



SENATE BILL No. 778

November 30, 1995, Introduced by Senators DUNASKISS and HONIGMAN and referred to the Committee on Local, Urban and State Affairs.

A bill to amend sections 4, 5, 7, 8, 9, 11, 15, 16, 18, 20, and 25 of Act No. 87 of the Public Acts of 1980, entitled as amended

"The uniform condemnation procedures act,"

section 4 as amended by Act No. 189 of the Public Acts of 1988, sections 5, 7, 8, and 9 as amended by Act No. 308 of the Public Acts of 1993, and section 25 as amended by Act No. 68 of the Public Acts of 1985, being sections 213.54, 213.55, 213.57, 213.58, 213.59, 213.61, 213.65, 213.66, 213.68, 213.70, and 213.75 of the Michigan Compiled Laws; to add section 13a; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 4, 5, 7, 8, 9, 11, 15, 16, 18, 20, and
2 25 of Act No. 87 of the Public Acts of 1980, section 4 as amended
3 by Act No. 189 of the Public Acts of 1988, sections 5, 7, 8, and

1 9 as amended by Act No. 308 of the Public Acts of 1993, and
2 section 25 as amended by Act No. 68 of the Public Acts of 1985,
3 being sections 213.54, 213.55, 213.57, 213.58, 213.59, 213.61,
4 213.65, 213.66, 213.68, 213.70, and 213.75 of the Michigan
5 Compiled Laws, are amended and section 13a is added to read as
6 follows:

7 Sec. 4. (1) If the acquisition of a portion of a
8 ~~particular~~ parcel of property actually needed by an agency
9 would destroy the practical value or utility of the remainder of
10 that ~~particular~~ parcel, the agency shall ~~acquire the fee to~~
11 PAY JUST COMPENSATION FOR the whole of ~~the particular~~ THAT
12 parcel. ~~of property.~~ THE AGENCY MAY ELECT WHETHER TO RECEIVE
13 TITLE AND POSSESSION OF THE REMAINDER OF THE PARCEL. The question
14 as to whether the practical value or utility of the remainder of
15 the parcel of property is in fact destroyed shall be determined
16 by the court or jury and incorporated in its verdict.

17 (2) IF THE ACQUISITION OF A PORTION OF A PARCEL OF PROPERTY
18 ACTUALLY NEEDED BY AN AGENCY WOULD LEAVE THE REMAINDER OF THE
19 PARCEL IN NONCONFORMITY WITH A ZONING ORDINANCE, THE AGENCY,
20 BEFORE OR AFTER ACQUISITION, MAY APPLY FOR A ZONING VARIANCE FOR
21 THE REMAINDER OF THE PARCEL. IN DETERMINING WHETHER TO GRANT THE
22 ZONING VARIANCE, THE GOVERNMENTAL ENTITY HAVING JURISDICTION TO
23 GRANT THE VARIANCE SHALL CONSIDER THE POTENTIAL BENEFITS OF THE
24 PUBLIC USE FOR WHICH THE PROPERTY WOULD BE ACQUIRED, IN ADDITION
25 TO THOSE CRITERIA APPLICABLE UNDER THE RELEVANT ZONING STATUTE,
26 ORDINANCE, OR REGULATION. THE AGENCY MUST ACTUALLY ACQUIRE THE
27 PORTION OF THE PARCEL OF PROPERTY FOR THE PROPOSED PUBLIC USE FOR

1 THE ZONING VARIANCE TO BECOME EFFECTIVE FOR THE REMAINDER. THE
2 VARIANCE SHALL REMAIN IN EFFECT AND MAY NOT BE TERMINATED SO LONG
3 AS THE NONCONFORMITY IS NOT SUBSTANTIALLY INCREASED, UNLESS THE
4 GOVERNMENTAL ENTITY PERMITS THE INCREASE. AN AGENCY HAS THE SAME
5 RIGHT TO APPEAL ACTION ON A ZONING VARIANCE AS WOULD A PROPERTY
6 OWNER SEEKING A ZONING VARIANCE.

