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BILL ANALYSIS

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House Bill 5817 (Substitute H-1 as passed by the House)
House Bill 5818 (Substitute H-1 as passed by the House)
House Bill 5819 (Substitute H-2 as passed by the House)
House Bill 5820 (Substitute H-1 as passed by the House)
House Bill 5821 (Substitute H-2 as passed by the House)
Sponsor: Representative Steve Tobocman (H.B. 5817)
Representative Leon Drolet (H.B. 5818)
Representative John Garfield (H.B. 5819)
Representative LaMar Lemmons III (H.B. 5820)
Representative Bill McConico (H.B. 5821)

House Committee: Government Operations

Senate Committee: Transportation

Date Completed: 6-6-06

CONTENT

House Bill 5817 (H-1) would amend Public Act 40 of 1965, which provides for allowances for moving personal property from real property acquired by a public agency, to do the following:

- Increase from \$1,000 to \$5,200 the maximum payment to reimburse an individual or family who must relocate due to a condemnation proceeding.
- Establish a fixed moving allowance for a person with a leasehold interest of less than six months.
- Allow a court to award attorney fees and costs to a person with a leasehold interest of less than six months who brought a successful action to recover the moving allowance.

House Bill 5818 (H-1) would amend the Uniform Condemnation Procedures Act (UCPA) to allow a court to award reasonable attorney or expert witness fees to a person who brought an unsuccessful challenge to

a condemnation action that involved the relocation of an indigent person, under certain circumstances.

House Bill 5819 (H-2) would amend the UCPA to require payment to be made to an owner or relocated person at least 30 days before physical dispossession, and provide that an individual could not be required to move until he or she had a reasonable opportunity to relocate to a comparable replacement dwelling.

House Bill 5820 (H-1) would amend the UCPA to specify that provisions related to money deposited in an escrow account as security for costs of environmental remediation on condemned property would not apply to money deposited in escrow for the payment of just compensation for a residential dwelling.

House Bill 5821 (H-2) would amend the UCPA to do the following:

- **Require an agency to notify occupants of a property subject to an eminent domain proceeding of their legal rights in the process.**
- **Revise provisions under which a property owner may file a claim for just compensation for property he or she believes was excluded from a good faith offer by an acquiring agency.**
- **Require an acquiring agency to pay an additional amount to the owner of property for which a court determined just compensation was more than 300% of the property's taxable value.**

The bills are tie-barred to each other. They are described below in further detail.

House Bill 5817 (H-1)

Under Public Act 40 of 1965, an occupant who vacates real property pursuant to the provisions of a written agreement to purchase the property, a written agreement for possession and use of the property, or the transfer of title to the property in condemnation proceedings, must be reimbursed by the public agency for the reasonable and necessary expense for moving his or her personal property up to 50 miles. The maximum payment to an individual or family is \$1,000, and the maximum payment to a business is \$15,000. Additionally, an individual or a family may elect to receive a fixed moving allowance, in lieu of actual moving expense, based on a schedule of payments established by the acquiring agency taking into consideration the maximum payment allowed, the number of rooms, and other factors.

The bill would increase the maximum payment to an individual family from \$1,000 to \$5,200. It also provides that an occupant of residential property who had a leasehold interest of less than six months would be entitled to a fixed moving allowance of \$5,200.

Currently, payment may not be made to an occupant until after he or she has vacated the real property. Under the bill, this provision would apply unless the

payment was required to enable the occupant to relocate.

The bill would allow a court to award reasonable attorney fees and costs to an occupant of residential property who had a leasehold interest of less than six months who brought a successful action to recover the \$5,200 moving allowance the bill would establish.

The bill specifies that, notwithstanding the provisions described above, if the public agency were complying with applicable Federal regulations and procedures regarding moving allowances and relocation requirements, the Federal regulations and procedures would take precedence over any contradictory provisions in the section of Public Act 40 that the bill would amend.

House Bill 5818 (H-1)

Under the Uniform Condemnation Procedures Act, if an agency wishing to acquire property cannot agree with the owner for the purchase of the property, the agency may file a complaint for acquisition to the circuit court. The property owner may challenge the necessity of acquisition of all or part of the property by filing a motion for review in the action. An ordinary or expert witness in a proceeding under the Act must 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.

(Under the UCPA, "agency" means a public or private agency. "Public agency" means a governmental unit, officer, or subdivision authorized by law to condemn property. "Private agency" means a person, partnership, association, corporation, other than a public agency, authorized by law to condemn property.)

If the property owner, by motion to review necessity or otherwise, successfully challenges the agency's right to acquire the property, and the court finds the proposed acquisition improper, the court must order the agency to reimburse the

owner for actual reasonable attorney fees and other expenses incurred in defending against the improper acquisition.

If the amount finally determined to be just compensation for the property exceeds the amount of the original good faith written offer made by the public agency to the property owner, the court must 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 one-third of the amount by which the ultimate award exceeds the agency's written offer. If the agency settles a case before entry of a verdict or judgment, it may stipulate to pay reasonable attorney and expert witness fees.

Expert witness fees must be allowed with respect to an expert whose services were reasonably necessary to allow the owner to prepare for trial.

An agency is not required to reimburse attorney or expert witness fees attributable to an unsuccessful challenge to the necessity or validity of the proceedings. The bill would make an exception to this provision. In any matter under the UCPA involving the relocation of an indigent person, the court could award reasonable attorney or expert witness fees attributable to an unsuccessful challenge to necessity or to the validity of the proceedings if the court found that the indigent person had a reasonable and good faith claim that the property was not being taken for a public use. (This provision would not apply to a proceeding concerning the taking of property for the construction of a highway.)

