

SENATE BILL No. 694

August 31, 2005, Introduced by Senator BROWN and referred to the Committee on Transportation.

A bill to amend 1980 PA 87, entitled
"The uniform condemnation procedures act,"
by amending section 4 (MCL 213.54), as amended by 1996 PA 474.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) If the acquisition of a portion of a parcel of
2 property actually needed by an agency would destroy the practical
3 value or utility of the remainder of that parcel, the agency shall
4 pay just compensation for the whole parcel. The agency may elect
5 whether to receive title and possession of the remainder of the
6 parcel. The question as to whether the practical value or utility
7 of the remainder of the parcel of property is in fact destroyed
8 shall be determined by the court or jury and incorporated in its
9 verdict.

1 (2) If the acquisition of a portion of a parcel of property
2 actually needed by an agency would leave the remainder of the
3 parcel in nonconformity with a zoning ordinance, the agency, before
4 or after acquisition, may apply for a zoning variance for the
5 remainder of the parcel. In determining whether to grant the zoning
6 variance, the governmental entity having jurisdiction to grant the
7 variance shall consider the potential benefits of the public use
8 for which the property would be acquired, in addition to those
9 criteria applicable under the relevant zoning statute, ordinance,
10 or regulation. The agency must actually acquire the portion of the
11 parcel of property for the proposed public use for the zoning
12 variance to become effective for the remainder. If a variance is
13 granted under this subsection, the property shall be considered by
14 the governmental entity to be in conformity with the zoning
15 ordinance for all future uses with respect to the nonconformity for
16 which that variance was granted. However, if the property was also
17 nonconforming for other reasons, the grant of that variance has no
18 effect on the status of those other preexisting nonconformities. An
19 owner shall not increase the nonconformity for which a variance is
20 granted under this section without the consent of the governmental
21 entity. An agency has the same right to appeal action on a zoning
22 variance as would a property owner seeking a zoning variance. This
23 section does not deprive a governmental entity of its discretion to
24 grant or deny a variance.

25 (3) An agency or an agent or employee of an agency may enter
26 upon property before filing an action for the purpose of making
27 surveys, measurements, examinations, tests, soundings, and borings;

1 taking photographs or samplings; appraising the property;
2 conducting an environmental inspection; conducting archaeological
3 studies pursuant to section 106 of title I of the national historic
4 preservation act, ~~Public Law 89-665,~~ 16 ~~U.S.C.~~ **USC** 470f; or
5 determining whether the property is suitable to take for public
6 purposes. The entry ~~may~~ **SHALL ONLY** be made ~~upon reasonable~~
7 ~~notice to the owner and~~ at reasonable hours **AND SHALL NOT BE MADE**
8 **UNLESS WRITTEN NOTICE IS PROVIDED TO THE OWNER NOT LESS THAN 30**
9 **DAYS BEFORE THE ENTRY IS MADE. ANY ENTRY MADE UNDER THIS SUBSECTION**
10 **SHALL BE CONDUCTED IN COMPLIANCE WITH THE STATE CONSTITUTION OF**
11 **1963 AND THE CONSTITUTION OF THE UNITED STATES.** An entry made
12 pursuant to this subsection shall not be construed as a taking. The
13 owner or his or her representative shall be given a reasonable
14 opportunity to accompany the agency's agent or employee during the
15 entry upon the property. The agency shall make restitution for
16 actual damage resulting from the entry, which may be recovered by
17 special motion before the court or by separate action if an action
18 for condemnation has not been filed. The term "actual damage" as
19 used in this subsection does not include, and an agency shall not
20 make restitution for, response activity, as defined in section
21 20101 of ~~part 201 (environmental remediation) of~~ the natural
22 resources and environmental protection act, ~~Act No. 451 of the~~
23 ~~Public Acts of 1994, being section 324.20101 of the Michigan~~
24 ~~Compiled Laws~~ **1994 PA 451, MCL 324.20101**, or diminution in the
25 value or utility of a parcel that is caused by the discovery of
26 information as the result of a survey, an appraisal, a measurement,
27 photography, or an environmental inspection made pursuant to this

1 section.

2 (4) If reasonable efforts to enter under subsection (3) have
3 been obstructed or denied, the agency may commence a civil action
4 in the circuit court in the county in which the property or any
5 part of the property is located for an order permitting entry. The
6 complaint shall state the facts making the entry necessary, the
7 date on which entry is sought, and the duration and the method
8 proposed for protecting the defendant against damage. The court may
9 grant a limited license for entry upon such terms as justice and
10 equity require, including the following:

11 (a) A description of the purpose of the entry.

12 (b) The scope of activities that are permitted.

13 (c) The terms and conditions of the entry with respect to the
14 time, place, and manner of the entry.

15 (5) An entry made under subsection (3) or (4) shall be made in
16 a manner that minimizes any damage to the property and any
17 hardship, burden, or damage to a person in lawful possession of the
18 property.

19 (6) As used in this section, "environmental inspection" means
20 the testing or inspection including the taking of samples of the
21 soil, groundwater, structures, or other materials or substances in,
22 on, or under the property for the purpose of determining whether
23 chemical, bacteriological, radioactive, or other environmental
24 contamination exists and, if it exists, the nature and extent of
25 the contamination.