

SENATE 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**
10 **LIMITED TO, THE FACT THAT ANY PERSON WHO HAS A LEASEHOLD INTEREST**

1 OF LESS THAN 6 MONTHS IS ENTITLED TO A \$3,500.00 MOVING ALLOWANCE
2 AS PROVIDED UNDER SECTION 2 OF 1965 PA 40, MCL 213.352, AND THAT AN
3 INDIVIDUAL WHO IS A RESIDENTIAL OCCUPANT MAY NOT BE DISPLACED UNTIL
4 MOVING EXPENSES OR A MOVING ALLOWANCE IS PAID AS PROVIDED UNDER
5 1965 PA 40, MCL 213.351 TO 213.355, AND THE PERSON HAS HAD A
6 REASONABLE OPPORTUNITY, NOT TO EXCEED 180 DAYS AFTER THE PAYMENT
7 DATE OF MOVING EXPENSES OR THE MOVING ALLOWANCE AS PROVIDED UNDER
8 1965 PA 40, MCL 213.351 TO 213.355, TO RELOCATE TO A COMPARABLE
9 REPLACEMENT DWELLING. If there is more than 1 owner of a parcel,
10 the agency may make a single, unitary good faith written offer. The
11 good faith offer shall state whether the agency reserves or waives
12 its rights to bring federal or state cost recovery actions against
13 the present owner of the property arising out of a release of
14 hazardous substances at the property and the agency's appraisal of
15 just compensation for the property shall reflect such reservation
16 or waiver. The amount shall not be less than the agency's appraisal
17 of just compensation for the property. If the owner fails to
18 provide documents or information as required by subsection (2), the
19 agency may base its good faith written offer on the information
20 otherwise known to the agency whether or not the agency has sought
21 a court order under subsection (2). The agency shall provide the
22 owner of the property and the owner's attorney with an opportunity
23 to review the written appraisal, if an appraisal has been prepared,
24 or if an appraisal has not been prepared, the agency shall provide
25 the owner or the owner's attorney with a written statement and
26 summary, showing the basis for the amount the agency established as
27 just compensation for the property. If an agency is unable to agree

1 with the owner for the purchase of the property, after making a
2 good faith written offer to purchase the property, the agency may
3 file a complaint for the acquisition of the property in the circuit
4 court in the county in which the property is located. If a parcel
5 of property is situated in 2 or more counties and an owner resides
6 in 1 of the counties, the complaint shall be filed in the county in
7 which the owner is a resident. If a parcel of property is situated
8 in 2 or more counties and an owner does not reside in 1 of the
9 counties, the complaint may be filed in any of the counties in
10 which the property is situated. The complaint shall ask that the
11 court ascertain and determine just compensation to be made for the
12 acquisition of the described property. ~~If an agency made a good~~
13 ~~faith written offer pursuant to this section before January 28,~~
14 ~~1994 but has not filed a complaint for acquisition of the property,~~
15 ~~the agency may withdraw the good faith written offer and resubmit a~~
16 ~~good faith written offer that complies with this act as amended. If~~
17 ~~a good faith offer is resubmitted pursuant to this subsection,~~
18 ~~attorney fees under section 16 shall be based on the resubmitted~~
19 ~~good faith offer.~~ **AS USED IN THIS SUBSECTION, "COMPARABLE**
20 **REPLACEMENT DWELLING" MEANS ANY DWELLING THAT IS ALL OF THE**
21 **FOLLOWING:**

22 (A) DECENT, SAFE, AND SANITARY.

23 (B) ADEQUATE IN SIZE TO ACCOMMODATE THE OCCUPANTS.

24 (C) WITHIN THE FINANCIAL MEANS OF THE INDIVIDUAL.

25 (D) FUNCTIONALLY EQUIVALENT.

26 (E) IN AN AREA NOT SUBJECT TO UNREASONABLE ADVERSE
27 ENVIRONMENTAL CONDITIONS.

1 (F) IN A LOCATION GENERALLY NOT LESS DESIRABLE THAN THE
2 LOCATION OF THE INDIVIDUAL'S DWELLING WITH RESPECT TO PUBLIC
3 UTILITIES, FACILITIES, SERVICES, AND THE INDIVIDUAL'S PLACE OF
4 EMPLOYMENT.