(Under the bill, "indigent person" would mean an individual whose annual income was at or below 200% of the Federal poverty guidelines published by the United States Department of Health and Human Services.)

House Bill 5819 (H-2)

Under the UCPA, if a motion for review is not filed, upon expiration of the time for filing the motion, or, if a motion for review

is filed, upon final determination of the motion, the court must 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 after the motion for review has been heard, determined, and denied by the circuit court, but before a final determination on appeal, if the agency demonstrates a reasonable need.

Under the bill, if the surrender of possession required relocation, payment would have to be made to an owner or relocated person not later than 30 days before physical dispossession. If there were a dispute after the payment was made, it would have to be resolved at an apportionment hearing held before physical dispossession. If the surrender of possession required the relocation of any individual who occupied a residential dwelling on the property, he or she could not be required to move unless he or she had had a reasonable opportunity to relocate to a comparable replacement dwelling, within 180 days from the date moving expenses were paid, and he or she had been paid the moving allowance provided for under Public Act 40 of 1965.

The bill specifies that, if the agency were complying with applicable Federal regulations and procedures regarding payment of compensation or relocation requirements, those regulations and procedures would take precedence over any contradictory provisions in the section of the UCPA that the bill would amend.

House Bill 5820 (H-1)

Under the UCPA, before initiating negotiations for the purchase of property, an agency must establish an amount that it believes to be just compensation of the property and must submit to the owner a good faith written offer to acquire the property. If the agency is unable to agree with the owner for the purchase, it may file a complaint for the acquisition of the property in the circuit court in the county in which the property is located. The complaint must ask that the court determine just compensation to be made

for the acquisition. When the complaint is filed, the agency must 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 treasurer of the State, municipality, or county. The deposit must be set aside and held for the benefit of the owners, to be disbursed upon order of the court under Section 8.

Under Section 8, if a motion for review is not filed or is denied and the right to appeal has terminated, or if interim possession is granted, the court must order the escrowee to pay the money deposited for or on account of the just compensation that may be awarded under the Act.

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 to remain in escrow as security for remediation costs of environmental contamination on the condemned parcel. An agency must present an affidavit and environmental report establishing that the funds placed on deposit are likely to be required to remediate the property.

Also, notwithstanding any court order requiring money deposited to remain in escrow for the payment of estimated remediation costs, the funds in escrow, plus interest on the judgment amount, must be released among the claimants to the just compensation under circumstances that the court considers just, including any of the following:

- 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.
- The court finds the anticipated need for the remediation is not required or is not required to the extent of the funds remaining on deposit.
- The remediation of the property is not initiated by the agency within two years

of surrender of possession and the agency is unable to show good cause for the delay.

- The costs actually spent for remediation are less than the estimated costs of remediation or less than the amount of money remaining in escrow.
- A court issues an order of apportionment of remediation responsibility.

The bill specifies that the provisions of Section 8 described above would not apply to money deposited in escrow for the payment of just compensation for a property that was a residential dwelling.

("Residential dwelling" would mean an improved property that is zoned residential that consists of a residence not primarily used for commercial or residential activities.)

House Bill 5821 (H-2)

Under the bill, at the time an agency submitted to a property owner a good faith offer to acquire the property, if the taking could require relocation, the agency would have to give the property's occupants written notice that an eminent domain proceeding had commenced and outlining the occupants' basic legal rights in the process, including the fact that any person who had a leasehold interest of less than six months was entitled to a \$5,200 moving allowance and that a residential occupant could not be displaced until that allowance was paid and the person had a reasonable opportunity to relocate to a comparable dwelling.

Under the UCPA, if an owner believes that the good faith offer did not include or fully include one or more items of compensable property or damage for which he or she intends to claim a right to just compensation, the owner must, for each item, file a written claim with the agency providing sufficient information and detail to enable the agency to evaluate the validity of the claim and to determine its value. The bill would refer to "categories of claims for compensation", rather than "items of compensable property or

damage”, and require the owner to file a written claim with the agency for each category, rather than each item.

The owner must file the claim within 90 days after the good faith offer is made or 60 days after the complaint is served, whichever is later. Within 60 days after the owner files the claim, 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 determine its value. Under the bill, the owner would have to file the claim within 90 days after the good faith offer was made or 60 days after the complaint was served, whichever was later, unless a different date was set by the court under Section 11(1). (Under that section, upon motion of either party, the court must 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.) If the agency believed that the information provided by the owner was not sufficient to allow the evaluation of the claim, the agency would have to ask the court to compel the owner to provide additional information.

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

Under the bill, for any claim that had not fully accrued or was continuing in nature when the claim was filed, the owner reasonably would have to provide available information that would enable the agency to evaluate the claim, subject to the owner's reasonably supplementing that information as it became available.

The bill specifies that a residential tenant's leasehold interest of less than six months in the property would not be a compensable claim under the Act.

Under the bill, if the property were a principal residence for which a homestead exemption from local school district

taxation was granted under the General Property Tax Act, and the amount estimated to be just compensation was more than 300% of the property's taxable value as determined under that Act, the agency would be obligated to pay the additional amount to the owner or owners. The additional amount would have to be deposited along with the amount estimated to be just compensation. The additional amount would have to be determined by subtracting the taxable value from the State equalized value, multiplying that amount by the total property tax millage rate applicable to the property, and multiplying that result by five.

MCL 213.352 (H.B. 5817)
213.66 (H.B. 5818)
213.59 (H.B. 5819)
213.58 (H.B. 5820)
213.55 (H.B. 5821)

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bills would result in an indeterminate increase in land acquisition costs for the State and local units of government.

Fiscal Analyst: Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.