

IN THE SUPREME COURT OF OHIO

STATE OF OHIO *ex. rel.* JONDAVID
BALUNEK,

Relator,

vs.

JACK MARCHBANKS, DIRECTOR,
OHIO DEPARTMENT OF
TRANSPORTATION, et al.,

Respondents.

Case No. 2021-1469

Original Action in Mandamus

RELATOR JONDAVID BALUNEK'S MERIT BRIEF

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Pursuant to the Court's Alternative-Writ Entry of November 30, 2022 and S.Ct.Prac.R. 12.05, Relator Jondavid Balunek submits the following as his Merit Brief.

Respectfully submitted,

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT OF FACTS	1
ARGUMENT	5
<u>Proposition of Law No. 1:</u>	
There is a clear legal right to compensation where state action deprives a property owner of street access to property and a clear legal duty on the part of the state actor to provide such compensation.	5
<u>Proposition of Law No. 2:</u>	
Relator lacks an adequate remedy in the ordinary course of the law.....	10
CONCLUSION.....	11
CERTIFICATE OF SERVICE	12
APPENDIX	<u>Appx. Page</u>
<u>CONSTITUTIONAL PROVISIONS; STATUTES</u>	
United States Constitution, Fifth Amendment.....	1
United States Constitution, Fourteenth Amendment.....	2
Ohio Constitution, Article I, Section 19.....	4
R.C. Chapter 163.....	5

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cases:</u>	
<i>Preschool Dev., Ltd. v. City of Springboro</i> , S.D.Ohio No. 1:04-CV-00348, 2005 WL 1038849 (May 4, 2005).....	6-7
<i>Smith v. Bd. of Commissioners of Wayne County</i> , 50 Ohio St. 628 (1893).....	7
<i>State ex rel. BSW Dev. Group</i> , 83 Ohio St.3d 338 (1998).....	6, 11
<i>State ex rel. Hilltop Basic Resources, Inc. v. City of Cincinnati</i> , 118 Ohio St.3d 131 (2008).....	6-8, 11
<i>State ex rel. McKay v. Kauer</i> , 156 Ohio St. 347 (1951).....	6-7
<i>State ex rel. Merritt v. Linzell</i> , 163 Ohio St. 97 (1955).....	7
<i>State ex rel. New Wen, Inc. v. Marchbanks</i> , 159 Ohio St.3d 15 (2020).....	11-12
<i>State ex rel. OTR v. City of Columbus</i> , 76 Ohio St.3d 203 (1996).....	6-11
<i>State ex rel. Preschool Dev., Ltd. v. City of Springboro</i> , 99 Ohio St.3d 347 (2003).....	5-6, 11
<i>State ex rel. Romine v. McIntosh</i> , 162 Ohio St.3d 501 (2020).....	5
<i>State ex rel. Sekermestrovich</i> , 90 Ohio St.3d 536 (2001).....	6, 11
<i>See State ex rel. Shemo v. City of Mayfield Heights</i> , 95 Ohio St.3d 59 (2002).....	6, 11-12
<i>State ex rel. Thieken v. Proctor</i> , 10 th Dist. Franklin No. 08AP-109, 2008-Ohio-6960.....	7-8, 10
<u>Constitutional Provisions; Statutes:</u>	
Ohio Constitution, Article I, Section 19.....	6-7, 10
R.C. Chapter 163.....	1
United States Constitution, Fifth Amendment.....	5-7, 10
United States Constitution, Fourteenth Amendment.....	5-6

I. INTRODUCTION

Respondents Jack Marchbanks, Director, and the Ohio Department of Transportation (collectively “ODOT”) have destroyed Relator Jondavid Balunek’s access to his real property located in Cuyahoga County, Ohio at Parcel No. 126-10-002 with an address of 2525 East 93rd Street, Cleveland, Ohio 44104 (the “Property”). ODOT’s conduct has rendered Relator’s Property landlocked, useless, and without value. Here, Relator seeks a Peremptory Writ of Mandamus compelling ODOT to initiate appropriation proceedings under Ohio Revised Code Chapter 163 for its total taking of the entire Property in fee simple absolute, including the 2.2349-acre portion not identified as being taken in fee simple in ODOT’s Petition filed in the Cuyahoga County Action (defined below).¹ Specifically, this Court should compel ODOT, through the requested writ, to amend its Petition in the Cuyahoga County Action to reflect a total taking of the Property.

II. STATEMENT OF FACTS

Relator owns the Property, comprising 2.7169 acres. (RELATOR002, ¶2). Peter M. Balunek, as Executor of the Will of John Balunek, deceased, conveyed the Property to Relator on July 18, 2008. (RELATOR255-256). The Property is located along the eastern side of East 93rd Street, north of Woodland Avenue and south of Quincy Avenue, in the City of Cleveland, Ohio. (RELATOR007). The Property has frontage on East 93rd Street, a north/south two-lane roadway with a speed limit of 35 miles per hour. (RELATOR116).

The Property consists of industrial vacant land zoned GI-B3, General Industry District. (RELATOR007). This zoning classification permits certain industrial, manufacturing, commercial, and other non-residential uses. (RELATOR007; RELATOR117-120).

¹ The total acreage for the Property (2.7169) less the fee simple taking reflected in ODOT’s Petition in the Cuyahoga County Action (0.482) equals the acreage *not* identified in such Petition as being taken in fee simple (2.2349).

When Relator acquired the Property, it had three access points: (1) a 26-foot curb cut driveway off East 93rd Street; (2) a 14-foot curb cut driveway off East 93rd Street; and (3) a right-of-way easement across a neighboring property onto Woodland Avenue. (RELATOR002, ¶4). Since acquiring the Property, Relator has attempted to market the Property to developers for development and commercial use and consistently listed the Property with a real estate broker for this purpose. (RELATOR002, ¶3).

In 2009, the State of Ohio announced the Opportunity Corridor Project (the “**Project**”), involving the construction of a roadway from East 55th Street at Interstate 490 to East 105th Street in University Circle. (RELATOR002, ¶5-6). ODOT, the City of Cleveland, Greater Cleveland Partnership, and the Opportunity Corridor Partnership Office manage the Project. (RELATOR084). In 2009, ODOT also published drawings depicting three alternative renderings of the Project, two of which would directly impact the Property. (RELATOR002, ¶7-8). Despite Relator’s best efforts to attract an investor, there was no market for development of the Property due to the pending Project. (RELATOR003, ¶9).

On or about July 25, 2013, then-Governor John Kasich publicly announced funding for the Project. (RELATOR003, ¶10). At or around this time, ODOT published a right-of-way impact table showing that the Project would, in fact, affect the Property, but not that the Property would be totally taken. (RELATOR003, ¶11); *see also* Answer of Respondents, ¶3.

Beginning in December 2014, ODOT commissioned the preparation of three appraisal reports in anticipation of the planned appropriation of the Property. (RELATOR003, ¶12). Each appraisal report contemplated a fee simple appropriation of a *portion* of the Property, a permanent utility easement across the Property, and a temporary work easement. *See* Verified Petition and Complaint for Writ of Mandamus (“**Relator’s Petition**”), ¶29; Answer of Respondents, ¶3. Each

appraisal report also assumed replacement of driveway access to the Property from East 93rd Street.

See Relator's Petition, ¶34; Answer of Respondents, ¶3.

The first appraisal report, certified January 19, 2015, contemplated a fee simple taking of 0.451 acres, a utility easement of 0.144 acres, and a temporary work easement of 0.392 gross acres (0.248 net acres). (RELATOR006-030). The second appraisal report, certified January 15, 2016, contemplated a fee simple taking of 0.482 acres, a utility easement of 0.144 acres, and a temporary work easement of 0.500 gross acres (0.356 net acres). (RELATOR031-074). The third and final appraisal report prepared for ODOT, certified October 24, 2018, contemplated a fee simple taking of 0.482 acres, a utility easement of 0.144 acres, and a temporary work easement of 0.500 gross acres (0.356 net acres). (RELATOR075-187).²

All the ODOT appraisal reports contemplated replacement of access to East 93rd Street from the Property. (RELATOR003, ¶17; RELATOR006-030; RELATOR031-074; RELATOR075-187). Specifically, the January 19, 2015 report states:

Any seeded lawn, asphalt paving, and/or concrete paving site improvements (if applicable) within the temporary and utility easement areas will be replaced in kind, therefore no compensation for these items is warranted.

...

A temporary easement is needed to complete grading and ***reconstruct drive.***

...

[T]here are no incurable severance damages to the residue property

(RELATOR008; RELATOR009; RELATOR012) (emphasis added). The January 15, 2016 appraisal report made the same representations regarding replacement of the driveway.

² Respondents admit that Relator attached accurate copies of ODOT's three appraisal reports to the Verified Petition filed in this case. *See Answer of Respondents, ¶9-11.*

(RELATOR036; RELATOR037; RELATOR040). Similarly, the October 24, 2018 appraisal report stated:

In the before situation, the subject . . . has access to/from East 93rd Street.

. . .

Parcel 3001 T is a temporary easement needed to complete grading and ***reconstruct drive.***

. . .

In the after situation, the subject will continue to . . . have access to/from East 93rd Street.

. . .

Any seeded lawn, asphalt paving, and/or concrete paving site improvements within the temporary and utility easement areas will be replaced in kind, therefore no compensation for these items is warranted.

(RELATOR084; RELATOR085; RELATOR143) (emphasis added).

On March 22, 2016, ODOT commenced appropriation proceedings regarding the Property against Relator in the Cuyahoga County Probate Court, Case No. 2016ADV214882 (the “**Cuyahoga County Action**”). (RELATOR003, ¶18). ODOT’s Petition in the Cuyahoga County Action seeks a judgment ordering the appropriation of only a ***portion*** of the Property.³ *See* Relator’s Petition, ¶48-49; Answer of Respondents, ¶13.

Based on ODOT’s representations and the reports of ODOT’s appraisers, Relator expected access to the Property from East 93rd Street would be restored upon completion of the Project. (RELATOR004, ¶18). However, the portion of the Project impacting Relator’s Property is now complete, and Relator does ***not*** have access to his Property from East 93rd Street. (RELATOR004,

³ ODOT’s Petition in the Cuyahoga County Action contemplates a fee simple taking of 0.482 acres, a utility easement of 0.144 acres, and a temporary work easement of 0.500 acres. *See* Petition to Appropriate Property and to Fix Compensation, Cuyahoga County Probate Court, Case No. 2016ADV214882.

¶21). This is because ODOT did **not** replace the driveways on East 93rd Street or provide Relator an alternative driveway on East 93rd Street or at any other location on the Property. *See* Relator's Petition, ¶41; Answer of Respondents, ¶3. The Project also eliminated Relator's easement access across the neighboring property onto Woodland Avenue. (RELATOR004, ¶24). In other words, there is no access to the Property from **any** street. (RELATOR004, ¶25).

ODOT's elimination of access to the Property has deprived Relator of all economically viable use of the Property. (RELATOR004, ¶27). Specifically, there is no market for development or lease of the Property because it cannot be accessed from any road. (RELATOR005, ¶28). The entire Property has suffered a complete loss in fair market value, and will continue to suffer such loss unless access to the Property is restored. (RELATOR005, ¶29). Without access to the Property, Relator cannot develop, sell, or use the Property. (RELATOR005, ¶30).

III. ARGUMENT

ODOT's destruction of Relator's access to all abutting public roadways, a fundamental attribute of property ownership, constitutes a fee simple "taking" of the entire Property requiring just compensation. To prevail on a claim for a writ of mandamus, Relator must establish (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of Respondents to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *See State ex rel. Romine v. McIntosh*, 162 Ohio St.3d 501, 2020-Ohio-6826, 165 N.E.3d 1262, ¶10.

A. Proposition of Law No. 1: There is a clear legal right to compensation where state action deprives a property owner of street access to property and a clear legal duty on the part of the state actor to provide such compensation.

"The United States and Ohio Constitutions guarantee that private property shall not be taken for public use without just compensation." *State ex rel. Preschool Dev., Ltd. v. City of Springboro*, 99 Ohio St.3d 347, 792 N.E.2d 721, 2003-Ohio-3999, ¶12 (citing Fifth and Fourteenth

Amendments, U.S. Constitution; Article I, Section 19, Ohio Constitution) [hereinafter *Preschool Dev.*]. Where an involuntary taking of private property is alleged, mandamus is the appropriate action to compel a public authority to institute appropriation proceedings. *See State ex rel. Shemo v. City of Mayfield Heights*, 95 Ohio St.3d 59, 63, 765 N.E.2d 345, 350 (2002).

