

# Fiscal Note & Local Impact Statement

127<sup>th</sup> General Assembly of Ohio

Ohio Legislative Service Commission  
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BILL: **Sub. H.B. 5** DATE: **June 13, 2007**  
STATUS: **As Reported by 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  |
|-----------------------------|---|---|---|
| <b>Various Agency Funds</b> |   |   |   |
| 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  |
|--------------------------|---|---|---|
| <b>Local Governments</b> |   |   |   |
| 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.
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## ***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. However, the owner's right to repurchase may be extinguished if it is determined that the owner was partly responsible for creating the blighted conditions of the property.

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 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, and

provides some limits on how these are determined. 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. The bill extends this requirement to both public and private agencies. A privately owned and operated utility company would be an example of a private agency that would seek to take property through eminent domain.

Second, if an agency negotiated in good faith with the property owner before and after filing petitions or when establishing the value of the property interest so 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 bill states that awarded 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. In their totality, any new costs the bill is likely to impose on the state or its political subdivisions for property acquisitions through eminent domain, and any resultant legal proceedings are difficult to project, the same is true for trying to determine the bill's effect on any future loss in revenue. This would be considered an indirect effect.

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