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## ***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. The bill requires affected owner to make a good faith effort to negotiate a settlement and specify 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. The survey results could indicate that many local governments rarely, if ever, appropriate land. The bill would have no effect on such local government entities' costs. However, many local governments will periodically want to 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. (Note: A land appropriation means that a case has been filed with a court. The term acquisition refers to the entire process of obtaining a piece of land and does not necessarily involve court action.)

There are a number of local government entities in the state that 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

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 just over 1%).

The bill could increase the incentive to litigate for both property owners and their legal counsel. Under the bill, attorneys will be assured to have their costs covered if a jury award is more than 10% of a highest offer. It would not be uncommon for two legitimate appraisals of a piece of property to differ by more than 10 percent. 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 bill's changes could induce governments to make higher settlement offers to property owners in order to avoid litigation and the possibility of having to pay the property owners' legal costs.

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 could 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 only frontage from a piece of property or the entire property.

LBO 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. However, if more property owners choose to litigate under the bill, this could create delays in a project, which can also lead to a significant increase in costs.

*Survey results.* Twenty-seven survey responses were received. Some local government officials were also interviewed over the telephone. 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

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

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 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%. (Note: Cases begun in 1996 could have been awaiting trial or in the midst of a trial and not have been 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. Typically, the highest ODOT deposit on a parcel of land is not the highest offer that has been made to the landowner before trial. Usually the highest offer is substantively larger than the highest deposit made. However, ODOT only had data on the highest deposit made and not the highest offer. 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.

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