



Sub. H.B. 426

124th General Assembly

(As Reported by H. State Government)

Reps. Young, Brinkman, Britton, Carey, Carmichael, DeWine, Fessler, Flowers, Hagan, Lendrum, Schaffer, Schmidt, Seaver, Webster, Willamowski, Trakas, Patton

BILL SUMMARY

- Requires acquiring state and political subdivision agencies 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 requires those agencies to update or obtain new appraisals under certain circumstances.
- Specifies that an acquiring state or political subdivision agency'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.

CONTENT AND OPERATION

Defined public purpose for acquiring real property

The current 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 bill), establishes various standards to *guide* "to the greatest extent practicable" the head of an acquiring agency (see **COMMENT 1**) when acquiring real property (sec. 163.59). The bill, instead of requiring acquiring 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 existing standards several requirements, one of which is a requirement 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 bill states that an acquisition of property that complies with a provision of current 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 bill--see **COMMENT 2**). (Sec. 163.59(B).)

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

One of the standards for acquiring real property under the current Displaced Persons Law is that the property generally must be appraised before negotiations to acquire it begin. Also, under this standard, the property owner or the owner's designated representative currently must be given "an opportunity" to accompany the appraiser during his or her inspection of the property. (Current sec. 163.59(B).)

The bill requires (1) that, similar to current law, the real property "to be acquired" must be appraised before the beginning of negotiations, (2) that the opportunity be a "reasonable" opportunity to accompany the appraiser, and (3) that, if the appraisal values the property to be acquired *at more than \$10,000*, the acquiring agency head must make every reasonable effort to provide a copy of the appraisal to the owner. It also removes a provision of current law that authorizes an acquiring agency head to prescribe a procedure to waive the appraisal in cases involving an acquisition by sale or donation of property with a low market value. (Sec. 163.59(C).)

Current law defines an "appraisal" for purposes of this standard to mean 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 bill alters this definition by providing that an "appraisal" also includes a written statement *prepared by an employee of the acquiring agency who is a qualified appraiser*, setting forth such an opinion. (Sec. 163.59(C).)

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

Under another standard of the current Displaced Persons Law, an acquiring agency head, before beginning negotiations to acquire real property, must establish an amount the head believes to be just compensation for the property and must make a prompt offer to acquire the property for the full amount so established (current sec. 163.59(C)). The bill instead requires that this offer be for *no less than* that full amount. As under current law, 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 bill adds another standard to the Displaced Persons Law which requires that the owner of real property 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 under this proposed standard. (Sec. 163.59(D).)

Under another new and interrelated standard in the bill, if the information presented by an owner, or a material change in the character or condition of real property being acquired, indicates the need for new appraisal information, or if a period of more than two years has elapsed since the time of the property's appraisal, an acquiring agency head must have the appraisal updated or obtain a new appraisal. Further, under this new standard, 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. (Sec. 163.59(E).)

Scope of the standards

Existing law provides that the standards that must guide the head of an acquiring agency in acquiring real property create no rights or liabilities and do not affect the validity of any property acquisitions by purchase or condemnation. The bill instead provides that the failure of an acquiring agency to satisfy the standards (which are "requirements" under the bill, as contrasted with guiding principles under current law), whether as proposed by the bill or in a provision of continuing law unaffected by the bill, does not affect the validity of any property acquisition by purchase or condemnation. (Sec. 163.52(A).)

The bill further specifies that (1) an acquiring agency is required to carry out the standards (i.e., "do or ensure the acquisition satisfies" their requirements) only 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 so carrying out the standards (sec. 163.59, last two paragraphs).

COMMENT

1. The current Displaced Persons Law defines an "acquiring agency" to include (1) a *state agency* that is authorized to acquire property by eminent domain *under state law* and (2) 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 bill). That current law further defines a "state agency" as (1) any department, agency, or instrumentality of a state or of a political subdivision of a state, (2) any department, agency, or instrumentality of two or more states or of two or more political subdivisions of a state or states, (3) any community redevelopment corporation organized under Ohio law, or (4) any person authorized to acquire property by eminent domain under state law (sec. 163.51(A)--not in the bill).

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. . . .

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-30-01	p. 1040
Reported, H. State Government	02-07-02	p. 1364

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