

As Introduced

135th General Assembly

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H. B. No. 64

Representatives Kick, Creech

**Cosponsors: Representatives Click, Cutrona, Dean, Dell'Aquila, Ferguson, Gross,
Johnson, Jordan, Klopfenstein, Lipps, Loychik, Manchester, McClain, Merrin,
Miller, M., Schmidt, Stoltzfus, Willis**

A BILL

To amend sections 163.01, 163.021, 163.04, 163.09, 1
163.16, 163.19, 163.21, 163.52, 163.59, and 2
163.62 and to enact section 163.221 of the 3
Revised Code to modify the law regarding eminent 4
domain. 5

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

Section 1. That sections 163.01, 163.021, 163.04, 163.09, 6
163.16, 163.19, 163.21, 163.52, 163.59, and 163.62 be amended 7
and section 163.221 of the Revised Code be enacted to read as 8
follows: 9

Sec. 163.01. As used in sections 163.01 to 163.22 of the 10
Revised Code: 11

(A) "Public agency" means any governmental corporation, 12
unit, organization, instrumentality, or officer authorized by 13
law to appropriate property in the courts of this state. 14

(B) "Private agency" means any corporation, firm, 15
partnership, voluntary association, joint-stock association, or 16

company that is not a public agency and that is authorized by 17
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 use of property for 49
recreational trails, which are trails used for hiking, 50
bicycling, horseback riding, ski touring, canoeing, or other 51
nonmotorized forms of recreational travel. 52

(3) All of the following are presumed to be public uses: 53
utility facilities, roads, sewers, water lines, public schools, 54
public institutions of higher education, private institutions of 55
higher education that are authorized to appropriate property 56
under section 3333.08 of the Revised Code, public parks, 57
government buildings, port authority transportation facilities, 58
projects by an agency that is a public utility, and similar 59
facilities and uses of land. 60

(I) "Electric cooperative" has the same meaning as in 61
section 4928.01 of the Revised Code. 62

(J) "Good faith offer" means the written offer that an 63
agency that is appropriating property must make to the owner of 64
the property pursuant to division (B) of section 163.04 of the 65
Revised Code before commencing an appropriation proceeding. 66

(K) "Goodwill" means the calculable benefits that accrue 67
to a business as a result of its location, reputation for 68
dependability, skill or quality, and any other circumstances 69
that result in probable retention of old, or acquisition of new, 70
patronage. 71

(L) "Municipal power agency" has the same meaning as in 72
section 3734.058 of the Revised Code. 73

(M) "Port authority transportation facility" means any 74
facility developed, controlled, or operated by a port authority 75
for the purpose of providing passenger, cargo, or freight 76
transportation services, such as airports, maritime ports, rail 77
facilities, transit facilities, and support facilities directly 78
related to any airport, maritime port, rail facility, or transit 79
facility. 80

(N) "Making or repairing roads" does not include the 81
making or repairing of, or access management for, shared-use 82
paths, bike paths, or recreational trails. 83

Sec. 163.021. (A) No agency shall appropriate real 84
property except as necessary and for a public use. In any 85
appropriation, the taking agency shall show by ~~a preponderance~~ 86
~~of the clear and convincing~~ evidence that the taking is 87
necessary and for a public use. 88

(B) Before an agency appropriates property based on a 89
finding that the area is a blighted area or a slum, the agency 90
shall do both of the following: 91

(1) Adopt a comprehensive development plan that describes 92
the public need for the property. The plan shall include at 93
least one study documenting the public need. All of the costs of 94
developing the plan shall be publicly financed. 95

(2) If the agency is governed by a legislative body, 96
obtain a resolution from that legislative body affirming the 97
public need for the property. 98

(C) No park board, park district, board of directors of a 99
conservancy district, incorporated association with a purpose of 100
establishing or preserving public parks and memorial sites, or 101
similar park authority shall exercise any power of eminent 102

domain to appropriate real property outside the county or 103
counties in which the park authority is located unless the 104
appropriation has the written approval of the legislative 105
authority of each county in which the property is located, other 106
than the county or counties in which the park authority is 107
located. 108

