



**Sub. S.B. 7**

127th General Assembly

Sens. **Grendell, Harris, Faber, Schaffer, Amstutz, Coughlin, Gardner, Padgett, Schuring, Clancy**

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**BILL SUMMARY**

**Limits on the use of eminent domain and applicability of Chapter 163.**

- Requires all entities with eminent domain power, both public and private, to follow the procedures in the eminent domain law, R.C. Chapter 163.
- Defines "agency" for purposes of the eminent domain law to mean any agency or entity, public or private, with eminent domain power.
- Causes references in the Revised Code to "condemnation" proceedings and taking by "eminent domain" to mean an appropriation pursuant to R.C. Chapter 163. (R.C. 163.01 and 163.63.)
- Specifies that all takings must be necessary and for a public use. Public use does not include any taking for "conveyance to a private commercial enterprise, economic development, or solely for the purpose of increasing public revenue." Public use does, however, include takings because of blight pursuant to a redevelopment plan adopted by a legislative authority if the area meets the bill's definition of blight. (R.C. 163.021(A).)
- Provides specific exceptions for the "quick take" eminent domain procedures that may be used under existing law for reasons related to public health and public exigency. (R.C. 163.04(A)(3), 163.06(A), 163.02(A), and 163.17(A).)
- Maintains ODOT takings procedures as under current law, which except in quick take follows R.C. Chapter 163. (R.C. 163.02(B).)

**Definition of "blight"**

- Specifies that at least 90% of the parcels in an area must be blighted for the area to qualify as a "blighted area." (R.C. 1.08.)

- Specifies that agricultural land cannot be declared blighted, absent environmental or public health hazards that cannot be corrected under its current use or ownership, if the characteristic is consistent with generally accepted agricultural practices and is used for agricultural purposes, or the county auditor has declared the land to be "land used exclusively for agricultural use." (R.C. 1.08.)
- Specifies that a property must meet at least three of the following blighting conditions to be declared blighted (R.C. 1.08):
  - Any premises which, because of physical condition, use, or occupancy, constitutes a public nuisance.
  - Any structure which, because it is dilapidated, unsanitary, unsafe, or vermin-infested, has been designated by the agency responsible for enforcement of the housing, building, or fire codes as being unfit for human habitation or use.
  - Any structure which, in its current condition, is a fire hazard, or is otherwise dangerous to the safety of persons or property.
  - Any structure from which the utilities, plumbing, heating, sewerage, or other facilities have been disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.
  - Any vacant or unimproved lot or parcel of ground in a predominantly built-up-neighborhood, which by reason of neglect or lack of maintenance has become a place for accumulation of trash and debris, or a haven for rodents or other vermin.
  - Any property that has tax delinquencies exceeding the value of the property.
  - Any property with code violations affecting health or safety that has not been substantially rehabilitated within one year of the receipt of a notice to rehabilitate from the appropriate code enforcement agency.
  - Any property which, by reason of environmentally hazardous conditions, solid waste pollution, or contamination, poses a direct threat to public health or safety in its present condition.

--Any abandoned property, which is defined as property not occupied by a person with a legal or equitable right to occupy it and for which the condemning authority is unable to identify and contact the owner despite making reasonable efforts or which has been declared abandoned by the owner, including an estate in possession of the property.

### **Public input and participation, notice, and disclosure**

- Requires agencies to adopt procedures for public input. (R.C. 163.04(A).)
- Requires all agencies to have a process to provide notice and to permit public input for the two-week period before any exercise of eminent domain power. If the agency's board is not elected by the public, the agency must, in addition, hold at least one public hearing. An exception to these requirements applies for quick take procedures. (R.C. 163.04(A).)
- Requires agencies to disclose the full appraisal, or a summary appraisal if that is all that was performed, to the owner at the time of the first offer. (R.C. 163.04(A).)
- Extends the appraisal requirement to any agency with eminent domain power. (R.C. 163.021 and 163.63.)
- Requires all takings to provide the relocation assistance procedures and program that existing law requires only of ODOT and other takings that use federal funds. The program includes moving and relocation expenses and assistance finding replacement housing or a new business location. The procedures and program are integrated into R.C. Chapter 163. (R.C. 163.52 to 163.62.)
- Requires that appropriations may proceed only if an agreement cannot be reached with the owner on a conveyance or the terms of a conveyance, or the owner cannot be located. (R.C. 163.04(C).)

