

Act No. 474
Public Acts of 1996
Approved by the Governor
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**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Senators Dunaskiss and Honigman

ENROLLED SENATE BILL No. 778

AN ACT to amend sections 1, 4, 5, 6, 7, 8, 9, 11, 15, 16, 18, 20, and 25 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. 58 of the Public Acts of 1996, sections 5, 7, 8, and 9 as amended by Act No. 308 of the Public Acts of 1993, section 6 as amended by Act No. 31 of the Public Acts of 1995, and section 25 as amended by Act No. 68 of the Public Acts of 1985, being sections 213.51, 213.54, 213.55, 213.56, 213.57, 213.58, 213.59, 213.61, 213.65, 213.66, 213.68, 213.70, and 213.75 of the Michigan Compiled Laws; to add section 13a; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Sections 1, 4, 5, 6, 7, 8, 9, 11, 15, 16, 18, 20, and 25 of Act No. 87 of the Public Acts of 1980, section 4 as amended by Act No. 58 of the Public Acts of 1996, sections 5, 7, 8, and 9 as amended by Act No. 308 of the Public Acts of 1993, section 6 as amended by Act No. 31 of the Public Acts of 1995, and section 25 as amended by Act No. 68 of the Public Acts of 1985, being sections 213.51, 213.54, 213.55, 213.56, 213.57, 213.58, 213.59, 213.61, 213.65, 213.66, 213.68, 213.70, and 213.75 of the Michigan Compiled Laws, are amended and section 13a is added to read as follows:

Sec. 1. As used in this act:

(a) "Acquire" or "take" means to secure transfer of ownership of property to an agency by involuntary expropriation.

(b) "Acquisition" or "taking" means the transfer of ownership of property to an agency by involuntary expropriation.

(c) "Agency" means a public agency or private agency.

(d) "Appraisal" means an expert opinion of the value of property taken or damaged, or other expert opinion pertaining to the amount of just compensation.

(e) "Constructive taking" or "de facto taking" means conduct, other than regularly established judicial proceedings, sufficient to constitute a taking of property within the meaning of section 2 of article X of the state constitution of 1963.

(f) "Owner" means a person, fiduciary, partnership, association, corporation, or a governmental unit or agency having an estate, title, or interest, including beneficial, possessory, and security interest, in a property sought to be condemned.

(g) "Parcel" means an identifiable unit of land, whether physically contiguous or not, having substantially common beneficial ownership, all or part of which is being acquired, and treated as separate for valuation purposes.

(h) "Private agency" means a person, partnership, association, corporation, or entity, other than a public agency, authorized by law to condemn property.

(i) "Property" means land, buildings, structures, tenements, hereditaments, easements, tangible and intangible property, and property rights whether real, personal, or mixed, including fluid mineral and gas rights.

(j) "Public agency" means a governmental unit, officer, or subdivision authorized by law to condemn property.

Sec. 4. (1) If the acquisition of a portion of a parcel of property actually needed by an agency would destroy the practical value or utility of the remainder of that parcel, the agency shall pay just compensation for the whole parcel. The agency may elect whether to receive title and possession of the remainder of the parcel. 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) If the acquisition of a portion of a parcel of property actually needed by an agency would leave the remainder of the parcel in nonconformity with a zoning ordinance, the agency, before or after acquisition, may apply for a zoning variance for the remainder of the parcel. In determining whether to grant the zoning variance, the governmental entity having jurisdiction to grant the variance shall consider the potential benefits of the public use for which the property would be acquired, in addition to those criteria applicable under the relevant zoning statute, ordinance, or regulation. The agency must actually acquire the portion of the parcel of property for the proposed public use for the zoning variance to become effective for the remainder. If a variance is granted under this subsection, the property shall be considered by the governmental entity to be in conformity with the zoning ordinance for all future uses with respect to the nonconformity for which that variance was granted. However, if the property was also nonconforming for other reasons, the grant of that variance has no effect on the status of those other preexisting nonconformities. An owner shall not increase the nonconformity for which a variance is granted under this section without the consent of the governmental entity. An agency has the same right to appeal action on a zoning variance as would a property owner seeking a zoning variance. This section does not deprive a governmental entity of its discretion to grant or deny a variance.

