

# HOUSE BILL No. 6223

May 27, 2010, Introduced by Reps. Geiss, Tlaib, Johnson, Durhal, Young, Bledsoe, Melton, Leland, Womack, Kandrevas, Gonzales, Miller, Bettie Scott, Gregory, Stanley, Lemmons, Nathan, Haugh and Jackson and referred to the Committee on Urban Policy.

A bill to amend 1980 PA 87, entitled "The uniform condemnation procedures act," by amending section 5 (MCL 213.55), as amended by 2006 PA 439.

**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. As used in this subsection,  
13 "comparable replacement dwelling" means any dwelling that is all of  
14 the following:

15 (a) Decent, safe, and sanitary.

16 (b) Adequate in size to accommodate the occupants.

17 (c) Within the financial means of the individual.

18 (d) Functionally equivalent.

19 (e) In an area not subject to unreasonable adverse  
20 environmental conditions.

21 (f) In a location generally not less desirable than the  
22 location of the individual's dwelling with respect to public  
23 utilities, facilities, services, and the individual's place of  
24 employment.

25 (2) During the period in which the agency is establishing just  
26 compensation for the owner's parcel, the agency has the right to  
27 secure tax returns, financial statements, and other relevant

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

1 other information, the owner shall be responsible for all expenses  
2 incurred by the agency in obtaining the documents and other  
3 information. This section does not affect any right a party may  
4 otherwise have to discovery or to require the production of  
5 documents and other information upon commencement of an action  
6 under this act. A copy of this section shall be provided to the  
7 owner with the agency's request.

8 (3) In determining just compensation, all of the following  
9 apply:

10 (a) If an owner claims that the agency is taking property  
11 other than the property described in the good faith written offer  
12 or claims a right to compensation for damage caused by the taking,  
13 apart from the value of the property taken, and not described in  
14 the good faith written offer, the owner shall file a written claim  
15 with the agency stating the nature and substance of that property  
16 or damage. The owner's written claim shall provide sufficient  
17 information and detail to enable the agency to evaluate the  
18 validity of the claim and to determine its value. The owner shall  
19 file the claim within 90 days after the good faith written offer is  
20 made pursuant to ~~section 5(1)~~ **SUBSECTION (1)** or 180 days after the  
21 complaint is served, whichever is later, unless a later date is set  
22 by the court for reasonable cause. If the appraisal or written  
23 estimate of value is provided within the established period for  
24 filing written claims, the owner's appraisal or written estimate of  
25 value may serve as the written claim under this act. If the owner  
26 fails to timely file the written claim under this subsection, the  
27 claim is barred.

1           (b) The parties shall exchange the agency's updated appraisal  
2 reports, if any, and the owner's appraisal report within 90 days  
3 after the expiration of the period for filing written claims,  
4 unless a later date is set by the court in accordance with section  
5 11(1) for reasonable cause. If the agency believes that the  
6 information provided by the owner is not sufficient to allow the  
7 evaluation of the claim, the agency may request additional  
8 information from the owner and, if that information is not  
9 provided, may ask the court to compel the owner to provide  
10 additional information to enable the agency to evaluate the  
11 validity of the claim and to determine its value. If the owner  
12 fails to provide sufficient information after being ordered to do  
13 so by the court, the court may assess an appropriate sanction in  
14 accordance with the Michigan court rules for failing to comply with  
15 discovery orders, including, but not limited to, barring the claim.  
16 In addition, the court also shall consider any failure to provide  
17 timely information when it determines the maximum reimbursable  
18 attorney fees under section 16.

19           (c) For any claim that has not fully accrued or is continuing  
20 in nature when the claim is filed, the owner shall provide  
21 information then reasonably available that would enable the agency  
22 to evaluate the claim, subject to the owner's continuing duty to  
23 supplement that information as it becomes available. The owner  
24 shall provide all supplementary information at least 90 days before  
25 trial, and the court shall afford the agency a reasonable  
26 opportunity for discovery once all supplementary information is  
27 provided and allow that discovery to proceed until 30 days before

1 trial. For reasonable cause, the court may extend the time for the  
2 owner to provide information to the agency and for the agency to  
3 complete discovery. If the owner fails to provide supplementary  
4 information as required under this subdivision, the court may  
5 assess an appropriate sanction in accordance with the Michigan  
6 court rules for failing to comply with discovery orders, including,  
7 but not limited to, barring the claim. In addition, the court also  
8 shall consider any failure to provide timely supplemental  
9 information when it determines the maximum reimbursable attorney  
10 fees under section 16.

11 (d) After receiving a written claim from an owner, the agency  
12 may provide written notice that it contests the compensability of  
13 the claim, establish an amount that it believes to be just  
14 compensation for the claim, or reject the claim. If the agency  
15 establishes an amount it believes to be just compensation for the  
16 claim, the agency shall submit a good faith written offer for the  
17 claim. The sum of the good faith written offer for all claims  
18 submitted under this subsection or otherwise disclosed in discovery  
19 for all items of property or damage plus the original good faith  
20 written offer constitutes the good faith written offer for purposes  
21 of determining the maximum reimbursable attorney fees under section  
22 16.

23 (e) If the owner files a claim that is frivolous or in bad  
24 faith, the agency is entitled to recover from the owner its actual  
25 and reasonable expenses incurred to evaluate the validity and to  
26 determine the value of the claim.

27 (f) A residential tenant's leasehold interest of less than 6

1 months in the property is not a compensable claim under this act.

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

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

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

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

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

15 (e) A declaration signed by an authorized official of the  
16 agency declaring that the property is being taken by the agency.  
17 The declaration shall be recorded with the register of deeds of  
18 each county within which the property is situated. The declaration  
19 shall include all of the following:

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

22 (ii) A statement of the estate or interest in the property  
23 being taken. Fluid mineral and gas rights and rights of access to  
24 and over the highway are excluded from the rights acquired unless  
25 the rights are specifically included.

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

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

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

11 (6) If the property being taken is a principal residence for  
12 which an exemption from certain local taxation is granted under  
13 section 7cc of the general property tax act, 1893 PA 206, MCL  
14 211.7cc, the agency is obligated to pay an additional amount to the  
15 owner or owners, which shall be deposited along with the amount  
16 estimated to be just compensation as provided in subsection (5).  
17 The additional amount shall be determined by subtracting the  
18 taxable value from the state equalized value, multiplying that  
19 amount by the total property tax millage rate applicable to the  
20 property taken, and multiplying that result by the number of years  
21 the owner or owners have owned the principal residence, but not  
22 more than ~~5 years~~. **THE FOLLOWING NUMBER OF YEARS:**

23 (A) EXCEPT AS PROVIDED IN SUBDIVISION (B), 5 YEARS.

24 (B) TEN YEARS, IF, WITHIN 180 DAYS AFTER TITLE TO THE PROPERTY  
25 BEING TAKEN VESTS IN THE AGENCY, THE OWNER OR OWNERS PURCHASE A  
26 REPLACEMENT DWELLING TO BE USED AS THEIR PRINCIPAL RESIDENCE THAT  
27 IS LOCATED IN THE SAME CITY, VILLAGE, OR TOWNSHIP AS THE PROPERTY

1 **BEING TAKEN.**

2 (7) As used in this section, "taxable value" means that value  
3 determined under section 27a of the general property tax act, 1893  
4 PA 206, MCL 211.27a.