



Pamela Goshay

*Final Analysis*  
Legislative Service Commission

**Am. Sub. H.B. 426**  
124th General Assembly  
(As Passed by the General Assembly)

**Reps. Young, Brinkman, Britton, Carey, Carmichael, DeWine, Fessler, Flowers, Hagan, Lendrum, Schaffer, Schmidt, Seaver, Webster, Willamowski, Trakas, Patton, Damschroder, Williams, Buehrer, Coates, Hollister, Carano, Sulzer, Sferra, Setzer, Niehaus, Reidelbach, Salerno, Otterman, Kearns, Roman, Perry, Brown**

**Sens. Robert Gardner, Amstutz**

**Effective date: September 6, 2002**

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**ACT SUMMARY**

- Requires state agencies and political subdivisions acquiring property by eminent domain, when the Displaced Persons Law is involved, to make every reasonable effort to provide a copy of an appraisal to the owner of real property appraised at more than \$10,000 and to update or obtain new appraisals under certain circumstances.
- Specifies that a state agency's or political subdivision's acquisition of property must be for a defined public purpose that is to be achieved in a defined and reasonable period of time.
- Makes other changes in the acquisition of property standards of the Displaced Persons Law.

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**CONTENT AND OPERATION**

**Defined public purpose for acquiring real property**

The Displaced Persons Law, which is a body of law distinct from but sometimes implicated by eminent domain takings under the Appropriation of Property Law (secs. 163.01 to 163.22--not in the act), establishes various standards that formerly were to *guide* "to the greatest extent practicable" the head of an acquiring agency (see **COMMENT 1**) when acquiring real property (sec. 163.59). The act, instead of requiring those agency heads to be guided by the

standards, requires them to "do" the tasks specified in the standards or "ensure" an acquisition of real property "satisfies" the standards. It also adds to the standards several requirements, one of which is that the acquisition of real property be for a defined public purpose that is to be achieved in a defined and reasonable period of time. The act states that an acquisition of property that complies with a provision of continuing law that generally authorizes the Director of Transportation to purchase or appropriate property for highway purposes is an acquisition for a defined public purpose (sec. 5501.31, not in the act--see **COMMENT 2**). (Sec. 163.59(B).)

**Copy of appraisal to owner when property value exceeds \$10,000**

One of the continuing standards for acquiring real property under the Displaced Persons Law is that the property generally must be appraised before negotiations for its acquisition begin. Under former law, the property owner or the owner's designated representative had to be given "an opportunity" to accompany the appraiser during the inspection of the property. (Former sec. 163.59(B).)

The act adds that the opportunity to accompany the appraiser must be a "reasonable" opportunity, and, if the appraisal values the property *at more than \$10,000*, the acquiring agency head must make every reasonable effort to provide a copy of the appraisal to the owner (presumably, before negotiations begin). (Sec. 163.59(C).)

Former law defined an "appraisal" as a written statement independently and impartially prepared by a qualified appraiser, setting forth an opinion of defined value of an adequately described property as of a specified date, supported by the presentation and analysis of relevant market information. The act continues that definition but also includes as an "appraisal" a written statement that is *prepared by an employee of the acquiring agency who is a qualified appraiser* and that sets forth such an opinion. (Sec. 163.59(C).)

**Offer for property to be no less than full amount established by the acquiring agency**

Another standard under the Displaced Persons Law requires an acquiring agency head, before beginning negotiations to acquire real property, to establish an amount the head believes to be just compensation for the property and formerly required the agency head to make a prompt offer to acquire the property for "the full amount" so established (former sec. 163.59(C)). The act instead requires the offer to be for *no less than* that full amount so established.<sup>1</sup> Under continuing law,

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<sup>1</sup> *It appears that, under the act's language, an offer could be made for more than the established amount before beginning negotiations, but not after an updated or new*

that full amount cannot be less than the acquiring agency's approved appraisal of the property's fair market value. (Sec. 163.59(D).)

