



HOUSE BILL No. 5309

October 25, 1995, Introduced by Rep. Bodem and referred to the Committee on Conservation, Environment and Great Lakes.

A bill to amend sections 4 and 6a of Act No. 87 of the Public Acts of 1980, entitled as amended "The uniform condemnation procedures act," 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:

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

6 Sec. 4. (1) If the acquisition of a portion of a
7 particular parcel of property actually needed by an agency would

1 destroy the practical value or utility of the remainder of that
 2 particular parcel, the agency shall acquire the fee to the whole
 3 of the particular parcel of property. The question as to whether
 4 the practical value or utility of the remainder of the parcel of
 5 property is in fact destroyed shall be determined by the court or
 6 jury and incorporated in its verdict.

7 (2) An agency or an agent or employee of an agency may enter
 8 upon property before filing an action for the purpose of making
 9 surveys, measurements, examinations, tests, soundings, and bor-
 10 ings; or taking photographs or samplings; or appraising the prop-
 11 erty; or conducting an environmental inspection; or determining
 12 whether the property is suitable to take for public purposes.
 13 The entry may be made upon reasonable notice to the owner and at
 14 reasonable hours. An entry made pursuant to this subsection
 15 shall not be construed as a taking. The owner or his or her rep-
 16 resentative shall be given a reasonable opportunity to accompany
 17 the agency's agent or employee during the entry upon the
 18 property. The agency shall make restitution for actual damage
 19 resulting from the entry which may be recovered by special motion
 20 before the court or by separate action if an action for condemna-
 21 tion has not been filed. The term "actual damage" as used in
 22 this subsection does not include, and an agency shall not make
 23 restitution for response activity, as defined in section ~~3 of~~
 24 ~~the environmental response act, Act No. 307 of the Public Acts of~~
 25 ~~1982, being section 299.603~~ 20101 OF PART 201 (ENVIRONMENTAL
 26 REMEDIATION) OF THE NATURAL RESOURCES AND ENVIRONMENTAL
 27 PROTECTION ACT, ACT NO. 451 OF THE PUBLIC ACTS OF 1994, BEING

1 SECTION 324.20101 of the Michigan Compiled Laws, or for
2 diminution in the value or utility of a parcel which is caused by
3 the discovery of information as the result of a survey, an
4 appraisal, a measurement, photography, or an environmental
5 inspection made pursuant to this section.

6 (3) If reasonable efforts to accomplish entry under subsec-
7 tion (2) have been obstructed or denied, the agency may commence
8 a civil action in the circuit court in the county in which the
9 property or any part of the property is located for an order per-
10 mitting entry. The complaint shall state the facts making the
11 entry necessary, the date on which entry is sought, and the dura-
12 tion and the method proposed for protecting the defendant against
13 damage. The court may grant a limited license for entry upon
14 such terms as justice and equity require, including the
15 following:

16 (a) A description of the purpose of the entry.

17 (b) The scope of activities that are permitted.

18 (c) The terms and conditions of the entry with respect to
19 the time, place, and manner of the entry.

20 (4) An entry made pursuant to subsection (3) shall be made
21 in a manner that minimizes any damage to the property and any
22 hardship, burden, or damage to a person in lawful possession of
23 the property.

24 (5) As used in this section, "environmental inspection"
25 means the testing or inspection including the taking of samples
26 of the soil, groundwater, structures, or other materials or
27 substances in, on, or under the property for the purpose of

1 determining whether chemical, bacteriological, radioactive, or
2 other environmental contamination exists and, if it exists, the
3 nature and extent of such contamination.

4 Sec. 6a. (1) If an agency elects to reserve its rights to
5 bring a state or federal cost recovery claim against an owner,
6 the court upon motion of the owner, which must be filed within
7 the time prescribed to responsively plead after service of a com-
8 plaint, may reverse that election and order the agency to waive
9 its claims, if the owner establishes by affidavit, and after an
10 evidentiary hearing if requested by the agency in the time pre-
11 scribed to provide an answer to a motion, 1 or more of the fol-
12 lowing circumstances exist with respect to the property:

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

15 (b) The property is "agricultural property" as defined in
16 section ~~3 of the environmental response act, Act No. 307 of the~~
17 ~~Public Acts of 1982, being section 299.603~~ 20101 OF PART 201
18 (ENVIRONMENTAL REMEDIATION) OF THE NATURAL RESOURCES AND ENVIRON-
19 MENTAL PROTECTION ACT, ACT NO. 451 OF THE PUBLIC ACTS OF 1994,
20 BEING SECTION 324.20101 of the Michigan Compiled Laws, and the
21 reservation of rights arises out of a release of hazardous sub-
22 stances caused by the application of a fertilizer, soil condi-
23 tioner, agronomically applied manure, or a pesticide or a combi-
24 nation of these substances according to label directions and
25 according to generally accepted agricultural and management prac-
26 tices, as defined by the Michigan right to farm act, Act No. 93

1 of the Public Acts of 1981, being sections 286.471 to 286.474 of
2 the Michigan Compiled Laws.

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

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

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