(D) No agency shall appropriate property based on a 109
finding that the parcel is a blighted parcel or that the area is 110
a blighted area or slum by making that finding in, or in 111
conjunction with, an emergency ordinance or resolution. 112

(E) If an appropriation is by a public agency that is not 113
elected and an owner has provided the public agency with a 114
written objection to the appropriation, the elected officials of 115
the public agency or elected individual that appointed the 116
unelected agency may veto that appropriation. If the unelected 117
public agency was appointed by more than one public agency or 118
elected individual, a majority vote of the elected officials of 119
the appointing public agencies or elected individuals is 120
required to veto the appropriation. If the public agency that is 121
not elected is a state agency or instrumentality such as a 122
university, the governor has the veto authority. The governor 123
may delegate that authority but may not delegate that authority 124
to the unelected agency that seeks the appropriation. 125

Sec. 163.04. (A) At least thirty days before filing a 126
petition pursuant to section 163.05 of the Revised Code, an 127
agency shall provide notice to the owner of the agency's intent 128
to acquire the property. The notice shall be substantially in 129
the form set forth in section 163.041 of the Revised Code. The 130
notice shall be delivered personally on, or by certified mail 131
to, the owner of the property or the owner's designated 132

representative. 133

(B) Together with the notice that division (A) of this 134
section requires, or after providing that notice but not less 135
than thirty days before filing a petition pursuant to section 136
163.05 of the Revised Code, an agency shall provide an owner 137
with ~~a~~ an initial written good faith offer to purchase the 138
property. ~~The agency may revise that offer if before commencing~~ 139
~~an appropriation proceeding the agency becomes aware of~~ 140
~~conditions indigenous to the property that could not reasonably~~ 141
~~have been discovered at the time of the initial good faith offer~~ 142
~~or if the agency and the owner exchange appraisals prior to the~~ 143
~~filing of the petition.~~ Such initial written good faith offer 144
shall be the minimum award of compensation to the owner and may 145
not be later reduced or revoked by the agency nor shall the 146
agency present evidence or argument of a lesser compensation 147
amount at the compensation jury trial. Nothing in this division 148
prohibits the agency from making a subsequent offer that is in 149
excess of the initial good faith offer. If the agency makes a 150
subsequent offer that is in excess of the initial good faith 151
offer, then that subsequent offer becomes the minimum award of 152
compensation to the owner, the agency shall not later reduce or 153
revoke the subsequent offer, and the agency shall not present 154
evidence or argument of a lesser compensation amount than the 155
subsequent offer at the compensation jury trial. No agency shall 156
make an offer that is not in writing. 157

(C) An agency may appropriate real property only after the 158
agency obtains an appraisal of the property and provides a copy 159
of the appraisal to the owner or, if more than one, each owner 160
or to the guardian or trustee of each owner. The agency need not 161
provide an owner with a copy of the appraisal when that owner is 162
incapable of contracting in person or by agent to convey the 163

property and has no guardian or trustee or is unknown, or the residence of the owner cannot with reasonable diligence be ascertained. When the appraisal indicates that the property is worth less than ten thousand dollars, the agency need only provide an owner, guardian, or trustee with a summary of the appraisal. The agency shall provide the copy or summary of the appraisal to an owner, guardian, or trustee at or before the time the agency makes its first offer to purchase the property. 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 194
the property taken and the damages, if any, to the residue to be 195
as set forth in any document properly filed with the clerk of 196
the court of common pleas by the public agency. In all other 197
cases, the court shall fix a time, within ~~twenty~~ninety days 198
from the last date that the answer could have been filed, for 199
the assessment of compensation by a jury. 200

(B) (1) When an answer is filed pursuant to section 163.08 201
of the Revised Code and any of the matters relating to the right 202
to make the appropriation, the inability of the parties to 203
agree, or the necessity for the appropriation are specifically 204
denied in the manner provided in that section, the court shall 205
set a day, not less than ~~five or more than fifteen~~thirty days 206
from the date the answer was filed, to hear those matters. Upon 207
those matters, the burden of proof is upon the agency by a- 208
~~preponderance of the~~clear and convincing evidence, except as- 209
~~follows:~~ 210