(3) 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; taking photographs or samplings; appraising the property; conducting an environmental inspection; conducting archaeological studies pursuant to section 106 of title I of the national historic preservation act, Public Law 89-665, 16 U.S.C. 470f; 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 diminution in the value or utility of a parcel that 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.

(4) If reasonable efforts to enter under subsection (3) 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.

(5) An entry made under subsection (3) or (4) 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.

(6) 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 the contamination.

Sec. 5. (1) Before initiating negotiations for the purchase of property, the agency shall establish an amount that it believes to be just compensation for the property and promptly shall submit to the owner a good faith written offer to acquire the property for the full amount so established. If there is more than 1 owner of a parcel, the agency may make a single, unitary good faith written offer. 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. If the owner fails to provide documents or information as required by subsection (2), the agency may base its

good faith written offer on the information otherwise known to the agency whether or not the agency has sought a court order under subsection (2). 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 may 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 made a good faith written offer pursuant to this section before January 28, 1994 but has not filed a complaint for acquisition of the property, the agency may withdraw the good faith written offer and resubmit a good faith written offer that complies with this act as amended. 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) During the period in which the agency is establishing just compensation for the owner's parcel, the agency has the right to secure tax returns, financial statements, and other relevant financial information for a period not to exceed 5 years before the agency's request. The owner shall produce the information within 21 business days after receipt of a written request from the agency. The agency shall reimburse the owner for actual, reasonable costs incurred in reproducing any requested documents, plus other actual, reasonable costs of not more than \$1,000.00 incurred to produce the requested information. Within 45 days after production of the requested documents and other information, the owner shall provide to the agency a detailed invoice for the costs of reproduction and other costs sought. The owner is not entitled to a reimbursement of costs under this subsection if the reimbursement would be duplicative of any other reimbursement to the owner. If the owner fails to provide all documents and other information requested by the agency under this section, the agency may file a complaint and proposed order to show cause in the circuit court in the county specified in subsection (1). The court shall immediately hold a hearing on the agency's proposed order to show cause. The court shall order the owner to provide documents and other information requested by the agency that the court finds to be relevant to a determination of just compensation. An agency shall keep documents and other information that an owner provides to the agency under this section confidential. However, the agency and its experts and representatives may utilize the documents and other information to determine just compensation, may utilize the documents and other information in legal proceedings under this act, and may utilize the documents and other information as provided by court order. If the owner unreasonably fails to timely produce the documents and other information, the owner shall be responsible for all expenses incurred by the agency in obtaining the documents and other information. This section does not affect any right a party may otherwise have to discovery or to require the production of documents and other information upon commencement of an action under this act. A copy of this section shall be provided to the owner with the agency's request.

(3) If an owner believes that the good faith written offer made under subsection (1) did not include or fully include 1 or more items of compensable property or damage for which the owner intends to claim a right to just compensation, the owner shall, for each item, file a written claim with the agency. The owner's written claim shall provide sufficient information and detail to enable the agency to evaluate the validity of the claim and to determine its value. The owner shall file all such claims within 90 days after the good faith written offer is made pursuant to section 5(1) or 60 days after the complaint is filed, whichever is later. Within 60 days after the date the owner files a written claim with the agency, the agency may ask the court to compel the owner to provide additional information to enable the agency to evaluate the validity of the claim and to determine its value. For good cause shown, the court shall, upon motion filed by the owner, extend the time in which claims may be made, if the rights of the agency are not prejudiced by the delay. Only 1 such extension may be granted. After receiving a written claim from an owner, the agency may provide written notice that it contests the compensability of the claim, establish an amount that it believes to be just compensation for the item of property or damage, or reject the claim. If the agency establishes an amount it believes to be just compensation for the item of property or damage, the agency shall submit a good faith written offer for the item of property or damage. The sum of the good faith written offer for all such items of property or damage plus the original good faith written offer constitutes the good faith written offer for purposes of determining the maximum reimbursable attorney fees under section 16. If an owner fails to file a timely written claim under this subsection, the claim is barred. If the owner files a claim that is frivolous or in bad faith, the agency is entitled to recover from the owner its actual and reasonable expenses incurred to evaluate the validity and to determine the value of the claim.

