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Bill Analysis

Sub. S.B. 7*

127th General Assembly
(As Reported by S. State & Local Government & Veterans Affairs)

Sens. Grendell, Harris, Faber, Schaffer, Amstutz, Coughlin, Gardner, Padgett, Schuring, Clancy

BILL SUMMARY

- Specifies that any appropriation must be necessary and for a public use.
- Defines public use to not include private purpose conveyances unless the property is blighted and taken pursuant to a redevelopment plan adopted by legislative authority.
- Defines "blight" and "blighted area" and uses those definitions throughout the Revised Code in place of existing definitions.
- Specifies that at least 90% of parcels in an area must be blighted for the area to qualify as a "blighted area."
- Prohibits agencies with appropriation power from using that power to enforce nuisance laws.
- Generally exempts agricultural land from being declared blighted if the land meets specified qualifications.
- Requires specified disclosures on conveyance instruments to include the purpose of the appropriation and a statement of the owner's right to repurchase.
- Deems an owner's voluntary conveyance of a property to an agency to be, for all purposes, a sale under the threat of appropriation for a public use.

* This analysis was prepared before the report of the Senate State and Local Government and Veterans Affairs Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Requires unelected agencies to obtain approval from the public agency or elected individual that appointed the agency.

- Specifies that contents of a request for approval of an appropriation from an appointing entity must include a description of all affected properties and the address of each.

- Prohibits a park board, park district, board of directors of a conservancy district, and similar entities from appropriating real property outside the entity's jurisdiction.

- Requires any public agency with authority to appropriate property outside its jurisdiction to obtain approval from the legislative authority where the property is located.

- Requires an agency to adopt procedures under which the public is entitled to comment on a proposed appropriation, with the procedures to include specified notice and a reasonable public comment period.

- Permits the notice and public comment period to be on the basis of an individual appropriation or a project, but prohibits notice for an entire project unless specified procedures and property identification requirements are met.

- Requires a public hearing in addition to the public comment period if the agency's board is not elected by the public and permits a public hearing on a project basis if the bill's notice requirements are met.

- Excepts utilities and electric cooperatives from the notice, comment, and public hearing requirements under specified conditions.

- Provides an exception from the notice, comment, and hearing requirements for takings pursuant to a public exigency.

- Requires an appraisal of each property, a summary appraisal, or a written explanation of how the agency established the value of the property. The records of the county auditor may not be used to determine a property's value.

- Permits an agency to initiate appropriation proceedings in court only after an attempt to agree on a conveyance or the terms of a conveyance.

- Specifies that the content of a petition include a statement that the taking is necessary and for a public use, that all approvals have been received, the appraised value of the property, and affirmation that the stated amount was offered to the owner.

- Requires the petition for a blighted property to include a statement that shows the basis for the finding of blight as well as a map clearly showing the delineated boundaries of the redevelopment area.

- Grants the owner of a property where less than the whole is needed the discretion to determine whether the agency must appropriate the whole property or just the needed portion.

- Maintains existing quick take procedures but authorizes attorney's fees, appraisal fees, and expenses if the award is 125% or more of the amount deposited with the court.

- Requires an owner to answer a petition in general terms, eliminating the need for alleging facts as under current law.

- Places the burden of proof, with respect to any matter, on the agency once the owner has established a prima-facie case instead of placing the burden of proof on the owner as under current law.

- Specifies that the matter of necessity of an appropriation is for the court to decide.

- Gives the owner the right to an immediate appeal if the order is in favor of the agency.

- Grants the owner reasonable attorney's fees, expenses, and costs if the final, unappealble order is against the agency as to the necessity of an appropriation.

- Directs the jury to make an award for goodwill if the bill's qualifications are met.

- Requires the court to award reasonable attorney's fees and expenses, including appraisal fees, if the jury award is 125% more than the value the agency included in the appropriation petition and offered the owner.

- Provides limits for attorney's fees and expert witness fees.

- Eliminates the provision that allowed the agency to take possession of property before appeals could be filed.

- Permits a court to grant a stay on appeal to prevent the agency from taking a property while an appeal is pending.

- Permits an owner to repurchase property under certain conditions if an agency abandons a project or does not use the property for the purpose appropriated; specifies how the value of the property will be determined.

- Extends the program of relocation assistance and compensation currently applied to highway takings and takings using federal funds to all takings, to include moving costs, rent supplements, down payment assistance, planning assistance, and miscellaneous expenses.