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

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

15 (3) **IN DETERMINING JUST COMPENSATION, ALL OF THE FOLLOWING**
16 **APPLY:**

17 (A) If an owner ~~believes~~ **CLAIMS** that **THE AGENCY IS TAKING**
18 **PROPERTY OTHER THAN THE PROPERTY DESCRIBED IN** the good faith
19 written offer ~~made under subsection (1) did not include or fully~~
20 ~~include 1 or more items of compensable property or damage for which~~
21 ~~the owner intends to claim a right to just compensation~~ **OR CLAIMS**
22 **A RIGHT TO COMPENSATION FOR DAMAGE CAUSED BY THE TAKING, APART FROM**
23 **THE VALUE OF THE PROPERTY TAKEN, AND NOT DESCRIBED IN THE GOOD**
24 **FAITH WRITTEN OFFER,** the owner shall ~~—, for each item,~~ file a
25 written claim with the agency **STATING THE NATURE AND SUBSTANCE OF**
26 **THAT PROPERTY OR DAMAGE.** The owner's written claim shall provide
27 sufficient information and detail to enable the agency to evaluate

1 the validity of the claim and to determine its value. The owner
2 shall file ~~all such claims~~ **THE CLAIM** within 90 days after the
3 good faith written offer is made pursuant to section 5(1) or ~~60~~
4 **180** days after the complaint is ~~filed~~ **SERVED**, whichever is later,
5 ~~. Within 60 days after the date the owner files a written claim~~
6 ~~with the agency, the agency may~~ **UNLESS A LATER DATE IS SET BY THE**
7 **COURT FOR REASONABLE CAUSE. IF THE APPRAISAL OR WRITTEN ESTIMATE OF**
8 **VALUE IS PROVIDED WITHIN THE ESTABLISHED PERIOD FOR FILING WRITTEN**
9 **CLAIMS, THE OWNER'S APPRAISAL OR WRITTEN ESTIMATE OF VALUE MAY**
10 **SERVE AS THE WRITTEN CLAIM UNDER THIS ACT. IF THE OWNER FAILS TO**
11 **TIMELY FILE THE WRITTEN CLAIM UNDER THIS SUBSECTION, THE CLAIM IS**
12 **BARRED.**

13 (B) **THE PARTIES SHALL EXCHANGE THE AGENCY'S UPDATED APPRAISAL**
14 **REPORTS, IF ANY, AND THE OWNER'S APPRAISAL REPORT WITHIN 90 DAYS**
15 **AFTER THE EXPIRATION OF THE PERIOD FOR FILING WRITTEN CLAIMS,**
16 **UNLESS A LATER DATE IS SET BY THE COURT IN ACCORDANCE WITH SECTION**
17 **11(1) FOR REASONABLE CAUSE. IF THE AGENCY BELIEVES THAT THE**
18 **INFORMATION PROVIDED BY THE OWNER IS NOT SUFFICIENT TO ALLOW THE**
19 **EVALUATION OF THE CLAIM, THE AGENCY MAY REQUEST ADDITIONAL**
20 **INFORMATION FROM THE OWNER AND, IF THAT INFORMATION IS NOT**
21 **PROVIDED, MAY** ask the court to compel the owner to provide
22 additional information to enable the agency to evaluate the
23 validity of the claim and to determine its value. ~~For good cause~~
24 ~~shown, the court shall, upon motion filed by the owner, extend the~~
25 ~~time in which claims may be made, if the rights of the agency are~~
26 ~~not prejudiced by the delay. Only 1 such extension may be granted.~~
27 **IF THE OWNER FAILS TO PROVIDE SUFFICIENT INFORMATION AFTER BEING**

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1 ORDERED TO DO SO BY THE COURT, THE COURT MAY ASSESS AN APPROPRIATE
2 SANCTION IN ACCORDANCE WITH THE MICHIGAN COURT RULES FOR FAILING TO
3 COMPLY WITH DISCOVERY ORDERS, INCLUDING, BUT NOT LIMITED TO,
4 BARRING THE CLAIM. IN ADDITION, THE COURT ALSO SHALL CONSIDER ANY
5 FAILURE TO PROVIDE TIMELY INFORMATION WHEN IT DETERMINES THE
6 MAXIMUM REIMBURSABLE ATTORNEY FEES UNDER SECTION 16.