7 (3) ~~(2)~~ An agency or an agent or employee of an agency may
8 enter upon property before filing an action for the purpose of
9 making surveys, measurements, examinations, tests, soundings, and
10 borings; or taking photographs or samplings; or appraising the
11 property; or conducting an environmental inspection; or determin-
12 ing whether the property is suitable to take for public
13 purposes. The entry may be made upon reasonable notice to the
14 owner and at reasonable hours. An entry made pursuant to this
15 ~~subsection shall not be construed as~~ SECTION IS NOT a taking.
16 The owner or his or her representative shall be given a reason-
17 able opportunity to accompany the agency's agent or employee
18 during the entry upon the property. The agency shall make resti-
19 tution for actual damage resulting from the entry, which may be
20 recovered by special motion before the court or by separate
21 action if an action for condemnation has not been filed. The
22 term "actual damage" as used in this subsection does not include,
23 and an agency shall not make restitution for, response activity,
24 as defined in section ~~3 of the environmental response act, Act~~
25 ~~No. 307 of the Public Acts of 1982, being section 299.603~~ 20101
26 OF PART 201 (ENVIRONMENTAL REMEDIATION) OF THE NATURAL RESOURCES
27 AND ENVIRONMENTAL PROTECTION ACT, ACT NO. 451 OF THE PUBLIC ACTS

1 OF 1994, BEING SECTION 324.20101 of the Michigan Compiled Laws,
2 or ~~for~~ diminution in the value or utility of a parcel ~~which~~
3 THAT is caused by the discovery of information as the result of a
4 survey, an appraisal, a measurement, photography, or an environ-
5 mental inspection made pursuant to this section.

6 (4) ~~(3)~~ If reasonable efforts to ~~accomplish entry~~ ENTER
7 under subsection ~~(2)~~ (3) have been obstructed or denied, the
8 agency may commence a civil action in the circuit court in the
9 county in which the property or any part of the property is
10 located for an order permitting entry. The complaint shall state
11 the facts making the entry necessary, the date on which entry is
12 sought, and the duration and the method proposed for protecting
13 the defendant against damage. The court may grant a limited
14 license for entry upon such terms as justice and equity require,
15 including the following:

16 (a) A description of the purpose of the entry.

17 (b) The scope of activities that are permitted.

18 (c) The terms and conditions of the entry with respect to
19 the time, place, and manner of the entry.

20 (5) ~~(4)~~ An entry made ~~pursuant to~~ UNDER subsection (3)
21 OR (4) shall be made in a manner that minimizes any damage to the
22 property and any hardship, burden, or damage to a person in
23 lawful possession of the property.

24 (6) ~~(5)~~ As used in this section, "environmental
25 inspection" means the testing or inspection including the taking
26 of samples of the soil, groundwater, structures, or other
27 materials or substances in, on, or under the property for the

1 purpose of determining whether chemical, bacteriological,
2 radioactive, or other environmental contamination exists and, if
3 it exists, the nature and extent of ~~such~~ THE contamination.

4 Sec. 5. (1) ~~Except as provided in section 25(4), before~~
5 BEFORE initiating negotiations for the purchase of property, the
6 agency shall establish an amount ~~which~~ THAT it believes to be
7 just compensation for the property. ~~and promptly~~ DURING THE
8 PERIOD IN WHICH THE AGENCY IS ESTABLISHING JUST COMPENSATION FOR
9 THE PROPERTY, THE AGENCY MAY REQUEST FROM THE OWNER REPRODUCTIONS
10 OF TAX RETURNS, FINANCIAL STATEMENTS, AND OTHER EXISTING FINAN-
11 CIAL DOCUMENTS RELEVANT TO THE APPRAISAL OF THE PROPERTY FOR THE
12 5-YEAR PERIOD PRECEDING THE AGENCY'S REQUEST. THE REPRODUCTIONS
13 SHALL BE MADE PURSUANT TO THE RECORDS MEDIA ACT, ACT NO. 116 OF
14 THE PUBLIC ACTS OF 1992, BEING SECTIONS 24.401 TO 24.403 OF THE
15 MICHIGAN COMPILED LAWS. THE OWNER SHALL PROVIDE THE REQUESTED
16 DOCUMENTS NOT MORE THAN 15 BUSINESS DAYS AFTER RECEIPT OF A WRIT-
17 TEN REQUEST FROM THE AGENCY. THE AGENCY SHALL REIMBURSE THE
18 OWNER FOR REASONABLE COSTS INCURRED IN REPRODUCING THE REQUESTED
19 DOCUMENTS. THE AGENCY MAY ALSO REQUEST THAT THE OWNER INFORM THE
20 AGENCY OF THE IMPACT THAT THE TAKING WOULD HAVE ON THE REMAINING
21 PROPERTY, TO THE EXTENT THAT THE INFORMATION IS RELEVANT TO A
22 DETERMINATION OF JUST COMPENSATION. IF THE OWNER FAILS TO PRO-
23 VIDE ALL DOCUMENTS AND INFORMATION REQUESTED BY THE AGENCY UNDER
24 THIS SECTION, THE AGENCY MAY FILE A COMPLAINT AND PROPOSED ORDER
25 TO SHOW CAUSE IN THE CIRCUIT COURT IN THE COUNTY SPECIFIED IN
26 SUBSECTION (2). THE COURT SHALL IMMEDIATELY HOLD A HEARING ON
27 THE AGENCY'S PROPOSED ORDER TO SHOW CAUSE. THE COURT SHALL ORDER