This Court has repeatedly recognized right of access to abutting public roadways as a fundamental attribute of property ownership. *See Preschool Dev.*, 2003-Ohio-3999, ¶13; *State ex rel. Sekermestrovich*, 90 Ohio St.3d 536, 537-38, 740 N.E.2d 252, 254 (2001); *State ex rel. BSW Dev. Group*, 83 Ohio St.3d 338, 342-43, 699 N.E.2d 1271, 1275 (1998); *State ex rel. OTR v. City of Columbus*, 76 Ohio St.3d 203, 207, 667 N.E.2d 8, 12 (1996) (holding that the regrading of a road preventing the property owner from having access was a “taking” requiring compensation); *State ex rel. Hilltop Basic Resources, Inc. v. City of Cincinnati*, 118 Ohio St.3d 131, 886 N.E.2d 839, 2008-Ohio-1966, ¶29 [hereinafter *Hilltop*]. In cases like this one, where a fundamental attribute of property ownership such as the right of access has been destroyed, ““the landowner need not establish the deprivation of *all* economically viable uses of the land.”” *See Preschool Dev.*, 2003-Ohio-3999, ¶13 (quoting *Sekermestrovich*, 90 Ohio St.3d at 537-38). Instead, the landowner must demonstrate ““a substantial or unreasonable interference with a property right.”” *Id.* (quoting *OTR*, 76 Ohio St.3d at 206). ““A property owner’s right of access to his property from a street or highway upon which it abuts cannot be lawfully destroyed or unreasonably affected”” *Id.* at ¶14 (quoting *State ex rel. McKay v. Kauer*, 156 Ohio St. 347, 347, 102 N.E.2d 703, 703 (1951)).

Where state action removes physical access to private property from the street, ““the owner of such property suffers a ‘taking’ of his property and is entitled to compensation by way of damages from the state.”” *Preschool Dev., Ltd. v. City of Springboro*, S.D.Ohio No. 1:04-CV-

00348, 2005 WL 1038849, *7 (May 4, 2005) (quoting *McKay*, 156 Ohio St. at 347). Further, “[t]he owner of a lot abutting on a street has an easement in the street appendant to his lots whereby he is entitled to an unobstructed access to and from the street, and this appendant easement is as much property as the lot itself.” *Id.* (quoting *Smith v. Bd. of Commissioners of Wayne County*, 50 Ohio St. 628, 633, 35 N.E. 796, 797 (1893)). A property owner’s “private right or easement for the purpose of ingress and egress to and from his property . . . may not be taken away, . . . destroyed or substantially impaired without compensation.” *Id.* at *9 (quoting *State ex rel. Merritt v. Linzell*, 163 Ohio St. 97, 97-98, 126 N.E.2d 53, 54 (1955)).

In *Hilltop*, this Court affirmed the granting of a writ of mandamus ordering the City of Cincinnati to bring an appropriation action for the denial of access to a public road. *See Hilltop*, 2008-Ohio-1966, ¶1. There, the city denied a landlord’s application for a curb-cut permit because the pending construction of an unrelated project “[did] not support this access.” *Id.* at ¶11. The denial of the curb-cut permit left the property landlocked – the only access would be by boat. The landlord and tenant then filed a petition for a writ of mandamus to compel the city to commence an eminent domain proceeding. *Id.* at ¶12.

The city in *Hilltop* argued there was no compensable taking since the denial of access affected only undeveloped property. *Id.* at ¶30. This Court rejected that argument, noting there is no distinction between developed and undeveloped property in determining whether there is a compensable taking. *See id.* at ¶31-33. This Court again recognized a property owner has a right to access abutting public streets or highways, and thus any governmental action which substantially or unreasonably interferes with this right constitutes a taking of private property under Section 19, Article I of the Ohio Constitution and the Fifth Amendment to the United States Constitution. *See id.* at ¶32 (citing *OTR*, 76 Ohio St.3d at 203, syllabus); *see also State ex rel.*

Thieken v. Proctor, 180 Ohio App.3d 154, 904 N.E.2d 619, 2008-Ohio-6960, ¶15 (holding state action which completely deprives a property owner of all access to an abutting public roadway constitutes a taking). Because the city substantially and unreasonably interfered with a private property owner's right of access to an abutting public road, this Court upheld the writ. *See Hilltop*, 2008-Ohio-1966, ¶1.

In *OTR*, the relator owned two properties across the street from each other on East Campus View Boulevard in Columbus, Ohio. *See OTR*, 76 Ohio St.3d at 203-04. Access to the 355 East Campus View Boulevard property (a/k/a Crossgate Center) was provided by driveways onto Courtyard and Horizon Drives, located to the west and south of the property, respectively. *Id.* at 204. Access to the 400 East Campus View Boulevard property (a/k/a Campus View Plaza) was provided by a common access driveway at the southwest section of the property. *Id.* This driveway crossed a separately designated tax parcel also owned by OTR. *Id.* A driveway at the northwest portion of Campus View Plaza also provided access. *Id.* In February 1987, the City of Columbus solicited proposals for engineering services to extend Campus View Boulevard eastward, requiring the construction of an overpass above certain railroad tracks. *See id.* at 204. The new overpass required grade separation and concrete retaining walls running virtually the entire length of both the Crossgate Center and Campus View Plaza properties, creating a barrier between the properties and Campus View Boulevard. *Id.* at 205. As a result, OTR was prevented from developing any access routes along the properties' frontage on Campus View Boulevard. *Id.*

The owner in *OTR* filed a mandamus action in common pleas court, claiming the construction of the railroad overpass interfered with their right to access the properties via Campus View Boulevard. *Id.* The trial court issued a peremptory writ of mandamus, commanding the city to institute appropriation proceedings. *Id.* After a reversal on appeal, the *OTR* matter came before

this Court for consideration. The Court first noted, “In order to establish a taking, a landowner must demonstrate a substantial or unreasonable interference with a property right.” *Id.* at 206. This interference may involve an actual physical taking of real property, or it may entail the deprivation of an intangible interest in the premises. *Id.* This Court further noted the right to access abutting public roadways is “one of the elemental rights” arising from ownership of real property. *Id.* at 207. Where a public authority substantially, materially, or unreasonably interferes with this right, the landowner is entitled to just compensation. *Id.* at 208.

This Court concluded in *OTR* that the property owner’s existing private right or easement of access to the properties via Campus View Boulevard was destroyed (or at the very least substantially impaired). *Id.* at 209.⁴ The Court held the city effectuated a taking of private property rights, namely the right of street access, requiring compensation to the property owner under the state and federal constitutions. *See id.*

Here, all three of ODOT’s appraisal reports contemplated a fee simple appropriation of a **portion** of the Property, a permanent utility easement across the Property, and a temporary work easement. *See* Relator’s Petition, ¶29; Answer of Respondents, ¶3. All three reports also contemplated replacement of driveway access to the Property from East 93rd Street. *See* Relator’s Petition, ¶34; Answer of Respondents, ¶3. However, that did not happen.

ODOT did **not** replace the driveways on East 93rd Street or restore or provide **any** access to **any** portion of the Property from **any** abutting roadway. *See* Relator’s Petition, ¶41; Answer of Respondents, ¶3. Moreover, due to the location of the newly constructed Opportunity Corridor Boulevard, the Project also eliminated Relator’s easement access across the neighboring property

⁴ A taking can occur even where governmental action does not deny the landowner all access to the property. *See OTR*, 76 Ohio St.3d at 209.

onto Woodland Avenue. (RELATOR004, ¶24). Simply put, ODOT has eliminated *all* access to the *entire* Property from *all* abutting streets. (RELATOR004, ¶25).

“The law in Ohio is clear. An owner of a parcel of real property has a right to access public streets or highways on which the property abuts.” *OTR*, 76 Ohio St.3d at 211. “[A]ny governmental action that substantially or unreasonably interferes with this right constitutes a taking of private property within the meaning of Section 19, Article I of the Ohio Constitution and the Fifth Amendment to the United States Constitution.” *Id.* Where a state completely deprives a property owner of all access to an abutting roadway (like here), the state has substantially or unreasonably interfered with the right of access. *State ex rel. Thieken v. Proctor*, 10th Dist. Franklin No. 08AP-109, 2008-Ohio-6960, ¶15.

This is *not* a case where ODOT has merely limited Relator’s access to his Property. This is *not* a case where Relator continues to have alternative street access. This is a case where ODOT has destroyed *all* access to the *entire* Property from *every* abutting roadway. Without vehicular access, there is no market for developing, leasing, or selling the Property. (RELATOR005, ¶28-30). Indeed, the *entire* Property is now devoid of *all* utility and value. (RELATOR004-005, ¶27-30). Under these facts, the only way to treat ODOT’s conduct is as a total take of the entire Property in fee simple absolute. Since ODOT has substantially and unreasonably interfered with, and in fact eliminated, Relator’s right to access abutting roadways, Relator is entitled to just compensation. *See OTR*, 76 Ohio St.3d at 207-08.

B. Proposition of Law No. 2: Relator lacks an adequate remedy in the ordinary course of the law.

ODOT has *already* eliminated vehicular access to the *entire* Property, a substantial and unreasonable interference with Relator’s well-established fundamental right to access his Property from abutting roadways. For the reasons stated in Section III(A) above, ODOT’s conduct amounts

to a total taking of the *entire* Property. However, ODOT's Petition in the Cuyahoga County Action seeks a judgment ordering the appropriation of only a *portion* of the Property. *See* Relator's Petition, ¶48-49; Answer of Respondents, ¶13.⁵

Relator seeks a Peremptory Writ of Mandamus compelling ODOT to initiate appropriation proceedings for its *total* taking of the entire Property, including the 2.2349-acre portion not identified as being taken in fee simple in ODOT's Cuyahoga County Petition. "When a property owner alleges the taking of private property, mandamus is the correct action to force the state to institute appropriation proceedings." *State ex rel. New Wen, Inc. v. Marchbanks*, 159 Ohio St.3d 15, 146 N.E.2d 545, 2020-Ohio-63, ¶5. Accordingly, the proper mechanism for compelling ODOT to amend its petition in the Cuyahoga County Action to reflect a taking of the *whole* Property is a mandamus action, an equitable remedy. *See id.*; *see also Shemo*, 95 Ohio St.3d at 63. There is no adequate remedy at law available to Relator.

IV. CONCLUSION

An owner of real property has a clear and long-established right to access public streets or highways on which the property abuts. *See Preschool Dev.*, 2003-Ohio-3999, ¶13; *Sekermestrovich*, 90 Ohio St.3d at 537-38; *BSW Dev. Group*, 83 Ohio St.3d at 342-43; *OTR*, 76 Ohio St.3d at 207; *Hilltop*, 2008-Ohio-1966, ¶29. Here, ODOT's conduct went far beyond an interference – it was a complete destruction of Relator's right of access. Any governmental action which substantially or unreasonably interferes with Relator's *clear* right of access constitutes a taking of private property *clearly* requiring just compensation from ODOT. *See Hilltop*, 2008-Ohio-1966, ¶32; *OTR*, 76 Ohio St.3d at 207-08. Lastly, the correct way for Relator to compel

⁵ *See also* Petition to Appropriate Property and to Fix Compensation, Cuyahoga County Probate Court, Case No. 2016ADV214882.

ODOT to amend its Cuyahoga County Petition to reflect a taking of the *entire* Property is a mandamus action. *See New Wen, Inc.*, 2020-Ohio-63, ¶5; *Shemo*, 95 Ohio St.3d at 63.

WHEREFORE, Relator Jondavid Balunek respectfully requests that this Honorable Court grant him all the relief previously requested in his Verified Petition and Complaint for Writ of Mandamus.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 30, 2022, the foregoing was submitted to the Clerk's filing system for distribution to all parties registered as users with that system, and a copy of the foregoing was served on all counsel of record by electronic mail.

