

HOUSE BILL No. 5818

March 2, 2006, Introduced by Reps. Drolet, Jones, Gosselin, Tobocman, Stahl, Brandenburg, Baxter, Elsenheimer, Rocca, Mortimer, Huizenga, Acciavatti and Lipsey and referred to the Committee on Government Operations.

A bill to amend 1980 PA 87, entitled
"The uniform condemnation procedures act,"
by amending section 16 (MCL 213.66), as amended by 1996 PA 474.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16. (1) Except as provided in this section, an ordinary
2 or expert witness in a proceeding under this act shall receive from
3 the agency the reasonable fees and compensation provided by law for
4 similar services in ordinary civil actions in circuit court,
5 including the reasonable expenses for preparation and trial.

6 (2) If the property owner, by motion to review necessity or
7 otherwise, successfully challenges the agency's right to acquire
8 the property, or the legal sufficiency of the proceedings, and the
9 court finds the proposed acquisition improper, the court shall

1 order the agency to reimburse the owner for actual reasonable
2 attorney fees and other expenses incurred in defending against the
3 improper acquisition.

4 (3) If the amount finally determined to be just compensation
5 for the property acquired exceeds the amount of the good faith
6 written offer under section 5, the court shall order reimbursement
7 in whole or in part to the owner by the agency of the owner's
8 reasonable attorney's fees, but not in excess of 1/3 of the amount
9 by which the ultimate award exceeds the agency's written offer as
10 defined by section 5. The reasonableness of the owner's attorney
11 fees shall be determined by the court. If the agency or owner is
12 ordered to pay attorney fees as sanctions under ~~Michigan court~~
13 ~~rule~~ **MCR** 2.403 or 2.405, those attorney fee sanctions shall be
14 paid to the court as court costs and shall not be paid to the
15 opposing party unless the parties agree otherwise.

16 (4) If the agency settles a case before entry of a verdict or
17 judgment, it may stipulate to pay reasonable attorney and expert
18 witness fees.

19 (5) Expert witness fees provided for in ~~subsection (1) and~~
20 ~~this subsection~~ **THIS SECTION** shall be allowed with respect to an
21 expert whose services were reasonably necessary to allow the owner
22 to prepare for trial. For the purpose of ~~subsection (1) and this~~
23 ~~subsection~~ **THIS SECTION**, for each element of compensation, each
24 party is limited to 1 expert witness to testify on that element of
25 compensation unless, upon showing of good cause, the court permits
26 additional experts. The agency's liability for expert witness fees
27 shall not be diminished or affected by the failure of the owner to

1 call an expert as a witness if the failure is caused by settlement
2 or other disposition of the case or issue with which the expert is
3 concerned.

4 (6) ~~An~~ **EXCEPT AS PROVIDED IN SUBSECTION (7), AN** agency
5 ~~shall~~ **IS** not ~~be~~ required to reimburse attorney or expert witness
6 fees ~~that are~~ attributable to an unsuccessful challenge to
7 necessity or to the validity of the proceedings.

8 (7) **IN ANY PROCEEDING UNDER THIS ACT BROUGHT BY AN INDIGENT**
9 **PLAINTIFF, OTHER THAN A PROCEEDING CONCERNING THE TAKING OF**
10 **PROPERTY FOR THE CONSTRUCTION OF A HIGHWAY, THE COURT MAY AWARD**
11 **ATTORNEY OR EXPERT WITNESS FEES ATTRIBUTABLE TO AN UNSUCCESSFUL**
12 **CHALLENGE TO NECESSITY OR TO THE VALIDITY OF THE PROCEEDINGS IF THE**
13 **COURT FINDS THAT THE PLAINTIFF HAD A REASONABLE AND GOOD FAITH**
14 **CLAIM THAT THE PROPERTY WAS NOT BEING TAKEN FOR A PUBLIC USE. AS**
15 **USED IN THIS SUBSECTION, "INDIGENT" MEANS AN INDIVIDUAL WHOSE**
16 **ANNUAL INCOME IS AT OR BELOW 125% OF THE FEDERAL POVERTY GUIDELINES**
17 **PUBLISHED BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN**
18 **SERVICES.**

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

22 (a) Senate Bill No.____ or House Bill No. 5821(request no.
23 05069'05).

24 (b) Senate Bill No.____ or House Bill No. 5817(request no.
25 05070'05).

26 (c) Senate Bill No.____ or House Bill No. 5819(request no.
27 06018'06).

1 (d) Senate Bill No.____ or House Bill No. 5820(request no.
2 06019'06).