1 THE OWNER TO PROVIDE DOCUMENTS AND INFORMATION REQUESTED BY THE
2 AGENCY THAT THE COURT FINDS TO BE RELEVANT TO A DETERMINATION OF
3 JUST COMPENSATION. THE OWNER IS LIABLE FOR ALL DAMAGES AND
4 EXPENSES INCURRED BY THE AGENCY AS A RESULT OF THE OWNER'S FAIL-
5 URE TO TIMELY PROVIDE THE INFORMATION REQUESTED BY THE AGENCY.
6 THIS SECTION DOES NOT AFFECT ANY RIGHT A PARTY MAY OTHERWISE HAVE
7 TO DISCOVERY UPON COMMENCEMENT OF AN ACTION UNDER THIS ACT.

8 (2) BEFORE INITIATING NEGOTIATIONS FOR THE PURCHASE OF PROP-
9 ERTY AND PROMPTLY AFTER ESTABLISHING AN AMOUNT THAT IT BELIEVES
10 TO BE JUST COMPENSATION FOR THE PROPERTY, THE AGENCY shall submit
11 to the owner ~~a~~ AN INITIAL good faith WRITTEN offer to ~~acquire~~
12 PURCHASE the property for the full amount so established. The
13 good faith offer shall state whether the agency reserves or
14 waives its rights to bring federal or state cost recovery actions
15 against the present owner of the property arising out of a
16 release of hazardous substances at the property and the agency's
17 appraisal of just compensation for the property shall reflect
18 such reservation or waiver. The amount shall not be less than
19 the agency's appraisal of just compensation for the property. IF
20 THE OWNER FAILS TO PROVIDE DOCUMENTS OR INFORMATION AS REQUIRED
21 BY SUBSECTION (1), THE AGENCY MAY BASE ITS GOOD FAITH WRITTEN
22 OFFER ON THE INFORMATION OTHERWISE KNOWN TO THE AGENCY WHETHER OR
23 NOT THE AGENCY HAS SOUGHT A COURT ORDER UNDER SUBSECTION (1). The
24 agency shall provide the owner of the property and the owner's
25 attorney with an opportunity to review the written appraisal, if
26 an appraisal has been prepared, or if an appraisal has not been
27 prepared, the agency shall provide the owner or the owner's

1 attorney with a written statement and summary, showing the basis
2 for the amount the agency established as just compensation for
3 the property. If an agency is unable to agree with the owner for
4 the purchase of the property, after making a FINAL good faith
5 written offer to purchase the property, the agency may file a
6 complaint for the acquisition of the property in the circuit
7 court in the county in which the property is located. If a
8 parcel of property is situated in 2 or more counties and an owner
9 resides in 1 of the counties, the complaint shall be filed in the
10 county in which the owner is a resident. If a parcel of property
11 is situated in 2 or more counties and an owner does not reside in
12 1 of the counties, the complaint ~~shall~~ MAY be filed in any of
13 the counties in which the property is situated. The complaint
14 shall ask that the court ascertain and determine just compensa-
15 tion to be made for the acquisition of the described property.
16 If an agency ~~has~~ made ~~a~~ AN INITIAL OR FINAL good faith
17 WRITTEN offer pursuant to this section ~~prior to the effective~~
18 ~~date of section 6a~~ BEFORE JANUARY 28, 1994 but has not filed a
19 complaint for acquisition of the property, the agency may with-
20 draw the ~~original~~ GOOD FAITH WRITTEN offer and resubmit ~~a~~ AN
21 INITIAL OR FINAL good faith WRITTEN offer that complies with this
22 act as amended. ~~by the amendatory act that added section 6a.~~ If
23 a FINAL good faith offer is resubmitted pursuant to this subsec-
24 tion, attorney fees under section 16 shall be based on the resub-
25 mitted good faith offer.