/s/ Ryan M. Gembala
Ryan M. Gembala

United States Code Annotated

Constitution of the United States

Annotated

Amendment V. Grand Jury; Double Jeopardy; Self-Incrimination; Due Process; Takings

U.S.C.A. Const. Amend. V

Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Takings without Just Compensation

Currentness

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

<Historical notes and references are included in the full text document for this amendment.>

<For Notes of Decisions, see separate documents for clauses of this amendment:>

<USCA Const. Amend. V--Grand Jury clause>

<USCA Const. Amend. V--Double Jeopardy clause>

<USCA Const. Amend. V--Self-Incrimination clause>

<USCA Const. Amend. V-- Due Process clause>

<USCA Const. Amend. V--Takings clause>

U.S.C.A. Const. Amend. V, USCA CONST Amend. V

Current through P.L. 117-248. Some statute sections may be more current, see credits for details.

United States Code Annotated

Constitution of the United States

Annotated

Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

U.S.C.A. Const. Amend. XIV, USCA CONST Amend. XIV

Current through P.L. 117-248. Some statute sections may be more current, see credits for details.

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Baldwin's Ohio Revised Code Annotated

Constitution of the State of Ohio

Article I. Bill of Rights (Refs & Annos)

OH Const. Art. I, § 19

O Const I Sec. 19 Eminent domain

Currentness

Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure, or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money, and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

CREDIT(S)

(1851 constitutional convention, adopted eff. 9-1-1851)

Notes of Decisions (841)

Const. Art. I, § 19, OH CONST Art. I, § 19

Current through File 135 of the 134th General Assembly (2021-2022) and 2022 Statewide Issue 1 and 2022 Statewide Issue 2.

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Baldwin's Ohio Revised Code Annotated

Title I. State Government

Chapter 163. Appropriation of Property

R.C. T. I, Ch. 163, Refs & Annos

Currentness

R.C. T. I, Ch. 163, Refs & Annos, OH ST T. I, Ch. 163, Refs & Annos

Current through File 135 of the 134th General Assembly (2021-2022) and 2022 Statewide Issue 1 and 2022 Statewide Issue 2.

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Baldwin's Ohio Revised Code Annotated

Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

General Provisions

R.C. § 163.01

163.01 Definitions

Effective: October 10, 2007

Currentness

As used in sections 163.01 to [163.22 of the Revised Code](#):

(A) "Public agency" means any governmental corporation, unit, organization, instrumentality, or officer authorized by law to appropriate property in the courts of this state.

(B) "Private agency" means any corporation, firm, partnership, voluntary association, joint-stock association, or company that is not a public agency and that is authorized by law to appropriate property in the courts of this state.

(C) "Agency" means any public agency or private agency.

(D) "Court" means the court of common pleas or the probate court of any county in which the property sought to be appropriated is located in whole or in part.

(E) "Owner" means any individual, partnership, association, or corporation having any estate, title, or interest in any real property sought to be appropriated.

(F) "Real property," "land," or "property" includes any estate, title, or interest in any real property that is authorized to be appropriated by the agency in question, unless the context otherwise requires.

(G) "Public utility" has the same meaning as in [section 4905.02 of the Revised Code](#) and also includes a public utility owned or operated by one or more municipal corporations, an electric cooperative, and an agency holding a certificate of public convenience and necessity granted by the federal energy regulatory commission.

(H)(1) "Public use" does not include any taking that is for conveyance to a private commercial enterprise, economic development, or solely for the purpose of increasing public revenue, unless the property is conveyed or leased to one of the following:

- (a) A public utility, municipal power agency, or common carrier;
- (b) A private entity that occupies a port authority transportation facility or an incidental area within a publicly owned and occupied project;
- (c) A private entity when the agency that takes the property establishes by a preponderance of the evidence that the property is a blighted parcel or is included in a blighted area.

(2) All of the following are presumed to be public uses: utility facilities, roads, sewers, water lines, public schools, public institutions of higher education, private institutions of higher education that are authorized to appropriate property under [section 3333.08 of the Revised Code](#), public parks, government buildings, port authority transportation facilities, projects by an agency that is a public utility, and similar facilities and uses of land.

- (I) "Electric cooperative" has the same meaning as in [section 4928.01 of the Revised Code](#).
- (J) "Good faith offer" means the written offer that an agency that is appropriating property must make to the owner of the property pursuant to [division \(B\) of section 163.04 of the Revised Code](#) before commencing an appropriation proceeding.
- (K) "Goodwill" means the calculable benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances that result in probable retention of old, or acquisition of new, patronage.
- (L) "Municipal power agency" has the same meaning as in [section 3734.058 of the Revised Code](#).
- (M) "Port authority transportation facility" means any facility developed, controlled, or operated by a port authority for the purpose of providing passenger, cargo, or freight transportation services, such as airports, maritime ports, rail facilities, transit facilities, and support facilities directly related to any airport, maritime port, rail facility, or transit facility.

CREDIT(S)

[\(2007 S 7, eff. 10-10-07; 1991 H 201, eff. 6-30-91; 131 v S 94\)](#)

[Notes of Decisions \(25\)](#)

[R.C. § 163.01, OH ST § 163.01](#)

Current through File 135 of the 134th General Assembly (2021-2022) and 2022 Statewide Issue 1 and 2022 Statewide Issue 2.

Baldwin's Ohio Revised Code Annotated

Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

General Provisions

R.C. § 163.02

163.02 Applicability of chapter; exceptions; contents of acquisition
instrument; voluntary conveyance of property under threat of appropriation

Effective: October 10, 2007

Currentness

(A) All appropriations of real property shall be made pursuant to [sections 163.01 to 163.22 of the Revised Code](#), except as otherwise provided in this section, as otherwise provided to abate a health nuisance or because of a public exigency as provided in [division \(B\) of section 307.08, 6101.181, 6115.221, 6117.39, or 6119.11](#) or [division \(D\) of section 504.19 of the Revised Code](#), or as otherwise provided to abate a health nuisance or because of a public exigency as provided in a municipal charter or ordinance.

(B) The director of transportation may appropriate real property pursuant to [sections 163.01 to 163.22 of the Revised Code](#) or as otherwise provided by law.

(C) Notwithstanding any authority to appropriate real property other than under [sections 163.01 to 163.22 of the Revised Code](#), any proceeding to appropriate real property is subject to [division \(B\) of section 163.21 of the Revised Code](#).

(D) Any instrument by which an agency acquires real property pursuant to this section shall include all of the following:

(1) The name of the agency that has the use and benefit of the real property in the manner required by [section 5301.012 of the Revised Code](#);

(2) A statement of the purpose of the appropriation as provided with the appropriation petition;

(3) A statement that the prior owner possesses a right of repurchase pursuant to [section 163.211 of the Revised Code](#) if the agency decides not to use the property for the purpose stated in the appropriation petition and the owner provides timely notice of a desire to repurchase. Nothing in this section affects the authority of the director of transportation to convey unneeded property pursuant to [division \(F\) of section 5501.34 of the Revised Code](#).

(E) Nothing in this chapter precludes any person from voluntarily conveying a property to an agency that is considering appropriating the property or that offers to purchase the property under threat of appropriation. Any such voluntary conveyance of a property to an agency is deemed for all purposes to be a sale under the threat of appropriation for a public use. This division applies to a voluntary conveyance to an agency regardless of whether the property is a blighted property or is located in a blighted area, or the property subsequently could be found for any reason not to qualify for appropriation by the agency.

CREDIT(S)

(2007 S 7, eff. 10-10-07; 2004 H 411, eff. 5-6-05; 1999 H 19, eff. 10-26-99; 1987 H 57, eff. 9-10-87; 1973 H 200; 131 v S 94)

Notes of Decisions (43)

R.C. § 163.02, OH ST § 163.02

Current through File 135 of the 134th General Assembly (2021-2022) and 2022 Statewide Issue 1 and 2022 Statewide Issue 2.

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Baldwin's Ohio Revised Code Annotated

Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

General Provisions

R.C. § 163.021

163.021 Burden of proof; prerequisites to appropriation in blighted area or slum; requirements for appropriation in another county; emergency action to appropriate in blighted area or slum prohibited; appropriation by unelected public agency

Effective: October 10, 2007

Currentness

(A) No agency shall appropriate real property except as necessary and for a public use. In any appropriation, the taking agency shall show by a preponderance of the evidence that the taking is necessary and for a public use.

(B) Before an agency appropriates property based on a finding that the area is a blighted area or a slum, the agency shall do both of the following:

(1) Adopt a comprehensive development plan that describes the public need for the property. The plan shall include at least one study documenting the public need. All of the costs of developing the plan shall be publicly financed.

(2) If the agency is governed by a legislative body, obtain a resolution from that legislative body affirming the public need for the property.

(C) No park board, park district, board of directors of a conservancy district, incorporated association with a purpose of establishing or preserving public parks and memorial sites, or similar park authority shall exercise any power of eminent domain to appropriate real property outside the county or counties in which the park authority is located unless the appropriation has the written approval of the legislative authority of each county in which the property is located, other than the county or counties in which the park authority is located.

(D) No agency shall appropriate property based on a finding that the parcel is a blighted parcel or that the area is a blighted area or slum by making that finding in, or in conjunction with, an emergency ordinance or resolution.

(E) If an appropriation is by a public agency that is not elected and an owner has provided the public agency with a written objection to the appropriation, the elected officials of the public agency or elected individual that appointed the unelected agency may veto that appropriation. If the unelected public agency was appointed by more than one public agency or elected individual, a majority vote of the elected officials of the appointing public agencies or elected individuals is required to veto the appropriation. If the public agency that is not elected is a state agency or instrumentality such as a university, the governor

has the veto authority. The governor may delegate that authority but may not delegate that authority to the unelected agency that seeks the appropriation.

CREDIT(S)

(2007 S 7, eff. 10-10-07)

Notes of Decisions (1)

R.C. § 163.021, OH ST § 163.021

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

General Provisions

R.C. § 163.03

163.03 Entry for surveys, examinations, etc.; notice; restitution for damages

Currentness

Any agency may, upon the notice prescribed in this section, prior to or subsequent to the filing of a petition pursuant to [section 163.05 of the Revised Code](#), enter upon any lands, waters, and premises for the purpose of making such surveys, soundings, drillings, appraisals, and examinations as are necessary or proper for the purpose of the agency under [sections 163.01 to 163.22, inclusive, of the Revised Code](#), and such entry shall not constitute a trespass. Notice of such proposed entry shall be given to the owner or the person in possession by such means as are reasonably available not less than forty-eight hours nor more than thirty days prior to the date of such entry.

The agency shall make restitution or reimbursement for any actual damage resulting to such lands, waters, and premises and to improvements or personal property located in, on, along, over, or under such lands, waters, and premises, as a result of such activities. If the parties are unable to agree upon restitution or other settlement, damages are recoverable by civil action to which the state or agency hereby consents.

CREDIT(S)

(131 v S 94, eff. 1-1-66)

Notes of Decisions (19)

R.C. § 163.03, OH ST § 163.03

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

General Provisions

R.C. § 163.04

163.04 Notice; good faith offer to purchase; appraisal; inability to agree; limiting effects of projects that will disrupt flow of traffic or impede access to property

Effective: October 10, 2007

Currentness

(A) At least thirty days before filing a petition pursuant to [section 163.05 of the Revised Code](#), an agency shall provide notice to the owner of the agency's intent to acquire the property. The notice shall be substantially in the form set forth in [section 163.041 of the Revised Code](#). The notice shall be delivered personally on, or by certified mail to, the owner of the property or the owner's designated representative.

(B) Together with the notice that division (A) of this section requires, or after providing that notice but not less than thirty days before filing a petition pursuant to [section 163.05 of the Revised Code](#), an agency shall provide an owner with a written good faith offer to purchase the property. The agency may revise that offer if before commencing an appropriation proceeding the agency becomes aware of conditions indigenous to the property that could not reasonably have been discovered at the time of the initial good faith offer or if the agency and the owner exchange appraisals prior to the filing of the petition.

(C) An agency may appropriate real property only after the agency obtains an appraisal of the property and provides a copy of the appraisal to the owner or, if more than one, each owner or to the guardian or trustee of each owner. The agency need not provide an owner with a copy of the appraisal when that owner is incapable of contracting in person or by agent to convey the property and has no guardian or trustee or is unknown, or the residence of the owner cannot with reasonable diligence be ascertained. When the appraisal indicates that the property is worth less than ten thousand dollars, the agency need only provide an owner, guardian, or trustee with a summary of the appraisal. The agency shall provide the copy or summary of the appraisal to an owner, guardian, or trustee at or before the time the agency makes its first offer to purchase the property. A public utility or the head of a public agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a fair market value of ten thousand dollars or less.