~~(a) A resolution or ordinance of the governing or 211
controlling body, council, or board of the agency declaring the 212
necessity for the appropriation creates a rebuttable presumption 213
of the necessity for the appropriation if the agency is not 214
appropriating the property because it is a blighted parcel or 215
part of a blighted area or slum. 216~~

~~(b) The presentation by a public utility or common carrier 217
of evidence of the necessity for the appropriation creates a 218
rebuttable presumption of the necessity for the appropriation. 219~~

~~(c) Approval that approval by a state or federal 220
regulatory authority of ~~an~~the appropriation of all interests 221
sought specific to an owner's property by a public utility or 222
common carrier creates ~~an irrebuttable~~a rebuttable presumption 223~~

of the necessity for the appropriation regarding the specific 224
interests reviewed and approved by the regulatory authority. 225

(2) ~~Subject to the irrebuttable presumption in division~~ 226
~~(B)(1)(c) of this section, only~~ Only the judge may determine the 227
necessity of the appropriation. If, as to any or all of the 228
property or other interests sought to be appropriated, the court 229
determines the matters in favor of the agency, the court shall 230
set a time for the assessment of compensation by the jury not 231
less than ~~sixty-ninety~~ days from the date of the journalization 232
of that determination, subject to the right of the parties to 233
request mediation under section 163.051 of the Revised Code and 234
the right of the owner to an immediate appeal under division (B) 235
(3) of this section. Except as provided in division (B) (3) of 236
this section, an order of the court in favor of the agency on 237
any of the matters or on qualification under section 163.06 of 238
the Revised Code shall not be a final order for purposes of 239
appeal. An order of the court against the agency on any of the 240
matters or on the question of qualification under section 163.06 241
of the Revised Code shall be a final order for purposes of 242
appeal. If a public agency has taken possession prior to such an 243
order and such an order, after any appeal, is against the agency 244
on any of the matters, the agency shall restore the property to 245
the owner in its original condition or respond in damages, which 246
may include the items set forth in division (A) (2) of section 247
163.21 of the Revised Code, recoverable by civil action, to 248
which the state consents. 249

(3) An owner has a right to an immediate appeal if the 250
order of the court is in favor of the agency in any of the 251
matters the owner denied in the answer, unless the agency is 252
appropriating property ~~in~~ under any of the following 253
circumstances: 254

(a) In time of war or other public exigency imperatively 255
requiring its immediate seizure, ~~for;~~ 256

(b) For the sole purpose of making or repairing roads 257
which shall be open to the public without charge, ~~for;~~ 258

(c) For the purpose of implementing rail service under 259
Chapter 4981. of the Revised Code, or under section 307.08, 260
504.19, 6101.181, 6115.221, 6117.39, or 6119.11 of the Revised 261
Code or by a public utility owned and operated by a municipal 262
corporation as the result of a public exigency. 263

The court shall not set a time for nor proceed with a 264
determination of the assessment of compensation until the 265
owner's immediate appeal is final. 266

(C) When an answer is filed pursuant to section 163.08 of 267
the Revised Code, and none of the matters set forth in division 268
(B) of this section is specifically denied, the court shall fix 269
a time ~~within twenty~~ not sooner than ninety days from the date 270
the answer was filed for the assessment of compensation by a 271
jury. 272

(D) If answers are filed pursuant to divisions (B) and (C) 273
of this section, or an answer is filed on behalf of fewer than 274
all the named owners, the court shall set the hearing or 275
hearings at such times as are reasonable under all the 276
circumstances, ~~but in no event later than twenty days after the~~ 277
~~issues are joined as to all necessary parties or twenty days~~ 278
~~after rule therefor, whichever is earlier.~~ 279

(E) The court, with the consent of the parties, may order 280
two or more cases to be consolidated and tried together, but the 281
rights of each owner to compensation, damages, or both shall be 282
separately determined by the jury in its verdict. 283

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

(G) If the court determines the matter wholly or partially in the favor of the owner as to the necessity of the appropriation or whether the use for which the agency seeks to appropriate the property is a public use, in a final, unappealable order, the court shall award the owner reasonable attorney's fees, expenses, and costs.