1 (3) ~~(2)~~ In addition to other allegations required or
2 permitted by law, the complaint shall contain or have annexed to
3 it all of the following:

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

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

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

10 (d) A statement setting forth the time within which motions
11 for review under section 6 shall be filed; the amount ~~which~~
12 THAT will be awarded and the persons to whom the amount will be
13 paid in the event of a default; and the deposit and escrow
14 arrangements made ~~pursuant to~~ UNDER subsection ~~(3)~~ (4).

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 declara-
19 tion shall include ALL OF THE FOLLOWING:

20 (i) A description of the property to be acquired sufficient
21 for 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
24 to and over the highway are ~~considered~~ excluded from the rights
25 acquired unless the rights are specifically included.

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

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

7 (4) ~~(3) At the time~~ WHEN the complaint is filed, the
8 agency shall deposit the amount estimated to be just compensation
9 with a bank, trust company, or title company in the business of
10 handling real estate escrows, or with the state treasurer, munic-
11 ipal treasurer, or county treasurer. The deposit shall be set
12 aside and held for the benefit of the owners, to be disbursed
13 upon order of the court ~~as provided in~~ UNDER section 8.

14 Sec. 7. (1) If a motion to review necessity is not filed
15 ~~within the time specified in~~ UNDER section 6, the title to the
16 property described in the petition shall vest in the agency as of
17 the date on which the complaint was filed. The right to just
18 compensation shall then vest in the persons entitled to the com-
19 pensation and be secured as provided in this act. Title to the
20 property shall also vest in the agency, as ~~provided in this act~~
21 OF THE DATE ON WHICH THE COMPLAINT WAS FILED OR SUCH OTHER DATE
22 AS THE COURT MAY SET UPON MOTION OF THE AGENCY, if the motion to
23 review necessity is denied after a hearing and after any further
24 right to appeal has terminated.

25 (2) ~~Neither a~~ VESTING OF TITLE IN THE AGENCY SHALL NOT BE
26 DELAYED OR DENIED BECAUSE OF ANY OF THE FOLLOWING:

1 (A) A motion filed ~~pursuant to~~ UNDER section 6a,
2 challenging the agency's ~~decision~~ ELECTION to reserve its
3 rights to bring federal or state cost recovery actions. ~~nor a~~

4 (B) A motion challenging the agency's escrow under
5 section 8. ~~shall delay vesting of title in the agency.~~

6 (C) AN ALLEGATION THAT THE AGENCY SHOULD HAVE OFFERED A
7 HIGHER AMOUNT FOR THE PROPERTY.

8 (D) AN ALLEGATION THAT THE AGENCY SHOULD HAVE INCLUDED ADDI-
9 TIONAL PROPERTY IN ITS INITIAL OR FINAL GOOD FAITH WRITTEN
10 OFFER.

11 (E) ANY OTHER REASON EXCEPT A CHALLENGE TO THE NECESSITY OF
12 THE ACQUISITION FILED UNDER SECTION 6.

13 Sec. 8. (1) Except as provided in ~~subsection (3)~~
14 SUBSECTIONS (2) AND (3), if a motion for review ~~as provided in~~
15 UNDER section 6 is not filed or is denied and the right to appeal
16 has terminated or if interim possession is granted ~~pursuant to~~
17 UNDER section 9, the court shall order the escrowee to pay the
18 money deposited ~~pursuant to~~ UNDER section 5, for or on account
19 of the just compensation that may be awarded ~~pursuant to~~ UNDER
20 section 13. ~~However, if~~ UPON THE MOTION OF ANY PARTY, THE
21 COURT SHALL APPORTION THE ESTIMATED COMPENSATION AMONG THE CLAIM-
22 ANTS TO THE COMPENSATION.

