

SUBSTITUTE FOR
HOUSE BILL NO. 5821

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 of
2 property, the agency shall establish an amount that it believes to
3 be just compensation for the property and promptly shall submit to
4 the owner a good faith written offer to acquire the property for
5 the full amount so established. **AT THE SAME TIME, IF THE TAKING OF**
6 **THE PROPERTY MIGHT REQUIRE RELOCATION, THE AGENCY SHALL PROVIDE**
7 **WRITTEN NOTICE TO THE OCCUPANTS OF THE PROPERTY STATING THAT AN**
8 **EMINENT DOMAIN PROCEEDING HAS COMMENCED AND OUTLINING THE**
9 **OCCUPANTS' BASIC LEGAL RIGHTS IN THE PROCESS, INCLUDING, BUT NOT**

1 LIMITED TO, THE FACT THAT ANY PERSON WHO HAS A LEASEHOLD INTEREST
2 OF LESS THAN 6 MONTHS IS ENTITLED TO A \$5,200.00 MOVING ALLOWANCE
3 PURSUANT TO SECTION 2 OF 1965 PA 40, MCL 213.352, AND THAT AN
4 INDIVIDUAL WHO IS A RESIDENTIAL OCCUPANT MAY NOT BE DISPLACED UNTIL
5 THAT ALLOWANCE IS PAID AND THE PERSON HAS HAD A REASONABLE
6 OPPORTUNITY TO RELOCATE TO A COMPARABLE DWELLING. If there is more
7 than 1 owner of a parcel, the agency may make a single, unitary
8 good faith written offer. The good faith offer shall state whether
9 the agency reserves or waives its rights to bring federal or state
10 cost recovery actions against the present owner of the property
11 arising out of a release of hazardous substances at the property
12 and the agency's appraisal of just compensation for the property
13 shall reflect such reservation or waiver. The amount shall not be
14 less than the agency's appraisal of just compensation for the
15 property. If the owner fails to provide documents or information as
16 required by subsection (2), the agency may base its good faith
17 written offer on the information otherwise known to the agency
18 whether or not the agency has sought a court order under subsection
19 (2). The agency shall provide the owner of the property and the
20 owner's attorney with an opportunity to review the written
21 appraisal, if an appraisal has been prepared, or if an appraisal
22 has not been prepared, the agency shall provide the owner or the
23 owner's attorney with a written statement and summary, showing the
24 basis for the amount the agency established as just compensation
25 for the property. If an agency is unable to agree with the owner
26 for the purchase of the property, after making a good faith written
27 offer to purchase the property, the agency may file a complaint for

1 the acquisition of the property in the circuit court in the county
2 in which the property is located. If a parcel of property is
3 situated in 2 or more counties and an owner resides in 1 of the
4 counties, the complaint shall be filed in the county in which the
5 owner is a resident. If a parcel of property is situated in 2 or
6 more counties and an owner does not reside in 1 of the counties,
7 the complaint may be filed in any of the counties in which the
8 property is situated. The complaint shall ask that the court
9 ascertain and determine just compensation to be made for the
10 acquisition of the described property. ~~If an agency made a good~~
11 ~~faith written offer pursuant to this section before January 28,~~
12 ~~1994 but has not filed a complaint for acquisition of the property,~~
13 ~~the agency may withdraw the good faith written offer and resubmit a~~
14 ~~good faith written offer that complies with this act as amended. If~~
15 ~~a good faith offer is resubmitted pursuant to this subsection,~~
16 ~~attorney fees under section 16 shall be based on the resubmitted~~
17 ~~good faith offer.~~

18 (2) During the period in which the agency is establishing just
19 compensation for the owner's parcel, the agency has the right to
20 secure tax returns, financial statements, and other relevant
21 financial information for a period not to exceed 5 years before the
22 agency's request. The owner shall produce the information within 21
23 business days after receipt of a written request from the agency.
24 The agency shall reimburse the owner for actual, reasonable costs
25 incurred in reproducing any requested documents, plus other actual,
26 reasonable costs of not more than \$1,000.00 incurred to produce the
27 requested information. Within 45 days after production of the