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CONTENT AND OPERATION

Introduction

Eminent domain

Both the United States and Ohio Constitutions limit the government's power of eminent domain to situations where the property is being taken for a "public use" and the owner is compensated (United States Const., Amend. 5, Ohio Const., Art. I, sec. 19). In *Kelo v. City of New London* (2005), 125 S.Ct. 2655, the United States Supreme Court held that economic development was a legitimate public use and authorized the taking of private property that was not blighted to give it to another private entity for purposes of economic development. *Kelo* noted, however, that "nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power." (*Kelo* at 36.)

Task force

In response to *Kelo*, the 126th General Assembly created the Legislative Task Force to Study Eminent Domain and its Use and Applications in the State. The task force was instructed to study the use of eminent domain and its impact on the state, how the decision in *Kelo* affects state law governing the use of eminent domain, and the overall impact of laws governing the use of eminent domain on economic development, residents, and local governments. The task force included members of the House and Senate, representatives from executive branch agencies, local government representatives, and advocates for developers and property owners (Sections 3 and 4 of Am. Sub. S.B. 167 of the 126th General Assembly). The task force met 13 times during 2006 and issued its final report on August 1, 2006.

Norwood v. Horney

Shortly before the task force issued its final report, the Ohio Supreme Court issued an opinion in *Norwood v. Horney* (2006), 110 Ohio St.3d 353, that interpreted the Ohio Constitution to provide greater protections for property rights than under the *Kelo* decision. In *Norwood*, the Court held that an economic benefit alone does not satisfy the Ohio Constitution's "public use" requirement. The court struck down the city's definition of blight as unconstitutionally vague because it included "deteriorating" areas, a classification that relies on speculation as to the future condition of the property, and also held part of R.C. 163.19 (appeals in eminent domain cases) to be unconstitutional in violation of the separation of powers doctrine. The Court addressed judicial review of eminent domain laws and offered that courts should apply heightened scrutiny when reviewing statutes that regulate eminent domain.

This bill incorporates some of the task force recommendations and makes other modifications to the Ohio Eminent Domain Law in Chapter 163. of the Revised Code, including the incorporation of rulings and suggestions of the Ohio Supreme Court in its *Norwood* decision.

Application of the law

The bill sets forth its intent to provide a uniform eminent domain law by specifying that any reference in the Revised Code to an authority to acquire real property by "condemnation" or to take real property pursuant to a power of eminent domain is deemed to be an appropriation of real property and that any such taking or acquisition must be made pursuant to Chapter 163. (R.C. 163.02 and 163.63). The bill continues the constitutionally required procedures for "quick take" appropriations. (**COMMENT** 2 contains a discussion of "quick take.") The bill also maintains the authority of the Director of Transportation to appropriate real property pursuant to the Eminent Domain Law or as otherwise provided by

law (R.C. 163.02(A) and (B)). The bill specifies that no agency with appropriation power may use that power as a substitute for the enforcement of nuisance laws (R.C. 1.08(C)(2)).

Public use

The bill prohibits agencies from appropriating real property except as necessary and for a public use. The burden is placed on the agency to show by a preponderance of the evidence in any appropriation that the taking is necessary and for a public use. The bill establishes limits on takings by stating that "public use" does not include any taking that is for conveyance to a private commercial enterprise, for economic development, or solely for the purpose of increasing public revenue, unless the taking agency shows by a preponderance of the evidence that the property being appropriated is within a blighted area and the taking is pursuant to a redevelopment plan having a purpose of eliminating blight that has been adopted by the legislative authority where the property is located (R.C. 163.021(A)(1) and (2)).

Presumption of public use

All of the following are presumed to be a public use: utility facilities, roads, sewers, water lines, public schools, public parks, government buildings, projects by an agency that is a public utility (as defined in section 4905.02 of the Revised Code) or an agency holding a certificate of public convenience and necessity granted by the Federal Energy Regulatory Commission, an electric cooperative (as defined in R.C. 4928.01), and similar facilities and uses of land (R.C. 163.021(A)(3)).

"Blight"

The definition of "blight" is important with regard to eminent domain, because the Ohio Supreme Court has found that taking blighted property for conveyance to a private owner for redevelopment meets the Ohio Constitution's public use requirement. (*Breustle v. Rich* (1953), 159 Ohio St. 13.) Current law contains multiple definitions of "blight" and "slum." The bill creates a uniform definition that applies throughout the Revised Code and eliminates existing definitions that appear in separate sections of the Revised Code: R.C. 303.26 (county renewal), 719.012 (municipal corporation rehabilitation), 725.01 (urban renewal), 1728.01 (impacted city), and 3735.40 (housing projects). (**COMMENT** 1 presents a more detailed discussion of existing definitions of blight.)

