

**House Civil Justice Committee**  
**Opponent Testimony on HB 64**

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Chairman Hillyer, Vice Chair Mathews, and Ranking Member Galonski,

My name is Jim Papakirk. I am a founding member of the Flagel & Papakirk law firm. Thank you for allowing me to provide testimony in opposition to HB 64. In my 28-plus years of practice, I have handled numerous real estate matters throughout Ohio, including appropriation matters. My firm and I have represented property owners in certain instances and a public utility and a municipality in others. Currently, I represent AES OH on appropriation issues. Those matters have included the acquisition of real property interests, easement rights, and other access rights. In utility matters, I have seen first-hand the interplay – and in most cases the balancing -- between land-owner rights and concerns and the need for public utilities to modernize and upgrade infrastructure to provide the shared goal of resilient, reliable, cost-effective power to homes and businesses.

The majority of projects are years in the making and involve teams of dedicated professionals to plan and construct intricate distribution and transmission facilities that serve a large footprint and impact a large number of customers. In many cases, those projects undergo vetting by agencies such as the Ohio Power Siting Board. There are a lot of moving parts. However, in my experience, in the overwhelming number of cases, landowners and utilities work cooperatively in finding acceptable solutions to reach the common goal of reliable, cost-effective power. Litigation is a last resort.

Overall, HB 64 would fundamentally alter the landscape of appropriation by Ohio public utilities and make upgrades and modernization, including sustainability initiatives, significantly more costly, difficult, and prolonged from the outset. Public utilities have a duty to provide and ensure service in the most timely and efficient manner possible. While the latest version of HB 64 addresses some of the initial concerns, there are still some very key provisions that, if adopted, would create profound challenges in reaching the shared goals of customers and utilities and in providing infrastructure that literally powers economic growth and opportunity in Ohio. In my view, although an underpinning of the statute is to promote settlement efforts, many of the proposed revisions would actually hamper, if not disincentivize, such efforts. Among other things, HB 64 as proposed:

- Heightens the burden of proof on establishing necessity to clear and convincing evidence;
- Eliminates certain presumptions regarding necessity and alters presumptions that arise from agency determinations;

- Lengthens certain timelines in obtaining key determinations;
- Permits the admission of offers of compromise at trial contrary to long established evidentiary principles;
- Awards additional compensation to jury awards, while eliminating safeguards when the appropriating agency has acted reasonably and in good faith;
- Extends attorney fee awards to landowners in virtually every situation, even when there is mediation of a dispute, a settlement, or an appeal, even if the appeal is partially upheld;
- Creates ambiguity and vagueness by permitting courts to award unspecified damages if it finds the appropriating agency engages in undefined coercive actions.

This legislation is also poorly timed; currently, Ohio is seeing one of the largest economic development expansions in history. If the current appropriation process were to be changed, utilities could see significant delays in meeting project deadlines and the demands of their residential and business consumers. Ohio would be at risk of missing out on future economic development projects.

While I appreciate the sponsors' intention behind HB 64, I believe that in its current form it would hamper the future success of Ohio. Thank you again for allowing me to provide opponent testimony on Sub. HB 64, I would be happy to answer any questions.