1 requested documents and other information, the owner shall provide
2 to the agency a detailed invoice for the costs of reproduction and
3 other costs sought. The owner is not entitled to a reimbursement of
4 costs under this subsection if the reimbursement would be
5 duplicative of any other reimbursement to the owner. If the owner
6 fails to provide all documents and other information requested by
7 the agency under this section, the agency may file a complaint and
8 proposed order to show cause in the circuit court in the county
9 specified in subsection (1). The court shall immediately hold a
10 hearing on the agency's proposed order to show cause. The court
11 shall order the owner to provide documents and other information
12 requested by the agency that the court finds to be relevant to a
13 determination of just compensation. An agency shall keep documents
14 and other information that an owner provides to the agency under
15 this section confidential. However, the agency and its experts and
16 representatives may utilize the documents and other information to
17 determine just compensation, may utilize the documents and other
18 information in legal proceedings under this act, and may utilize
19 the documents and other information as provided by court order. If
20 the owner unreasonably fails to timely produce the documents and
21 other information, the owner shall be responsible for all expenses
22 incurred by the agency in obtaining the documents and other
23 information. This section does not affect any right a party may
24 otherwise have to discovery or to require the production of
25 documents and other information upon commencement of an action
26 under this act. A copy of this section shall be provided to the
27 owner with the agency's request.

1 (3) If an owner believes that the good faith written offer
2 made under subsection (1) did not include or fully include 1 or
3 more ~~items of compensable property or damage~~ **CATEGORIES OF CLAIMS**
4 **FOR COMPENSATION** for which the owner intends to claim a right to
5 just compensation, the owner shall, for each ~~item~~ **CATEGORY**, file
6 a written claim with the agency. The owner's written claim shall
7 provide sufficient information and detail to enable the agency to
8 evaluate the validity of the claim and to determine its value. The
9 owner shall file ~~all such~~ **THE CLAIM OR** claims within 90 days
10 after the good faith written offer is made pursuant to section 5(1)
11 or 60 days after the complaint is ~~filed~~ **SERVED**, whichever is
12 later, ~~-. Within 60 days after the date the owner files a written~~
13 ~~claim with the agency, the agency may~~ **UNLESS A DIFFERENT DATE IS**
14 **SET BY THE COURT IN ACCORDANCE WITH SECTION 11(1). IF THE AGENCY**
15 **BELIEVES THAT THE INFORMATION PROVIDED BY THE OWNER IS NOT**
16 **SUFFICIENT TO ALLOW THE EVALUATION OF THE CLAIM, THE AGENCY SHALL**
17 ask the court to compel the owner to provide additional information
18 to enable the agency to evaluate the validity of the claim and to
19 determine its value. ~~For good cause shown, the court shall, upon~~
20 ~~motion filed by the owner, extend the time in which claims may be~~
21 ~~made, if the rights of the agency are not prejudiced by the delay.~~
22 ~~Only 1 such extension may be granted.~~ **FOR ANY CLAIM THAT HAS NOT**
23 **FULLY ACCRUED OR IS CONTINUING IN NATURE WHEN THE CLAIM IS FILED,**
24 **THE OWNER SHALL REASONABLY PROVIDE INFORMATION THEN AVAILABLE THAT**
25 **WOULD ENABLE THE AGENCY TO EVALUATE THE CLAIM, SUBJECT TO THE OWNER**
26 **REASONABLY SUPPLEMENTING THAT INFORMATION AS IT BECOMES AVAILABLE.**
27 After receiving a written claim from an owner, the agency may

