

SENATE BILL NO. 509

May 20, 1997, Introduced by Senators DUNASKISS and BENNETT
and referred to the Committee on Local, Urban and State
Affairs.

A bill to amend 1980 PA 87, entitled
"The uniform condemnation procedures act,"
by amending section 5 (MCL 213.55), as amended by 1996 PA 474.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5. (1) Before initiating negotiations for the purchase
2 of property, the agency shall establish an amount that it
3 believes to be just compensation for the property and promptly
4 shall submit to the owner a good faith written offer to acquire
5 the property for the full amount so established. If there is
6 more than 1 owner of a parcel, the agency may make a single, uni-
7 tary good faith written offer. The good faith offer shall state
8 whether the agency reserves or waives its rights to bring federal
9 or state cost recovery actions against the present owner of the
10 property arising out of a release of hazardous substances at the
11 property and the agency's appraisal of just compensation for the

1 property shall reflect such reservation or waiver. The amount
2 shall not be less than the agency's appraisal of just compensa-
3 tion for the property. If the owner fails to provide documents
4 or information as required by subsection (2), the agency may base
5 its good faith written offer on the information otherwise known
6 to the agency whether or not the agency has sought a court order
7 under subsection (2). The agency shall provide the owner of the
8 property and the owner's attorney with an opportunity to review
9 the written appraisal, if an appraisal has been prepared, or if
10 an appraisal has not been prepared, the agency shall provide the
11 owner or the owner's attorney with a written statement and summa-
12 ry, showing the basis for the amount the agency established as
13 just compensation for the property. If an agency is unable to
14 agree with the owner for the purchase of the property, after
15 making a good faith written offer to purchase the property, the
16 agency may file a complaint for the acquisition of the property
17 in the circuit court in the county in which the property is
18 located. If a parcel of property is situated in 2 or more coun-
19 ties and an owner resides in 1 of the counties, the complaint
20 shall be filed in the county in which the owner is a resident.
21 If a parcel of property is situated in 2 or more counties and an
22 owner does not reside in 1 of the counties, the complaint may be
23 filed in any of the counties in which the property is situated.
24 The complaint shall ask that the court ascertain and determine
25 just compensation to be made for the acquisition of the described
26 property. If an agency made a good faith written offer pursuant
27 to this section before January 28, 1994 but has not filed a

1 complaint for acquisition of the property, the agency may
2 withdraw the good faith written offer and resubmit a good faith
3 written offer that complies with this act as amended BY 1993 PA
4 308. If a good faith offer is resubmitted pursuant to this sub-
5 section, attorney fees under section 16 shall be based on the
6 resubmitted good faith offer.

7 (2) During the period in which the agency is establishing
8 just compensation for the owner's parcel, the agency has the
9 right to secure tax returns, financial statements, and other rel-
10 evant financial information for a period not to exceed 5 years
11 before the agency's request. The owner shall produce the infor-
12 mation within 21 business days after receipt of a written request
13 from the agency. The agency shall reimburse the owner for
14 actual, reasonable costs incurred in reproducing any requested
15 documents, plus other actual, reasonable costs of not more than
16 \$1,000.00 incurred to produce the requested information. Within
17 45 days after production of the requested documents and other
18 information, the owner shall provide to the agency a detailed
19 invoice for the costs of reproduction and other costs sought.
20 The owner is not entitled to a reimbursement of costs under this
21 subsection if the reimbursement would be duplicative of any other
22 reimbursement to the owner. If the owner fails to provide all
23 documents and other information requested by the agency under
24 this section, the agency may file a complaint and proposed order
25 to show cause in the circuit court in the county specified in
26 subsection (1). The court shall immediately hold a hearing on
27 the agency's proposed order to show cause. The court shall order