### **Who can take**

- Specifies that port authorities may take property using eminent domain only if the legislative authority that appointed the port authority approves the taking. (R.C. 163.021(B).)
- Specifies that a park district, park board, or other similar entity may take property by eminent domain only if the property is within the entity's



jurisdiction and only with approval of the legislative authority where the property is located. (R.C. 163.021(C).)

- Requires conveyance documents of property acquired by eminent domain to include statements of purpose and of the previous owner's right to repurchase the property appropriated if the property is not used for that purpose. (R.C. 163.02(D).)

### **Legal procedures**

- Requires an agency, in filing a petition for an appropriation proceeding in a court, to include a statement that the appropriation is necessary (as under continuing law) and that it is for a public use and, if pursuant to a redevelopment plan, that it is blighted and the basis for the finding of blight. (R.C. 163.05(B).)
- Specifies that only a judge may decide a question of public necessity. (R.C. 163.09(B)(1).)
- Specifies that, in any appropriation proceeding, the burden is on the agency to show by a preponderance of the evidence: the necessity of the taking, that the taking is for a public use, and that the area claimed to be blighted meets the definition of blight. This applies after the owner establishes a *prima facie* case that the taking is not necessary, not for a public use, or that the property is not blighted. Under current law, an agency's declaration of necessity is *prima facie* evidence of necessity, in the absence of an abuse of discretion. (In response to footnote 16 of the *Norwood* case.) (R.C. 163.08(A) and 163.09(B).)
- Amends the portion of R.C. 163.19 that the Ohio Supreme Court found unconstitutional in the *Norwood* case (as a violation of separation of powers) to make it consistent with that decision. (R.C. 163.19.)
- Maintains the procedures for quick take. (R.C. 163.09(B)(3).)

### **Private property owner protection**

- Compensates all takings using a program based on the program that previously governed only ODOT and federally funded takings (R.C. 163.52 to 163.62 and 163.21).
- Removes the right of an agency to take possession by depositing the award amount with the court. (R.C. 163.15(A).)

- Awards owners reasonable attorney's fees and costs, including appraisal costs, when the final award of compensation is greater than 125% of the taking agency's first offer. (R.C. 163.21(C).)
- Specifies, if the owner prevails in the final ruling of necessity in a final, unappealable order, that the owner is entitled to reasonable attorney's fees and costs. (R.C. 163.21(B) and 163.09(B)(4).)
- Grants owners the right to repurchase appropriated property if the project is abandoned in an early phase and the title has not been transferred from the taking agency to another agency or person. (R.C. 163.211.)
- Specifies, if a jury award is greater than 125% of the initial offer, that the court must award reasonable attorney's fees and costs. (R.C. 163.14(B) and 163.16(B).)

**Changes to unify eminent domain requirements (in addition to above)**

- Merges definitions sections from ODOT procedures (R.C. 163.51) into R.C. 163.01 for a unified definition section for Chapter 163. (R.C. 163.01.)
- Establishes one definition for "agency" and uses that term throughout, replacing terms that were not substantively different ("state agency," "acquiring agency," "displacing agency"). (R.C. 163.01.)
- Merges the overlapping procedures of R.C. 163.62 (ODOT) and R.C. 163.21 into R.C. 163.21. (R.C. 163.21.)
- Uses a single term for a taking, "appropriation," and changes "condemnation," used in part of Chapter 163., to "appropriation" to make it apparent that they are the same procedure and subject to Chapter 163.

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**HISTORY**

ACTION	DATE
Introduced	2-20-07