1 provide written notice that it contests the compensability of the
 2 claim, establish an amount that it believes to be just compensation
 3 for the ~~item of property or damage~~ **CATEGORY OF CLAIMS FOR**
 4 **COMPENSATION**, or reject the claim. If the agency establishes an
 5 amount it believes to be just compensation for the ~~item of~~
 6 ~~property or damage~~ **CATEGORY OF CLAIMS FOR COMPENSATION**, the agency
 7 shall submit a good faith written offer for the ~~item of property~~
 8 ~~or damage~~ **CATEGORY OF CLAIMS FOR COMPENSATION**. The sum of the good
 9 faith written offer for all such ~~items of property or damage~~
 10 **CATEGORIES OF CLAIMS FOR COMPENSATION** plus the original good faith
 11 written offer constitutes the good faith written offer for purposes
 12 of determining the maximum reimbursable attorney fees under section
 13 16. If an owner fails to file a timely written claim under this
 14 subsection, the claim is barred. If the owner files a claim that is
 15 frivolous or in bad faith, the agency is entitled to recover from
 16 the owner its actual and reasonable expenses incurred to evaluate
 17 the validity and to determine the value of the claim. **A RESIDENTIAL**
 18 **TENANT'S LEASEHOLD INTEREST OF LESS THAN 6 MONTHS IN THE PROPERTY**
 19 **IS NOT A COMPENSABLE CLAIM UNDER THIS ACT.**

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

23 (a) A plan showing the property to be taken.

24 (b) A statement of purpose for which the property is being
 25 acquired, and a request for other relief to which the agency is
 26 entitled by law.

27 (c) The name of each known owner of the property being taken.

1 (d) A statement setting forth the time within which motions
2 for review under section 6 shall be filed; the amount that will be
3 awarded and the persons to whom the amount will be paid in the
4 event of a default; and the deposit and escrow arrangements made
5 under subsection (5).

6 (e) A declaration signed by an authorized official of the
7 agency declaring that the property is being taken by the agency.
8 The declaration shall be recorded with the register of deeds of
9 each county within which the property is situated. The declaration
10 shall include all of the following:

11 (i) A description of the property to be acquired sufficient for
12 its identification and the name of each known owner.

13 (ii) A statement of the estate or interest in the property
14 being taken. Fluid mineral and gas rights and rights of access to
15 and over the highway are excluded from the rights acquired unless
16 the rights are specifically included.

17 (iii) A statement of the sum of money estimated by the agency to
18 be just compensation for each parcel of property being acquired.

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

22 (5) When the complaint is filed, the agency shall deposit the
23 amount estimated to be just compensation with a bank, trust
24 company, or title company in the business of handling real estate
25 escrows, or with the state treasurer, municipal treasurer, or
26 county treasurer. The deposit shall be set aside and held for the
27 benefit of the owners, to be disbursed upon order of the court

1 under section 8.

2 (6) IF THE PROPERTY IS A PRINCIPAL RESIDENCE FOR WHICH AN
3 EXEMPTION FROM CERTAIN LOCAL TAXATION IS GRANTED UNDER SECTION 7CC
4 OF THE GENERAL PROPERTY TAX ACT, 1893 PA 206, MCL 211.7CC, AND THE
5 AMOUNT ESTIMATED TO BE JUST COMPENSATION IS GREATER THAN 300% OF
6 THE TAXABLE VALUE OF THE PROPERTY, THE AGENCY IS OBLIGATED TO PAY
7 AN ADDITIONAL AMOUNT TO THE OWNER OR OWNERS, WHICH SHALL BE
8 DEPOSITED ALONG WITH THE AMOUNT ESTIMATED TO BE JUST COMPENSATION
9 AS PROVIDED IN SUBSECTION (5). THE ADDITIONAL AMOUNT SHALL BE
10 DETERMINED BY SUBTRACTING THE TAXABLE VALUE FROM THE STATE
11 EQUALIZED VALUE, MULTIPLYING THAT AMOUNT BY THE TOTAL PROPERTY TAX
12 MILLAGE RATE APPLICABLE TO THE PROPERTY, AND MULTIPLYING THAT
13 RESULT BY 5. AS USED IN THIS SUBSECTION, "TAXABLE VALUE" MEANS THAT
14 VALUE DETERMINED UNDER SECTION 27A OF THE GENERAL PROPERTY TAX ACT,
15 1893 PA 206, MCL 211.27A.

16 Enacting section 1. This amendatory act does not take effect
17 unless all of the following bills of the 93rd Legislature are
18 enacted into law:

- 19 (a) House Bill No. 5817.
20 (b) House Bill No. 5818.
21 (c) House Bill No. 5819.
22 (d) House Bill No. 5820.