(D) An agency may appropriate real property only after the agency is unable to agree on a conveyance or the terms of a conveyance, for any reason, with any owner or the guardian or trustee of any owner unless each owner is incapable of contracting in person or by agent to convey the property and has no guardian or trustee, each owner is unknown, or the residence of each owner is unknown to the agency and the residence of no owner can with reasonable diligence be ascertained.

(E) An agency may appropriate real property for projects that will disrupt the flow of traffic or impede access to property only after the agency makes reasonable efforts to plan the project in a way that will limit those effects. This division does not apply to an agency if it initiated the project for which it appropriates the property under Title LV of the Revised Code.

CREDIT(S)

(2007 S 7, eff. 10-10-07; 131 v S 94, eff. 1-1-66)

Notes of Decisions (44)

R.C. § 163.04, OH ST § 163.04

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Baldwin's Ohio Revised Code Annotated

Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

General Provisions

R.C. § 163.041

163.041 Form of notice

Effective: October 10, 2007

Currentness

Before initiating an appropriation action, an agency shall provide notice to each property owner as required by [division \(A\) of section 163.04 of the Revised Code](#). The notice shall be substantially in the following form:

NOTICE OF INTENT TO ACQUIRE

TO: (owner(s)) DATE:

..... (agency) needs your property for a (description of the project) and will need to acquire the following from you:
.....(general description of the property or easement to be acquired).

Ohio law authorizes (agency) to obtain your property or an easement across your property for certain public purposes. The legal description of your property that (agency) needs is: (is attached:)

We will be presenting you with a written offer based on our determination of the fair market value of your property. You will have days (minimum of ten) from the time you receive that offer to accept or reject the offer. We will be willing to discuss the offer with you during that time. **You are not required to accept that offer.** If you reject the offer or we are unable to come to an agreement, we may have to exercise our eminent domain authority to appropriate your property, which requires a court procedure. In a court proceeding, you may disagree with any of the following: whether the project is necessary (except in quick takes), whether the project is a public use (except in quick takes), whether your property is blighted (if applicable), and whether our offer reflects the fair market value of the property.

HERE IS A BRIEF SUMMARY OF YOUR OPTIONS AND LEGALLY PROTECTED RIGHTS:

1. By law, (agency) is required to make a good faith effort to purchase (your property) (an easement across your property).
2. **You do not have to accept this offer** and (agency) is not required to agree to your demands.
3. If you do not accept this offer, and we cannot come to an agreement on the acquisition of (your property)(an easement), (agency) has the right to file suit to acquire the (property)(easement) by eminent domain in the county in which the property is located.

4. You have the right to seek the advice of an attorney, real estate appraiser, or any other person of your choice in this matter.

5. (*this paragraph does not apply to private agencies or to municipally owned public utilities*) You have a right to appeal this decision and may object to this project's public purpose, necessity, designation of blight (if applicable), or valuation by writing, within ten business days of receiving this notice, to:

.....(name(s) and address(es) of the taking agency, as well as to the elected official(s) who appointed the taking agency if the taking agency is not elected).

(The elected official)(A majority of the elected officials) that appointed (unelected agency) has/have the discretion to veto this project, and if they do so, it will not proceed. (This applies only if the taking agency is a public agency composed of officials who were not elected.)

6. We are required by law to provide you with a written offer and the appraisal or summary appraisal on which we base that offer (public agencies and public utilities may delete this phrase for properties valued at less than \$10,000 if they have adopted alternate procedures).

After a trial, a jury will decide the amount you are to be awarded for your property that is taken, for the damage that is caused by the taking, if applicable, and for other damages permitted by law, which could either exceed or be less than our offer. During the court proceeding, you have the right to testify as to the value of your property, and you and the agency are entitled to present evidence of the fair market value of the property (easement).

You may employ, at your own expense, appraisers and attorneys to represent you at this time or at any time during the proceedings described in this notice.

If we go to court to determine the amount we pay for your property and the jury awards you an amount that is significantly in excess of a good faith offer, revised offer, or offer made after an exchange of appraisals, as provided by law, you may be entitled to recover attorney's fees, costs, and expenses, subject to certain statutory limits.

If we go to court to determine whether the project is necessary or for a public use, and the court decides that it is not necessary or not for a public use, the judge shall award you your full amount of attorney's fees, costs, and expenses.

You also have the right to request that the issue of the value of your property be submitted to nonbinding mediation. You must submit your written request for mediation within ten business days after you file an answer to the agency's petition for an appropriation proceeding. If a settlement is not reached at mediation, the matter will proceed to a jury valuation trial.

If you have any questions concerning this matter, you may contact us at:

..... (full name, mailing, and street address, and phone of the agency)

..... (signature of contact person)

..... (printed name and title of contact person)

Agent of (if different than agency)

CREDIT(S)

(2007 S 7, eff. 10-10-07)

Notes of Decisions (2)

R.C. § 163.041, OH ST § 163.041

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.05

163.05 Petition for appropriation

Effective: October 10, 2007

Currentness

An agency that has met the requirements of [sections 163.04 and 163.041 of the Revised Code](#), may commence proceedings in a proper court by filing a petition for appropriation of each parcel or contiguous parcels in a single common ownership, or interest or right therein. The petition of a private agency shall be verified as in a civil action. All petitions shall contain:

- (A) A description of each parcel of land or interest or right therein sought to be appropriated, such as will permit ready identification of the land involved;
- (B)(1) A statement that the appropriation is necessary, for a public use, and, in the case of a public agency, a copy of the resolution of the public agency to appropriate;
- (2) If the property being appropriated is a blighted parcel that is being appropriated pursuant to a redevelopment plan, a statement that shows the basis for the finding of blight and that supports that the parcel is part of a blighted area pursuant to the definition in [section 1.08 of the Revised Code](#).
- (C) A statement of the purpose of the appropriation;
- (D) A statement of the estate or interest sought to be appropriated;
- (E) The names and addresses of the owners, so far as they can be ascertained;
- (F) A statement showing requirements of [section 163.04 of the Revised Code](#) have been met;
- (G) A prayer for the appropriation.

In the event of an appropriation where the agency would require less than the whole of any parcel containing a residence structure and the required portion would remove a garage and sufficient land that a replacement garage could not be lawfully or practically attached, the appropriation shall be for the whole parcel and all structures unless, at the discretion of the owner, the owner waives this requirement, in which case the agency shall appropriate only the portion that the agency requires as well as the entirety of any structure that is in whole or in part on the required portion.

In the event of the appropriation of less than the fee of any parcel or of a fee in less than the whole of any parcel of property, the agency shall either make available to the owner or shall file in the office of the county engineer, a description of the nature of the improvement or use which requires the appropriation, including any specifications, elevations, and grade changes already determined at the time of the filing of the petition, in sufficient detail to permit a determination of the nature, extent, and effect of the taking and improvement. A set of highway construction plans shall be acceptable in providing such description for the purposes of the preceding sentence in the appropriation of land for highway purposes.

CREDIT(S)

(2007 S 7, eff. 10-10-07; 1994 H 790, eff. 9-12-94; 132 v H 132, eff. 8-8-67; 131 v S 94)

Notes of Decisions (49)

R.C. § 163.05, OH ST § 163.05

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.051

163.051 Mediation

Effective: October 10, 2007

Currentness

Either an owner of property or an agency may request that the issue of the value of the property be submitted to nonbinding mediation. Any request for mediation shall be made in writing within ten business days after the owner files an answer pursuant to [section 163.08 of the Revised Code](#). The court shall appoint a mediator, and the mediation shall be conducted and concluded within fifty days after the owner filed an answer. Only a judge may extend the time for concluding the mediation, and the judge may do so only for the reason of an inability to obtain an appraisal. The agency shall pay the cost of mediation.

CREDIT(S)

(2007 S 7, eff. 10-10-07)

R.C. § 163.051, OH ST § 163.051

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.06

163.06 Deposit with court; appraisal of structures

Effective: October 10, 2007

Currentness

(A) A public agency, other than an agency appropriating property for the purposes described in division (B) of this section, that qualifies pursuant to [Section 19 of Article I, Ohio Constitution](#), may deposit with the court at the time of filing the petition the value of such property appropriated together with the damages, if any, to the residue, as determined by the public agency, and thereupon take possession of and enter upon the property appropriated. The right of possession upon deposit as provided in this division shall not extend to structures.

(B) A public agency appropriating property for the purpose of making or repairing roads which shall be open to the public, without charge, or for the purpose of implementing rail service under Chapter 4981. of the Revised Code, may deposit with the court at the time of filing the petition the value of such property appropriated together with the damages, if any, to the residue, as determined by the public agency, and stated in an attached declaration of intention to obtain possession and thereupon take possession of and enter upon the property appropriated, including structures situated upon the land appropriated for such purpose or situated partly upon the land appropriated therefor and partly upon adjoining land, so that such structures cannot be divided upon the line between such lands without manifest injury thereto. The jury, in assessing compensation to any owner of land appropriated under this division shall assess the value thereof in accordance with [section 163.14 of the Revised Code](#). The owner or occupant of such structures shall vacate the same within sixty days after service of summons as required under [section 163.07 of the Revised Code](#), after which time the agency may remove said structures. In the event such structures are to be removed before the jury has fixed the value of the same, the court, upon motion of the agency, shall:

(1) Order appraisals to be made by three persons, one to be named by the owner, one by the county auditor, and one by the agency. Such appraisals may be used as evidence by the owner or the agency in the trial of said case but shall not be binding on said owner, agency, or the jury, and the expense of said appraisals shall be approved by the court and charged as costs in said case.

(2) Cause pictures to be taken of all sides of said structures;

(3) Compile a complete description of said structures, which shall be preserved as evidence in said case to which the owner or occupants shall have access.

(C) Any time after the deposit is made by the public agency under division (A) or (B) of this section, the owner may apply to the court to withdraw the deposit, and such withdrawal shall in no way interfere with the action except that the sum so withdrawn shall be deducted from the sum of the final verdict or award. Upon such application being made the court shall direct that the sum be paid to such owner subject to the rights of other parties in interest provided such parties make timely application as provided in [section 163.18 of the Revised Code](#). Interest shall not accrue on any sums withdrawable as provided in this division.

CREDIT(S)

(2007 S 7, eff. 10-10-07; 1994 H 250, eff. 10-20-94; 1986 S 289, eff. 6-24-86; 132 v H 188, H 132, H 1; 131 v S 94)

Notes of Decisions (7)

R.C. § 163.06, OH ST § 163.06

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.07

163.07 Service of summons and copy of petition to owners

Currentness

When the residence of the owners is known and is within this state, notice of the filing of a petition as provided in [section 163.05 of the Revised Code](#) shall be given to all such owners by serving a summons and a copy of such petition in the manner of service of summons in civil actions. When the residence of the owners is unknown, and as to all who cannot be served within the state, notice shall be given by publishing the substance of the petition, and a statement of the date of the filing thereof and of the date on and after which the matter may be heard, once a week for two consecutive weeks, in a newspaper of general circulation in the county, or shall be given by registered mail. When service is made by publication, [section 2703.16 of the Revised Code](#)¹ shall be complied with.

Unless a person acquiring any interest in any property described in an appropriation petition after the filing thereof moves to be made an additional party defendant prior to the date that the case is set for the jury trial on compensation or to any journalization of a settlement entry, he shall be bound by the final judgment, without right of appeal except as to distribution, and shall receive such compensation as was awarded to his predecessor in interest to the extent that he has succeeded thereto.

CREDIT(S)

(131 v S 94, eff. 1-1-66)

Notes of Decisions (4)

Footnotes

¹ So in original; 2703.16 repealed by 1970 H 1201, eff. 7-1-71; see now [Civ R 4.4](#) for provisions analogous to former 2703.16.

R.C. § 163.07, OH ST § 163.07

Current through File 135 of the 134th General Assembly (2021-2022) and 2022 Statewide Issue 1 and 2022 Statewide Issue 2.