(4) 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 that 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 under subsection (5).

(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 all of the following:

(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 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.

(5) When 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 under section 8.

Sec. 6. (1) Within the time prescribed to responsively plead after service of a complaint, an owner of the property desiring to challenge the necessity of acquisition of all or part of the property for the purposes stated in the complaint may file a motion in the pending action asking that the necessity be reviewed. The hearing shall be held within 30 days after the filing of the motion.

(2) With respect to an acquisition by a public agency, the determination of public necessity by that agency is binding on the court in the absence of a showing of fraud, error of law, or abuse of discretion.

(3) Except as otherwise provided in this section, with respect to an acquisition by a private agency, the court at the hearing shall determine the public necessity of the acquisition of the particular parcel. The granting of a permanent or temporary certificate by the public service commission or by a federal agency authorized by federal law to make determinations of public convenience and necessity as to condemnation constitutes a prima facie case that the project in furtherance of which the particular parcel would be acquired is required by the public convenience and necessity. The granting of a certificate of public convenience and necessity by the public service commission pursuant to the electric transmission line certification act, Act No. 30 of the Public Acts of 1995, being sections 460.561 to 460.575 of the Michigan Compiled Laws, is binding on the court.

(4) The court shall render a decision within 60 days after the date on which the hearing is first scheduled.

(5) The court's determination of a motion to review necessity is a final judgment.

(6) Notwithstanding section 309 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.309 of the Michigan Compiled Laws, an order of the court upholding or determining public necessity or upholding the validity of the condemnation proceeding is appealable to the court of appeals only by leave of that court pursuant to the general court rules. In the absence of a timely filed appeal of the order, an appeal shall not be granted and the order is not appealable as part of an appeal from a judgment as to just compensation.

(7) If a motion to review necessity is not filed as provided in this section, necessity shall be conclusively presumed to exist and the right to have necessity reviewed or further considered is waived.

Sec. 7. (1) If a motion to review necessity is not filed under 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. If the motion to review necessity is denied after a hearing and after any further right to appeal has terminated, title to the property shall also vest in the agency as of the date on which the complaint was filed or such other date as the court may set upon motion of the agency.

(2) Vesting of title in the agency shall not be delayed or denied because of any of the following:

(a) A motion filed under section 6a, challenging the agency's election to reserve its rights to bring federal or state cost recovery actions.

(b) A motion challenging the agency's escrow under section 8.

(c) An allegation that the agency should have offered a higher amount for the property.

(d) An allegation that the agency should have included additional property in its good faith written offer.

(e) Any other reason except a challenge to the necessity of the acquisition filed under section 6.

Sec. 8. (1) Except as provided in subsections (2) and (3), if a motion for review under section 6 is not filed or is denied and the right to appeal has terminated or if interim possession is granted under section 9, the court shall order the

escrowee to pay the money deposited under section 5 for or on account of the just compensation that may be awarded under section 13. Except as provided in subsections (2) and (3), if a motion for review under section 6 is not filed, the court shall, within 30 days, order the escrowee to pay the money deposited under section 5 for or on account of the just compensation that may be awarded under section 13. Upon the motion of any party, the court shall apportion the estimated compensation among the claimants to the compensation.