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

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

(B) The court costs, including jury fees, of any

proceeding shall be paid by the agency as the court directs, 314
except as may be provided for in cases subject to division (A) 315
(2) or (B) (1) of section 163.21 of the Revised Code. ~~The agency~~ 316
~~may offer to confess judgment for the amount to be stated and~~ 317
~~the court costs then made in favor of any owner who in any~~ 318
~~manner enters an appearance or upon whom service has been made.~~ 319
~~If such owner refuses to accept such offer and as a result of~~ 320
~~the trial does not receive more, he shall pay all court costs~~ 321
~~accruing after the offer.~~ 322

Sec. 163.19. Subject to sections 163.07 and 163.09 of the 323
Revised Code, any party may prosecute appeals as in other civil 324
actions from the judgment of the court. 325

The owner may request, and the court may grant, a stay on 326
appeal, provided that the owner posts a supersedeas bond in an 327
amount the court determines. 328

If the agency appeals from a judgment of the court and the 329
judgment is affirmed in whole or in part, the court shall award 330
the owner reasonable attorney's fees, expenses, and costs 331
incurred in defending the appeal. 332

Sec. 163.21. (A) (1) If it has not taken possession of 333
property that is appropriated, an agency may abandon 334
appropriation proceedings under sections 163.01 to 163.22 of the 335
Revised Code at any time after the proceedings are commenced but 336
not later than ninety days after the final determination of the 337
cause. 338

(2) In all cases of abandonment as described in division 339
(A) (1) of this section, the court shall enter a judgment against 340
the agency for costs, including jury fees, and shall enter a 341
judgment in favor of each affected owner, in amounts that the 342

court considers to be just, for each of the following that the owner incurred:

- (a) Witness fees, including expert witness fees;
- (b) Attorney's fees;
- (c) Other actual expenses.

(B) (1) In appropriation proceedings under sections 163.01 to 163.22 of the Revised Code or as authorized by divisions (A) and (B) of section 163.02 of the Revised Code for appropriation proceedings in time of a public exigency under other sections of the Revised Code, if the court determines that an agency is not entitled to appropriate particular property, the court shall enter both of the following:

- (a) A judgment against the agency for costs, including jury fees;
- (b) A judgment in favor of each affected owner, in amounts that the court considers to be just, for the owner's reasonable disbursements and expenses, to include witness fees, expert witness fees, attorney's fees, appraisal and engineering fees, and for other actual expenses that the owner incurred in connection with the proceedings.

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

(C) (1) Except as otherwise provided in division (C) (2) ~~or~~ ~~(3)~~ of this section and subject to division ~~(C) (5)~~ (C) (4) of this section, when an agency appropriates property and the final award of compensation is greater than one hundred twenty-five per cent of the agency's initial good faith offer for the

~~property or, if before commencing the appropriation proceeding~~ 371
~~the agency made a revised offer based on conditions indigenous~~ 372
~~to the property that could not reasonably have been discovered~~ 373
~~at the time of the good faith offer, one hundred twenty five per~~ 374
~~cent of the revised offer made pursuant to section 163.04 of the~~ 375
Revised Code, the court shall enter judgment in favor of the 376
owner, in amounts the court considers just, for all costs and 377
expenses, including attorney's and appraisal fees, that the 378
owner actually incurred. 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) (4) (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), (2), and (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 voids~~ any property acquisition by 457
purchase or condemnation. 458

(B) If a property acquisition by purchase or condemnation 459
is void for failure to satisfy the requirements of section 460

163.59 of the Revised Code, the agency shall pay the owner 461
reasonable attorney fees, costs, and expenses. 462

(C) An owner has a cause of action against an agency for a 463
violation of section 163.59 of the Revised Code. 464

(D) Nothing in sections 163.51 to 163.62 of the Revised 465
Code shall be construed as creating, in any condemnation 466
proceeding brought under the power of eminent domain, any 467
element of value or damage not in existence immediately prior to 468
June 11, 1971. 469

