

Legislative Analysis



CONDEMNATION AMENDMENTS

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House Bill 5817 (Substitute H-1)
Sponsor: Rep. Steve Tobocman

House Bill 5818 (Substitute H-1)
Sponsor: Rep. Leon Drolet

House Bill 5819 (Substitute H-2)
Sponsor: Rep. John Garfield

House Bill 5820 (Substitute H-1)
Sponsor: Rep. LaMar Lemmons, III

House Bill 5821 (Substitute H-2)
Sponsor: Rep. Bill McConico

Committee: Government Operations
Complete to 5-30-06

A SUMMARY OF THE FLOOR SUBSTITUTES FOR HOUSE BILLS 5817 – 5821

House Bill 5817

Public Act 40 of 1965 (MCL 213.352) generally requires public agencies obtaining land for a public purpose through purchase or condemnation to pay the necessary and reasonable moving expenses of an occupant of the land. The act caps the payment at \$1,000 for individuals and families, and \$15,000 for businesses, including farming operations and nonprofit organizations.

House Bill 5817(H-1) would increase the cap on payments made to individuals and families to \$5,200. The bill would not, however, increase the cap on payments made to businesses. Also, the bill specifies that occupants of residential property with a leasehold interest of less than six months would be entitled to a fixed moving allowance of \$5,200. Further, the bill provides that the court could award reasonable attorney fees and costs to an occupant with a leasehold interest of less than six months who brings a successful action to recover the moving allowance.

In addition, the act requires an occupant to vacate the property before payment is made. The bill provides that a payment may be made to an occupant before he or she moves, if the payment is necessary to enable the occupant to move.

The bill also specifies that if the public agency is complying with applicable federal regulations concerning moving allowances and relocation requirements, those regulations take precedence over any contradictory provisions concerning the payment of moving expenses.

House Bill 5818

The Uniform Condemnation Procedures Act (MCL 213.66) generally provides that a condemning agency is not required to reimburse a person challenging the necessity of the

taking or the validity of proceedings for attorney or expert witness fees if the challenge is unsuccessful. The bill provides that the court could award attorney and expert witness fees in an unsuccessful challenge to the necessity or validity of the proceedings, if the person's annual income is at or below 200 percent of the federal poverty level and the person made a reasonable and good faith claim that the property was not being taken for a public use. This would not, however, apply to proceedings concerning the taking of property for the construction of a highway.

House Bill 5819

Section 59 of the UCPA (MCL 213.59) provides that the court shall fix the time and terms for surrender of possession of property and enforce surrender by appropriate order or other means. The section further provides that although the court shall not order possession be surrendered before it orders the escrow be distributed or retained (for environmental remediation), it shall not delay or deny the surrender of possession because of any of the following: (1) a motion challenging an agency's decision to reserve its rights to bring state or federal cost recovery actions; (2) a motion challenging the agency's escrow; (3) an allegation that the agency should have offered a higher amount for the property; (4) an allegation that the agency should have included additional property in its good faith offer; or (5) any other reason except a challenge to the necessity of the acquisition.

The bill would, in addition to the above provisions, require that property owners be paid at least 30 days prior to dispossession of their property. Any disputes that arise after payment is made would have to be resolved at an apportionment hearing before dispossession.

If an occupant of a residential dwelling is required to relocate, he or she could not be required to move until he or she has had a reasonable opportunity to relocate to a comparable dwelling, up to 180 days after moving expenses are paid, and has been paid for the moving expenses and the moving allowance.

The bill further adds that if the agency is complying with applicable federal regulations and procedures regarding payment of compensation or relocation requirements, those regulations and procedures take precedence over any contradictory provisions in the bill.

House Bill 5820

The Uniform Condemnation Procedures Act (MCL 213.58) permits a public agency to bring a state or federal cost recovery claim against a property owner to remediate any environmental contamination, and further permits the court to allow a portion of the just compensation payment to a property owner remain in escrow as security for remediation costs. The bill provides that money wouldn't remain in escrow as security for remediation costs if the property is a residential dwelling.

House Bill 5821

The Uniform Condemnation Procedures Act (MCL 213.55) generally provides that before an agency initiates negotiations to purchase a property, it must provide the property owner with a good faith written offer of "just compensation" for the property. If the agency and the owner cannot agree on the purchase price, the agency may file an action in the circuit court of the county where the property is located, asking the court to determine the amount of just compensation. When an action is filed, the agency must place an amount it believes to be just compensation in escrow and set aside for the property owner.

House Bill 5821 specifies that at the time the agency provides the property owner with its good faith offer of just compensation, it must also notify the property's occupants of the condemnation proceeding, stating their basic rights in the process, including the fact that a person with a leasehold interest of less than six months is entitled to a \$5,200 moving allowance [as provided under House Bill 5817], and that occupants of a residential dwelling could not be displaced until they have had a reasonable opportunity to relocate to a comparable dwelling and have been paid the moving allowance, if the taking "might" require relocation.

The act also permits a property owner to file a written claim with the agency listing property the owner believes was not included or fully included in the agency's good faith offer, and requires that such claims be filed within 90 days after receiving the written offer or 60 days after a complaint is filed. The bill would require written claims be filed within 90 days after receiving the offer or 60 days after the complaint is served, unless the court sets a different date.

The bill would delete a provision permitting the court, for good cause shown and upon a motion of the property owner, to extend the time by which claims may be made if the rights of the agency are not prejudiced by the delay.

The act also permits the agency to ask the court to compel the property owner to provide additional information necessary to evaluate the claim within 60 days after receiving the claim. The bill would delete the time requirement.

The bill also adds that for any claim that has not fully accrued or is continuing in nature when the claim is filed, the owner shall reasonably provide information then available that would enable the agency to evaluate the claim, subject to the owner reasonably supplementing that information as it becomes available.

Finally, the bill provides property owners with a payment in addition to the just compensation payment, if the amount estimated to be just compensation is greater than 300 percent of the property's taxable value. The payment would also be placed in escrow (and subsequently payable to the property owner) in instances where the condemning authority and the property owner cannot agree to the just compensation amount. The

additional payment would equal, [(Just Compensation – Taxable Value) X Millage Rate]
X 5

FISCAL IMPACT:

The bills would have no direct impact on state revenue. They would have an indeterminate impact on the property acquisition costs to the state and local governmental units.

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