(2) 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 under 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 under 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. This subsection does not limit or expand an owner's or agency's rights to bring federal or state cost recovery claims.

(3) 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 subject to section 15, 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.

(4) 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 written 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) If a motion for review under section 6 is not filed, upon expiration of the time for filing the motion for review, or, if a 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 is 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) Although the court shall not order possession to be surrendered to the agency before it orders that the escrow be distributed under section 8(1) or (4) or retained under section 8(2), the court shall not delay or deny surrender of possession because of any of the following:

(a) A motion filed pursuant to section 6a, challenging the agency's decision to reserve its rights to bring federal or state cost recovery actions.

(b) A motion challenging the agency's escrow under section 8.

(c) An allegation that the agency should have offered a higher amount for the property.

(d) An allegation that the agency should have included additional property in its good faith written offer.

(e) Any other reason except a challenge to the necessity of the acquisition filed under section 6.

Sec. 11. (1) Upon motion of either party, the court shall issue a scheduling order to assure that the appraisal reports are exchanged and the parties are afforded a reasonable opportunity for discovery before a case is submitted to mediation, alternative dispute resolution, or trial.

(2) An appraisal report provided pursuant to this section shall fairly and reasonably describe the methodology and basis for the amount of the appraisal. If the testimony or opinion of a person relating to the value of real property would require a license under article 26 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.2601 to 339.2637 of the Michigan Compiled Laws, the appraisal shall comply with section 2609 of Act No. 299 of the Public Acts of 1980, being section 339.2609 of the Michigan Compiled Laws, and the standards adopted under section 2609 of Act No. 299 of the Public Acts of 1980 and the person shall not be permitted to testify or otherwise render an opinion relating to the value of real property unless the person is licensed under that article. An owner is not required to be licensed or to comply with professional appraisal standards to testify to the value of the owner's property.

(3) The court may issue orders to facilitate compliance with this section, including but not limited to orders to require mutual simultaneous exchange of the agency's updated appraisal report, if any, and the owner's appraisal report. If an appraisal report has not been provided pursuant to this section, the appraisal report shall not be considered in mediation or alternative dispute resolution proceedings unless specifically authorized by court order. If an appraisal report has not been provided pursuant to this section, the court may bar the taking of appraisal testimony from the appraisal expert, unless the court finds good cause for the failure and finds that the interests and opportunity of the other party to prepare have not been prejudiced.

Sec. 13a. A person is not entitled to a payment in connection with the acquisition of all or part of that person's property under this act if that payment would be duplicative of any grant or other payment received under any state or federal statute or regulation.

Sec. 15. (1) The court shall award interest on the judgment amount or part of the amount from the date of the filing of the complaint to the date that payment of the amount or part of the amount is tendered. However, if a portion of the judgment is attributable to damages incurred after the date of surrender of possession, the court shall award interest on that portion of the judgment from the date the damage is incurred.

(2) Interest shall be computed at the interest rate applicable to a federal income tax deficiency or penalty. However, an owner remaining in possession after the date that the complaint is filed waives the interest for the period of the possession.

(3) If it is determined that a de facto acquisition occurred at a date earlier than the date of filing the complaint, interest awarded under this section shall be calculated from the earlier date.

Sec. 16. (1) Except as provided in this section, an ordinary or expert witness in a proceeding under this act shall receive from the agency the reasonable fees and compensation provided by law for similar services in ordinary civil actions in circuit court, including the reasonable expenses for preparation and trial.

(2) If the property owner, by motion to review necessity or otherwise, successfully challenges the agency's right to acquire the property, or the legal sufficiency of the proceedings, and the court finds the proposed acquisition improper, the court shall order the agency to reimburse the owner for actual reasonable attorney fees and other expenses incurred in defending against the improper acquisition.