Definition of "blight"

Under the bill, "blighted property means a property to which either of the following applies:

(1) The property contains a structure that is dilapidated, unsanitary, unsafe, or vermin-infested, and because of its condition an agency that is responsible for the enforcement of housing, building, or fire codes has designated it unfit for human habitation or use.

(2) The property has two or more of the following conditions:

(a) The property or a structure on the property constitutes a public nuisance because of its physical condition, use, or occupancy.

(b) The property contains a structure that in its current condition is a fire hazard, or is otherwise dangerous to the safety of persons or property.

(c) The property contains a structure from which the utilities, plumbing, heating, sewerage, or other facilities have been disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.

(d) The property is a vacant or unimproved lot or parcel in a predominantly built-up-neighborhood that, by reason of neglect or lack of maintenance, has become a place for accumulation of trash and debris, or a haven for rodents or other vermin.

(e) The property has tax delinquencies that exceed the value of the property.

(f) The property or a structure on the property has code violations that substantially affect health or safety, and at least one year has passed since an appropriate code enforcement agency provided notice to the owner of the need to rehabilitate the property or structure, and the property or structure has not been substantially rehabilitated.

(g) The property poses a direct threat to public health or safety in its present condition by reason of environmentally hazardous conditions, solid waste pollution, or contamination.

(h) The property is an abandoned property, meaning that the owner or estate in possession of the property has declared it to be abandoned, or the property is occupied by a person who does not have a legal or equitable right to occupy the property and the entity taking the property is unable to identify and communicate with the owner despite making reasonable efforts. (R.C. 1.08(A).)

Definition of "blighted area" and "slum"

Under the bill, "blighted area" and "slum" mean a delineated area that the taking agency establishes, that is comprised of contiguous properties, and in which

over 90% of all properties within the borders of the delineated area are blighted properties. Only properties within the delineated boundaries may be considered in the determination that an area is a "blighted area" or "slum." No area may be designated as a "blighted area" or "slum" unless the boundaries of that area are clearly delineated on a map that is made available to the public (R.C. 1.08(B)).

The bill prohibits any person from considering whether a property could generate more tax revenues if put to another use when determining whether a property is a blighted property or whether an area is a blighted area or slum (R.C. 1.08(C)).

Limitations on declaring agricultural land blighted

The bill generally exempts agricultural land from being declared blighted by specifying that absent any environmental or public health hazard that cannot be corrected under its current use or ownership, an agricultural property is not a blighted property if its condition is consistent with conditions that are normally incident to generally accepted agricultural practices and the land is used for purposes consistent with the definition of "agriculture" in section 1.61 of the Revised Code, or the county auditor has determined under R.C. 5713.31 that the land is "land devoted exclusively to agricultural use" as defined in R.C. 5713.30 (R.C. 1.08(D)).

Required disclosures on conveyance documents

Continuing law requires any instrument by which the state or agency acquires real property under the Eminent Domain Law to identify the name of the agency that has the use and benefit of the real property. The bill adds the requirements that the instrument include a statement of the purpose of the appropriation as provided in the appropriation petition, and a statement that the prior owner possesses a right of repurchase pursuant to the bill's limitations if the agency decides not to use the property for the purpose stated in the appropriation petition and the owner provides timely notice of a desire to repurchase. The bill also specifies that it does not affect the authority of the director of transportation to convey unneeded property as under continuing law (R.C. 5501.34 (not in the bill)). (R.C. 163.02(D).)

Voluntary conveyance

The bill clarifies that the Eminent Domain Law does not prohibit any person from voluntarily conveying a property to an agency that is considering appropriating the property or that offers to purchase the property under threat of appropriation. Any such voluntary conveyance of a property to an agency is deemed for all purposes to be a sale under the threat of appropriation for a public use. This provision applies to a voluntary conveyance to an agency regardless of

whether the property is a blighted property or is located in a blighted area, or the property subsequently could be found for any reason not to qualify for appropriation by the agency. (R.C. 163.02(E).)

Limits on taking

Takings by non-elected agencies

The bill prohibits a public agency that is not elected from appropriating real property unless the public agency or elected individual that appointed the agency approves the appropriation or a majority of the appointing public agencies or elected individuals approve the appropriation if more than one agency or individual participated in the appointment. If the agency that is not elected is a state agency or a state instrumentality such as a university, the approval is to be by the Governor (R.C. 163.02(B)(1)).

The bill specifies that these required approvals be obtained for each appropriation or each project for which the agency proposes to appropriate property. If the project includes more than one property, an agency may request approval for the project only if that request includes a description of all affected properties in the project by the street address of each property or other method of identification by which an owner reasonably would be made aware that the owner's property is included in the project. If the agency adds properties to the project following an approval, the agency shall seek an additional approval for appropriation of those additional properties pursuant to the same procedures and requirements as the initial approval. Authority to approve appropriations may not be delegated to an agency that is not elected (R.C. 163.02(B)(2)).