Baldwin's Ohio Revised Code Annotated

Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.08

163.08 Answer by owner; making roads open to public without charge; construction plans as presumptive evidence

Currentness

Any owner may file an answer to such petition. Such answer shall be verified as in a civil action and shall contain a general denial or specific denial of each material allegation not admitted. The agency's right to make the appropriation, the inability of the parties to agree, and the necessity for the appropriation shall be resolved by the court in favor of the agency unless such matters are specifically denied in the answer and the facts relied upon in support of such denial are set forth therein, provided, when taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, an answer may not deny the right to make the appropriation, the inability of the parties to agree, or the necessity for the appropriation. A petition for appropriation, filed by the director of transportation, which contains a declaration and journalization of his intent to construct a state highway or interstate highway, shall constitute a presumption that such appropriation is for the purpose of making or repairing roads which shall be open to the public without charge. At a hearing on an issue whether a taking sought by the director of transportation is for the purpose of making or repairing roads open to the public without charge, a set of construction plans made by or for the director and showing the proposed use of the property in connection with the construction or repair of such a road is presumptive evidence of such purpose, notwithstanding that no money has been appropriated for such construction or repair.

An answer shall be served in accordance with [Civil Rule 12](#). If the agency involved in the action is a private agency, no more than one extension of the time authorized by [Civil Rule 12](#) for serving an answer shall be granted pursuant to [Civil Rule 6](#), and that extension shall not exceed thirty days.

CREDIT(S)

(1983 H 373, eff. 7-1-83; 1981 S 61; 131 v S 94)

Notes of Decisions (33)

R.C. § 163.08, OH ST § 163.08

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Baldwin's Ohio Revised Code Annotated

Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.09

163.09 Declaration of value and damages; time for assessment of compensation by jury; hearings

Effective: October 10, 2007

Currentness

(A) If no answer is filed pursuant to [section 163.08 of the Revised Code](#), and no approval ordered by the court to a settlement of the rights of all necessary parties, the court, on motion of a public agency, shall declare the value of the property taken and the damages, if any, to the residue to be as set forth in any document properly filed with the clerk of the court of common pleas by the public agency. In all other cases, the court shall fix a time, within twenty days from the last date that the answer could have been filed, for the assessment of compensation by a jury.

(B)(1) When an answer is filed pursuant to [section 163.08 of the Revised Code](#) and any of the matters relating to the right to make the appropriation, the inability of the parties to agree, or the necessity for the appropriation are specifically denied in the manner provided in that section, the court shall set a day, not less than five or more than fifteen days from the date the answer was filed, to hear those matters. Upon those matters, the burden of proof is upon the agency by a preponderance of the evidence except as follows:

(a) A resolution or ordinance of the governing or controlling body, council, or board of the agency declaring the necessity for the appropriation creates a rebuttable presumption of the necessity for the appropriation if the agency is not appropriating the property because it is a blighted parcel or part of a blighted area or slum.

(b) The presentation by a public utility or common carrier of evidence of the necessity for the appropriation creates a rebuttable presumption of the necessity for the appropriation.

(c) Approval by a state or federal regulatory authority of an appropriation by a public utility or common carrier creates an irrebuttable presumption of the necessity for the appropriation.

(2) Subject to the irrebuttable presumption in division (B)(1)(c) of this section, only the judge may determine the necessity of the appropriation. If, as to any or all of the property or other interests sought to be appropriated, the court determines the matters in favor of the agency, the court shall set a time for the assessment of compensation by the jury not less than sixty days from the date of the journalization of that determination, subject to the right of the parties to request mediation under [section 163.051 of the Revised Code](#) and the right of the owner to an immediate appeal under division (B)(3) of this section. Except as provided in division (B)(3) of this section, an order of the court in favor of the agency on any of the matters or on qualification under [section 163.06 of the Revised Code](#) shall not be a final order for purposes of appeal. An order of the court against the

agency on any of the matters or on the question of qualification under [section 163.06 of the Revised Code](#) shall be a final order for purposes of appeal. If a public agency has taken possession prior to such an order and such an order, after any appeal, is against the agency on any of the matters, the agency shall restore the property to the owner in its original condition or respond in damages, which may include the items set forth in [division \(A\)\(2\) of section 163.21 of the Revised Code](#), recoverable by civil action, to which the state consents.

(3) An owner has a right to an immediate appeal if the order of the court is in favor of the agency in any of the matters the owner denied in the answer, unless the agency is appropriating property in time of war or other public exigency imperatively requiring its immediate seizure, for the purpose of making or repairing roads which shall be open to the public without charge, for the purpose of implementing rail service under Chapter 4981. of the Revised Code, or under [section 307.08, 504.19, 6101.181, 6115.221, 6117.39, or 6119.11 of the Revised Code](#) or by a public utility owned and operated by a municipal corporation as the result of a public exigency.

(C) When an answer is filed pursuant to [section 163.08 of the Revised Code](#), and none of the matters set forth in division (B) of this section is specifically denied, the court shall fix a time within twenty days from the date the answer was filed for the assessment of compensation by a jury.

(D) If answers are filed pursuant to divisions (B) and (C) of this section, or an answer is filed on behalf of fewer than all the named owners, the court shall set the hearing or hearings at such times as are reasonable under all the circumstances, but in no event later than twenty days after the issues are joined as to all necessary parties or twenty days after rule therefor, whichever is earlier.

(E) The court, with the consent of the parties, may order two or more cases to be consolidated and tried together, but the rights of each owner to compensation, damages, or both shall be separately determined by the jury in its verdict.

(F) If an answer is filed under [section 163.08 of the Revised Code](#) with respect to the value of property, the trier of fact shall determine that value based on the evidence presented, with neither party having the burden of proof with respect to that value.

(G) If the court determines the matter in the favor of the owner as to the necessity of the appropriation or whether the use for which the agency seeks to appropriate the property is a public use, in a final, unappealable order, the court shall award the owner reasonable attorney's fees, expenses, and costs.

CREDIT(S)

(2007 S 7, eff. 10-10-07; 2004 H 411, eff. 5-6-05; 1987 H 57, eff. 9-10-87; 1969 H 1; 132 v H 188, H 132; 131 v S 94)

Notes of Decisions (127)

R.C. § 163.09, OH ST § 163.09

Current through File 135 of the 134th General Assembly (2021-2022) and 2022 Statewide Issue 1 and 2022 Statewide Issue 2.

Baldwin's Ohio Revised Code Annotated

Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.10

163.10 Selection of jury

Effective: May 22, 2012

Currentness

The assessment of compensation may be made at a regular or special term of court. The jury shall be selected from the jurors drawn as prescribed in Chapter 2313. of the Revised Code, and qualified as in civil actions. However, it shall be grounds for challenge for cause if a juror has served in two appropriation trials in the current term of court.

CREDIT(S)

(2012 H 268, eff. 5-22-12; 2001 H 73, eff. 6-29-01; 1973 H 200, eff. 9-28-73; 131 v S 94)

Notes of Decisions (7)

R.C. § 163.10, OH ST § 163.10

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.11

163.11 Appointment of guardian ad litem

Currentness

If it appears that any of the owners is an infant or otherwise incompetent, and has no guardian, a guardian ad litem shall be appointed in his behalf.

CREDIT(S)

(131 v S 94, eff. 1-1-66)

R.C. § 163.11, OH ST § 163.11

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.12

163.12 View of premises; defect in proceedings; new parties

Effective: October 10, 2007

Currentness

(A) A view of the premises to be appropriated or of premises appropriated shall be ordered by the court when requested by a party to the proceedings.

(B) The property owners shall open and close the case except that, if the premises are appropriated under [section 163.06, 307.08, 504.19, 6101.181, 6115.221, 6117.39, or 6119.11 of the Revised Code](#) as the result of a public exigency, the party or parties other than the owners shall open and close the case.

(C) The court may amend any defect or informality in proceedings under [sections 163.01 to 163.22 of the Revised Code](#). The court may cause new parties to be added and direct further notice to be given to a party in interest as the court considers proper.

(D) No part of the pleadings shall be read or exhibited to the jury.

CREDIT(S)

(2007 S 7, eff. 10-10-07; 2004 H 411, eff. 5-6-05; 131 v S 94, eff. 1-1-66)

Notes of Decisions (19)

R.C. § 163.12, OH ST § 163.12

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.13

163.13 Delay; retention of deposit until rights of parties determined

Currentness

No delay in the proceedings shall be occasioned by doubt as to the ownership of any property, or as to the interest of the respective owners, but in such cases the court may require the retention of the deposit or award or such portion thereof as the court deems appropriate, until the rights of the respective parties have been determined.

CREDIT(S)

(131 v S 94, eff. 1-1-66)

Notes of Decisions (1)

R.C. § 163.13, OH ST § 163.13

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.14

163.14 Jury; verdict

Effective: October 10, 2007

Currentness

(A) In appropriation proceedings the jury shall be sworn to impartially assess the compensation and damages, if any, without deductions for general benefits as to the property of the owner.

(B) The jury, in its verdict, shall assess the compensation for the property appropriated and damages, if any, to the residue, to be paid to the owners. When a building or other structure is on the property appropriated or when a building or other structure is situated partly upon the land appropriated and partly upon adjoining land so that the structure cannot be divided upon the line between such lands without manifest injury thereto, the jury, in assessing compensation to any owner of the land, shall assess the value thereof, as part of the compensation. The title to said structure shall vest in the agency which shall have the right to enter upon the adjoining land upon which any part of the structure is located for the purpose of removing said structure therefrom, after deposit in accordance with the verdict. Such removal shall be made within ninety days after taking title to the property appropriated; provided, that the court may extend removal time upon such conditions as the court requires.

(C) The jury, in its verdict, shall assess compensation to the owner of a business conducted on the property taken for loss of goodwill if the owner proves both of the following:

(1) The loss is caused by the taking of the property;

(2) 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 shall not be included in payments made under [section 163.53 of the Revised Code](#), shall not be duplicated in any compensation otherwise awarded to the owner, shall not exceed ten thousand dollars, and shall not be awarded in appropriations of less than the entirety of the business property.

(D) The verdict shall be signed by at least three-fourths of the members of the jury.

(E) If a jury is discharged without rendering a verdict, another shall be impaneled at the earliest convenient time and shall make the inquiry and assessment.

CREDIT(S)

(2007 S 7, eff. 10-10-07; 132 v H 132, eff. 8-8-67; 131 v S 94)

Notes of Decisions (57)

R.C. § 163.14, OH ST § 163.14

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Baldwin's Ohio Revised Code Annotated

Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.15

163.15 When agency entitled to possession; filing of journal entry with auditor; relocation expenses

Effective: September 15, 2014

Currentness

(A) As soon as the agency pays to the party entitled thereto or deposits with the court the amount of the award and the costs assessed against the agency, it may take possession; provided, that this shall not be construed to limit the right of a public agency to enter and take possession, as provided in [section 163.06 of the Revised Code](#). When the agency is entitled to possession the court shall enter an order to such effect upon the record and, if necessary, process shall be issued to place the agency in possession. Whenever a final journal entry in an appropriation proceeding, granting to this state a fee title or any lesser estate or interest in real property is filed and journalized by the clerk of courts, the clerk of courts shall forthwith transmit to the county auditor a certified copy of said final journal entry who shall transfer the property on the auditor's books and transmit said entry with proper endorsement to the county recorder for recording. The costs of filing such final journal entry with the county auditor and the county recorder shall be taxed as costs in the appropriation proceedings the same as other costs are taxed under [section 163.16 of the Revised Code](#).

(B)(1) Whenever the appropriation of real property requires the owner, a commercial tenant, or a residential tenant identified by the owner in a notice filed with the court to move or relocate, the agency shall make a payment to that person, upon proper application as approved by the agency, for all of the following:

(a) Actual reasonable expenses in moving the person and the person's family, business, farm operation, or other personal property;

(b) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the agency;

(c) Actual reasonable expenses in searching for a replacement business or farm, but not to exceed two thousand five hundred dollars;

(d) Actual and reasonable expenses necessary to reestablish a farm, nonprofit organization, or small business at its new site, but not to exceed twenty-five thousand dollars.

(2) If the agency does not approve a payment for which the owner applied under division (B)(1) of this section, the trier of fact, upon presentation of proof, shall determine whether to award a payment for the expenses described in division (B)(1) of this section and the amount of any award. The owner shall have the burden of proof with respect to those expenses.

