

# HOUSE BILL No. 4897

September 22, 2015, Introduced by Reps. Geiss, Pettalia, Dianda, Santana, Chang and Sarah Roberts and referred to the Committee on Tax 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~~**AN** agency shall establish an amount that it believes  
3 to be just compensation for the property and promptly shall submit  
4 to 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  
11 of less than 6 months is entitled to a \$3,500.00 moving allowance

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

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

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

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

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

1 fails to timely file the written claim under this subsection, the  
2 claim is barred.

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

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

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

13 (d) After receiving a written claim from an owner, the agency  
14 may provide written notice that it contests the compensability of  
15 the claim, establish an amount that it believes to be just  
16 compensation for the claim, or reject the claim. If the agency  
17 establishes an amount it believes to be just compensation for the  
18 claim, the agency shall submit a good faith written offer for the  
19 claim. The sum of the good faith written offer for all claims  
20 submitted under this subsection or otherwise disclosed in discovery  
21 for all items of property or damage plus the original good faith  
22 written offer constitutes the good faith written offer for purposes  
23 of determining the maximum reimbursable attorney fees under section  
24 16.

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

1 determine the value of the claim.

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (A) FIVE YEARS, UNLESS SUBDIVISION (B) APPLIES.

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

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