7 (C) FOR ANY CLAIM THAT HAS NOT FULLY ACCRUED OR IS CONTINUING
8 IN NATURE WHEN THE CLAIM IS FILED, THE OWNER SHALL PROVIDE
9 INFORMATION THEN REASONABLY AVAILABLE THAT WOULD ENABLE THE AGENCY
10 TO EVALUATE THE CLAIM, SUBJECT TO THE OWNER'S CONTINUING DUTY TO
11 SUPPLEMENT THAT INFORMATION AS IT BECOMES AVAILABLE. THE OWNER
12 SHALL PROVIDE ALL SUPPLEMENTARY INFORMATION AT LEAST 90 DAYS BEFORE
13 TRIAL, AND THE COURT SHALL AFFORD THE AGENCY A REASONABLE
14 OPPORTUNITY FOR DISCOVERY ONCE ALL SUPPLEMENTARY INFORMATION IS
15 PROVIDED AND ALLOW THAT DISCOVERY TO PROCEED UNTIL 30 DAYS BEFORE
16 TRIAL. FOR REASONABLE CAUSE, THE COURT MAY EXTEND THE TIME FOR THE
17 OWNER TO PROVIDE INFORMATION TO THE AGENCY AND FOR THE AGENCY TO
18 COMPLETE DISCOVERY. <<IF THE OWNER FAILS TO PROVIDE SUPPLEMENTARY
INFORMATION AS REQUIRED UNDER THIS SUBDIVISION, THE COURT MAY ASSESS AN
APPROPRIATE SANCTION IN ACCORDANCE WITH THE MICHIGAN COURT RULES FOR
FAILING TO COMPLY WITH DISCOVERY ORDERS, INCLUDING, BUT NOT LIMITED TO,
BARRING THE CLAIM. IN ADDITION, THE COURT ALSO SHALL CONSIDER ANY FAILURE
TO PROVIDE TIMELY SUPPLEMENTAL INFORMATION WHEN IT DETERMINES THE MAXIMUM
REIMBURSABLE ATTORNEY FEES UNDER SECTION 16.>>

19 (D) After receiving a written claim from an owner, the agency
20 may provide written notice that it contests the compensability of
21 the claim, establish an amount that it believes to be just
22 compensation for the ~~item of property or damage~~ CLAIM, or reject
23 the claim. If the agency establishes an amount it believes to be
24 just compensation for the ~~item of property or damage~~ CLAIM, the
25 agency shall submit a good faith written offer for the ~~item of~~
26 ~~property or damage~~ CLAIM. The sum of the good faith written offer
27 for all ~~such~~ CLAIMS SUBMITTED UNDER THIS SUBSECTION OR OTHERWISE

1 **DISCLOSED IN DISCOVERY FOR ALL** items of property or damage plus the
2 original good faith written offer constitutes the good faith
3 written offer for purposes of determining the maximum reimbursable
4 attorney fees under section 16. ~~If an owner fails to file a timely~~
5 ~~written claim under this subsection, the claim is barred.~~

6 (E) If the owner files a claim that is frivolous or in bad
7 faith, the agency is entitled to recover from the owner its actual
8 and reasonable expenses incurred to evaluate the validity and to
9 determine the value of the claim.

10 (F) **A RESIDENTIAL TENANT'S LEASEHOLD INTEREST OF LESS THAN 6**
11 **MONTHS IN THE PROPERTY IS NOT A COMPENSABLE CLAIM UNDER THIS ACT.**

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

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

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

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

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

25 (e) A declaration signed by an authorized official of the
26 agency declaring that the property is being taken by the agency.
27 The declaration shall be recorded with the register of deeds of

1 each county within which the property is situated. The declaration
2 shall include all of the following:

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

5 (ii) A statement of the estate or interest in the property
6 being taken. Fluid mineral and gas rights and rights of access to
7 and over the highway are excluded from the rights acquired unless
8 the rights are specifically included.

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

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

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

21 (6) IF THE PROPERTY BEING TAKEN IS A PRINCIPAL RESIDENCE FOR
22 WHICH AN EXEMPTION FROM CERTAIN LOCAL TAXATION IS GRANTED UNDER
23 SECTION 7CC OF THE GENERAL PROPERTY TAX ACT, 1893 PA 206, MCL
24 211.7CC, THE AGENCY IS OBLIGATED TO PAY AN ADDITIONAL AMOUNT TO THE
25 OWNER OR OWNERS, WHICH SHALL BE DEPOSITED ALONG WITH THE AMOUNT
26 ESTIMATED TO BE JUST COMPENSATION AS PROVIDED IN SUBSECTION (5).
27 THE ADDITIONAL AMOUNT SHALL BE DETERMINED BY SUBTRACTING THE

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1 TAXABLE VALUE FROM THE STATE EQUALIZED VALUE, MULTIPLYING THAT
2 AMOUNT BY THE TOTAL PROPERTY TAX MILLAGE RATE APPLICABLE TO THE
3 PROPERTY TAKEN, AND MULTIPLYING THAT RESULT BY THE NUMBER OF YEARS
4 THE OWNER OR OWNERS HAVE <<OWNED>> THE PRINCIPAL RESIDENCE, BUT
5 NOT MORE THAN 5 YEARS.

6 (7) AS USED IN THIS SECTION, "TAXABLE VALUE" MEANS THAT VALUE
7 DETERMINED UNDER SECTION 27A OF THE GENERAL PROPERTY TAX ACT, 1893
8 PA 206, MCL 211.27A.

9 Enacting section 1. This amendatory act takes effect December
10 23, 2006.

11 Enacting section 2. This amendatory act does not take effect
12 unless House Bill No. 5820 of the 93rd Legislature is enacted into
13 law.