
amending this section, the General Assembly agrees with Justices 646
Fischer and DeWine that Ohioans "who have had property 647
improperly taken by any government—and who must go to court to 648
correct that problem caused by the government—should be entitled 649
to their attorney fees, which they incurred to uphold their 650
constitutionally protected property rights." 651

Section 2. That existing sections 163.01, 163.021, 163.04, 652
163.09, 163.16, 163.19, 163.21, 163.52, 163.59, and 163.62 of 653
the Revised Code are hereby repealed. 654