23 (2) IF the agency reserves its rights to bring a state or
24 federal cost recovery claim against an owner, under circumstances
25 that the court considers just, the court may allow any portion of
26 the money deposited ~~pursuant to~~ UNDER section 5 to remain in
27 escrow as security for remediation costs of environmental

1 contamination on the condemned parcel. An agency shall present
2 an affidavit and environmental report establishing that the funds
3 placed on deposit ~~pursuant to~~ UNDER section 5 are likely to be
4 required to remediate the property. The amount in escrow shall
5 not exceed the likely costs of remediation if the property were
6 used for its highest and best use. ~~Nothing contained in this~~
7 ~~subsection is intended to~~ THIS SUBSECTION DOES NOT limit or
8 expand an owner's or agency's rights to bring federal or state
9 cost recovery claims. ~~Except as provided in subsection (2),~~
10 ~~upon the motion of any party, the court shall apportion the esti-~~
11 ~~mated compensation among the claimants to the compensation.~~

12 (3) ~~(2)~~ Notwithstanding any order entered by the court
13 requiring money deposited pursuant to section 5 to remain in
14 escrow for the payment of estimated remediation costs of contami-
15 nated property, the funds in escrow, plus interest SUBJECT TO
16 SECTION 15, shall be released among the claimants to the just
17 compensation under circumstances that the court considers just,
18 including any of the following circumstances:

19 (a) The court finds that the applicable statutory require-
20 ments for remediation have changed and the amount remaining in
21 escrow is no longer required in full or in part to remediate the
22 alleged environmental contamination.

23 (b) The court finds that the anticipated need for the reme-
24 diation of the alleged environmental contamination is not
25 required or is not required to the extent of the funds remaining
26 on deposit.

1 (c) If the remediation of the property is not initiated by
2 the agency within 2 years of surrender of possession pursuant to
3 section 9 and the agency is unable to show good cause for delay.

4 (d) The costs actually expended for remediation are less
5 than the estimated costs of remediation or less than the amount
6 of money remaining in escrow.

7 (e) A court issues an order of apportionment of remediation
8 responsibility.

9 (4) ~~(3)~~ If the court orders the agency to reverse its
10 election under section 6a(1), the court shall order the escrowee
11 to pay the amount of the revised FINAL good faith WRITTEN offer
12 for or on account of the just compensation that may be awarded
13 pursuant to section 13, and to pay the balance of the escrow to
14 the agency. If the agency seeks possession before the court
15 decides whether to reverse the agency's election or before sub-
16 mitting a revised good faith offer, the agency may request that
17 the court order a portion of the escrow withheld in anticipation
18 of a reduction in the revised good faith offer, with the balance
19 to be paid by the escrowee for or on account of the just compen-
20 sation that may be awarded pursuant to section 13. If the court
21 denies the request to reverse the agency's election or when the
22 revised good faith offer is submitted, the court shall order the
23 escrowee to pay any unpaid portion of it for or on account of the
24 owner and to pay any balance to the agency.

25 Sec. 9. (1) ~~Upon filing of a complaint and making the~~
26 ~~deposit as provided in section 5 and after opportunity is given~~
27 ~~for a person to file a motion for review under section 6~~ IF A

1 MOTION FOR REVIEW UNDER SECTION 6 IS NOT FILED, UPON EXPIRATION
2 OF THE TIME FOR FILING THE MOTION FOR REVIEW, or, if A motion for
3 review is filed, upon final determination of the motion, the
4 court shall fix the time and terms for surrender of possession of
5 the property to the agency and enforce surrender by appropriate
6 order or other process. The court also may require surrender of
7 possession of the property after the motion for review filed
8 under section 6 has been heard, determined and denied by the cir-
9 cuit court, but before a final determination on appeal, if the
10 agency demonstrates a reasonable need.

11 (2) If interim possession is granted to a private agency,
12 the court, upon motion of the owner, may order the private agency
13 to file an indemnity bond in an amount determined by the court as
14 necessary to adequately secure just compensation to the owner for
15 the property taken.

16 (3) If an order granting interim possession is entered, an
17 appeal from the order or any other part of the proceedings shall
18 not act as a stay of the possession order. An agency ~~shall be~~
19 IS liable for damages caused by the possession if its right to
20 possession is denied by the trial court or on appeal.

21 (4) Repayment of all sums advanced shall be a condition
22 precedent to entry of a final order setting aside a determination
23 of public necessity.

