



Ohio Revised Code

Section 163.21 Abandonment of proceedings.

Effective: October 10, 2007

Legislation: Senate Bill 7 - 127th General Assembly

(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.