Location of property

Under the bill, a park board, a park district, a board of directors of a conservancy district, an incorporated association with a purpose of establishing or preserving public parks and memorial sites, or a similar park authority is prohibited from appropriating real property unless the property is located within the entity's jurisdiction (R.C. 163.02(C)).

Any public agency with authority to appropriate property outside its jurisdiction is required under the bill to obtain approval for the proposed appropriation from the legislative authority where the property is located and is required to include a copy of that approval with any petition for appropriation (R.C. 163.02(D)).

Public notice, comment, and disclosure

Public comment

The bill requires any agency that appropriates real property to adopt procedures under which the public is entitled to comment on a proposed appropriation. The procedure is to include notice and a reasonable public comment period. For at least two consecutive weeks prior to any appropriation, the agency is to provide notice of the proposed appropriation in a newspaper of general circulation in the county in which the appropriation is proposed. If the notice is for a project that includes more than one property, the notice is to describe the project and identify each property in the project by the property's street address or other method reasonably designed to enable an owner to recognize that the owner's property is included in the project. Any notice is to specify the dates during which the agency will accept written comment and set forth the address to which persons may submit comments.

The required public notice may be for the appropriation of an individual property or for a project so long as the notice for the project clearly identifies each property in the project and each owner is given an opportunity to provide comment. If the agency adds additional properties to the project, the agency is required to repeat this procedure for those additional properties. During the period of public comment, the agency is required to accept from any person a written comment addressing the proposed appropriation and any project for which that appropriation would be made (R.C. 163.04(A)(1)).

Public hearing

If a public agency's board is not elected by the public, the agency must, in addition to the general public comment requirements, hold at least one public hearing per appropriation or per project, following the two weeks' published notice. The agency's notice is to include, in addition to all other notice requirements, the time, date, and location of the public hearing.

A public hearing may be held for an individual property or for a project so long as the notice for a project clearly identifies each property in that project and each owner is given an opportunity to provide comment at the public hearing. If the agency adds additional properties to the project, the agency is required to repeat the procedure for the public hearing (R.C. 163.04(A)(2)).

Utility exception

Under the bill, any agency that is a public utility as defined in R.C. 4905.02, an electric cooperative as defined in R.C. 4928.01, or a utility owned by a municipal corporation satisfies the bill's notice and hearing requirements if the

agency has a certificate granted by a regulatory agency for the facility or project for which property will be appropriated. If the public utility, electric cooperative, or utility owned by a municipal corporation does not have such a certificate, it is required to provide notice to all affected property owners at least 30 days prior to any initial offer to purchase property. The notice informs the owner that all or a portion of the property is necessary for a project, describes the nature of the project, and describes the property to be acquired by street address or other reasonable method that would enable an owner to identify the property (R.C. 163.04(A)(3)).

Exigency exception

The bill provides an exception for its notice and hearing requirements if the appropriation is to eliminate a health nuisance or is pursuant to a public exigency (R.C. 163.04(A)(4)).

Appraisal

An agency is prohibited from appropriating property unless prior to filing a petition for appropriation the agency makes a good faith offer to the owner and provides the owner or the guardian, agent, or trustee of the owner with a copy of an appraisal, a summary appraisal if the agency performed only a summary appraisal, or a written explanation of how the agency established the value of the property. The agency need not provide the owner, guardian, agent, or trustee an appraisal, summary appraisal, or written explanation of value if none of the persons to be provided the information is known or their residence or business address cannot be ascertained with reasonable diligence. The bill specifies that the tax records of the county auditor may not be used to determine a property's value in an appropriation action, but county tax payment records are prima-facie evidence of ownership for purposes of an adverse possession action (R.C. 163.04(B)).

Attempt to agree

Under continuing law, an agency may appropriate property only after the agency is unable to agree with an owner or an owner's representative, but did not specify the subject of that failure to agree. The bill specifies that the agency may appropriate property only after the parties are unable to agree on a "conveyance or the terms of a conveyance." Under existing law, this requirement is excepted if the residence of the owner is unknown or cannot be ascertained with reasonable diligence. The bill specifies that the exception applies if the residence or business address of any of the persons who could approve a conveyance cannot be ascertained with reasonable diligence (R.C. 164.04(C)).