24 (5) ~~Neither a~~ ALTHOUGH THE COURT SHALL NOT ORDER POSSES-
25 SION TO BE SURRENDERED TO THE AGENCY BEFORE IT ORDERS THAT THE
26 ESCROW BE DISTRIBUTED UNDER SECTION 8(1) OR (4) OR RETAINED UNDER

1 SECTION 8(2), THE COURT SHALL NOT DELAY OR DENY SURRENDER OF
2 POSSESSION BECAUSE OF ANY OF THE FOLLOWING:

3 (A) A motion filed pursuant to section 6a, challenging the
4 agency's decision to reserve its rights to bring federal or state
5 cost recovery actions. ~~7 nor a~~

6 (B) A motion challenging the agency's escrow under
7 section 8. ~~7 shall delay the vesting of possession in the agency
8 provided that the court shall not order possession surrendered to
9 the agency before it orders that the escrow be distributed as
10 provided in section 8(1) or (3).~~

11 (C) AN ALLEGATION THAT THE AGENCY SHOULD HAVE OFFERED A
12 HIGHER AMOUNT FOR THE PROPERTY.

13 (D) AN ALLEGATION THAT THE AGENCY SHOULD HAVE INCLUDED ADDI-
14 TIONAL PROPERTY IN ITS INITIAL OR FINAL GOOD FAITH WRITTEN OFFER.

15 Sec. 11. (1) ~~On the date of the hearing the court shall
16 set a date certain for the pretrial as to parcels not previously
17 disposed of.~~ NOT LATER THAN 180 DAYS AFTER THE COMPLAINT IS
18 FILED, EACH PARTY SHALL COMPLETE ITS APPRAISALS AND PROVIDE TO
19 THE OPPOSING PARTIES A FULL APPRAISAL REPORT FROM EACH APPRAISAL
20 EXPERT ON WHOM RELIANCE IS PLACED TO DETERMINE JUST
21 COMPENSATION. THE 180-DAY LIMIT IS SUBJECT TO BOTH OF THE FOL-
22 LOWING EXCEPTIONS:

23 (A) IF THE OWNER CLAIMS THAT THE AGENCY IS TAKING PROPERTY
24 OTHER THAN THAT DESCRIBED IN THE FINAL GOOD FAITH WRITTEN OFFER,
25 THE AGENCY MAY TAKE ADDITIONAL TIME AS MAY BE NEEDED TO APPRAISE
26 THAT ADDITIONAL PROPERTY.

1 (B) THE COURT MAY EXTEND THE 180-DAY LIMIT UPON STIPULATION
2 OR GOOD CAUSE SHOWN.

3 (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, TO
4 ALLOW A REASONABLE OPPORTUNITY FOR REVIEW AND PREPARATION AND FOR
5 THE DEPOSITION OF APPRAISAL EXPERT WITNESSES, THE PARTIES SHALL
6 EXCHANGE APPRAISAL REPORTS AND THE IDENTITIES OF APPRAISAL EXPERT
7 WITNESSES NOT LATER THAN 30 DAYS BEFORE ANY SCHEDULED MEDIATION
8 AND NOT LATER THAN 60 DAYS BEFORE TRIAL.

9 (3) AN APPRAISAL REPORT PROVIDED PURSUANT TO THIS SECTION
10 SHALL FAIRLY AND REASONABLY DESCRIBE THE METHODOLOGY AND BASIS
11 FOR THE AMOUNT OF THE APPRAISAL. IF THE TESTIMONY OR OPINION OF
12 A PERSON RELATING TO THE VALUE OF REAL PROPERTY WOULD REQUIRE A
13 LICENSE UNDER ARTICLE 26 OF THE OCCUPATIONAL CODE, ACT NO. 299 OF
14 THE PUBLIC ACTS OF 1980, BEING SECTIONS 339.2601 TO 339.2637 OF
15 THE MICHIGAN COMPILED LAWS, THE PERSON SHALL NOT BE PERMITTED TO
16 TESTIFY OR OTHERWISE RENDER AN OPINION RELATING TO THE VALUE OF
17 REAL PROPERTY UNLESS THE PERSON IS LICENSED UNDER THAT ARTICLE.

18 (4) THE COURT MAY ISSUE ORDERS TO FACILITATE COMPLIANCE WITH
19 THIS SECTION, INCLUDING BUT NOT LIMITED TO ORDERS TO REQUIRE
20 MUTUAL SIMULTANEOUS EXCHANGE OF APPRAISAL REPORTS. IF AN
21 APPRAISAL REPORT HAS NOT BEEN PROVIDED PURSUANT TO THIS SECTION,
22 THE APPRAISAL REPORT SHALL NOT BE CONSIDERED BY A MEDIATION PANEL
23 UNLESS SPECIFICALLY AUTHORIZED BY COURT ORDER. IF AN APPRAISAL
24 EXPERT'S APPRAISAL REPORT HAS NOT BEEN PROVIDED PURSUANT TO THIS
25 SECTION, THE COURT MAY BAR THE TAKING OF APPRAISAL TESTIMONY FROM
26 THE APPRAISAL EXPERT.