(3) If the amount finally determined to be just compensation for the property acquired exceeds the amount of the good faith written offer under section 5, the court shall order reimbursement in whole or in part to the owner by the agency of the owner's reasonable attorney's fees, but not in excess of 1/3 of the amount by which the ultimate award exceeds the agency's written offer as defined by section 5. The reasonableness of the owner's attorney fees shall be determined by the court. If the agency or owner is ordered to pay attorney fees as sanctions under Michigan court rule 2.403 or 2.405, those attorney fee sanctions shall be paid to the court as court costs and shall not be paid to the opposing party unless the parties agree otherwise.

(4) If the agency settles a case before entry of a verdict or judgment, it may stipulate to pay reasonable attorney and expert witness fees.

(5) Expert witness fees provided for in subsection (1) and this subsection shall be allowed with respect to an expert whose services were reasonably necessary to allow the owner to prepare for trial. For the purpose of subsection (1) and this subsection, for each element of compensation, each party is limited to 1 expert witness to testify on that element of compensation unless, upon showing of good cause, the court permits additional experts. The agency's liability for expert witness fees shall not be diminished or affected by the failure of the owner to call an expert as a witness if the failure is caused by settlement or other disposition of the case or issue with which the expert is concerned.

(6) An agency shall not be required to reimburse attorney or expert witness fees that are attributable to an unsuccessful challenge to necessity or to the validity of the proceedings.

Sec. 18. (1) If any agency acquires property without commencement of an action or abandons its efforts to acquire property after making the jurisdictional good faith written offer required by section 5 to the owners of the property and

if the owners of the property reasonably relied upon the agency's action, the owners shall be reimbursed by the agency for the reasonable expenses incurred in evaluating the agency's good faith written offer, in preparing for trial, or in negotiating a settlement, if those expenses would have been taxable as costs under section 16. For the purpose of this section, the jurisdictional written offer includes only written offers made under threat of institution of judicial proceedings to acquire the property.

(2) The rights created by this section may be enforced in a court having jurisdiction over claims for damages against the agency, or in a court in which an action under this act for the acquisition of the property could have been filed.

(3) The claim for reimbursement of expenses shall be filed within 1 year after the date on which the property is acquired or after the date on which notice of abandonment of the intention to acquire the property is mailed to the owner.

Sec. 20. (1) A change in the fair market value before the date of the filing of the complaint which the agency or the owner establishes was substantially due to the general knowledge of the imminence of the acquiring by the agency, other than that due to physical deterioration of the property within the reasonable control of the owner, shall be disregarded in determining fair market value. Except as provided in section 23, the property shall be valued in all cases as though the acquisition had not been contemplated.

(2) The general effects of a project for which property is taken, whether actual or anticipated, that in varying degrees are experienced by the general public or by property owners from whom no property is taken, shall not be considered in determining just compensation. A special effect of the project on the owner's property that, standing alone, would constitute a taking of private property under section 2 of article X of the state constitution of 1963 shall be considered in determining just compensation. To the extent that the detrimental effects of a project are considered to determine just compensation, they may be offset by consideration of the beneficial effects of the project.

(3) The date of acquiring and of valuation in a proceeding pursuant to this act shall be the date of filing unless the parties agree to a different date, or unless a different date is determined by a counterclaim filed under section 21. The value of each parcel, and of a part of a parcel remaining after the acquisition of a part of the parcel, shall be determined with respect to the condition of the property and the state of the market on the date of valuation. However, if anticipated damages are avoided because of changes in the taking or project or changes in the actual effect of the taking or project on the remaining property, the property shall be valued as if those damages had not been anticipated.

Sec. 25. All actions for the acquisition of property by an agency under the power of eminent domain shall be commenced pursuant to and be governed by this act. Amendments made to this act by the amendatory act that added this sentence shall apply to all good faith written offers made after the effective date of the amendatory act that added this sentence.

Section 2. Sections 26 and 27 of Act No. 87 of the Public Acts of 1980, being sections 213.76 and 213.77 of the Michigan Compiled Laws, are repealed.

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.