



Wendy H. Gridley

*Bill Analysis*  
Legislative Service Commission

## **S.B. 226**

125th General Assembly  
(As Introduced)

**Sens. Padgett, Wachtmann**

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### **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.

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### **CONTENT AND OPERATION**

#### **Appropriation of property--background law**

Under Ohio law, property may be appropriated for public use when necessary. (Article I, Section 19, Ohio Constitution; see also Amendment V to the U.S. Constitution.) If an appropriation is permissible and the property owner and the appropriating public or private agency cannot agree on the amount of compensation for the taking and any damages to the residue of the property, a jury must determine what is just compensation and the damages to the residue. But, if a court in an appropriation proceeding determines that an appropriating agency is not entitled to appropriate particular property under the Appropriation of Property Law (R.C. Chapter 163.) or certain other provisions of the Revised Code, the court must award (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 proceeding (sec. 163.21(B); see also generally similar sec. 163.62).

#### **Additional circumstances for a costs and fees award**

The bill provides that, in appropriation proceedings by a public or private agency, after a jury has assessed compensation and any damages to the residue,

the court also must award the costs and fees set forth in (1) and (2) above if specified circumstances apply.<sup>1</sup> In order to make the additional award, the court must find 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 the damages, if any, to the residue that the agency would pay in connection with the property, (2) the affected property owner made a good faith effort to settle the controversy regarding the compensation and damages but was unable to reach a settlement with the agency, and (3) the amount of the compensation and damages assessed by the jury 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 issue before appropriation or condemnation proceedings began. (Secs. 163.21(C) and 163.62(B).)

### **Property owner's answer to appropriation petition**

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 circumstances for a costs and fees award**," 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 that must be deposited with the court *prior to an agency taking possession* of appropriated property includes the moneys described under "**Additional circumstances for a costs and fees award**," 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.

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<sup>1</sup> *The bill applies to appropriation proceedings under the Appropriation of Property Law (secs. 163.01 to 163.22), appropriation proceedings by the Director of Transportation, a conservancy district, or a sanitary district under other provisions of the Revised Code, and condemnation proceedings by a "state agency" under the Displaced Persons Law (secs. 163.51 to 163.62). (See COMMENT.)*

163.15(C) and 163.17). Similar provisions are added to the Displaced Persons Law for "state agencies" taking possession (sec. 163.59(F)). 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 circumstances for a costs and fees award," 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 "costs and fees" 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).

**Prospective application of bill's provisions**

The bill applies only to appropriation or condemnation proceedings that are commenced on or after its effective date (Section 3).

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**COMMENT**

The Appropriation of Property Law defines an "agency" as 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).

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	04-13-04	p. 1716

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