**Owner's consideration of offer and requirement for new or updated appraisal**

The act adds to the Displaced Persons Law a standard that requires the owner of real property to be given a reasonable opportunity to (1) consider the offer of the acquiring agency for the property, (2) present material that the owner believes is relevant to determining its fair market value, and (3) suggest modification in the proposed terms and conditions of its acquisition. The acquiring agency must consider the owner's presentation and suggestions. (Sec. 163.59(D).)

The act also adds a standard providing that an acquiring agency head must have the appraisal updated or obtain a new appraisal if (1) the information presented by an owner or a material change in the character or condition of the real property being acquired indicates the need for new appraisal information, or (2) if a period of more than two years has elapsed since the time of the property's appraisal. If updated appraisal information or a new appraisal indicates that a change in the acquisition offer is warranted, the acquiring agency head must promptly reestablish the amount of the just compensation for the property and offer that amount to the owner in writing.<sup>2</sup> (Sec. 163.59(E).)

**Scope of the standards**

Former law provided that the standards formerly guiding the acquisition of real property created no rights or liabilities and did not affect the validity of any property acquisitions by purchase or condemnation. The act provides that the failure of an acquiring agency to satisfy the standards (which are termed "requirements" under the act) does not affect the validity of any property acquisition by purchase or condemnation. (Sec. 163.52(A).)

The act further provides that (1) the section of law requiring an acquiring agency to carry out the standards (i.e., "do or ensure the acquisition satisfies" the requirements) only applies when an acquisition of real property may result in an exercise of the power of eminent domain and (2) an acquisition of real property may continue while an acquiring agency is carrying out the standards (sec. 163.59, last two paragraphs).

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*appraisal under the new provision described below. This is because that new provision does not contain the "no less than" terminology and specifically requires the amount of "reestablished" just compensation to be offered.*

<sup>2</sup> See Footnote 1.

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## COMMENT

1. The Displaced Persons Law defines an "acquiring agency" to include (a) a *state agency* that is authorized to acquire property by eminent domain *under state law* and (b) a state agency or person without that authority, apparently to the extent it is provided with eminent domain power *by rule* of the head of a lead agency (sec. 163.51(J)--not in the act). That continuing law further defines a "state agency" as (a) any department, agency, or instrumentality of a state or of a political subdivision of a state, (b) any department, agency, or instrumentality of two or more states or of two or more political subdivisions of a state or states, (c) any community redevelopment corporation organized under Ohio law, or (d) any person authorized to acquire property by eminent domain under state law (sec. 163.51(A)--not in the act).

2. Section 5501.31 reads in pertinent part as follows (emphasis added):

The director of transportation shall have general supervision of all roads comprising the state highway system. The director may alter, widen, straighten, realign, relocate, establish, construct, reconstruct, improve, maintain, repair, and preserve any road or highway on the state highway system, and, in connection therewith, relocate, alter, widen, deepen, clean out, or straighten the channel of any watercourse as the director considers necessary, and purchase or *appropriate* property for the disposal of surplus materials or borrow pits, and, where an established road has been relocated, establish, construct, and maintain such connecting roads between the old and new location as will provide reasonable access thereto.

The director may purchase or *appropriate* property necessary for the location or construction of any culvert, bridge, or viaduct, or the approaches thereto, including any property needed to extend, widen, or alter any feeder or outlet road, street, or way adjacent to or under the bridge or viaduct when the extension, widening, or alteration of the feeder road, street, or way is necessary for the full utilization of the bridge or viaduct, or for any other highway improvement. The director may purchase or *appropriate*, for such length of time as is necessary and desirable, any additional property required for the construction and maintenance

of slopes, detour roads, sewers, roadside parks, rest areas, recreational park areas, park and ride facilities, and park and carpool or vanpool facilities, scenic view areas, drainage systems, or land to replace wetlands, incident to any highway improvement, that the director is or may be authorized to locate or construct. . . .

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-30-01	p. 1040
Reported, H. State Government	02-07-02	p. 1364
Passed House (94-0)	02-19-02	pp. 1412-1413
Reported, S. State & Local Gov't & Veterans Affairs	04-25-02	p. 1724
Passed Senate (33-0)	05-14-02	p. 1766
Concurrence (95-0)	05-15-02	pp. 1765-1766

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