

HOUSE BILL No. 5821

March 2, 2006, Introduced by Reps. McConico, Tobocman, Drolet, Green, Gosselin, Stahl, Brandenburg, Baxter, Elsenheimer, Mortimer, Rocca, Huizenga, Lipsey, Acciavatti and Jones and referred to the Committee on Government Operations.

A bill to amend 1980 PA 87, entitled

"The uniform condemnation procedures act,"

by amending section 5 (MCL 213.55), as amended by 1996 PA 474.

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, THE AGENCY SHALL**
6 **PROVIDE WRITTEN NOTICE TO THE OCCUPANTS OF THE PROPERTY STATING**
7 **THAT A CONDEMNATION PROCESS HAS COMMENCED AND OUTLINING THE**
8 **OCCUPANTS' BASIC LEGAL RIGHTS IN THE PROCESS, INCLUDING, BUT NOT**
9 **LIMITED TO, THE FACT THAT ANY PERSON WHO HAS A LEASEHOLD INTEREST**

1 OF LESS THAN 6 MONTHS IS ENTITLED TO A \$5,200.00 MOVING ALLOWANCE
2 PURSUANT TO 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 THAT ALLOWANCE IS PAID AND THE PERSON HAS HAD A REASONABLE
5 OPPORTUNITY TO RELOCATE TO A COMPARABLE DWELLING. If there is more
6 than 1 owner of a parcel, the agency may make a single, unitary
7 good faith written offer. The good faith offer shall state whether
8 the agency reserves or waives its rights to bring federal or state
9 cost recovery actions against the present owner of the property
10 arising out of a release of hazardous substances at the property
11 and the agency's appraisal of just compensation for the property
12 shall reflect such reservation or waiver. The amount shall not be
13 less than the agency's appraisal of just compensation for the
14 property. If the owner fails to provide documents or information as
15 required by subsection (2), the agency may base its good faith
16 written offer on the information otherwise known to the agency
17 whether or not the agency has sought a court order under subsection
18 (2). The agency shall provide the owner of the property and the
19 owner's attorney with an opportunity to review the written
20 appraisal, if an appraisal has been prepared, or if an appraisal
21 has not been prepared, the agency shall provide the owner or the
22 owner's attorney with a written statement and summary, showing the
23 basis for the amount the agency established as just compensation
24 for the property. If an agency is unable to agree with the owner
25 for the purchase of the property, after making a good faith written
26 offer to purchase the property, the agency may file a complaint for
27 the acquisition of the property in the circuit court in the county

1 in which the property is located. If a parcel of property is
2 situated in 2 or more counties and an owner resides in 1 of the
3 counties, the complaint shall be filed in the county in which the
4 owner is a resident. If a parcel of property is situated in 2 or
5 more counties and an owner does not reside in 1 of the counties,
6 the complaint may be filed in any of the counties in which the
7 property is situated. The complaint shall ask that the court
8 ascertain and determine just compensation to be made for the
9 acquisition of the described property. ~~If an agency made a good
10 faith written offer pursuant to this section before January 28,
11 1994 but has not filed a complaint for acquisition of the property,
12 the agency may withdraw the good faith written offer and resubmit a
13 good faith written offer that complies with this act as amended. If
14 a good faith offer is resubmitted pursuant to this subsection,
15 attorney fees under section 16 shall be based on the resubmitted
16 good faith offer.~~

17 (2) During the period in which the agency is establishing just
18 compensation for the owner's parcel, the agency has the right to
19 secure tax returns, financial statements, and other relevant
20 financial information for a period not to exceed 5 years before the
21 agency's request. The owner shall produce the information within 21
22 business days after receipt of a written request from the agency.
23 The agency shall reimburse the owner for actual, reasonable costs
24 incurred in reproducing any requested documents, plus other actual,
25 reasonable costs of not more than \$1,000.00 incurred to produce the
26 requested information. Within 45 days after production of the
27 requested documents and other information, the owner shall provide

1 to the agency a detailed invoice for the costs of reproduction and
2 other costs sought. The owner is not entitled to a reimbursement of
3 costs under this subsection if the reimbursement would be
4 duplicative of any other reimbursement to the owner. If the owner
5 fails to provide all documents and other information requested by
6 the agency under this section, the agency may file a complaint and
7 proposed order to show cause in the circuit court in the county
8 specified in subsection (1). The court shall immediately hold a
9 hearing on the agency's proposed order to show cause. The court
10 shall order the owner to provide documents and other information
11 requested by the agency that the court finds to be relevant to a
12 determination of just compensation. An agency shall keep documents
13 and other information that an owner provides to the agency under
14 this section confidential. However, the agency and its experts and
15 representatives may utilize the documents and other information to
16 determine just compensation, may utilize the documents and other
17 information in legal proceedings under this act, and may utilize
18 the documents and other information as provided by court order. If
19 the owner unreasonably fails to timely produce the documents and
20 other information, the owner shall be responsible for all expenses
21 incurred by the agency in obtaining the documents and other
22 information. This section does not affect any right a party may
23 otherwise have to discovery or to require the production of
24 documents and other information upon commencement of an action
25 under this act. A copy of this section shall be provided to the
26 owner with the agency's request.

