

As Introduced

134th General Assembly

Regular Session

2021-2022

H. B. No. 63

Representatives Cutrona, Stoltzfus

**Cosponsors: Representatives Cross, Ginter, Jones, Jordan, Kick, McClain,
Merrin, Riedel, Schmidt, Wiggam**

A BILL

To amend sections 163.021 and 163.041 and to enact 1
section 163.022 of the Revised Code to amend the 2
law regarding eminent domain and to declare an 3
emergency. 4

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

Section 1. That sections 163.021 and 163.041 be amended 5
and section 163.022 of the Revised Code be enacted to read as 6
follows: 7

Sec. 163.021. (A) No agency shall appropriate real 8
property except as necessary and for a public use. In any 9
appropriation, the taking agency shall show by a preponderance 10
of the evidence that the taking is necessary and for a public 11
use. 12

(B) Before an agency appropriates property based on a 13
finding that the area is a blighted area or a slum, the agency 14
shall do both of the following: 15

(1) Adopt a comprehensive development plan that describes 16
the public need for the property. The plan shall include at 17

least one study documenting the public need. All of the costs of 18
developing the plan shall be publicly financed. 19

(2) If the agency is governed by a legislative body, 20
obtain a resolution from that legislative body affirming the 21
public need for the property. 22

(C) No park board, park district, board of directors of a 23
conservancy district, incorporated association with a purpose of 24
establishing or preserving public parks and memorial sites, or 25
similar park authority shall exercise any power of eminent 26
domain to appropriate real property outside the county or 27
counties in which the park authority is located unless the 28
appropriation has the written approval of the legislative 29
authority of each county in which the property is located, other 30
than the county or counties in which the park authority is 31
located. 32

(D) No agency shall appropriate property based on a 33
finding that the parcel is a blighted parcel or that the area is 34
a blighted area or slum by making that finding in, or in 35
conjunction with, an emergency ordinance or resolution. 36

~~(E) If an appropriation is by a public agency that is not 37
elected and an owner has provided the public agency with a 38
written objection to the appropriation, the elected officials of 39
the public agency or elected individual that appointed the 40
unelected agency may veto that appropriation. If the unelected 41
public agency was appointed by more than one public agency or 42
elected individual, a majority vote of the elected officials of 43
the appointing public agencies or elected individuals is 44
required to veto the appropriation. If the public agency that is 45
not elected is a state agency or instrumentality such as a 46
university, the governor has the veto authority. The governor 47~~

~~may delegate that authority but may not delegate that authority~~ 48
~~to the unelected agency that seeks the appropriation.~~ 49

Sec. 163.022. (A) If an appropriation is by a public 50
agency that is not elected and an owner has provided the public 51
agency with a written objection to the appropriation, the 52
elected officials of the public agency or elected individual 53
that appointed the unelected agency may veto that appropriation. 54
If the unelected public agency was appointed by more than one 55
public agency or elected individual, a majority vote of the 56
elected officials of the appointing public agencies or elected 57
individuals is required to veto the appropriation. If the public 58
agency that is not elected is a state agency or instrumentality 59
such as a university, the governor has the veto authority. The 60
governor may delegate that authority but may not delegate that 61
authority to the unelected agency that seeks the appropriation. 62

A written objection and subsequent veto may be made 63
pursuant to this division at any time before the court in any 64
resulting appropriation proceeding, or an appeal of that 65
proceeding, enters a final order granting the agency's request 66
to appropriate the property. 67

(B) (1) Except as provided in division (B) (3) of this 68
section, if an appropriation is for the purpose of providing a 69
recreational trail, the legislative authority of the municipal 70
corporation where the real property is located, or board of 71
township trustees for the township where the real property is 72
located, may veto the appropriation after receiving a written 73
objection from an owner. 74

A written objection and subsequent veto may be made 75
pursuant to this division at any time before the court in any 76
resulting appropriation proceeding, or an appeal of that 77

proceeding, enters a final order granting the agency's request 78
to appropriate the property. 79

(2) Except as provided in division (B) (3) of this section, 80
if the real property to be appropriated for the purpose of 81
providing a recreational trail is located in both a municipal 82
corporation and township, a written objection from an owner may 83
be made to, and a veto may be issued by, either the legislative 84
authority of the municipal corporation or the board of township 85
trustees, or both. 86

(3) Divisions (B) (1) and (2) of this section do not apply 87
to an appropriation of real property that is located in a county 88
with more than one probate judge, as provided by Chapter 2101. 89
of the Revised Code. 90

(C) An owner's remedies under divisions (A) and (B) of 91
this section are cumulative, and the owner may elect to pursue 92
them simultaneously. 93

(D) As used in this section, "recreational trail" means a 94
public trail that is used for hiking, bicycling, horseback 95
riding, ski touring, canoeing, or other nonmotorized forms of 96
recreational travel. 97

Sec. 163.041. Before initiating an appropriation action, 98
an agency shall provide notice to each property owner as 99
required by division (A) of section 163.04 of the Revised Code. 100
The notice shall be substantially in the following form: 101