(3)(a) In addition to any payments an owner of a business may receive under division (B)(1) of this section, an owner of a business who is required by an appropriation of real property to relocate the business may recover damages for the owner's actual economic loss resulting from the appropriation, as proven by the owner by a preponderance of the evidence. Compensation for actual economic loss under this division shall not include any attorney's fees and shall not duplicate any amount awarded as compensation under this chapter.

(b) The amount of compensation awarded under division (B)(3)(a) of this section shall not exceed twelve months net profit of the business on an annualized basis. Except as otherwise provided in division (B)(3)(c) of this section, if the agency is appropriating property in time of war or other public exigency imperatively requiring its immediate seizure, for the purpose of making or repairing roads that shall be open to the public without charge, for the purpose of implementing rail service under Chapter 4981. of the Revised Code, or under [section 307.08, 504.19, 6101.181, 6115.221, 6117.39, or 6119.11 of the Revised Code](#) as the result of a public exigency, or the agency is a municipal corporation that is appropriating property as a result of a public exigency, the period for which the net profit of the business is calculated shall be twelve months minus the time period from the date the agency gives the notice required by [section 163.04 of the Revised Code](#) to the date the agency deposits the value of the property with the court pursuant to [section 163.06 of the Revised Code](#) or pays that amount to the owner, but in no event shall the compensation time period be less than fifteen days. If the period on which the loss is calculated is reduced to fifteen days and the relocation is unusually complex, the owner may request the agency to increase that period by up to fifteen additional days. If the agency fails to pay the compensation as provided under division (B)(3)(a) of this section or denies the request, the owner may seek an award of such compensation pursuant to this section.

(c) In case of an act of God or other public exigency that requires an immediate taking of property to protect public health or safety or in case of a voluntary conveyance, the amount of compensation awarded under division (B)(3)(a) of this section shall not exceed fifteen days net profit of the business on an annualized basis. The owner may request the agency to increase that period by up to fifteen additional days. If the agency fails to pay the compensation as provided under division (B)(3)(a) of this section or denies the request, the owner may seek an award of such compensation pursuant to this section.

CREDIT(S)

(2014 H 483, eff. 9-15-14; 2007 S 7, eff. 10-10-07; 132 v S 38, eff. 4-29-68; 131 v S 94)

Notes of Decisions (5)

R.C. § 163.15, OH ST § 163.15

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Baldwin's Ohio Revised Code Annotated

Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.16

163.16 Court costs; confession of judgment

Currentness

The court costs, including jury fees, of any proceeding shall be paid as the court directs, except as may be provided for in cases subject to division (A)(2) or (B)(1) of section 163.21 of the Revised Code. The agency may offer to confess judgment for the amount to be stated and the court costs then made in favor of any owner who in any manner enters an appearance or upon whom service has been made. If such owner refuses to accept such offer and as a result of the trial does not receive more, he shall pay all court costs accruing after the offer.

CREDIT(S)

(1987 H 57, eff. 9-10-87; 131 v S 94)

Notes of Decisions (4)

R.C. § 163.16, OH ST § 163.16

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.17

163.17 Withdrawal of deposit by owner; accrual of interest; deposit on appeal; refund

Currentness

Where the agency has the right to take possession of the property before the verdict upon payment into court of a deposit, and a portion of said deposit may be withdrawn immediately by the owner, the amount of the verdict which exceeds the portion of the deposit withdrawable shall be subject to interest from the date of taking to the date of actual payment of the award.

Where the agency has no right to take possession of the property before the verdict, if the award is not paid to the owner or deposited in court within twenty-one days after journalization of the verdict, interest thereafter shall accrue, except that where the owner appeals, interest shall not accrue until the agency takes possession.

If the owner appeals and is granted a larger award, interest shall be paid on the additional amount awarded from the date of taking possession to the date of actual payment or date of deposit with immediate right of withdrawal.

If the agency wishes to appeal, it may require the deposit to remain with the court pending final disposition of the case provided it pays interest on the final award from date of taking possession to the date the money is actually paid or made available to the owner; provided, the owner may withdraw the entire award upon posting an appropriate refund bond set by the court; and provided, that where a building or other structure is taken, the court may, on application of the owner, permit the owner to withdraw a reasonable portion of the award allocable to the building without giving bond.

If the amount of any deposit actually withdrawn by the owner exceeds the final award from which no appeal is or can be taken, then the owner at the time of entry of judgment on such award shall refund at once to the court for the account of the agency the amount of such excess plus interest on such excess from the date of withdrawal of such excess until the date of such refund, and upon the failure of the owner to make such refund, the agency shall be entitled to a money judgment against the owner.

Except for cases involving the department of transportation, interest as provided for in this section shall be at the rate of interest for judgments as set forth in [section 1343.03 of the Revised Code](#). In a case involving the appropriation of property by the department of transportation, and the department is the sole public agency seeking to appropriate property in the case, interest as provided for in this section shall be at the per annum rate of either the interest rate as defined and established in [division \(B\) of section 5703.47 of the Revised Code](#), or ten per cent, whichever is less.

CREDIT(S)

(2001 S 108, § 2.01, eff. 7-6-01; 2001 S 108, § 2.02, eff. 7-6-01; 1996 H 350, eff. 1-27-97 (State, ex rel. Ohio Academy of Trial Lawyers, v. Sheward (1999)); 1993 H 154, eff. 6-30-93; 1981 S 62; 131 v S 94)

Notes of Decisions (20)

R.C. § 163.17, OH ST § 163.17

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.18

163.18 Notice of deposit or payment; motion for distribution

Currentness

At the time the agency makes a deposit or pays into court the jury award, the clerk of courts shall give notice by ordinary mail of such payment to the counsel of record of each owner and to the known address of owners not represented. Thereupon any owner may file with the court a motion for distribution. After reasonable notice to all parties and to any additional interested parties who become known to the court, the court shall hear evidence as to the respective interests of the owners in the property and may make distribution of the deposit or award accordingly.

CREDIT(S)

(131 v S 94, eff. 1-1-66)

Notes of Decisions (6)

R.C. § 163.18, OH ST § 163.18

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Proposed Legislation

Baldwin's Ohio Revised Code Annotated

Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.19

163.19 Appeals

Effective: October 10, 2007

Currentness

Subject to [sections 163.07](#) and [163.09](#) of the Revised Code, any party may prosecute appeals as in other civil actions from the judgment of the court.

The owner may request, and the court may grant, a stay on appeal, provided that the owner posts a supersedeas bond in an amount the court determines.

CREDIT(S)

[\(2007 S 7, eff. 10-10-07; 131 v S 94, eff. 1-1-66\)](#)

Notes of Decisions (16)

R.C. § 163.19, OH ST § 163.19

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.20

163.20 Appropriation to perfect title

Currentness

An agency may appropriate in accordance with [sections 163.01 to 163.22, inclusive, of the Revised Code](#), any property in which an interest has been appropriated, in order to perfect title in itself.

CREDIT(S)

(131 v S 94, eff. 1-1-66)

Notes of Decisions (1)

R.C. § 163.20, OH ST § 163.20

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Baldwin's Ohio Revised Code Annotated

Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.21

163.21 Compensation upon abandonment of proceedings, determination of lack of entitlement to appropriate, or final award substantially greater than agency's good faith offer

Effective: October 10, 2007

Currentness

(A)(1) If it has not taken possession of property that is appropriated, an agency may abandon appropriation proceedings under sections [163.01](#) to [163.22](#) of the Revised Code at any time after the proceedings are commenced but not later than ninety days after the final determination of the cause.

(2) In all cases of abandonment as described in division (A)(1) of this section, the court shall enter a judgment against the agency for costs, including jury fees, and shall enter a judgment in favor of each affected owner, in amounts that the court considers to be just, for each of the following that the owner incurred:

(a) Witness fees, including expert witness fees;

(b) Attorney's fees;

(c) Other actual expenses.

(B)(1) In appropriation proceedings under sections [163.01](#) to [163.22](#) of the Revised Code or as authorized by divisions **(A)** and **(B)** of section [163.02](#) of the Revised Code for appropriation proceedings in time of a public exigency under other sections of the Revised Code, if the court determines that an agency is not entitled to appropriate particular property, the court shall enter both of the following:

(a) A judgment against the agency for costs, including jury fees;

(b) A judgment in favor of each affected owner, in amounts that the court considers to be just, for the owner's reasonable disbursements and expenses, to include witness fees, expert witness fees, attorney's fees, appraisal and engineering fees, and for other actual expenses that the owner incurred in connection with the proceedings.

(2) Any award to an owner pursuant to this section shall be paid by the head of the agency for whose benefit the appropriation proceedings were initiated.

(C)(1) Except as otherwise provided in division (C)(2) or (3) of this section and subject to division (C)(5) of this section, when an agency appropriates property and the final award of compensation is greater than one hundred twenty-five per cent of the agency's good faith offer for the property or, if before commencing the appropriation proceeding the agency made a revised offer based on conditions indigenous to the property that could not reasonably have been discovered at the time of the good faith offer, one hundred twenty-five per cent of the revised offer, the court shall enter judgment in favor of the owner, in amounts the court considers just, for all costs and expenses, including attorney's and appraisal fees, that the owner actually incurred.

(2) The court shall not enter judgment for costs and expenses, including attorney's fees and appraisal fees, if the agency is appropriating property in time of war or other public exigency imperatively requiring its immediate seizure, for the purpose of making or repairing roads that shall be open to the public without charge, for the purpose of implementing rail service under Chapter 4981. of the Revised Code, or under [section 307.08, 504.19, 6101.181, 6115.221, 6117.39](#), or [6119.11 of the Revised Code](#) as the result of a public exigency, or the agency is a municipal corporation that is appropriating property as a result of a public exigency, except that the court shall enter judgment in favor of the owner for costs and expenses, including attorney's and appraisal fees, that the owner actually incurred only if the property being appropriated is land used for agricultural purposes as defined in [section 303.01 or 519.01 of the Revised Code](#), or the county auditor of the county in which the land is located has determined under [section 5713.31 of the Revised Code](#) that the land is "land devoted exclusively to agricultural use" as defined in [section 5713.30 of the Revised Code](#) and the final award of compensation is more than one hundred fifty per cent of the agency's good faith offer or a revised offer made by the agency under division (C)(1) or (3) of this section.

(3) The court shall not enter judgment for costs and expenses, including attorney's fees and appraisal fees, that the owner actually incurred if the owner and the agency exchanged appraisals prior to the filing of the petition and the final award of compensation was not more than one hundred twenty-five per cent of the agency's first offer for the property made subsequent to the exchange of appraisals and at least thirty days before the filing of the petition.

(4) An award of costs and expenses, including attorney's and appraisal fees, that the owner actually incurred, under division (C) of this section shall not exceed the lesser of twenty-five per cent of the amount by which the final award of compensation exceeds the agency's initial good faith offer or revised offer or twenty-five per cent of the amount by which the final award of compensation exceeds the agency's last written offer made not less than forty-five days before the date initially designated for trial by the court.

(5)(a) An award of costs and expenses, including attorney's and appraisal fees, that the owner actually incurred, made under division (G) of [section 163.09 of the Revised Code](#) is not subject to the conditions and limitations set forth in divisions (C)(1), (2), (3), and (4) of this section.

(b) The court shall not enter judgment for costs and expenses, including attorney's fees and appraisal fees, under division (C) of this section unless not less than fifty days prior to the date initially designated by the court for trial the owner provided the agency with an appraisal or summary appraisal of the property being appropriated or with the owner's sworn statement setting forth the value of the property and an explanation of how the owner arrived at that value.

CREDIT(S)

(2007 S 7, eff. 10-10-07; 1987 H 57, eff. 9-10-87; 131 v S 94)

Notes of Decisions (46)

R.C. § 163.21, OH ST § 163.21

Current through File 135 of the 134th General Assembly (2021-2022) and 2022 Statewide Issue 1 and 2022 Statewide Issue 2.

