

Act No. 58
Public Acts of 1996
Approved by the Governor
February 25, 1996
Filed with the Secretary of State
February 26, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Rep. Bodem

ENROLLED HOUSE BILL No. 5309

AN ACT to amend sections 4 and 6a 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 4 as amended by Act No. 189 of the Public Acts of 1988 and section 6a as added by Act No. 308 of the Public Acts of 1993, being sections 213.54 and 213.56a of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 4 and 6a of Act No. 87 of the Public Acts of 1980, section 4 as amended by Act No. 189 of the Public Acts of 1988 and section 6a as added by Act No. 308 of the Public Acts of 1993, being sections 213.54 and 213.56a of the Michigan Compiled Laws, are amended to read as follows:

Sec. 4. (1) If the acquisition of a portion of a particular parcel of property actually needed by an agency would destroy the practical value or utility of the remainder of that particular parcel, the agency shall acquire the fee to the whole of the particular parcel of property. The question as to whether the practical value or utility of the remainder of the parcel of property is in fact destroyed shall be determined by the court or jury and incorporated in its verdict.

(2) An agency or an agent or employee of an agency may enter upon property before filing an action for the purpose of making surveys, measurements, examinations, tests, soundings, and borings; or taking photographs or samplings; or appraising the property; or conducting an environmental inspection; or determining whether the property is suitable to take for public purposes. The entry may be made upon reasonable notice to the owner and at reasonable hours. An entry made pursuant to this subsection shall not be construed as a taking. The owner or his or her representative shall be given a reasonable opportunity to accompany the agency's agent or employee during the entry upon the property. The agency shall make restitution for actual damage resulting from the entry which may be recovered by special motion before the court or by separate action if an action for condemnation has not been filed. The term "actual damage" as used in this subsection does not include, and an agency shall not make restitution for response activity, as defined in section 20101 of part 201 (environmental remediation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.20101 of the Michigan Compiled Laws, or for diminution in the value or utility of a parcel which is caused by the discovery of information as the result of a survey, an appraisal, a measurement, photography, or an environmental inspection made pursuant to this section.

(3) If reasonable efforts to accomplish entry under subsection (2) have been obstructed or denied, the agency may commence a civil action in the circuit court in the county in which the property or any part of the property is located for an order permitting entry. The complaint shall state the facts making the entry necessary, the date on which entry

is sought, and the duration and the method proposed for protecting the defendant against damage. The court may grant a limited license for entry upon such terms as justice and equity require, including the following:

- (a) A description of the purpose of the entry.
- (b) The scope of activities that are permitted.
- (c) The terms and conditions of the entry with respect to the time, place, and manner of the entry.
- (4) An entry made pursuant to subsection (3) shall be made in a manner that minimizes any damage to the property and any hardship, burden, or damage to a person in lawful possession of the property.
- (5) As used in this section, "environmental inspection" means the testing or inspection including the taking of samples of the soil, groundwater, structures, or other materials or substances in, on, or under the property for the purpose of determining whether chemical, bacteriological, radioactive, or other environmental contamination exists and, if it exists, the nature and extent of such contamination.

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 20101 of part 201 (environmental remediation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.20101 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.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.