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**HOUSE CIVIL JUSTICE COMMITTEE**

**SUB. HOUSE BILL 64 -- OPPONENT TESTIMONY (WRITTEN ONLY)**

May 23, 2023

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Good afternoon, Chair Hillyer, Vice Chair Mathews, Ranking Member Galonski, and Members of the House Civil Justice Committee. Thank you for the opportunity to submit opponent testimony on House Bill 64. CCAO would like to thank the sponsors, Representatives Kick and Creech, for including CCAO in the interested party discussions on this bill. We are committed to continuing this dialogue and we appreciate the sponsors' efforts to address some of the concerns of the interested parties in the substitute bill. Nonetheless, we are opposed to the bill in its current form because it undermines the balance in current law between the rights of the property owner and the authority of the political subdivision to exercise its power of eminent domain. Ohio's law on Appropriation of Property (RC Chapter 163) clearly states that appropriation cannot be used "except as necessary and for a public use" (RC. 163.021). The General Assembly reformed RC Chapter 163 in 2007 in the wake of the Ohio Supreme Court's ruling in *City of Norwood v. Horney*, 110 Ohio St. 3d 353 (2006), to make it clear that eminent domain cannot be used solely to provide an economic benefit to the community or to the government.

Counties may use eminent domain for a variety of purposes, including roads, bridges, water and sewer lines, jails, mental health or addiction treatment centers, county homes for children or seniors, stadiums, and various other public buildings (see RC 307.02). It should be emphasized that when county governments consider any infrastructure or construction project, their preference and statutory duty is to avoid the use of eminent domain. Counties would prefer to negotiate with a landowner to reach an agreement rather than resorting to an appropriation, and indeed will sometimes pay more than fair market value in order to avoid the appropriation process and potentially lengthy litigation that may result. When an appropriation process is initiated, these cases are often settled before they reach judgment, and we want to make sure that any potential changes in the law preserve this flexibility.

One of the problems in the bill is that the standard for judicial review in an appropriation proceeding is changed from "preponderance of the evidence" to "clear and convincing evidence." The existing standard has been in place for decades and has been shown to be more than adequate to balance landowner rights with governmental appropriation authority. A large body of case law exists to interpret the existing standard.



The change to a new standard of evidence is not about ensuring just compensation for landowners. It is an invitation for landowners and their attorneys to second-guess the necessity and justification for governmental decisions about the placement of public infrastructure. Years of litigation will be needed to understand how the new standard applies to the many different scenarios in which eminent domain might be used. In the meantime, it will diminish landowners' motivation to negotiate fair compensation and reach a settlement.

The bill also changes the law with respect to the award of attorney fees. Under current law, if the two parties exchanged appraisals prior to the filing of the petition, and the final award of compensation was not more than 125% of the agency's first offer, the court cannot award judgment for attorney's fees and appraisal costs. The bill lowers this threshold to 110%. This change diminishes the incentive for landlords and their attorneys to be realistic in their estimations of how much a property is worth and discourages settlement. The bill also adds an additional award if the amount of compensation is greater than 125% of the offer. It is not clear why this is needed when the agency's offer is made in good faith and based on a professional appraisal.

The bill creates a new statutory process for inverse condemnation using a "preponderance of evidence" standard rather than the "clear and convincing evidence" standard being proposed for appropriation proceedings. CCAO is not opposed to the establishment of a statutory process for inverse condemnation, but our belief is that the process outlined in the bill needs further detail. The relationship of this action to zoning decisions, for example, should be given more definition. This new section also awards attorney's fees to the owner, even when the parties have settled. This provision needs to be modified to restore balance by supporting the award of attorney's fees to the public authority when judgment has been made in its favor, and to allow parties to negotiate fees as part of a settlement.

We are committed to working with the sponsor to make further improvements to the bill, and we recommend that the Civil Justice Committee refrain from moving the bill forward in its current form.