Petition for appropriation

When an agency's attempts to negotiate a sale fail and the agency has made a good faith offer to purchase the property, the agency may initiate proceedings to appropriate the property using its power of eminent domain. Continuing law requires that an agency commence appropriation proceedings in a proper court by filing a petition for appropriation of each parcel or contiguous parcels in a single common ownership. The content of the petition must include a description of each parcel or the interest in each parcel sought to be appropriated, a statement of the purpose of the appropriation, a statement of the estate or interest to be appropriated, the names and addresses of the owners, and a statement showing that preliminary requirements (attempt to agree with owner) have been met. Additionally, existing law requires a private agency to provide in the petition for appropriation a statement that the appropriation is necessary.

Under the bill, all agencies must include a statement in the petition that the appropriation is necessary and for a public use. Further, if the agency is a public agency or an agency for which a resolution or approval is required, it must include a copy of the resolution or approval (R.C. 163.05(A) and (B)(1)).

The bill also requires that all petitions include a statement showing the appraised value of the property and affirming that the stated amount was offered to the owner as compensation. If the property is part of a blighted area that is being appropriated pursuant to a redevelopment plan, the petition must include a statement that shows the basis for the finding of blight and that supports that the redevelopment area in which the parcel is located is a "blighted area" as the bill defines, and include a map that clearly sets forth the delineated boundaries of the redevelopment area (R.C.163. 05(B)(2) and (3)).

Amount of property to acquire

Under existing law, if an agency requires less than the whole of any parcel that contains a residence structure and the required portion would remove a garage and sufficient land that a replacement garage could not be lawfully or practically attached, the appropriation is required to be for the whole parcel. The bill gives the owner the discretion to waive this requirement. In this case, the agency may appropriate only the portion that the agency requires as well as the entirety of any structure that is in whole or in part on the required portion (R.C. 163.05).

"Quick take" procedures

Current law provides special procedures for taking if the appropriation is pursuant to Section 19 of Article I, Ohio Constitution, for immediate seizure or for roads that will be open to the public. The bill does not change these procedures (R.C. 163.06). However, under the bill, if a jury award for the value of the

property exceeds 125% of the amount the agency deposited with the court as the estimated value of the property, the owner is to be awarded attorney's fees, appraisal fees, and expenses as the bill specifies (R.C. 163.06(D)).

Answer to petition

If an owner disagrees with any aspect of an appropriation, including its necessity, the value of a property, and whether for a public use continuing law enables the owner to contest that taking in court by filing an answer to a petition for appropriation. Under existing law the owner must "specifically" deny the matters alleged in the petition for appropriation and set forth the facts relied upon in support of the denial. Under the bill, the owner is required only to deny any allegations and is not required to set forth facts supporting that general denial (R.C. 163.08(A)).

Burden of proof in court

Continuing law provides procedures for a court to follow in appropriation proceedings. Under existing law, the burden of proof with respect to any matter the owner denied is on the owner. The bill shifts the burden of proof to the agency, stating that when the owner has established a prima-facie case as to any matter denied, the burden of proof with respect to that matter is upon the agency by a preponderance of the evidence. The bill also specifies that the public necessity of the taking is an issue for the court to determine. And the bill establishes that an owner has a right to an immediate appeal if the order of the court is in favor of the agency in any of the matters the owner denied in the answer (R.C. 163.09(B)(1) and (3) and (F)).

Under the bill, in any final, unappealable order that is against the agency as to the necessity of an appropriation, the owner is to be awarded reasonable attorney's fees, expenses, and costs as set forth in the bill (R.C. 163.09(G)).

Awards for the value of the property

Goodwill

Under continuing law, a jury establishes the amount to be awarded for the value of buildings and other damages but does not provide for an award of "goodwill." Under the bill, the jury also is to assess compensation to the owner of a business conducted on the property if the property is part of a larger parcel for loss of goodwill if the owner proves both of the following:

- The loss is caused by the taking of the property or the injury to the remainder;

- The loss cannot reasonably be prevented by relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill. Compensation for loss of goodwill is not to be included in payments made under other sections of the law and `is not to be duplicated in any compensation otherwise awarded to the owner (R.C. 163.14).

"Goodwill" means the calculable benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances that result in probable retention of old, or acquisition of new, patronage (R.C. 163.01(M)).

When award is greater than 125% of offer

If the amount of compensation the jury awards to an owner is greater than 125% of the value the agency included in the appropriation petition, the court is required to award the owner reasonable attorney's fees and expenses incurred or contracted, including appraisal fees (R.C. 163.14(B)(1)).

Any award of attorney's fees is to be in an amount the judge determines appropriate, but is not to exceed 25% of the amount by which the awarded value exceeds the appraised value that was stated in the appropriation petition or, in the case of an appropriation due to exigency, the amount deposited with the court (R.C. 163.14(B)(2)).

