

HOUSE BILL No. 4062

January 13, 2011, Introduced by Rep. Geiss and referred to the Committee on Local, Intergovernmental, and Regional Affairs.

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

1 limited to, the fact that any person who has a leasehold interest
2 of less than 6 months is entitled to a \$3,500.00 moving allowance
3 as provided under section 2 of 1965 PA 40, MCL 213.352, and that an
4 individual who is a residential occupant may not be displaced until
5 moving expenses or a moving allowance is paid as provided under
6 1965 PA 40, MCL 213.351 to 213.355, and the person has had a
7 reasonable opportunity, not to exceed 180 days after the payment
8 date of moving expenses or the moving allowance as provided under
9 1965 PA 40, MCL 213.351 to 213.355, to relocate to a comparable
10 replacement dwelling. If there is more than 1 owner of a parcel,
11 the agency may make a single, unitary good faith written offer. The
12 good faith offer shall state whether the agency reserves or waives
13 its rights to bring federal or state cost recovery actions against
14 the present owner of the property arising out of a release of
15 hazardous substances at the property and the agency's appraisal of
16 just compensation for the property shall reflect such reservation
17 or waiver. The amount shall not be less than the agency's appraisal
18 of just compensation for the property. If the owner fails to
19 provide documents or information as required by subsection (2), the
20 agency may base its good faith written offer on the information
21 otherwise known to the agency whether or not the agency has sought
22 a court order under subsection (2). The agency shall provide the
23 owner of the property and the owner's attorney with an opportunity
24 to review the written appraisal, if an appraisal has been prepared,
25 or if an appraisal has not been prepared, the agency shall provide
26 the owner or the owner's attorney with a written statement and
27 summary, showing the basis for the amount the agency established as

1 just compensation for the property. If an agency is unable to agree
2 with the owner for the purchase of the property, after making a
3 good faith written offer to purchase the property, the agency may
4 file a complaint for the acquisition of the property in the circuit
5 court in the county in which the property is located. If a parcel
6 of property is situated in 2 or more counties and an owner resides
7 in 1 of the counties, the complaint shall be filed in the county in
8 which the owner is a resident. If a parcel of property is situated
9 in 2 or more counties and an owner does not reside in 1 of the
10 counties, the complaint may be filed in any of the counties in
11 which the property is situated. The complaint shall ask that the
12 court ascertain and determine just compensation to be made for the
13 acquisition of the described property. As used in this subsection,
14 "comparable replacement dwelling" means any dwelling that is all of
15 the following:

- 16 (a) Decent, safe, and sanitary.
 - 17 (b) Adequate in size to accommodate the occupants.
 - 18 (c) Within the financial means of the individual.
 - 19 (d) Functionally equivalent.
 - 20 (e) In an area not subject to unreasonable adverse
21 environmental conditions.
 - 22 (f) In a location generally not less desirable than the
23 location of the individual's dwelling with respect to public
24 utilities, facilities, services, and the individual's place of
25 employment.
- 26 (2) During the period in which the agency is establishing just
27 compensation for the owner's parcel, the agency has the right to

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

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

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

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

1 claim is barred.

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

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

1 provided and allow that discovery to proceed until 30 days before
2 trial. For reasonable cause, the court may extend the time for the
3 owner to provide information to the agency and for the agency to
4 complete discovery. If the owner fails to provide supplementary
5 information as required under this subdivision, the court may
6 assess an appropriate sanction in accordance with the Michigan
7 court rules for failing to comply with discovery orders, including,
8 but not limited to, barring the claim. In addition, the court also
9 shall consider any failure to provide timely supplemental
10 information when it determines the maximum reimbursable attorney
11 fees under section 16.

12 (d) After receiving a written claim from an owner, the agency
13 may provide written notice that it contests the compensability of
14 the claim, establish an amount that it believes to be just
15 compensation for the claim, or reject the claim. If the agency
16 establishes an amount it believes to be just compensation for the
17 claim, the agency shall submit a good faith written offer for the
18 claim. The sum of the good faith written offer for all claims
19 submitted under this subsection or otherwise disclosed in discovery
20 for all items of property or damage plus the original good faith
21 written offer constitutes the good faith written offer for purposes
22 of determining the maximum reimbursable attorney fees under section
23 16.

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

1 (f) A residential tenant's leasehold interest of less than 6
2 months in the property is not a compensable claim under this act.

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

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

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

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

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

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

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

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

27 (iii) A statement of the sum of money estimated by the agency to

1 be just compensation for each parcel of property being acquired.

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

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

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

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

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

1 IS LOCATED IN THE SAME CITY, VILLAGE, OR TOWNSHIP AS THE PROPERTY
2 BEING TAKEN.

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