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.211

163.211 Right of repurchase by prior owner when property not used for purpose stated in petition

Effective: October 10, 2007

Currentness

If an agency decides not to use appropriated property for the purpose stated in the appropriation petition, the prior owner from whom the property was appropriated may repurchase the property for its fair market value as determined by an independent appraisal made by an appraiser chosen by agreement of the parties or, if the parties cannot agree, an appraiser chosen by the court. The right of repurchase shall be extinguished if any of the following occur:

- (A) The prior owner declines to repurchase the property.
- (B) The prior owner fails to repurchase the property within sixty days after the public agency offers the property for repurchase.
- (C) A plan, contract, or arrangement is authorized that commences an urban renewal project that includes the property.
- (D) The agency grants or transfers the property to any other person or agency.
- (E) Five years have passed since the property was appropriated.
- (F) Prior to the filing of the petition for appropriation, the appropriated property was a blighted parcel, and the prior owner contributed to the blight.

CREDIT(S)

(2007 S 7, eff. 10-10-07)

R.C. § 163.211, OH ST § 163.211

Current through File 135 of the 134th General Assembly (2021-2022) and 2022 Statewide Issue 1 and 2022 Statewide Issue 2.

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Civil Actions; Procedure

R.C. § 163.22

163.22 Laws and rules applicable to civil actions to govern; advancement

Currentness

All proceedings brought under [sections 163.01](#) to 163.22 of the Revised Code shall be governed by the law applicable in civil actions and the Rules of Civil Procedure, including, but not limited to, the rules governing discovery, except as otherwise provided in those sections. The proceedings shall be advanced as a matter of immediate public interest and concern and shall be heard by the court at the earliest practicable moment.

CREDIT(S)

(2001 H 73, eff. 6-29-01; 132 v H 1, eff. 2-21-67; 131 v S 94)

Notes of Decisions (5)

R.C. § 163.22, OH ST § 163.22

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Advertising Devices

R.C. § 163.31

163.31 Definitions

Currentness

As used in sections 163.31 to [163.33 of the Revised Code](#):

(A) "Advertising device" includes any legally erected and maintained outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other contrivance designed, intended, or used to advertise or to give information in the nature of advertising, or any part of any such contrivance, the advertisement on which is visible from the traveled way of any street, road, or highway in this state.

(B) "Erect" means to construct or allow to be constructed, but does not include any activity performed incident to a change of an advertisement or normal maintenance of an advertising device.

(C) "Just compensation" means the payment of compensation by a public agency that orders the removal of an advertising device, in the same manner as it would for other property acquired pursuant to this chapter.

(D) "Maintain" means to preserve, keep in repair, continue, allow to exist, or restore if destroyed by an act of God or vandalism.

(E) "Public agency" has the same meaning as in [section 163.01 of the Revised Code](#).

(F) "Visible" means capable of being seen, whether or not legible, without visual aid by a person of normal acuity.

CREDIT(S)

(1981 H 146, eff. 10-9-81)

R.C. § 163.31, OH ST § 163.31

Current through File 135 of the 134th General Assembly (2021-2022) and 2022 Statewide Issue 1 and 2022 Statewide Issue 2.

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Advertising Devices

R.C. § 163.32

163.32 Order for removal of advertising device; interests deemed taken; action to appropriate

Currentness

Any removal of an advertising device that is ordered by a public agency pursuant to law or ordinance, or to the exercise of any power or authority possessed by the public agency, shall be deemed to constitute the taking of all right, title, and interest in the advertising device, including any leasehold interest, of the owner of the advertising device and of the right of the owner of the real property on which the advertising device is located to erect and maintain the advertising device on it. If the public agency and any such owner of a compensable right, title, or interest do not reach agreement as to the amount of just compensation to be paid for the right, title, or interest, the public agency shall institute an action to appropriate it in accordance with this chapter.

CREDIT(S)

(1981 H 146, eff. 10-9-81)

Notes of Decisions (1)

R.C. § 163.32, OH ST § 163.32

Current through File 135 of the 134th General Assembly (2021-2022) and 2022 Statewide Issue 1 and 2022 Statewide Issue 2.

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Advertising Devices

R.C. § 163.33

163.33 Payment to owner of land and of device before removal; exception

Currentness

(A) Before any advertising device is removed by a public agency pursuant to any law or ordinance, or to the exercise of any power or authority possessed by the public agency, the owner of the advertising device and the owner of the real property upon which the advertising device is located shall be paid just compensation.

(B) [Sections 163.31](#) to 163.33 of the Revised Code do not apply to any action taken pursuant to Chapter 5516. of the Revised Code.

CREDIT(S)

(1981 H 146, eff. 10-9-81)

R.C. § 163.33, OH ST § 163.33

Current through File 135 of the 134th General Assembly (2021-2022) and 2022 Statewide Issue 1 and 2022 Statewide Issue 2.

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 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Baldwin's Ohio Revised Code Annotated

Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Relocation Assistance

R.C. § 163.51

163.51 Definitions

Currentness

As used in sections 163.51 to [163.62 of the Revised Code](#):

(A) "State agency" means any department, agency, or instrumentality of a state or of a political subdivision of a state; any department, agency, or instrumentality of two or more states or of two or more political subdivisions of a state or states; or any community urban redevelopment corporation organized pursuant to Chapter 1728. of the Revised Code; and any person who has the authority to acquire property by eminent domain under state law.

(B) "Displacing agency" means any state agency or person carrying out a program or project with federal assistance, or carrying out any state highway project that causes a person to be a displaced person.

(C) "Federal financial assistance" means a grant, loan, or contribution provided by the United States.

(D) "Person" includes any individual, partnership, corporation, or association.

(E)(1) Except as provided in divisions (E)(2) and (3) of this section, "displaced person" means any person who moves from real property, or moves his personal property from real property, as a direct result of a written notice of intent to acquire or the acquisition of such real property, in whole or in part, under a program or project undertaken by a state agency with federal financial assistance or with the rights and powers granted to a community urban redevelopment corporation by the provisions of Chapter 1728. of the Revised Code, or for any state highway project; or as a direct result of rehabilitation, demolition, or other displacing activity on real property undertaken by such state agencies, on which such person is a residential tenant or conducts a business or farm operation, where the head of the displacing agency determines that the displacement is permanent.

(2) Solely for the purpose of establishing eligibility for moving expenses and advisory assistance under [sections 163.53 and 163.56 of the Revised Code](#), "displaced person" includes any person who moves from real property, or moves personal property from real property; as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, under a program or project undertaken by a state agency with federal financial assistance or with the rights and powers granted to a community urban redevelopment corporation by the provisions of Chapter 1728. of the Revised Code, or for any state highway project; or as a direct result of rehabilitation,

demolition, or other displacing activity undertaken by such state agencies on such other real property, where the head of the displacing agency determines that the displacement is permanent.

(3) "Displaced person" does not include a person who has been determined, according to criteria established by the head of the displacing agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this chapter; or a person who became an occupant of the dwelling after its acquisition and whose occupancy is on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

(F) "Business" means any lawful activity, excepting a farm operation, conducted primarily for one or more of the following:

(1) The purchase, sale, lease, and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(2) The sale of services to the public;

(3) By a nonprofit organization;

(4) Solely for the purposes of [section 163.53 of the Revised Code](#), for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(G) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(H) "Mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of Ohio, together with the credit instruments, if any, secured thereby.

(I) "Comparable replacement dwelling" means any dwelling that is decent, safe, and sanitary; adequate in size to accommodate the occupants; within the financial means of the displaced person; functionally equivalent to the displaced person's dwelling; in an area not subject to unreasonable adverse environmental conditions; and in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

(J) "Acquiring agency" means both of the following:

(1) A state agency with authority to acquire property by eminent domain under state law;

(2) A state agency or person without such authority, to the extent provided by the head of the lead agency by rule.

CREDIT(S)

(1989 H 381, eff. 7-1-89; 1989 H 295; 1973 S 90; 1971 H 295)

Notes of Decisions (12)

R.C. § 163.51, OH ST § 163.51

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Proposed Legislation

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Relocation Assistance

R.C. § 163.52

163.52 Validity of acquisition; elements of value or damage not affected

Currentness

(A) The failure of an acquiring agency to satisfy a requirement of [section 163.59 of the Revised Code](#) does not affect the validity of any property acquisition by purchase or condemnation.

(B) Nothing in [sections 163.51 to 163.62 of the Revised Code](#) shall be construed as creating, in any condemnation proceeding brought under the power of eminent domain, any element of value or damage not in existence immediately prior to June 11, 1971.

CREDIT(S)

[\(2002 H 426, eff. 9-6-02; 1971 H 295, eff. 6-11-71\)](#)

Notes of Decisions (2)

R.C. § 163.52, OH ST § 163.52

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Relocation Assistance

R.C. § 163.53

163.53 Application for relocation payments; eligibility; relocation of utility facility

Effective: September 15, 2014

Currentness

(A) Whenever the acquisition of real property for a program or project undertaken by a displacing agency will result in the displacement of any person, the head of the agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for all of the following:

(1) Actual reasonable expenses in moving the person, the person's family, business, farm operation, or other personal property;

(2) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the displacing agency;

(3) Actual reasonable expenses in searching for a replacement business or farm, but not to exceed two thousand five hundred dollars;

(4) Actual and reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed twenty-five thousand dollars.

(B) Any displaced person eligible for payments under division (A) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this division in lieu of the payments authorized by division (A) of this section may receive an expense and dislocation allowance, determined according to a schedule established by the head of the displacing agency.

(C) Any displaced person eligible for payments under division (A) of this section who is displaced from the person's place of business or from the person's farm operation may qualify for the payment authorized by this division in lieu of the payment authorized by division (A) of this section. The payment authorized by this division shall consist of a fixed payment in an amount to be determined according to criteria established by the head of the lead agency, except that such payment shall be not less than one thousand dollars nor more than forty thousand dollars. A person whose sole business at the displacement dwelling is the rental of such property to others does not qualify for a payment under this division.

(D)(1) Except as provided in section 5501.51 of the Revised Code, if a program or project undertaken by a displacing agency results in the relocation of a utility facility, and the purpose of the program or project was not to relocate or reconstruct any

utility facility; and if the owner of the utility facility which is being relocated under such program or project has entered into a franchise or similar agreement with the state or local government on whose property, easement, or right-of-way such facility is located with respect to the use of such property, easement, or right-of-way; and if the relocation of such facility results in such owner incurring an extraordinary cost in connection with such relocation; then the displacing agency may, in accordance with such rules as the head of the lead agency may adopt, provide to such owner a relocation payment which may not exceed the amount of such extraordinary cost, less any increase in the value of the new utility facility above the value of the old utility facility, and less any salvage value derived from the old utility facility.

(2) As used in division (D) of this section:

(a) "Extraordinary cost in connection with a relocation" means any cost incurred by the owner of a utility facility in connection with relocation of such facility that is determined by the head of the displacing agency, under such rules as the head of the lead agency shall adopt, to be a nonroutine relocation expense, to be a cost that owner ordinarily does not include in its annual budget as an expense of operation, and to meet such other requirements as the lead agency may prescribe in such rules.

(b) "Utility facility" means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixture, equipment, or other property associated with the operation, maintenance, or repair of any such system; which is located on property owned by a state or local government or over which a state or local government has an easement or right-of-way. A utility facility may be publicly, privately, or cooperatively owned.

CREDIT(S)

(2014 H 483, eff. 9-15-14; 2007 S 7, eff. 10-10-07; 1989 H 295, eff. 3-21-89; 1971 H 295)

Notes of Decisions (17)

R.C. § 163.53, OH ST § 163.53

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Relocation Assistance

R.C. § 163.54

163.54 Additional payment for replacement dwelling

Effective: September 15, 2014

Currentness

(A) In addition to payments otherwise authorized by [sections 163.51 to 163.62 of the Revised Code](#), the head of the displacing agency shall make an additional payment not to exceed thirty-one thousand dollars to any displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for not less than ninety days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(1) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.

(2) The amount, if any, which will compensate the displaced person for any increased interest costs and other debt service costs which the person is required to pay for financing the acquisition of a comparable replacement dwelling. This amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than ninety days prior to the initiation of negotiations for the acquisition of the dwelling.

(3) Reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(4) A rental assistance payment for a displaced person who is eligible for a replacement housing payment under this section but who elects to rent a replacement dwelling. The amount of the rental assistance payment shall be based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market in the general area of the acquired dwelling. The difference, if any, shall be computed in accordance with [division \(A\) of section 163.55 of the Revised Code](#), except the limit of seven thousand two hundred dollars shall not apply. Under no circumstances shall the rental assistance payment exceed the amount that the displaced person could have received under division (A)(1) of this section. A displaced person who is eligible to receive a replacement housing payment under this section is not eligible for a down payment assistance payment described in [division \(B\) of section 163.55 of the Revised Code](#).