The bill limits an award of expert witness fees to the amount the judge determines appropriate, not to exceed a total of $10,000. If cases have been consolidated, the judge is to determine the portion of that amount to be distributed on behalf of each parcel included in the consolidated case (R.C. 163.14(B)(3)).

The bill directs the agency to deposit any of these amounts awarded with the court for distribution (R.C. 163.14(B)(4)).

Right to possess the property

Under existing law, an agency may take possession of a property when it has deposited with the court the amount of the award. Existing law does not allow an owner to appeal before the property is taken. Under the bill, the agency may take possession when the owner has accepted the award or all appeals have been exhausted. The bill specifies that this limitation does not apply to takings due to a public exigency under R.C. 163.06 (R.C. 163.15).

Stay on appeal

Continuing law specifies that appeals may be prosecuted as in other civil actions. However, existing law specifies that an agency may take and use a property before an appeal is adjudicated if the agency has paid or deposited the amount of the award with the court and gives adequate security for further compensation and costs. Existing law does not permit a judge to grant a stay on appeal, a law that the Ohio Supreme Court ruled in *Norwood* is unconstitutional, in violation of the doctrine of separation of powers.

The bill removes the existing language that permits possession during an appeal and that does not allow a stay. The bill specifies instead that any appeal in an appropriation action is to be heard in an expedited manner and the owner has the right to an immediate appeal. Either party may request, and the court may grant, a stay on appeal, provided that the owner posts a supersedeas bond in an amount the court determines (R.C. 163.19).

Court costs

Under existing law, court costs are to be paid as the court directs, except that in specified cases, the costs are to be paid by the owner if the owner refuses to accept an offer and in the trial does not receive more. Under the bill, all court costs are to be paid by the agency (R.C. 163.16).

Agency abandons project

Continuing law specifies awards an agency is to make to an owner if the agency abandons a project. The court is directed in such a case to enter a judgment against the agency for costs including jury fees, and a judgment in favor of each owner in amounts the court considers just, for witness fees, including expert witness fees, attorney's fees, and other actual expenses. The bill adds appraisal fees and engineering fees, and reasonable costs and disbursements. The bill specifies that an award is to be paid by the head of the agency for whose benefit the appropriation proceedings were initiated (R.C. 163.21).

Right to repurchase

The bill establishes an owner's right to repurchase a property if an agency abandons a project or decides not to use the property for the purpose stated in the appropriation petition. Under the bill, if an agency abandons a project or decides not to use appropriated property for the purpose stated in the appropriation petition, the prior owner from whom the property was appropriated may repurchase the property if that owner provides timely notice to the agency that the owner desires to repurchase the property and the agency has not conveyed or transferred title to the property to another person or agency.

The right of repurchase is extinguished five years after the agency acquires the property or prior to that time if either of the following occur:

- The prior owner declines to repurchase the property;
- The prior owner fails to repurchase the property within 60 days after the agency offers the property for repurchase;
- The property qualified as blighted property at the time it was appropriated (R.C. 163.211(B)).

The bill specifies that its right to repurchase does not affect the authority of the Director of Transportation to convey unneeded property pursuant to R.C. 5501.34 (not in the bill), an authority the Director has under existing law (R.C. 163.211(C)).

Price to repurchase

The bill establishes that the fair market value of the property that an owner may repurchase a property may be determined by mutual agreement of the owner and the agency. However, if they are unable to agree, the court is to determine the fair market value. The amount the owner is required to pay for the property is the lesser of the court determined fair market value or the price the agency paid for the acquisition, increased by the amount by which the consumer price index increased since the acquisition (R.C. 163.211(D)).

Relocation assistance and compensation

Existing law contains a program of assistance and compensation generally known as the "Displaced Persons Law" (R.C. 163.51 to 163.62). That law generally applies to agencies using federal funds and to highway projects. With specified modifications, the bill extends the law to all takings under Chapter 163. The following summarizes those provisions.

Moving costs and costs to reestablish farm or small business

The bill extends the existing law to all takings so that agencies are required to make payment to any displaced person to cover moving costs, loss of personal property, and search costs to re-establish a farm, nonprofit organization, or small business. The bill provides for an alternative fixed payment based on the average annual net income of the business or farm operation for the two years prior to the displacement, with the amount limited to not less than $1,000 nor more than $20,000.

Continuing law also provides special assistance programs when utility facilities are relocated pursuant to an appropriation and the purpose of the appropriation was not the relocation of those facilities (R.C. 163.53).