Sec. 163.59. In order to encourage and expedite the 470
acquisition of real property by agreements with owners, to avoid 471
litigation and relieve congestion in the courts, to assure 472
consistent treatment for owners in the many state and federally 473
assisted programs, and to promote public confidence in public 474
land acquisition practices, heads of acquiring agencies shall do 475
or ensure the acquisition satisfies all of the following: 476

(A) The head of an acquiring agency shall make every 477
reasonable effort to acquire expeditiously real property by 478
negotiation. 479

(B) In order for an acquiring agency to acquire real 480
property, the acquisition shall be for a defined public purpose 481
that is to be achieved in a defined and reasonable period of 482
time. An acquisition of real property that complies with section 483
5501.31 of the Revised Code satisfies the defined public purpose 484
requirement of this division. 485

(C) Real property to be acquired shall be appraised before 486
the initiation of negotiations, and the owner or the owner's 487
designated representative shall be given a reasonable 488
opportunity to accompany the appraiser during the appraiser's 489

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

(D) Before the initiation of negotiations for real 504
property, the head of the acquiring agency concerned shall 505
establish an amount that the head of the acquiring agency 506
believes to be just compensation for the property and shall make 507
a prompt offer to acquire the property for no less than the full 508
amount so established. In no event shall that amount be less 509
than the agency's approved appraisal of the fair market value of 510
the property. Any decrease or increase in the fair market value 511
of real property prior to the date of valuation caused by the 512
public improvement for which the property is acquired, or by the 513
likelihood that the property would be acquired for that 514
improvement, other than that due to physical deterioration 515
within the reasonable control of the owner, will be disregarded 516
in determining the compensation for the property. 517

The head of the acquiring agency concerned shall provide 518
the owner of real property to be acquired with a written 519
statement of, and summary of the basis for, the amount that the 520

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

The owner shall be given a reasonable opportunity to 525
consider the offer of the acquiring agency for the real 526
property, to present material that the owner believes is 527
relevant to determining the fair market value of the property, 528
and to suggest modification in the proposed terms and conditions 529
of the acquisition. The acquiring agency shall consider the 530
owner's presentation and suggestions. 531

(E) If information presented by the owner or a material 532
change in the character or condition of the real property 533
indicates the need for new appraisal information, or if a period 534
of more than two years has elapsed since the time of the 535
appraisal of the property, the head of the acquiring agency 536
concerned shall have the appraisal updated or obtain a new 537
appraisal. If updated appraisal information or a new appraisal 538
indicates that a change in the acquisition offer is warranted, 539
the head of the acquiring agency shall promptly reestablish the 540
amount of the just compensation for the property and offer that 541
amount to the owner in writing. No subsequent offers of 542
compensation shall be less than the initial offer. 543

(F) No owner shall be required to surrender possession of 544
real property before the acquiring agency concerned pays the 545
agreed purchase price, or deposits with the court for the 546
benefit of the owner an amount not less than the agency's 547
approved appraisal of the fair market value of the property, or 548
the amount of the award of compensation in the condemnation 549
proceeding for the property. 550

(G) The construction or development of a public 551
improvement shall be so scheduled that no person lawfully 552
occupying real property shall be required to move from a 553
dwelling, or to move the person's business or farm operation, 554
without at least ninety days' written notice from the head of 555
the acquiring agency concerned of the date by which the move is 556
required. 557

(H) If the head of an acquiring agency permits an owner or 558
tenant to occupy the real property acquired on a rental basis 559
for a short term or for a period subject to termination on short 560
notice, the amount of rent required shall not exceed the fair 561
rental value of the property to a short-term occupier. 562

(I) In no event shall the head of an acquiring agency 563
either advance the time of condemnation, or defer negotiations 564
or condemnation and the deposit of funds in court for the use of 565
the owner, or take any other action coercive in nature, in order 566
to compel an agreement on the price to be paid for the real 567
property. For claims of coercive actions, the state hereby 568
waives its immunity from liability, and, notwithstanding Chapter 569
2743. of the Revised Code, such actions shall be brought in the 570
court of common pleas in the county where the property in 571
question is located. 572

