

Fiscal Note & Local Impact Statement

122nd General Assembly of Ohio

BILL: H.B. 345

DATE: June 12, 1997

STATUS: As Introduced

SPONSOR: Rep. Taylor

LOCAL IMPACT STATEMENT REQUIRED: Yes

CONTENTS: Requires a state agency or political subdivision to pay actual expenses incurred by a property owner in an eminent domain proceeding, if a jury award is 10% or more of the agency's or subdivision's highest offer

State Fiscal Highlights

STATE FUND	FY 1997	FY 1998	FUTURE YEARS
Highway Operating Fund, GRF, and other state funds			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase	Potential increase	Potential increase

- The bill could result in higher costs for state agencies to appropriate property via eminent domain. The Department of Transportation would be impacted more than any other agency.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1997	FY 1998	FUTURE YEARS
Political Subdivisions			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase	Potential increase	Potential increase

- The bill could result in higher costs for local governments to appropriate property via eminent domain. See "Detailed Fiscal Analysis" for survey information from 27 local governments
- If political subdivisions were required to pay litigation costs, the amount could range from \$20,000 to \$50,000 or more per case.



Detailed Fiscal Analysis

Provisions of the Bill

The bill would allow owners to collect actual costs for litigating an eminent domain case if a jury awards compensation and damages that exceed by 10% or more the highest amount that agency offered to the affected owner(s) in negotiations or other attempts to settle prior to or after the commencement of the appropriation proceedings. The affected owner must have made a good faith effort to negotiate a settlement and 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 that the agency proposed to appropriate.

Under current law, a property owner can only recover actual costs of litigating an eminent domain case against a state agency or local government entity if a court decides that an agency is not entitled to appropriate a particular property or if the agency abandons appropriation proceedings on a property which it seeks to acquire, but on which the agency has not taken possession.

Effects of the Bill

Local Effects

The effects of the bill could vary widely throughout the state. In order to obtain an understanding of how different local governments would be affected by the bill, the LBO sent out a survey to 54 local government officials. Twenty-seven responses were received. Some local government officials were also interviewed over the telephone. It is important to note that an appropriation means that a case has been filed with a court. An acquisition does not necessarily involve court action.

Of the 27 respondents to the survey, 6 local governments indicated having begun acquisition negotiations on at least one parcel of land within the past 24 months. Of those 6 local governments, 4 reported that a case had gone or was going to go to trial. The value of an individual property acquired by a local government (as appraised by the government entity) varied from a low of \$150 to a high of \$230,000. The total value of all the property on which the responding local governments reported beginning the acquisition process, in a given year, ranged from \$150 to \$500,000. While most local governments reported acquiring no land parcels last year, the City of Columbus reported acquiring between 200 and 300 parcels.

The survey results seem to indicate that a large percentage of local governments rarely, if ever, appropriate land. The bill would have not effect on such local government entities' costs.

However, many local governments will periodically want acquire property, perhaps every few years. In this case, such entities could face increased costs in years that they do want to acquire a property.

A smaller number of local government entities are currently growing in size or are undertaking large road or other development projects for which they are acquiring many parcels of land. For example, the City of Dayton and the City of Dublin reported acquiring 70 and 60

parcels, respectively, last year. These types of local government entities are most likely to face increased costs as a result of the provisions in the bill. This is the case mainly because the more properties a local government seeks to acquire in a given year, the more likely that there will be a property owner who will litigate the local government acquisition. The more cases that go to trial, the more likely that a local government will have a case in which it is required to pay the real costs required under the bill.

A trial itself can cost a government entity from \$200 to \$2000, or more. Costs include things such as witness fees, court costs, and other fees. From the time of filing to final resolution by trial, a case can last from 3 months to two years. How often land acquisition cases go to a trial varies considerably as well. Dublin reported that about 10% of its cases ultimately must be resolved in a jury trial. Whereas, of the 70 parcels acquired by Dayton in 1996, one resulted in a jury trial (or approximately 1.4%).

The bill could increase the incentive to litigate for both property owner's and their legal counsel. Under the bill, attorneys will be assured to have their costs covered if a jury awards more than 10% of a highest offer. This could increase an attorney's willingness to go to trial. Likewise property owners will know that if they are awarded 10% or more of a highest offer that all attorney's fees, witness fees, and actual costs will be paid by the local government, resulting in a higher net financial gain for the property owner.

The City of Dayton estimates that a property owner's litigation costs average between \$40,000 and \$50,000 by the time a case that goes to a jury trial is completed. A Central Ohio real estate attorney estimated that a straightforward case can cost between \$20,000 and \$50,000, while more complicated cases can cost significantly more. The main factors affecting the complexity of a case include: the reason the local government is seeking to acquire the property, whether the property is open farm land or a commercial site, perhaps, with tenants to be relocated, and whether the local government is seeking to acquire frontage from a piece of property or the entire property.

Still, one cannot know if the increased incentive to litigate will be enough to actually result in additional eminent domain matters going to trial. Also, more cases do not necessarily mean that a local government will end up paying the property owner's litigation costs in more instances.

State Effects

While under certain circumstances, just about any state agency can invoke eminent domain authority, most agencies rarely, if ever, appropriate land. The state agency that acquires, the most parcels of land per year, by far, is the Ohio Department of Transportation (ODOT). For example, in 1996, ODOT acquired approximately 1900 parcels of land. ODOT acquires more parcels of land each year than any other state agency or local government. Of the 1900 total parcels acquired by ODOT in 1996, seven cases were resolved via a jury trial, or .37%. Please note that additional cases begun in 1996 could have been awaiting trial or in the midst of a trial but were not completed at the end of 1996.

According to ODOT data, the average jury award amount, in its eminent domain cases was 39% below the lowest dollar value considered acceptable by the property owner for cases resolved by a jury trial between 1/1/95 and 3/7/97. However, these final awards were also 96%

higher than ODOT's highest deposit amount. (The law requires that before taking possession of a property that a public agency must deposit the appraised value of the land with the court.) Please note that, typically, the highest ODOT deposit on a parcel of land is not the highest offer that has been made to the land owner before trial. Usually the highest offer is substantively larger than the highest deposit made. ODOT only had data on the highest deposit made and not the highest offer.

Essentially the issues discussed above regarding local governments about trials, costs, and incentives for litigation also apply for ODOT and its eminent domain cases. However, the financial impact on the state has the potential to be much larger (in gross dollar amounts), since ODOT acquires significantly more parcels of land each year than any local government.

LBO Staff: Alexander C. Heckman, Graduate Researcher

Hb0345in