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Bill Analysis

Legislative Service Commission

H.B. 51

123rd General Assembly
(As Introduced)

Reps. Taylor, Padgett, Bateman, Haines, Pringle, Young, Boyd, Hood, Jacobson, Krupinski, Flannery

BILL SUMMARY

- Requires public agencies and certain private entities to pay court costs and, in just amounts that a court determines, the attorney's fees, witness fees, and other actual expenses that a property owner incurs in eminent domain proceedings if the compensation and damages that the jury assesses for the affected property exceed an agency's or entity's highest offer by 10% or more and if certain other circumstances apply.

CONTENT AND OPERATION

Additional award--circumstances

The bill provides that, in appropriation proceedings by a "public or private agency" under the Appropriation of Property Law (secs. 163.01 to 163.22), in appropriation proceedings by the Director of Transportation, a conservancy district, or a sanitary district under other provisions of the Revised Code, and in condemnation proceedings by a "state agency" under the Displaced Persons Law (secs. 163.51 to 163.62) after the jury has returned its verdict assessing the compensation and damages, if any, to the residue that the agency involved must pay in connection with the affected owner's property, the court also must award to the affected property owner under specified circumstances (1) a judgment against the agency for *costs*, including jury fees, and (2) a judgment in favor of the affected property owner, in amounts the court considers to be just, for *witness fees*, including expert witness fees, for *attorney's fees*, and for *other actual expenses* that the owner incurred in connection with the proceedings.¹ Before a court may

¹ *The awards described in items (1) and (2) must be made under current law if a court determines that an agency is not entitled to appropriate particular property under the Appropriation of Property Law or certain other provisions of the Revised Code.*

make such an award under the bill, however, it must determine that all of the *following circumstances* apply: (1) the affected property owner specified in the denials of the owner's answer the inability of the parties to agree on the compensation and damages, if any, to the residue that the agency would pay in connection with the property that the agency proposed to appropriate or acquire by condemnation, (2) the affected property owner made a good faith effort to settle the controversy with respect to the amount of the compensation and damages but was unable to reach a settlement with the agency, and (3) the amount of the compensation and damages that the jury assessed in its verdict *exceeded by 10% or more* the highest amount that the agency offered to the affected property owner in negotiations or other attempts to settle the compensation and damages issue prior to or after the commencement of the appropriation or condemnation proceedings. (Secs. 163.21(C) and 163.62(B).) (See **COMMENT.**)

Property owner's answer--nature

Under the bill, an owner who files an answer to an appropriation petition in a proceeding under the Appropriation of Property Law is not required to include in the answer a demand for an award of the moneys described under "**Additional award--circumstances**," above, when the described circumstances apply, and the owner is not required to file a counterclaim that includes such a demand against the agency involved. In order to receive an award of those moneys, however, the owner must specify in the owner's denials in the answer the inability of the parties to agree on the compensation and damages, if any, to the residue that the agency will pay in connection with the property proposed to be appropriated. (Sec. 163.08(A) and (C).)

Miscellaneous provisions

The bill provides in the Appropriation of Property Law (1) that the amount of an award that must be paid to an entitled property owner or must be deposited with the court *prior to an agency taking possession* of appropriated property includes the moneys described under "**Additional award--circumstances**," above, when the court has awarded those moneys to a property owner under the described circumstances and (2) that, for purposes of calculation of the amount of the *interest* that may be required to be paid on an award when property is appropriated, an "award" or "final award" includes those moneys when a court awards them under the described circumstances (secs. 163.15(C) and 163.17). Similar "state agency" possession provisions are added to the Displaced Persons Law (sec. 163.59(D)). The bill also specifies that, for purposes of the provisions of the Appropriation of Property Law that govern an agency's paying or depositing the amount of an appropriation award to or with the court, the reference to "award" includes the moneys described under "**Additional award--circumstances**," above,

and that a successor owner of property involved in an appropriation proceeding must receive the compensation, the damages, if any, to the residue, and the moneys described under "*Additional award--circumstances*," above, that were awarded to the predecessor owner to the extent the successor owner succeeds to the "award" (secs. 163.07, 163.14, 163.18, and 163.19).

Application of bill's provisions

The bill applies only in connection with appropriation or condemnation proceedings that are commenced on or after the bill's effective date (Section 3).

COMMENT

The Appropriation of Property Law defines an "agency" to mean any public agency or private entity authorized by law to appropriate property in the courts of the state (sec. 163.01(A), not in the bill). The Displaced Persons Law defines a "state agency" to mean (in relevant part) any state or political subdivision, department, agency, or instrumentality, a community urban redevelopment corporation, and other persons with authority to acquire property by eminent domain under state law (sec. 163.51(A), not in the bill).

HISTORY

ACTION	DATE	JOURNAL ENTRY
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