1 the owner to provide documents and other information requested by
2 the agency that the court finds to be relevant to a determination
3 of just compensation. An agency shall keep documents and other
4 information that an owner provides to the agency under this sec-
5 tion confidential. However, the agency and its experts and rep-
6 resentatives may utilize the documents and other information to
7 determine just compensation, may utilize the documents and other
8 information in legal proceedings under this act, and may utilize
9 the documents and other information as provided by court order.
10 If the owner unreasonably fails to timely produce the documents
11 and other information, the owner shall be responsible for all
12 expenses incurred by the agency in obtaining the documents and
13 other information. This section does not affect any right a
14 party may otherwise have to discovery or to require the produc-
15 tion of documents and other information upon commencement of an
16 action under this act. A copy of this section shall be provided
17 to the owner with the agency's request.

18 (3) If an owner believes that the good faith written offer
19 made under subsection (1) did not include or fully include 1 or
20 more items of compensable property or damage for which the owner
21 intends to claim a right to just compensation, the owner shall,
22 for each item, file a written claim with the agency. The owner's
23 written claim shall provide sufficient information and detail to
24 enable the agency to evaluate the validity of the claim and to
25 determine its value. The owner shall file all such claims within
26 90 days after the good faith written offer is made pursuant to
27 section 5(1) or 60 days after the complaint is filed, whichever

1 is later. Within 60 days after the date the owner files a
2 written claim with the agency, the agency may ask the court to
3 compel the owner to provide additional information to enable the
4 agency to evaluate the validity of the claim and to determine its
5 value. For good cause shown, the court shall, upon motion filed
6 by the owner, extend the time in which claims may be made, if the
7 rights of the agency are not prejudiced by the delay. Only 1
8 such extension may be granted. After receiving a written claim
9 from an owner, the agency may provide written notice that it con-
10 tests the compensability of the claim, establish an amount that
11 it believes to be just compensation for the item of property or
12 damage, or reject the claim. If the agency establishes an amount
13 it believes to be just compensation for the item of property or
14 damage, the agency shall submit a good faith written offer for
15 the item of property or damage. The sum of the good faith writ-
16 ten offer for all such items of property or damage plus the orig-
17 inal good faith written offer constitutes the good faith written
18 offer for purposes of determining the maximum reimbursable attor-
19 ney fees under section 16. If an owner fails to file a timely
20 written claim under this subsection, the claim is barred. If the
21 owner files a claim that is frivolous or in bad faith, the agency
22 is entitled to recover from the owner its actual and reasonable
23 expenses incurred to evaluate the validity and to determine the
24 value of the claim.

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

- 1 (a) A plan showing the property to be taken.
- 2 (b) A statement of purpose for which the property is being
3 acquired, and a request for other relief to which the agency is
4 entitled by law.
- 5 (c) The name of each known owner of the property being
6 taken.
- 7 (d) A statement setting forth the time within which motions
8 for review under section 6 shall be filed; the amount that will
9 be awarded and the persons to whom the amount will be paid in the
10 event of a default; and the deposit and escrow arrangements made
11 under subsection (5).
- 12 (e) A declaration signed by an authorized official of the
13 agency declaring that the property is being taken by the agency.
14 The declaration shall be recorded with the register of deeds of
15 each county within which the property is situated. The declara-
16 tion shall include all of the following:
- 17 (i) A description of the property to be acquired sufficient
18 for its identification and the name of each known owner.
- 19 (ii) A statement of the estate or interest in the property
20 being taken. Fluid mineral and gas rights and rights of access
21 to and over the highway are excluded from the rights acquired
22 unless the rights are specifically included.
- 23 (iii) A statement of the sum of money estimated by the
24 agency to be just compensation for each parcel of property being
25 acquired.

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

4 (5) When the complaint is filed, the agency shall deposit
5 the amount estimated to be just compensation with a bank, trust
6 company, or title company in the business of handling real estate
7 escrows, or with the state treasurer, municipal treasurer, or
8 county treasurer. The deposit shall be set aside and held for
9 the benefit of the owners, to be disbursed upon order of the
10 court under section 8.