(B) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one-year period beginning on the date on which the displaced person receives from the displacing agency final payment of all costs of the acquired dwelling, or on the date on which the displacing agency's obligation under [division \(B\)\(3\) of section 163.56 of the Revised Code](#) is met, whichever is later, except that the displacing agency may extend the period for good cause. If the period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within one year after the displaced person receives from the displacing agency final payment of all costs of the acquired dwelling.

CREDIT(S)

(2014 H 483, eff. 9-15-14; 1989 H 295, eff. 3-21-89; 1971 H 295)

Notes of Decisions (1)

R.C. § 163.54, OH ST § 163.54

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Relocation Assistance

R.C. § 163.55

163.55 Additional payment for rental dwelling or down payment on house

Effective: September 15, 2014

Currentness

(A) In addition to amounts otherwise authorized by [sections 163.51 to 163.62 of the Revised Code](#), the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under [section 163.54 of the Revised Code](#) which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling, or in any case in which displacement is not a direct result of acquisition, not less than ninety days prior to such other event as the head of the lead agency shall prescribe. The payment shall consist of the amount necessary to enable the displaced person to lease or rent for a period not to exceed forty-two months, a comparable replacement dwelling, but not to exceed seven thousand two hundred dollars. At the discretion of the head of the displacing agency, a payment under this division may be made in periodic installments. Computation of a payment under this division to a low-income displaced person shall take into account the person's income.

(B) Any person eligible for a payment under division (A) of this section may elect to apply the payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. The person may, under criteria established by the head of the displacing agency, be eligible under this division for the maximum payment allowed under division (A) of this section.

CREDIT(S)

(2014 H 483, eff. 9-15-14; 1989 H 295, eff. 3-21-89; 1971 H 295)

R.C. § 163.55, OH ST § 163.55

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Relocation Assistance

R.C. § 163.56

163.56 Relocation assistance advisory program

Currentness

(A)(1) Projects or programs that cause persons to be displaced persons shall be planned in a manner that recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions that will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and in a manner that provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

(2) Whenever a program or project undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in division (B) of this section. If the head of the displacing agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer that person relocation advisory services under the program.

(B) Each relocation assistance advisory program required by division (A) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to do all of the following:

(1) Determine the need, if any, of displaced persons for relocation assistance;

(2) Provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of suitable commercial properties and locations for displaced businesses and farm operations;

(3) Assure that, within a reasonable period of time, prior to displacement there will be available comparable replacement dwellings, as defined by the head of the displacing agency, equal in number to the number of and available to the displaced persons who require such dwellings, except that the head of the displacing agency may prescribe by regulation situations when such assurances may be waived;

(4) Assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) Supply information concerning federal and state housing programs, disaster loan programs, and other federal or state programs offering assistance to displaced persons;

(6) Provide other advisory services to displaced persons in order to minimize hardships to them in adjusting to relocation.

CREDIT(S)

(1989 H 295, eff. 3-21-89; 1971 H 295)

Notes of Decisions (3)

R.C. § 163.56, OH ST § 163.56

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Relocation Assistance

R.C. § 163.57

163.57 Replacement housing

Currentness

(A) If a project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the displacing agency determines that such housing cannot otherwise be made available, he may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project. The head of the displacing agency may use this section to exceed the maximum amounts which may be paid under [sections 163.54 and 163.55 of the Revised Code](#) on a case-by-case basis for good cause as determined in accordance with rules adopted under Chapter 119. of the Revised Code by the head of the lead agency.

(B) No person shall be required to move from his dwelling on account of any project, unless the displacing agency head is satisfied that replacement housing, in accordance with [section 163.56 of the Revised Code](#), is available to such person.

(C) The acquisition of replacement housing sites and the acquisition, rehabilitation, relocation, and construction of replacement housing shall be considered to be for a public purpose, and displacing agencies may properly expend their respective funds to carry out the purposes of [sections 163.51 to 163.62 of the Revised Code](#).

(D) In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under [sections 163.51 to 163.62 of the Revised Code](#), a displacing agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under [sections 163.51 to 163.62 of the Revised Code](#) through any federal or state governmental agency or instrumentality having an established organization for conducting relocation assistance programs. The displacing agency shall, in carrying out the relocation assistance activities described in this section, whenever practicable, utilize the services of state or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

CREDIT(S)

(1989 H 295, eff. 3-21-89; 1971 H 295)

R.C. § 163.57, OH ST § 163.57

Current through File 135 of the 134th General Assembly (2021-2022) and 2022 Statewide Issue 1 and 2022 Statewide Issue 2.

Baldwin's Ohio Revised Code Annotated

Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Relocation Assistance

R.C. § 163.58

163.58 Regulations and procedures; rulemaking powers

Currentness

(A) Except as otherwise provided in rules adopted under division (B) of this section, the head of each displacing agency is authorized to establish such regulations and procedures as he may determine to be necessary to assure:

(1) That the payments and assistance authorized by [sections 163.51 to 163.62 of the Revised Code](#) shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

(2) That a displaced person who makes proper application for a payment authorized for such person by [sections 163.51 to 163.62 of the Revised Code](#) shall be paid promptly after a move or, in hardship cases, be paid in advance;

(3) That any person aggrieved by a determination as to eligibility for a payment authorized by such sections, or the amount of a payment, may have his application reviewed by the head of the displacing agency having authority over the applicable program or project.

(B) Notwithstanding any provision of the Revised Code to the contrary, the lead agency shall adopt such rules as may be necessary to implement [sections 163.51 to 163.62 of the Revised Code](#) in a manner which is as fair, reasonable, and uniform as practicable. As used in this section, "lead agency" means the state agency that the governor shall designate to carry out the duties prescribed by this division.

CREDIT(S)

(1989 H 295, eff. 3-21-89; 1971 H 295)

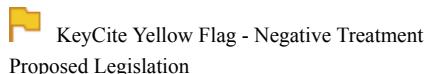
Notes of Decisions (3)

R.C. § 163.58, OH ST § 163.58

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Baldwin's Ohio Revised Code Annotated

Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Relocation Assistance

R.C. § 163.59

163.59 Policies for public land acquisition

Currentness

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many state and federally assisted programs, and to promote public confidence in public land acquisition practices, heads of acquiring agencies shall do or ensure the acquisition satisfies all of the following:

(A) The head of an acquiring agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(B) In order for an acquiring agency to acquire real property, the acquisition shall be for a defined public purpose that is to be achieved in a defined and reasonable period of time. An acquisition of real property that complies with [section 5501.31 of the Revised Code](#) satisfies the defined public purpose requirement of this division.

(C) Real property to be acquired shall be appraised before the initiation of negotiations, and the owner or the owner's designated representative shall be given a reasonable opportunity to accompany the appraiser during the appraiser's inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value. If the appraisal values the property to be acquired at more than ten thousand dollars, the head of the acquiring agency concerned shall make every reasonable effort to provide a copy of the appraisal to the owner. As used in this section, "appraisal" means a written statement independently and impartially prepared by a qualified appraiser, or a written statement prepared by an employee of the acquiring agency who is a qualified appraiser, setting forth an opinion of defined value of an adequately described property as of a specified date, supported by the presentation and analysis of relevant market information.

(D) Before the initiation of negotiations for real property, the head of the acquiring agency concerned shall establish an amount that the head of the acquiring agency believes to be just compensation for the property and shall make a prompt offer to acquire the property for no less than the full amount so established. In no event shall that amount be less than the agency's approved appraisal of the fair market value of the property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which the property is acquired, or by the likelihood that the property would be acquired for that improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property.

The head of the acquiring agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount that the head of the acquiring agency established as just compensation. Where appropriate, the just compensation for real property acquired and for damages to remaining real property shall be separately stated.

The owner shall be given a reasonable opportunity to consider the offer of the acquiring agency for the real property, to present material that the owner believes is relevant to determining the fair market value of the property, and to suggest modification in the proposed terms and conditions of the acquisition. The acquiring agency shall consider the owner's presentation and suggestions.

(E) If information presented by the owner or a material change in the character or condition of the real property indicates the need for new appraisal information, or if a period of more than two years has elapsed since the time of the appraisal of the property, the head of the acquiring agency concerned shall have the appraisal updated or obtain a new appraisal. If updated appraisal information or a new appraisal indicates that a change in the acquisition offer is warranted, the head of the acquiring agency shall promptly reestablish the amount of the just compensation for the property and offer that amount to the owner in writing.

(F) No owner shall be required to surrender possession of real property before the acquiring agency concerned pays the agreed purchase price, or deposits with the court for the benefit of the owner an amount not less than the agency's approved appraisal of the fair market value of the property, or the amount of the award of compensation in the condemnation proceeding for the property.

(G) The construction or development of a public improvement shall be so scheduled that no person lawfully occupying real property shall be required to move from a dwelling, or to move the person's business or farm operation, without at least ninety days' written notice from the head of the acquiring agency concerned of the date by which the move is required.

(H) If the head of an acquiring agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(I) In no event shall the head of an acquiring agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the real property.

(J) When any interest in real property is acquired by exercise of the power of eminent domain, the head of the acquiring agency concerned shall institute the formal condemnation proceedings. No head of an acquiring agency shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner's real property.

(K) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the acquiring agency concerned shall offer to acquire that remnant. For the purposes of this division, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the head of the agency concerned has determined has little or no value or utility to the owner.

An acquisition of real property may continue while an acquiring agency carries out the requirements of divisions (A) to (K) of this section.

This section applies only when the acquisition of real property may result in an exercise of the power of eminent domain.

CREDIT(S)

(2002 H 426, eff. 9-6-02; 1990 S 185, eff. 6-21-90; 1989 H 295; 1971 H 295)

Notes of Decisions (14)

R.C. § 163.59, OH ST § 163.59

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Baldwin's Ohio Revised Code Annotated

Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Relocation Assistance

R.C. § 163.60

163.60 Payment for buildings, structures and improvements on real property

Currentness

(A) If the head of a state agency acquires any interest in real property, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

(B) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by division (A) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(C) Payment under this section shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release all his right, title, and interest in and to such improvements.

CREDIT(S)

(1971 H 295, eff. 6-11-71)

Notes of Decisions (4)

R.C. § 163.60, OH ST § 163.60

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Relocation Assistance

R.C. § 163.61

163.61 Payment for other incidental expenses

Currentness

The head of a state agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency considers fair and reasonable, for expenses he necessarily incurred for:

- (A) Transfer taxes, and similar expenses incidental to conveying such real property to the state agency;
- (B) Penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering such real property;
- (C) The pro rata portion of any real property taxes paid which are allocable to a period subsequent to the date of vesting title in the state or state agency, or the effective date of possession of such real property by the agency, whichever is the earlier.

CREDIT(S)

(1971 H 295, eff. 6-11-71)

R.C. § 163.61, OH ST § 163.61

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Relocation Assistance

R.C. § 163.62

163.62 Award by court having jurisdiction

Effective: October 10, 2007

Currentness

(A) The court having jurisdiction of a proceeding instituted by a state agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for the owner's reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees actually incurred because of the condemnation proceeding, as provided in [division \(G\) of section 163.09](#) or [division \(A\) or \(C\) of section 163.21](#) of the Revised Code, as applicable.

(B) Any award made pursuant to division (A) of this section shall be paid by the head of the agency for whose benefit the condemnation proceeding was instituted.

CREDIT(S)

(2007 S 7, eff. 10-10-07; 1971 H 295, eff. 6-11-71)

Notes of Decisions (7)

R.C. § 163.62, OH ST § 163.62

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Title I. State Government

Chapter 163. Appropriation of Property (Refs & Annos)

Miscellaneous Provisions

R.C. § 163.63

163.63 Condemnation or eminent domain deemed pursuant to chapter

Effective: October 10, 2007

Currentness

Any reference in the Revised Code to any authority to acquire real property by "condemnation" or to take real property pursuant to a power of eminent domain is deemed to be an appropriation of real property pursuant to this chapter and any such taking or acquisition shall be made pursuant to this chapter.

CREDIT(S)

(2007 S 7, eff. 10-10-07)

R.C. § 163.63, OH ST § 163.63

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