

Act No. 308
Public Acts of 1993
Approved by the Governor
December 24, 1993
Filed with the Secretary of State
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STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993

Introduced by Reps. Dolan, Middaugh, Freeman, O'Neill, Brown, Shepich, Sikkema, Gnodtke, Hood, Wallace, Stallworth, Gire, Varga, DeMars, Points, Pitoniak, Murphy, Saunders, Bennane, Bryant, Llewellyn, Bodem, Rhead, Hill, Goschka, Bobier, Wetters and Randall
Rep. Yokich named co-sponsor

ENROLLED HOUSE BILL No. 4719

AN ACT to amend sections 5, 7, 8, and 9 of Act No. 87 of the Public Acts of 1980, entitled as amended "An act to provide procedures for the condemnation, acquisition, or exercise of eminent domain of real or personal property by public agencies or private agencies; to provide for an agency's entry upon land for certain purposes; to provide for damages; to prescribe remedies; and to repeal certain acts and parts of acts," section 5 as amended by Act No. 68 of the Public Acts of 1985, being sections 213.55, 213.57, 213.58, and 213.59 of the Michigan Compiled Laws; and to add section 6a.

The People of the State of Michigan enact:

Section 1. Sections 5, 7, 8, and 9 of Act No. 87 of the Public Acts of 1980, section 5 as amended by Act No. 68 of the Public Acts of 1985, being sections 213.55, 213.57, 213.58, and 213.59 of the Michigan Compiled Laws, are amended and section 6a is added to read as follows:

Sec. 5. (1) Except as provided in section 25(4), before initiating negotiations for the purchase of property, the agency shall establish an amount which it believes to be just compensation for the property and promptly shall submit to the owner a good faith offer to acquire the property for the full amount so established. The good faith offer shall state whether the agency reserves or waives its rights to bring federal or state cost recovery actions against the present owner of the property arising out of a release of hazardous substances at the property and the agency's appraisal of just compensation for the property shall reflect such reservation or waiver. The amount shall not be less than the agency's appraisal of just compensation for the property. The agency shall provide the owner of the property and the owner's attorney with an opportunity to review the written appraisal, if an appraisal has been prepared, or if an appraisal has not been prepared, the agency shall provide the owner or the owner's attorney with a written statement and summary, showing the basis for the amount the agency established as just compensation for the property. If an agency is unable to agree with the owner for the purchase of the property, after making a good faith written offer to purchase the property, the agency may file a complaint for the acquisition of the property in the circuit court in the county in which the property is located. If a parcel of property is situated in 2 or more counties and an owner resides in 1 of the counties, the complaint shall be filed in the county in which the owner is a resident. If a parcel of property is situated in 2 or more counties and an owner does not reside in 1 of the counties, the complaint shall be filed in any of the counties in which the property is situated. The complaint shall ask that the court ascertain and determine just compensation to be made for the acquisition of the described property. If an agency has made a good faith offer pursuant to this section prior to the effective date of section 6a but has not filed a complaint for acquisition of the property, the agency may withdraw the original offer and resubmit a good faith offer that complies with this act as amended by the amendatory act that

added section 6a. If a good faith offer is resubmitted pursuant to this subsection, attorney fees under section 16 shall be based on the resubmitted good faith offer.

(2) In addition to other allegations required or permitted by law, the complaint shall contain or have annexed to it all of the following:

(a) A plan showing the property to be taken.

(b) A statement of purpose for which the property is being acquired, and a request for other relief to which the agency is entitled by law.

(c) The name of each known owner of the property being taken.

(d) A statement setting forth the time within which motions for review under section 6 shall be filed; the amount which will be awarded and the persons to whom the amount will be paid in the event of a default; and the deposit and escrow arrangements made pursuant to subsection (3).

(e) A declaration signed by an authorized official of the agency declaring that the property is being taken by the agency. The declaration shall be recorded with the register of deeds of each county within which the property is situated. The declaration shall include:

(i) A description of the property to be acquired sufficient for its identification and the name of each known owner.

(ii) A statement of the estate or interest in the property being taken. Fluid mineral and gas rights and rights of access to and over the highway are considered excluded from the rights acquired unless the rights are specifically included.

(iii) A statement of the sum of money estimated by the agency to be just compensation for each parcel of property being acquired.

(iv) Whether the agency reserves or waives its rights to bring federal or state cost recovery actions against the present owner of the property.

(3) At the time the complaint is filed, the agency shall deposit the amount estimated to be just compensation with a bank, trust company, or title company in the business of handling real estate escrows, or with the state treasurer, municipal treasurer, or county treasurer. The deposit shall be set aside and held for the benefit of the owners, to be disbursed upon order of the court as provided in section 8.

Sec. 6a. (1) If an agency elects to reserve its rights to bring a state or federal cost recovery claim against an owner, the court upon motion of the owner, which must be filed within the time prescribed to responsively plead after service of a complaint, may reverse that election and order the agency to waive its claims, if the owner establishes by affidavit, and after an evidentiary hearing if requested by the agency in the time prescribed to provide an answer to a motion, 1 or more of the following circumstances exist with respect to the property:

(a) The property is a single family residence and has been used solely for residential purposes.

(b) The property is "agricultural property" as defined in section 3 of the environmental response act, Act No. 307 of the Public Acts of 1982, being section 299.603 of the Michigan Compiled Laws, and the reservation of rights arises out of a release of hazardous substances caused by the application of a fertilizer, soil conditioner, agronomically applied manure, or a pesticide or a combination of these substances according to label directions and according to generally accepted agricultural and management practices, as defined by the Michigan right to farm act, Act No. 93 of the Public Acts of 1981, being sections 286.471 to 286.474 of the Michigan Compiled Laws.

