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Substitute Bill Comparative Synopsis

Sub. H.B. 64

135th General Assembly

House Civil Justice

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This table summarizes how the latest substitute version of the bill differs from the immediately preceding version. It addresses only the topics on which the two versions differ substantively. It does not list topics on which the two bills are substantively the same.

Previous Version (I_135_0604-2)	Latest Version (I_135_2143-1)
Recreational trails	
Excludes the primary use of property as a recreational trail from the definition of “public use,” for which property may be taken through eminent domain (appropriated) unless the trail is adjacent to a public road and within its right-of-way (<i>R.C. 163.01(H)(2)</i>).	No provision.

Previous Version (I_135_0604-2)	Latest Version (I_135_2143-1)
Excludes the making or repairing of, or access management for, shared-use paths, bike paths, and recreational trails that are not adjacent to a public road and within its right-of-way from the definition of “making or repairing roads,” which continuing law presumes to be a public use (<i>R.C. 163.01(N)</i>).	No provision.
Appropriation authority	
No provision.	Removes statutory county, township, and municipal park district authority to appropriate property, and grants boards of county commissioners authority to appropriate property for the benefit of such a park district (<i>R.C. 307.08, 511.23, 511.24, 755.08, and 1545.11</i>).
Offers to purchase	
Establishes that all written pre-appropriation proceeding offers to purchase are admissible as evidence in appropriation proceedings, and shall not be considered confidential settlement communications (<i>R.C. 163.04(B)</i>).	No provision.
Changes a provision of current law that allows an agency to revise its initial offer before commencing appropriation proceedings if the agency becomes aware of property conditions that could not reasonably have been discovered when the offer was made or if the agency and owner exchange appraisals to a prohibition on any reduced offer unless there are property conditions that could not have reasonably been discovered at the time of the initial offer (<i>R.C. 163.04(B) and 163.59(E)</i>).	No provision.

Previous Version (I_135_0604-2)	Latest Version (I_135_2143-1)
Burdens and presumptions	
<p>Changes an appropriating agency’s burden of proof when demonstrating that an appropriation is necessary and for a public use, that the agency has the right to make an appropriation, and that the parties are unable to agree from a preponderance of the evidence to clear and convincing evidence (<i>R.C. 163.021 and 163.09</i>).</p>	<p>No provision.</p>
<p>Eliminates rebuttable presumptions that takings are necessary in two circumstances: (1) a resolution or ordinance adopted by the appropriating agency’s governing or controlling body declares the necessity and the appropriation is not pursued because a property is blighted, and (2) a public utility or common carrier presents evidence that the appropriation is necessary (<i>R.C. 163.09(B)(1)(a) and (b)</i>).</p>	<p>No provision.</p>
<p>Replaces an irrebuttable presumption that a taking by a public utility or common carrier is necessary when approved by a state or federal regulatory authority with a rebuttable presumption if all interests sought specific to an owner’s property are approved and only to the extent of the interests reviewed and approved (<i>R.C. 163.09(B)(1)(c)</i>).</p>	<p>Instead, changes that presumption to a purely rebuttable presumption (<i>R.C. 163.09(B)(1)(c)</i>).</p>
Right to an immediate appeal: roads	
<p>Narrows a provision in current law providing that a property owner does not have the right to an immediate appeal in cases where an appropriation is for the purpose of making or repairing roads open to the public without charge by requiring that the appropriation must be for that sole purpose to negate the right to immediate appeal (<i>R.C. 163.09(B)(3)</i>).</p>	<p>No provision.</p>

Previous Version (I_135_0604-2)	Latest Version (I_135_2143-1)
Compensation and cost awards	
<p>Expands required attorney fee and cost awards when a court determines questions of an appropriation’s necessity or public use in favor of a property owner by specifying that such award is required if the matter is determined “wholly or partially” in the owner’s favor (<i>R.C. 163.09(G)</i>).</p> <p>Requires the court to award an owner damages it considers appropriate if the owner demonstrates by a preponderance of the evidence that the agency used coercive actions during the appropriations process (<i>R.C. 163.09(H) and 163.59(I)</i>).</p> <p>Requires the court to award a property owner attorney’s fees, expenses, and costs in defending an agency appeal if the agency appeals from the court’s judgement and the judgment is affirmed in whole or in part (<i>R.C. 163.19</i>).</p> <p>Changes a provision requiring the court to award a property owner an amount the court considers just for all costs, expenses, and attorney’s and appraisal fees, actually incurred, when a final compensation award is more than 125% of the agency’s initial offer for the property, or 150% if agricultural land is appropriated for road, rail, or in times of war or other public exigency, or revised offer, by, among other things:</p> <ul style="list-style-type: none"> ▪ Reducing the percentage by which the final compensation award compares to the agency’s offer in cases not involving rail, road, or public exigency from 125% to 110%. 	<p>No provision.</p> <p>Requires such an award upon a demonstration by clear and convincing evidence (<i>R.C. 163.09(H) and 163.59(I)</i>).</p> <p>Requires such an award only if the judgment is affirmed in whole (<i>R.C. 163.19</i>).</p> <p>Same, with changes noted below:</p> <ul style="list-style-type: none"> ▪ Same, but also prohibits such an award if the final compensation award is not at least 75% of the amount stated in the owner’s appraisal or sworn statement submitted at least 50 days prior to the date initially set for trial (that filing is required under continuing law) (<i>R.C. 163.21(C)(3)(b)</i>).

Previous Version (I_135_0604-2)	Latest Version (I_135_2143-1)
<ul style="list-style-type: none"> ▪ Changing the referenced offer for nonagricultural land to the last written offer made prior to the necessity hearing, or, if no necessity hearing is held, prior to the beginning of the compensation trial, and the initial good faith offer for agricultural land. ▪ Requiring an additional 10% be added to the compensation award if it is greater than 125% of the offer. <i>(R.C. 163.21(C).)</i> 	<ul style="list-style-type: none"> ▪ Changing the referenced offer for agricultural land to the last written good faith offer. ▪ No provision <i>(R.C. 163.21(C)).</i>
Uniform Relocation Assistance and Real Property Acquisition Policies Act	
<p>Gives a property owner a cause of action against an agency for failure to follow the requirements in Ohio’s version of the Uniform Relocation Assistance and Real property Acquisition Policies Act, establishes the owner’s burden of proof on the claim as a preponderance of the evidence, and requires such action to be consolidated with the underlying appropriation action <i>(R.C. 163.52(B)).</i></p>	<p>Same, but requires the owner to prove the violation by clear and convincing evidence and provides that such cause of action may only be brought during the pendency of the appropriation proceeding or an inverse condemnation action <i>(R.C. 163.52(B)).</i></p>