27 (3) If an owner believes that the good faith written offer

1 made under subsection (1) did not include or fully include 1 or
2 more ~~items of compensable property or damage~~ **CATEGORIES OF CLAIMS**
3 **FOR COMPENSATION** for which the owner intends to claim a right to
4 just compensation, the owner shall, for each ~~item~~ **CATEGORY**, file
5 a written claim with the agency. The owner's written claim shall
6 provide sufficient information and detail to enable the agency to
7 evaluate the validity of the claim and to determine its value. The
8 owner shall file ~~all such~~ **THE CLAIM OR** claims ~~within 90 days~~
9 ~~after the good faith written offer is made pursuant to section 5(1)~~
10 ~~or 60 days after the complaint is filed, whichever is later. Within~~
11 ~~60 days after the date the owner files a written claim with the~~
12 ~~agency, the agency may~~ **ALONG WITH, OR AS PART OF, THE APPRAISAL,**
13 **UNLESS A DIFFERENT DATE IS SET BY THE COURT IN ACCORDANCE WITH**
14 **SECTION 11(1). IF THE AGENCY BELIEVES THAT THE INFORMATION PROVIDED**
15 **BY THE OWNER IS NOT SUFFICIENT TO ALLOW THE EVALUATION OF THE**
16 **CLAIM, THE AGENCY SHALL** ask the court to compel the owner to
17 provide additional information to enable the agency to evaluate the
18 validity of the claim and to determine its value. ~~For good cause~~
19 ~~shown, the court shall, upon motion filed by the owner, extend the~~
20 ~~time in which claims may be made, if the rights of the agency are~~
21 ~~not prejudiced by the delay. Only 1 such extension may be granted.~~
22 **FOR ANY CLAIM THAT HAS NOT FULLY ACCRUED OR IS CONTINUING IN NATURE**
23 **WHEN THE CLAIM IS FILED, THE OWNER SHALL REASONABLY PROVIDE**
24 **INFORMATION THEN AVAILABLE THAT WOULD ENABLE THE AGENCY TO EVALUATE**
25 **THE CLAIM, SUBJECT TO THE OWNER REASONABLY SUPPLEMENTING THAT**
26 **INFORMATION AS IT BECOMES AVAILABLE.** After receiving a written
27 claim from an owner, the agency may provide written notice that it

1 contests the compensability of the claim, establish an amount that
2 it believes to be just compensation for the item of property or
3 damage, or reject the claim. If the agency establishes an amount it
4 believes to be just compensation for the item of property or
5 damage, the agency shall submit a good faith written offer for the
6 item of property or damage. The sum of the good faith written offer
7 for all such items of property or damage plus the original good
8 faith written offer constitutes the good faith written offer for
9 purposes of determining the maximum reimbursable attorney fees
10 under section 16. If an owner fails to file a timely written claim
11 under this subsection, the claim is barred. If the owner files a
12 claim that is frivolous or in bad faith, the agency is entitled to
13 recover from the owner its actual and reasonable expenses incurred
14 to evaluate the validity and to determine the value of the claim. **A**
15 **RESIDENTIAL TENANT'S LEASEHOLD INTEREST OF LESS THAN 6 MONTHS IN**
16 **THE PROPERTY IS NOT A COMPENSABLE CLAIM UNDER THIS ACT.**

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

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

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

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

25 (d) A statement setting forth the time within which motions
26 for review under section 6 shall be filed; the amount that will be
27 awarded and the persons to whom the amount will be paid in the

1 event of a default; and the deposit and escrow arrangements made
2 under subsection (5).

3 (e) A declaration signed by an authorized official of the
4 agency declaring that the property is being taken by the agency.
5 The declaration shall be recorded with the register of deeds of
6 each county within which the property is situated. The declaration
7 shall include all of the following:

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

10 (ii) A statement of the estate or interest in the property
11 being taken. Fluid mineral and gas rights and rights of access to
12 and over the highway are excluded from the rights acquired unless
13 the rights are specifically included.

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

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

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

26 Enacting section 1. This amendatory act does not take effect
27 unless all of the following bills of the 93rd Legislature are

1 enacted into law:

2 (a) Senate Bill No.____ or House Bill No. 5817(request no.
3 05070'05).

4 (b) Senate Bill No.____ or House Bill No. 5818(request no.
5 06017'06).

6 (c) Senate Bill No.____ or House Bill No. 5819(request no.
7 06018'06).

8 (d) Senate Bill No.____ or House Bill No. 5820(request no.
9 06019'06).