

Act No. 370  
Public Acts of 2006  
Approved by the Governor  
September 20, 2006  
Filed with the Secretary of State  
September 21, 2006  
EFFECTIVE DATE: December 23, 2006

**STATE OF MICHIGAN  
93RD LEGISLATURE  
REGULAR SESSION OF 2006**

**Introduced by Reps. Drolet, Jones, Gosselin, Tobocman, Stahl, Brandenburg, Baxter, Elsenheimer, Rocca, Mortimer, Huizenga, Acciavatti, Lipsey, Waters, Anderson, Stewart, Zelenko, Kolb, Kooiman, Meyer, Hummel, Williams, Brown, Hunter, Farrah, Pastor, Bieda, Wojno, Clack, Condino, Vagnozzi, DeRoche, Taub, Accavitti, Amos, Stakoe, Hune, Gleason, Caswell, Shaffer, Nofs, Ward, Byrum, Steil, Sak, Sheen, Moolenaar, Palsrok, Gillard, Dillon, Ball, Booher, Cheeks, Espinoza, Gonzales, Hildenbrand, Kahn, David Law, Leland, Lemmons, III, Lemmons, Jr., Marleau, Mayes, McDowell, Moore, Palmer, Pavlov, Pearce, Polidori, Schuitmaker, Sheltrown, Alma Smith and Spade**

# **ENROLLED HOUSE BILL No. 5818**

AN ACT to amend 1980 PA 87, entitled "An act to provide procedures for the condemnation, acquisition, or exercise of eminent domain of real or personal property by public agencies or private agencies; to provide for an agency's entry upon land for certain purposes; to provide for damages; to prescribe remedies; and to repeal certain acts and parts of acts," by amending section 16 (MCL 213.66), as amended by 1996 PA 474.

*The People of the State of Michigan enact:*

Sec. 16. (1) Except as provided in this section, an ordinary or expert witness in a proceeding under this act shall 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.

(2) If the property owner, by motion to review necessity or otherwise, successfully challenges the agency's right to acquire the property, or the legal sufficiency of the proceedings, and the court finds the proposed acquisition improper, the court shall order the agency to reimburse the owner for actual reasonable attorney fees and other expenses incurred in defending against the improper acquisition.

(3) If the amount finally determined to be just compensation for the property acquired exceeds the amount of the good faith written offer under section 5, the court shall 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 1/3 of the amount by which the ultimate award exceeds the agency's written offer as defined by section 5. The reasonableness of the owner's attorney fees shall be determined by the court. If the agency or owner is ordered to pay attorney fees as sanctions under MCR 2.403 or 2.405, those attorney fee sanctions shall be paid to the court as court costs and shall not be paid to the opposing party unless the parties agree otherwise.

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

(5) Expert witness fees provided for in this section shall be allowed with respect to an expert whose services were reasonably necessary to allow the owner to prepare for trial. For the purpose of this section, for each element of compensation, each party is limited to 1 expert witness to testify on that element of compensation unless, upon showing of good cause, the court permits additional experts. The agency's liability for expert witness fees shall not be diminished

or affected by the failure of the owner to call an expert as a witness if the failure is caused by settlement or other disposition of the case or issue with which the expert is concerned.

(6) Except as provided in subsection (7), an agency is not required to reimburse attorney or expert witness fees attributable to an unsuccessful challenge to necessity or to the validity of the proceedings.

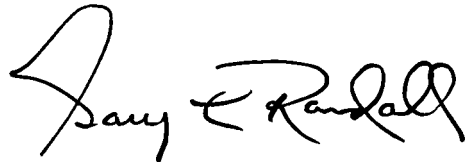
(7) In any matter under this act involving the relocation of an indigent person, other than a proceeding concerning the taking of property for the construction of a government-owned transportation project, the court may award reasonable attorney and expert witness fees attributable to an unsuccessful challenge to necessity or to the validity of the proceedings if the court finds that there was a reasonable and good faith claim that the property was not being taken for a public use. This subsection does not affect the right of an indigent person who successfully challenges the agency's right to acquire the property to recover attorney fees, ordinary or expert witness fees, and other expenses incurred in defending against the improper acquisition, as authorized by subsections (1) to (5). As used in this subsection, "indigent person" means an individual whose annual income is at or below 200% of the federal poverty guidelines published by the United States department of health and human services. This subsection does not apply after December 31, 2007.

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

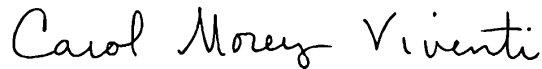
Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

- (a) House Bill No. 5817.
- (b) House Bill No. 5819.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved \_\_\_\_\_

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Governor