



**House  
Legislative  
Analysis  
Section**

Washington Square Building, Suite 1025  
Lansing, Michigan 48909  
Phone 517/373-6466

**INSPECTIONS UNDER CONDEMNATION ACT**

**House Bill 5222 (Substitute H-2)**  
**First Analysis (2-11-88)**

RECEIVED

**Sponsor: Rep. Wilfred Webb**  
**Committee: Judiciary**

**FEB 25 1988**

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***THE APPARENT PROBLEM:***

When public agencies acquire property by condemnation, they follow the procedures set forth in the Uniform Condemnation Procedures Act. That act authorizes an agency to enter upon land in order to appraise it, but does not specifically authorize an agency to conduct environmental tests. It occasionally happens that a public entity acquires land that is subsequently discovered to be contaminated. For example, in the course of acquiring land for the construction of I-696, the Department of Transportation acquired at least two parcels that were later found to be contaminated. One, a former plating company, cost the department almost \$2 million to clean up.

Occasionally a public body is lucky enough to discover the existence of contamination before acquisition is consummated. Such was the case with Eastern Michigan University, which learned of contamination at a former gas station prior to taking title to the property, which is being sought for the university's business school. Such near-misses are not uncommon, and there is a general perception that the problem of public acquisition of contaminated land could worsen along with the worsening problem of environmental contamination. The problem could be especially acute with regard to road-widening projects; such projects frequently entail the condemnation of former gas stations, nearly all of which have at least some contamination from leaking underground storage tanks.

To help prevent future occurrences of a public agency having to pay for cleaning up privately-contaminated land, amendments to the Uniform Condemnation Procedures Act have been proposed.

***THE CONTENT OF THE BILL:***

The Uniform Condemnation Procedures Act allows an agency to, before filing a condemnation action, enter upon the land in question for the purpose of surveying, appraising, measuring, or photographing it. The bill would in addition allow entry for examinations, tests, soundings, borings, environmental inspections, or determining whether the property is suitable to take for public purposes. Any diminution of value caused by the discovery of pollution or other information would not constitute damages for which the agency was liable.

In addition, the bill would specify civil procedures to accomplish entry when reasonable efforts had been obstructed or denied. The agency could seek to have the local circuit court issue an order permitting entry. The agency would have to state the facts making the entry necessary, the date on which entry was sought, and the duration and method proposed for protecting against damage. The court could grant a limited license for entry under terms dictated by justice and equity, including: a description of the purpose of the entry; the scope of permitted activities; and the time, place, and manner of

entry. Entry made under court order would have to be made in a manner that minimized any damage to the property and any burden to a person in lawful possession of the property.

The bill would take effect July 1, 1988.

MCL 213.54

***FISCAL IMPLICATIONS:***

The House Fiscal Agency reports the bill has no fiscal implications for the state. (2-10-88)

***ARGUMENTS:***

***For:***

The bill would protect the public against unknowingly acquiring contaminated property. It clearly would authorize an agency acquiring land by condemnation to go on that land to conduct tests, in addition to the currently-authorized appraisal. It also would offer specific civil procedures to be followed in the event that entry upon the land was obstructed; those procedures would respect property rights by requiring an agency to explain why entry was necessary and by suggesting that the scope of entry be reasonably limited. The bill would further require that the agency, when conducting its tests, minimize damage to the property and inconvenience to the owner or occupant.

***POSITIONS:***

The Michigan Association of Counties strongly supports the bill. (2-10-88)

The Michigan Municipal League supports the bill. (2-9-88)

A representative from the Department of Transportation testified in support of the bill. (2-9-88)

H.B. 5222 (2-1-88)

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