Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL:	**Sub. H.B. 5 (LSC 127 0578-4)**	DATE:	**June 6, 2007**
STATUS:	**In House Judiciary**	SPONSOR:	**Rep. Gibbs**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **To implement the recommendations of the Eminent Domain Task Force**

State Fiscal Highlights

STATE GOVERNMENT	**FY 2008**	**FY 2009**	**FUTURE YEARS**
Various Agency Funds			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase in compensation costs for properties taken by eminent domain	Potential increase in compensation costs for properties taken by eminent domain	Potential increase in compensation costs for properties taken by eminent domain

- The bill sets out new guidelines for eminent domain procedures, and establishes compensation guidelines for those takings. The new guidelines, which include provisions for compensating property owners, may potentially result in higher costs when eminent domain is invoked.

- The state fiscal effects would be difficult to quantify, although the agency most likely to be affected significantly would be the Department of Transportation, which relies on eminent domain for various construction projects. Whether the bill would add new costs for the Department is uncertain, and would depend on several factors.

Local Fiscal Highlights

LOCAL GOVERNMENT	**FY 2007**	**FY 2008**	**FUTURE YEARS**
Local Governments			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase in compensation costs for properties taken by eminent domain	Potential increase in compensation costs for properties taken by eminent domain	Potential increase in compensation costs for properties taken by eminent domain

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- The bill prohibits public authorities from taking private properties for public use for the purpose of increasing revenues.

- The bill allows properties to be taken by eminent domain in certain circumstances, and establishes compensation guidelines for those takings. The new guidelines, which include provisions for compensation property owners, may potentially result in higher costs when eminent domain is invoked.
- Whether these new restrictions would add new costs is uncertain, and would depend on many factors.

Detailed Fiscal Analysis

Provisions of the bill

The bill prohibits public authorities from taking private property for a public use for the purpose of increasing revenues for a public authority. Public authorities may not use the potential revenues as evidence that the property to be taken is blighted. The bill also exempts agricultural lands from being designated as blighted if the land is used for agricultural purposes as defined by section 303.01 or 519.01 of the Revised Code.

If a public agency acquires any real property, it must include a statement of the purpose of the appropriation and indicate that the prior owner possesses a right to repurchase the property if the public agency decides not to use the land for the stated purpose.

The bill also sets restrictions as to what purposes that property claimed by eminent domain may be used. No such property may be used for any private commercial enterprise, economic development, or any other private use unless that property is conveyed or leased to a public utility, a private entity that occupies an incidental area within a publicly owned project, or a private entity that shows a preponderance of evidence that the property is blighted as defined in section 1.08 of the Revised Code. Once a public entity finds an area blighted, it cannot appropriate the property until it adopts a comprehensive development plan, and obtains a resolution from the appropriate governing legislative body.

Impact on the state and political subdivisions

There is no immediate direct fiscal impact on the state or political subdivisions, but some state agencies and local governments may incur future revenue losses that would otherwise have been available absent the new restrictions in the bill.

The bill also establishes some compensation requirements for property taken by eminent domain. The bill requires that any public agency compensate property owners for any moving or relocation costs, direct losses of tangible property, reasonable expenses associated with searching for replacement farms or businesses, and reasonable re-establishment costs. If the final award of compensation for property exceeds 125% of the public agency's original offer, the court is to enter judgment in favor of the owner for all costs and expenses. The bill sets out guidelines for awarding these costs and expenses. The bill states that relocation costs cannot exceed $2,500.

One state agency certain to be affected, although to what degree is uncertain, is the Department of Transportation. On the local level, the same would hold true for county engineers. The Department of Transportation revealed that over the FY 2004-2006 period, of the 4,870 parcels it acquired, eminent domain was invoked for the appropriation of 578 parcels. To what extent the additional steps required by the bill would affect this process, and future highway construction and maintenance costs is uncertain.

Should a public agency take a property through eminent domain, the compensation cost requirements set forth in the bill could potentially exceed those that exist in current law, thereby resulting in increased expenditures for the public takings.

Synopsis of Fiscal Changes

- There is one primary change in the substitute bill that has a fiscal impact. The substitute bill creates guidelines as to the awarding of costs and expenses to a property owner when the value of the property is determined in court. The substitute bill caps relocation costs at $2,500. There was no such limit in the previous version of the bill.

- The substitute bill includes appraisal and engineering fees as expenses that must be paid for by a public agency in cases where there is judgment in favor of the property owner.

- The substitute bill alters the 125% offer rule in two ways. First, before commencing a proceeding, if an agency makes a revised offer based on conditions indigenous to the property that could not have been discovered at the time of the first offer, the award must exceed 125% of the **revised** offer instead of the original offer. Second, if a public agency negotiated in good faith with the property owner, or owner's representative before and after filing petitions or when the nature of property interest is inordinately complex to the degree that appraisers may reasonably disagree with its value, judgment may include attorney's fees and costs only if the award exceeds 150% of the first or **revised** offer.

- The above fiscal changes to the bill are difficult to quantify. However, it can be assumed that these provisions will reduce the costs to public agencies of eminent domain proceedings. The substitute bill will limit what can be spent on relocation costs. Presumably, the other changes to the award structure would reduce the number of instances in which a public agency will be forced to pay attorney's fees and all other costs and expenses of the property owner.

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