Owner-occupant expenses

Under continuing law extended to all takings, owner-occupants of a dwelling receive reimbursement for costs and in addition receive either the amount needed above the amount of the award to equal reasonable costs of a comparable replacement dwelling and increased costs of financing and purchase, or a lump sum down payment and purchase expense assistance. The bill establishes an upper limit of $5,250 for this purpose (R.C. 163.54).

Rent supplement

In addition to other amounts provided, continuing law provides rent supplement payments to or for any displaced person from any dwelling not eligible to receive a payment under R.C. 163.54 if the person lawfully and actually occupied the dwelling for not less than 90 days prior to the initiation of negotiations for acquisition of the dwelling. The payment consists of an amount necessary to enable the person to lease or rent a comparable replacement dwelling for a period not to exceed 42 months. As an alternative to using these funds to supplement rent, the person may use the rent supplement for a down payment and other expenses related to the purchase of a dwelling, in an amount that is the greater of $5,250 or the amount the person would have received in rent assistance (R.C. 163.55).

Planning assistance

Continuing law requires that planning and assistance be offered to a displaced person, and that advisory services be provided to minimize the impact on those displaced (R.C. 163.56).

Provide housing

If the agency cannot carry out the displaced persons program because comparable replacement housing is not available, continuing law extended by the bill to all takings permits the agency to use project funds to provide comparable replacement housing and enables the agency to enter into contracts for relocation services and assistance (R.C. 163.57).

Rules for relocation programs

Continuing law, extended by the bill to all takings, authorizes the head of the agency to establish rules to ensure relocation programs are administered in a uniform manner and that payments are made promptly (R.C. 163.58).

Appraisal

Continuing law provides guidelines to encourage acquisition of property by negotiation and includes the general right of a property owner to accompany an appraiser, and requires an offer to be not less than the appraised value. Existing law requires that an appraisal be performed before the initiation of negotiations but provides an alternative to an appraisal when the value of a property is low. The bill requires that in the alternative to an appraisal, the agency may provide a summary appraisal or a written statement that describes how the agency determined the value of the property. The agency is required to provide a copy of the appraisal, summary appraisal, or written statement to the property owner at the time an offer is made to purchase (R.C. 163.59).

Purchase of an adversely affected property

Continuing law provides procedures to be followed to purchase a property that is not needed for a project, but that would be adversely affected by the project so that the owner is left with a property with little or no value (R.C. 163.60).

Miscellaneous expenses of property transfer

Continuing law allows for an agency head to reimburse the owner for reasonable costs incurred, including transfer payments, mortgage penalties, and pro-rata apportionment of taxes (R.C. 163.61).

Definitions governing Chapter 163.

(A) "Public agency" means any governmental corporation, instrumentality, unit, organization, or officer authorized by law to appropriate property in the courts of this state. "Public agency" does not include a utility owned by a municipal corporation.

(B) "Private agency" means any other corporation, firm, partnership, voluntary association, joint-stock association, or company that is not a "public agency," authorized by law to appropriate property in the courts of this state.

(C) "Agency" means any public agency or private agency authorized by law to appropriate property in the courts of this state. "Agency" includes a utility owned by a municipal corporation.

(D) "Business" means any lawful activity, excepting a farm operation, conducted primarily for one or more of the following:

(1) The purchase, sale, lease, and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(2) The sale of services to the public;

(3) By a nonprofit organization;

(4) Solely for the purposes of section 163.53 of the Revised Code, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(E) "Comparable replacement dwelling" means any dwelling that is decent, safe, and sanitary; adequate in size to accommodate the occupants; within the financial means of the displaced person; functionally equivalent to the displaced person's dwelling; in an area not subject to unreasonable adverse environmental conditions; and in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

(F) "Court" means the court of common pleas or the probate court of any county in which the property sought to be appropriated is located in whole or in part.

(G) "Displaced person" means any person who moves from real property or moves personal property from real property on which the person is a residential tenant or conducts a business or farm operation, when that move is a direct result of a written notice of intent to acquire or the acquisition of that real property, in whole or in part, under a program or project an agency undertakes or as a direct result of rehabilitation, demolition, or other displacing activity on real property by an agency, and the head of the agency determines that the displacement is permanent. "Displaced person" does not include a person who has been determined, according to criteria the head of the agency establishes, to be either in unlawful occupancy of the displacement dwelling or to have occupied that dwelling for the purpose of obtaining assistance under this chapter, or a person who became an occupant of the dwelling after its acquisition and whose occupancy is on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

(H) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(I) "Mortgage" means the classes of liens commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of Ohio, together with the credit instruments, if any, secured thereby.

