



Working together for Ohio farmers to advance agriculture and strengthen our communities.

**House Civil Justice Committee
HB 64 Proponent Testimony
Evan Callicoat, Director of State Policy
March 14th, 2023**

Chairman Hillyer, Vice Chairman Mathews, Ranking Member Galonski, and members of the Ohio House Civil Justice Committee, thank you for the opportunity to provide proponent testimony on House Bill 64, which will make several vital reforms to Ohio's Eminent Domain law.

My name is Evan Callicoat, and I am the Director of State Policy for the Ohio Farm Bureau. The Ohio Farm Bureau is a grassroots organization comprised of over 70,000 members that are committed to supporting our farm and food community.

Background of Eminent Domain in Ohio

Eminent domain is a process that is permitted under the fifth amendment of the US Constitution and Article I of the Ohio Constitution. Ohio's last major review of eminent domain laws was in 2007, following the U.S. Supreme Court decision in *Kelo v. City of New London*. Following that, Ohio has had numerous court cases that have further refined both the eminent domain laws and court precedent. However, these cases and the experience of our members show a need for a renewed review of Ohio's eminent domain process and law.

Member Experience

Farm Bureau members often call us once they begin to hear about or are directly approached with threats of eminent domain. While we are happy to take the time to walk through the general process with our members, it often does not help much to allay their fears of losing their land, and the costs they may incur. Farmers, like most landowners, are very attached to their lands but in some ways, even uniquely so. A person's home and farm is where they have made memories, where their children have played, and for a farmer, where their family business - sometimes generations long- has grown and thrived. The back forty is not necessarily just a crop field, it's where they learned to drive a tractor. The barnyard is not just a pasture, but where they started their business as a young 4-Her or FFA member. It represents their hard times and their good times, and not just dirt and soil.

While current law does have some protections for landowners, those are rarely available and inadequate to protect the right of private property that is enshrined in the Ohio Constitution. Eminent domain actions are almost always going to require a landowner to acquire private legal counsel, something that can be more difficult to attain in rural areas. Then begins the back and



Working together for Ohio farmers to advance agriculture and strengthen our communities.

forth, the negotiations, and sometimes, the eventual courtrooms. Landowners deserve to receive a fair process and appropriate compensation when their land is taken for a public use. But compensation is often not the only worry - there's also whether the construction will cut drain tiles, whether they will still be able to access all parts of their farm, will law enforcement respond to trespassing issues, and a host of other concerns that arise when someone shows up to build something on your property.

Ohioans also have the dubious distinction of being the only landowners without a claim of inverse condemnation. Though inverse condemnation claims should be rare, they arise when a condemner has taken property without going through the proper procedures under the law. Currently, Ohio landowners must navigate a complex writ of mandamus process to have the condemnor held liable for the taking. But even that does not provide them relief, as they must then return to the lower court and start over the eminent domain process, as if their land was never taken in the first place. The U.S. Supreme Court recognized Ohio as the only state to lack an inverse condemnation procedure in its opinion in *Knick v. Township of Scott, PA*.

Ohio Farm Bureau also often acts as an amicus curiae, or “friend of the court,” in eminent domain cases involving our member families. Most recently, OFBF was an amicus party in the *Ohio Power v. Burns* case, where the Ohio Supreme Court further clarified the application of necessity presumptions, and the necessity determinations that must be made in takings cases involving easements. This is only the most recent case to be decided, as we have also participated in cases that clarified the landowner’s right to immediate appeal, and the application of eminent domain to continuous and recurring flooding. While individual rulings certainly provide relief for those families and create strong precedent, they also cost thousands of dollars to those landowners, not to mention the time and stress. Clear and transparent laws can reduce those costs, while also providing better protection to Ohioans.

Ohio Farm Bureau Position

Shown by the growing frustration and feeling of helplessness our members face when approached by a condemning agency that is attempting to take their land through eminent domain, Ohioians private property rights are not adequately respected or protected by the status quo. The reforms in this bill will not stand in the way of necessary public projects, moreso it provides landowners an opportunity to defend themselves from overreaching corporate and government interest if they don't follow the process outlined in Ohio law. That is why the Ohio Farm Bureau strongly supports House Bill 64. We specifically support this legislation because it:

- Allows landowners to challenge the necessity of takings by reforming the presumptions of necessity in current law.



Working together for Ohio farmers to advance agriculture and strengthen our communities.

- Requires all offers be in writing, and that each subsequent offer serve as the floor for compensation
- Builds on the law's current prohibition against coercive action by providing a landowner a claim if coercive actions occur.
- Prohibits takings for recreational trails
- Allows landowner's adequate time to prepare and respond to eminent domain lawsuits by extending the timelines by which the steps in the process occur
- Provides attorneys fees to a landowner when the condemning agency appeals a jury verdict
- And finally, brings Ohio in line with the rest of the country by providing a streamlined inverse condemnation claim when property is taken without following the law, and provides attorneys fees when a landowner is successful in their claim.

Conclusion

Almost all eminent domain proceedings are a "David v. Goliath" scenario. Individual landowners or family farms are approached by the state or large utility companies to force the sale of their land through eminent domain. These condemning agencies can have armies of attorneys who represent them against the small family farmer who might not even be able to afford one attorney, much less one that is well versed in eminent domain law. The Ohio Farm Bureau respects and understands the necessity of the state and other private agencies to have the ability to implement eminent domain when absolutely necessary, but current law in Ohio allows the condemning entity to impose their will on Ohio farmers without the protection that private property deserves as a constitutionally protected right. House Bill 64 creates a fair eminent domain process that balances the needs of the condemning agency with the private property rights of Ohio landowners.

The Ohio Farm Bureau greatly appreciates Representative Kick and Representative Creech's leadership on this issue. I have also brought Leah Curtis, our Policy Counsel and Sr. Director of Member Engagement along with me today, and we would be more than happy to answer questions at this time.