(c) The owner is the only identified potentially responsible party, the extent of contamination and cost of remediation has been reasonably quantified, and the estimated cost of remediation does not exceed the agency's appraised value of the property.

(2) If the court reverses the agency's election of reservation of rights under subsection (1), the agency shall submit to the owner a revised good faith offer. The revised good faith offer shall be considered the good faith offer for purposes of sections 5 and 16.

(3) An agency and an owner may stipulate that the agency will reverse its election and waive its rights to bring a state or federal cost recovery claim against an owner.

Sec. 7. (1) If a motion to review necessity is not filed within the time specified in section 6, the title to the property described in the petition shall vest in the agency as of the date on which the complaint was filed. The right to just compensation shall then vest in the persons entitled to the compensation and be secured as provided in this act. Title to the property shall also vest in the agency, as provided in this act, if the motion to review necessity is denied after a hearing and after any further right to appeal has terminated.

(2) Neither a motion filed pursuant to section 6a, challenging the agency's decision to reserve its rights to bring federal or state cost recovery actions nor a motion challenging the agency's escrow under section 8 shall delay vesting of title in the agency.

Sec. 8. (1) Except as provided in subsection (3), if a motion for review as provided in section 6 is not filed or is denied and the right to appeal has terminated or if interim possession is granted pursuant to section 9, the court shall order the escrowee to pay the money deposited pursuant to section 5, for or on account of the just compensation that may be awarded pursuant to section 13. However, if the agency reserves its rights to bring a state or federal cost recovery claim against an owner, under circumstances that the court considers just, the court may allow any portion of the money deposited pursuant to section 5 to remain in escrow as security for remediation costs of environmental contamination on the condemned parcel. An agency shall present an affidavit and environmental report establishing that the funds placed on deposit pursuant to section 5 are likely to be required to remediate the property. The amount in escrow shall not exceed the likely costs of remediation if the property were used for its highest and best use. Nothing contained in this subsection is intended to limit or expand an owner's or agency's rights to bring federal or state cost recovery claims. Except as provided in subsection (2), upon the motion of any party, the court shall apportion the estimated compensation among the claimants to the compensation.

(2) Notwithstanding any order entered by the court requiring money deposited pursuant to section 5 to remain in escrow for the payment of estimated remediation costs of contaminated property, the funds in escrow, plus interest, shall be released among the claimants to the just compensation under circumstances that the court considers just, including any of the following circumstances:

(a) The court finds that the applicable statutory requirements for remediation have changed and the amount remaining in escrow is no longer required in full or in part to remediate the alleged environmental contamination.

(b) The court finds that the anticipated need for the remediation of the alleged environmental contamination is not required or is not required to the extent of the funds remaining on deposit.

(c) If the remediation of the property is not initiated by the agency within 2 years of surrender of possession pursuant to section 9 and the agency is unable to show good cause for delay.

(d) The costs actually expended for remediation are less than the estimated costs of remediation or less than the amount of money remaining in escrow.

(e) A court issues an order of apportionment of remediation responsibility.

(3) If the court orders the agency to reverse its election under section 6a(1), the court shall order the escrowee to pay the amount of the revised good faith offer for or on account of the just compensation that may be awarded pursuant to section 13, and to pay the balance of the escrow to the agency. If the agency seeks possession before the court decides whether to reverse the agency's election or before submitting a revised good faith offer, the agency may request that the court order a portion of the escrow withheld in anticipation of a reduction in the revised good faith offer, with the balance to be paid by the escrowee for or on account of the just compensation that may be awarded pursuant to section 13. If the court denies the request to reverse the agency's election or when the revised good faith offer is submitted, the court shall order the escrowee to pay any unpaid portion of it for or on account of the owner and to pay any balance to the agency.

Sec. 9. (1) Upon filing of a complaint and making the deposit as provided in section 5 and after opportunity is given for a person to file a motion for review under section 6 or, if motion for review is filed, upon final determination of the motion, the court shall fix the time and terms for surrender of possession of the property to the agency and enforce surrender by appropriate order or other process. The court also may require surrender of possession of the property after the motion for review filed under section 6 has been heard, determined and denied by the circuit court, but before a final determination on appeal, if the agency demonstrates a reasonable need.

(2) If interim possession is granted to a private agency, the court, upon motion of the owner, may order the private agency to file an indemnity bond in an amount determined by the court as necessary to adequately secure just compensation to the owner for the property taken.

(3) If an order granting interim possession is entered, an appeal from the order or any other part of the proceedings shall not act as a stay of the possession order. An agency shall be liable for damages caused by the possession if its right to possession is denied by the trial court or on appeal.

(4) Repayment of all sums advanced shall be a condition precedent to entry of a final order setting aside a determination of public necessity.

(5) Neither a motion filed pursuant to section 6a, challenging the agency's decision to reserve its rights to bring federal or state cost recovery actions, nor a motion challenging the agency's escrow under section 8, shall delay the vesting of possession in the agency provided that the court shall not order possession surrendered to the agency before it orders that the escrow be distributed as provided in section 8(1) or (3).

Section 2. This amendatory act shall take effect upon the expiration of 30 days after the date of its enactment.

This act is ordered to take immediate effect.

Co-Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.