NOTICE OF INTENT TO ACQUIRE 102

TO: _____ (owner(s)) DATE: _____ 103

_____ (agency) needs your property for a _____ 104

(description of the project) and will need to acquire the 105

following from you:	106
_____ (general description of the property or easement to be acquired).	107 108
Ohio law authorizes _____ (agency) to obtain your property or an easement across your property for certain public purposes.	109 110
The legal description of your property that _____ (agency) needs is: (is attached:)	111 112
We will be presenting you with a written offer based on	113
our determination of the fair market value of your property. You	114
will have _____ days (minimum of ten) from the time you receive	115
that offer to accept or reject the offer. We will be willing to	116
discuss the offer with you during that time. You are not	117
required to accept that offer. If you reject the offer or we are	118
unable to come to an agreement, we may have to exercise our	119
eminent domain authority to appropriate your property, which	120
requires a court procedure. In a court proceeding, you may	121
disagree with any of the following: whether the project is	122
necessary (except in quick takes), whether the project is a	123
public use (except in quick takes), whether your property is	124
blighted (if applicable), and whether our offer reflects the	125
fair market value of the property.	126
HERE IS A BRIEF SUMMARY OF YOUR OPTIONS AND LEGALLY	127
PROTECTED RIGHTS:	128
1. By law, _____ (agency) is required to make a good	129
faith effort to purchase (your property) (an easement across	130
your property).	131
2. You do not have to accept this offer and _____	132
(agency) is not required to agree to your demands.	133
3. If you do not accept this offer, and we cannot come to	134

an agreement on the acquisition of (your property) (an easement), 135
_____ (agency) has the right to file suit to acquire the 136
(property) (easement) by eminent domain in the county in which 137
the property is located. 138

4. You have the right to seek the advice of an attorney, 139
real estate appraiser, or any other person of your choice in 140
this matter. 141

5. *(this paragraph does not apply to private agencies or* 142
to municipally owned public utilities) You have a right to 143
appeal this decision and may object to this project's public 144
purpose, necessity, designation of blight (if applicable), or 145
valuation by writing, ~~within ten business days of receiving this~~ 146
~~notice,~~ to: 147

_____ (name(s) and address(es) of the 148
taking agency, as well as to the elected official(s) who 149
appointed the taking agency if the taking agency is not 150
elected). 151

6. (The elected official) (A majority of the elected 152
officials) that appointed _____ (unelected agency) has/have 153
the discretion to veto this project, and if they do so, it will 154
not proceed. ~~(This~~ A written objection and subsequent veto may 155
be made at any time before the court in any resulting 156
appropriation proceeding, or an appeal of that proceeding, 157
enters a final order granting (agency's) request to take the 158
property by eminent domain. 159

(This applies only if the taking agency is a public agency 160
composed of officials who were not elected.) 161

6-7. If this taking is for the purpose of providing a 162
recreational trail, and your county does not have more than one 163

probate judge, the legislative authority of the municipal 164
corporation (village or city) or board of township trustees of 165
the township in which your property sits has the discretion to 166
veto this taking by a majority vote, upon your written objection 167
to the appropriation. If they do so, the taking will not 168
proceed. That veto authority is in addition to any veto 169
authority discussed in paragraph 5, and you may pursue either or 170
both if they are applicable. 171

If your property sits in both a township and municipal 172
corporation, and in a county with not more than one probate 173
judge, a veto by either the legislative authority of the 174
municipal corporation or the board of township trustees is 175
effective to stop the taking. A veto from both is not required, 176
though you may request that both veto the project if you choose. 177

If you wish to object to the legislative authority of a 178
municipal corporation or a board of township trustees such that 179
they may veto the taking, you must send your objection, in 180
writing, to the legislative authority of the municipal 181
corporation or the board of township trustees. If you do not 182
send a written objection, the legislative authority or board of 183
township trustees will not have veto authority on the grounds 184
that the taking is for the purpose of providing a recreational 185
trail. 186

A written objection and subsequent veto may be made at any 187
time before the court in any resulting appropriation proceeding, 188
or an appeal of that proceeding, enters a final order granting 189
(agency's) request to take the property by eminent domain. 190

8. We are required by law to provide you with a written 191
offer and the appraisal or summary appraisal on which we base 192
that offer (public agencies and public utilities may delete this 193

phrase for properties valued at less than \$10,000 if they have 194
adopted alternate procedures). 195

After a trial, a jury will decide the amount you are to be 196
awarded for your property that is taken, for the damage that is 197
caused by the taking, if applicable, and for other damages 198
permitted by law, which could either exceed or be less than our 199
offer. During the court proceeding, you have the right to 200
testify as to the value of your property, and you and the agency 201
are entitled to present evidence of the fair market value of the 202
property (easement). 203

You may employ, at your own expense, appraisers and 204
attorneys to represent you at this time or at any time during 205
the proceedings described in this notice. 206

If we go to court to determine the amount we pay for your 207
property and the jury awards you an amount that is significantly 208
in excess of a good faith offer, revised offer, or offer made 209
after an exchange of appraisals, as provided by law, you may be 210
entitled to recover attorney's fees, costs, and expenses, 211
subject to certain statutory limits. 212

If we go to court to determine whether the project is 213
necessary or for a public use, and the court decides that it is 214
not necessary or not for a public use, the judge shall award you 215
your full amount of attorney's fees, costs, and expenses. 216

You also have the right to request that the issue of the 217
value of your property be submitted to nonbinding mediation. You 218
must submit your written request for mediation within ten 219
business days after you file an answer to the agency's petition 220
for an appropriation proceeding. If a settlement is not reached 221
at mediation, the matter will proceed to a jury valuation trial. 222

If you have any questions concerning this matter, you may	223
contact us at:	224
_____ (full name, mailing, and street address,	225
and phone of the agency)	226
_____ (signature of contact person)	227
_____ (printed name and title of contact person)	228
Agent of _____ (if different than agency)	229
Section 2. That existing sections 163.021 and 163.041 of	230
the Revised Code are hereby repealed.	231
Section 3. This act is hereby declared to be an emergency	232
measure necessary for the immediate preservation of the public	233
peace, health, and safety. The reason for such necessity is the	234
protection of real property and property rights. Therefore, this	235
act goes into immediate effect.	236