(J) "Owner" means any individual, partnership, association, or corporation having any estate, title, or interest in any real property sought to be appropriated.

(K) "Person" includes any individual, partnership, corporation, or association.

(L) "Real property," "land," or "property" means any estate, title, or interest in any real property that is authorized to be appropriated by the agency in question, unless the context otherwise requires.

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

COMMENT

1. Existing definitions of blight in the Revised Code

The laws authorizing counties and municipal corporations to conduct renewal projects (R.C. 303.26 to 303.59; Chapter 725.--not in the bill) contain nearly identical definitions of blight and slum. "Blighted area" is defined as an area which substantially impairs or arrests sound growth, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of a substantial number of slum, deteriorated, or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions to title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors. In the case of county renewal projects, "blighted area" also includes a disaster area in need of redevelopment or rehabilitation as

certified by the county commissioners and the governor. "Slum area" is defined as an area which is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals, or welfare because it contains a predominance of buildings or improvements, whether residential or nonresidential, that suffer from dilapidation, deterioration, age or obsolescence, inadequate provisions for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property, by fire and other causes, or any combination of such factors. (R.C. 303.26(D) and (E); 303.36--not in the bill, 725.01(A) and (B).) A county that is conducting a renewal project to address blight or slum conditions is specifically authorized to exercise eminent domain (R.C. 303.37(C), 303.38--not in the bill). A municipal corporation is generally authorized to acquire property as necessary for an urban renewal project--unlike a county, a municipal corporation does not need a specific statutory authorization because its constitutional home rule powers include eminent domain authority (R.C. 725.01(I); *State ex rel. Breustle v. Rich* (1953), 159 Ohio St. 13, 13-15).

The laws authorizing the creation of community urban redevelopment corporations (Chapter 1728.--not in the bill) define "blighted area" as an area containing a majority of structures that have been extensively damaged or destroyed by a major disaster, or that, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, unsafe and unsanitary conditions or the existence of conditions which endanger lives or properties by fire or other hazards and causes, or that, by reason of location in an area with inadequate street layout, incompatible land uses or land use relationships, overcrowding of buildings on the land, excessive dwelling unit density, or other identified hazards to health and safety, are conducive to ill health, transmission of disease, juvenile delinquency and crime and are detrimental to the public health, safety, morals, and general welfare (R.C. 1728.01(E)). A project undertaken by a community urban redevelopment corporation may include the acquisition of blighted property "by purchase or otherwise" (R.C. 1728.01(F)(2)).

The laws authorizing metropolitan housing authorities to operate housing projects (R.C. 3735.40 to 3735.50--not in the bill) define "slum area" as any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light, or sanitary facilities, or any combination of these factors, are detrimental to safety, health, or morals (R.C. 3735.40(B)). Metropolitan housing authorities are authorized to use eminent domain to conduct housing projects in slum areas (R.C. 3735.31(B)--not in the bill).

On a related note, current law authorizes municipal corporations to appropriate and rehabilitate buildings or structures that they find to be a threat to the public health, safety, or welfare, that have been declared to be a public

nuisance, and that either have been found to be insecure, unsafe, structurally defective, unhealthful, or unsanitary or violate a building code or ordinance (R.C. 719.012). Current law also authorizes "impacted cities" to use eminent domain for purposes of economic development (R.C. 719.011--not in the bill). "Impacted cities" are cities that have been extensively damaged by a major disaster and declared to be a major disaster area under federal law, or cities that have attempted to cope with the problems of urbanization, and that provide for economic development by either authorizing the construction of housing by a metropolitan housing authority or adopting a program to combat blight and slums that has been certified as workable by the director of development (R.C. 1728.01(C)).

2. "Quick take"

"Quick take" refers to a class of takings that are given special treatment by the Ohio Constitution. Generally, an agency must wait until the jury has assessed value and awarded compensation before it can pay the award to the owner or deposit it into the court and take possession of the property. However, in certain cases, the agency may take possession of the property immediately upon filing the petition for appropriation and paying or depositing the amount that the agency determines that the owner is entitled to, without first waiting for a jury determination. Those cases are referred to as "quick takes," and they include takings in time of war or other public exigency imperatively requiring an immediate seizure, and for the purpose of making or repairing roads open to the public free of charge, implementing rail service under Chapter 4981. of the Revised Code, and addressing sewage emergencies under R.C. 307.08, 504.19, 6101.181, 6115.221, 6117.39, or 6119.11. (Ohio Const., Art. I, sec. 19; R.C. 163.06.)

HISTORY

ACTION	DATE
Introduced	02-20-07
Reported, S. State & Local Gov't & Veterans Affairs	---

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