(J) When any interest in real property is acquired by 573
exercise of the power of eminent domain, the head of the 574
acquiring agency concerned shall institute the formal 575
condemnation proceedings. No head of an acquiring agency shall 576
intentionally make it necessary for an owner to institute legal 577
proceedings to prove the fact of the taking of the owner's real 578
property. 579

(K) If the acquisition of only part of a property would 580

leave its owner with an uneconomic remnant, the head of the 581
acquiring agency concerned shall offer to acquire that remnant. 582
For the purposes of this division, an uneconomic remnant is a 583
parcel of real property in which the owner is left with an 584
interest after the partial acquisition of the owner's property 585
and which the head of the agency concerned has determined has 586
little or no value or utility to the owner. 587

An acquisition of real property may continue while an 588
acquiring agency carries out the requirements of divisions (A) 589
to (K) of this section. 590

This section applies only when the acquisition of real 591
property may result in an exercise of the power of eminent 592
domain. 593

Sec. 163.62. (A) The court having jurisdiction of a 594
proceeding instituted by a state agency to acquire real property 595
by condemnation shall award the owner of any right, or title to, 596
or interest in, such real property such sum as will in the 597
opinion of the court reimburse such owner for the owner's 598
reasonable costs, disbursements, and expenses, including 599
reasonable attorney, appraisal, and engineering fees actually 600
incurred because of the condemnation proceeding, as provided in 601
division (G) of section 163.09 or division (A) or (C) of section 602
163.21 of the Revised Code, as applicable. 603

(B) The court having jurisdiction of an inverse 604
condemnation proceeding shall award the owner of any right, or 605
title to, or interest in, such real property such sum as will in 606
the opinion of the court reimburse such owner for the owner's 607
reasonable costs, disbursements, and expenses, including 608
reasonable attorney, appraisal, and engineering fees actually 609
incurred because of the inverse condemnation proceeding, if the 610

court renders a judgment in favor of the owner or the agency 611
effects a settlement of the proceeding. As used in this 612
division, "court" means the court of common pleas, the court of 613
appeals, or the supreme court. 614

(C) Any award made pursuant to division (A) or (B) of this 615
section shall be paid by the head of the agency for whose 616
benefit the condemnation proceeding was instituted. 617

(D) (1) The General Assembly finds that the amendment to 618
this section by this act is remedial in nature in order to 619
ensure that Ohio is in compliance with the "Uniform Relocation 620
Assistance and Real Property Acquisitions Policies for Federal 621
and Federally Assisted Programs Act," 42 U.S.C. 4601, et seq., 622
and its implementing regulations, 49 C.F.R. 24.1, et seq. 623
Therefore, the General Assembly hereby declares its purpose in 624
amending this section in this act is that the amendment apply to 625
any judgment in favor of the owner in an inverse condemnation 626
proceeding or settlement effectuated by the agency in such a 627
proceeding that occurred on or after January 1, 2019. 628

(2) The amendment to this section by this act is in 629
response to the Supreme Court's opinion in *State ex rel. New* 630
Wen, Inc. v. Marchbanks, 163 Ohio St.3d 14, 2020-Ohio-4865. 631
There, the Supreme Court declared ineffective a provision in the 632
Administrative Code that authorized certain litigation expenses, 633
including reasonable attorney fees, to owners of real property 634
who prevailed in inverse condemnation proceedings. In a 635
concurring opinion, Justice Fischer, as joined by Justice 636
DeWine, wrote "separately to point out that the General Assembly 637
should examine the issue whether a property owner in Ohio who is 638
forced to file a lawsuit, in this case for a writ of mandamus, 639
to get a court order when the state has taken that owner's 640

property without filing a proper appropriation case, should or 641
should not be entitled to an award of attorney fees." In 642
amending this section, the General Assembly agrees with Justices 643
Fischer and DeWine that Ohioans "who have had property 644
improperly taken by any government—and who must go to court to 645
correct that problem caused by the government—should be entitled 646
to their attorney fees, which they incurred to uphold their 647
constitutionally protected property rights." 648

Section 2. That existing sections 163.01, 163.021, 163.04, 649
163.09, 163.16, 163.19, 163.21, 163.52, 163.59, and 163.62 of 650
the Revised Code are hereby repealed. 651