Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Am. Sub. S.B. 7** DATE: **June 27, 2007**

STATUS: **As Enacted – October 10, 2007** SPONSOR: **Sen. Grendell**

LOCAL IMPACT STATEMENT REQUIRED: **No — Potential indirect fiscal effects**

CONTENTS: **To implement the recommendations of the Eminent Domain Task Force and enact procedures to protect private property rights**

State Fiscal Highlights

STATE GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
Various Agency Funds			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase in compensation costs for properties taken by eminent domain	Potential increase in compensation costs for properties taken by eminent domain	Potential increase in compensation costs for properties taken by eminent domain

- Allows properties to be taken by eminent domain in certain circumstances, and establishes compensation guidelines for those takings. The new guidelines, which include provisions for compensating property owners, may potentially result in higher costs when eminent domain is invoked.
- The state fiscal effects would be difficult to quantify, although the agency most likely to be affected would be the Department of Transportation, which relies on eminent domain for various construction projects. Whether the bill would add new costs for the Department is uncertain, and would depend on several factors.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2007	FY 2008	FUTURE YEARS
Various Political Subdivisions			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase in compensation costs for properties taken by eminent domain	Potential increase in compensation costs for properties taken by eminent domain	Potential increase in compensation costs for properties taken by eminent domain

- The bill prohibits public authorities from taking private properties for public use for the purpose of increasing revenues.

- Allows properties to be taken by eminent domain in certain circumstances, and establishes compensation guidelines for those takings. The new guidelines, which include provisions for compensating property owners, may potentially result in higher costs when eminent domain is invoked.

- Whether these new restrictions would add new costs is uncertain, and would depend on many factors.

Detailed Fiscal Analysis

Provisions of the bill

The bill prohibits public authorities from taking private property for a public use for the purpose of increasing revenues for a public authority. Public authorities may not use the potential revenues as evidence that the property to be taken is blighted. A property is determined to be blighted if the property has an area in which at least 70% of the parcels of that property are blighted. The bill also exempts agricultural lands from being designated as blighted if the land is used for agricultural purposes as defined by section 303.01 or 519.01 of the Revised Code.

If a public agency acquires any real property, it must include a statement of the purpose of the appropriation and indicate that the prior owner possesses a right to repurchase the property if the public agency decides not to use the land for the stated purpose. The bill sets out conditions under which this right is extinguished. One such situation would be if it is determined that the owner was partly responsible for creating the blighted conditions of the property.

The bill also sets restrictions as to what purposes that property claimed by eminent domain may be used. No such property may be used for any private commercial enterprise, economic development, or any other private use unless that property is conveyed or leased to a public utility, a private entity that occupies an incidental area within a publicly owned project, or a private entity that shows a preponderance of evidence that the property is blighted as defined in section 1.08 of the Revised Code. Once a public entity finds an area blighted, it cannot appropriate the property until it adopts a comprehensive development plan, and obtains a resolution from the appropriate governing legislative body. Finally, the bill requires an agency to notify the owner of intent to take property at least 30 days before filing an appropriation petition. It would seem likely that this requirement could impose a minimal administrative cost on the public entity seeking to take the property.

Compensation Costs

The bill establishes compensation requirements for property taken by eminent domain. First, the bill requires that any public agency compensate property owners for any moving or relocation costs, direct losses of tangible property, reasonable expenses associated with searching for replacement farms or businesses, and reasonable re-establishment costs. Next, if the final award of compensation for property exceeds 125% of the public agency's original offer, the court is to enter judgment in favor of the owner for all costs and expenses. The bill sets out guidelines for awarding these costs and expenses, and provides some limits on how these are determined, briefly described below.

Before commencing a proceeding, if an agency makes a revised offer based on conditions indigenous to the property that could not have been discovered at the time of the first offer, the award must exceed 125% of the **revised** offer instead of the original offer. The bill extends this requirement to both public and private agencies. (A privately owned and operated utility company would be an example of a private agency that would seek to take property through eminent domain.) As an alternative, the bill also allows the parties involved in a court proceeding to request mediation in lieu of a court-determined compensation amount. Mediation by the parties involved could potentially result in an agreed upon compensation amount that is either more or less than the court-determined compensation. Presumably, there would be few instances where the mediated compensation level exceeded that of the court-determined compensation.

Second, if an agency negotiated in good faith with the property owner before and after filing petitions or when establishing the value of the property interest so that appraisers may reasonably disagree with its value, a judgment may include attorney's fees and costs only if the award exceeds 150% of the first or **revised** offer. Relocation costs are not to exceed $2,500.

The bill also requires a jury to assess compensation to the owner of a business conducted on the property taken for loss of goodwill if the owner proves that the loss is caused by the taking of the property and that the loss cannot reasonably be prevented by relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill. Compensation for loss of goodwill may not be duplicated in any other payments or awards of compensation. The determination for the amount of compensation awarded cannot exceed 12 months net profit on an annualized basis. The bill sets the goodwill compensation limit to $10,000.

One state agency certain to be affected, although to what degree is uncertain, is the Department of Transportation. On the local level, the same would hold true for county engineers. The Department of Transportation revealed that over the FY 2004-2006 period, of the 4,870 parcels it acquired, eminent domain was invoked for the appropriation of 578 parcels. To what extent the additional steps required by the bill would affect this process, and future highway construction and maintenance costs is uncertain.

Possible indirect effects

Some state agencies and local governments may experience a loss of revenues in the future that may have been available were the public agencies permitted to take certain private property through the use of eminent domain. Although these amounts could be significant, they are incalculable, and would be considered an indirect effect of this bill.

Summary

Should a public agency seek to appropriate property, the compensation cost requirements set forth in the bill could potentially exceed those that exist in current law, thereby resulting in increased expenditures for the public takings. Overall, the future indirect revenue impact of the bill on the state and local governments would be difficult to quantify, but it is possible that there could be revenue losses in the form of foregone property taxes for local governments, or any sort of revenue resulting from the economic development due to projects that were not undertaken because of the eminent domain restrictions in the bill.

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