1 SEC. 13A. A PERSON IS NOT ENTITLED TO A PAYMENT IN
2 CONNECTION WITH THE ACQUISITION OF ALL OR PART OF THAT PERSON'S
3 PROPERTY UNDER THIS ACT IF THAT PAYMENT WOULD BE DUPLICATIVE OF
4 ANY GRANT OR OTHER PAYMENT RECEIVED UNDER ANY STATE OR FEDERAL
5 STATUTE OR REGULATION.

6 Sec. 15. (1) The court shall award interest on the judgment
7 amount OR PART OF THE AMOUNT from the date of the filing of the
8 complaint to the date ~~of~~ THAT payment of the amount ~~or~~ or
9 ~~any~~ part of the amount IS TENDERED. INTEREST SHALL NOT BE
10 AWARDED ON ATTORNEY FEES, EXPERT WITNESS FEES, OR COSTS.

11 (2) Interest shall be ~~computed at the interest rate appli-~~
12 ~~cable to a federal income tax deficiency or penalty~~ SIMPLE
13 INTEREST, CALCULATED AT 6-MONTH INTERVALS FROM THE DATE OF FILING
14 THE COMPLAINT AT A RATE EQUAL TO 1% PLUS THE AVERAGE INTEREST
15 RATE PAID AT AUCTIONS OF 5-YEAR UNITED STATES TREASURY NOTES
16 DURING THE 6-MONTH PERIOD ENDING ON THE JUNE 30 OR DECEMBER 31
17 THAT IMMEDIATELY PRECEDES THE DATE OF THE 6-MONTH INTERVAL FOR
18 WHICH INTEREST IS CALCULATED, AS CERTIFIED BY THE STATE
19 TREASURER. However, an owner remaining in possession after the
20 date of filing ~~shall be considered to have waived~~ THE COMPLAINT
21 WAIVES the interest for the period of the possession.

22 (3) If it is determined that a de facto acquisition occurred
23 at a date earlier than the date of filing THE COMPLAINT, interest
24 awarded ~~pursuant to~~ UNDER this section shall be calculated from
25 the earlier date.

1 (4) THE COURT MAY TOLL THE ACCRUAL OF INTEREST AWARDED UNDER
2 THIS SECTION FOR ANY PERIOD OF UNREASONABLE DELAY ATTRIBUTABLE TO
3 THE OWNER.

4 Sec. 16. (1) ~~A witness, either~~ EXCEPT AS PROVIDED IN THIS
5 SECTION, AN ordinary or expert ~~WITNESS~~ WITNESS in a proceeding under
6 this act shall receive from the agency the reasonable fees and
7 compensation provided by law for similar services in ordinary
8 civil actions in circuit court. ~~, including the reasonable~~
9 ~~expenses for preparation and trial.~~

10 (2) If the property owner, by motion to review necessity or
11 otherwise, successfully challenges the agency's right to acquire
12 the property, or the legal sufficiency of the proceedings, and
13 the court finds the proposed acquisition improper, the court
14 shall order the agency to reimburse the owner for actual reason-
15 able attorney fees and other expenses incurred in defending
16 against the improper acquisition.

17 (3) If the amount finally determined to be just compensation
18 for the property acquired exceeds the amount of the FINAL GOOD
19 FAITH written offer ~~as defined in~~ UNDER section 5, the court
20 shall order reimbursement in whole or in part to the owner by the
21 agency of the owner's reasonable ~~attorney's fees, but not in~~
22 ~~excess of 1/3 of the amount by which the ultimate award exceeds~~
23 ~~the agency's written offer as defined by section 5~~ ATTORNEY
24 FEES. The reasonableness of the owner's ~~attorney's~~ ATTORNEY
25 fees shall be determined by the court AFTER REVIEWING AN ITEMIZED
26 ACCOUNTING OF THE LEGAL SERVICES PROVIDED AND SUCH ADDITIONAL
27 EVIDENCE AND ARGUMENT AS MAY BE PRESENTED TO THE COURT. THE

1 DETERMINATION OF THE OWNER'S REASONABLE ATTORNEY FEES IS SUBJECT
2 TO ALL OF THE FOLLOWING:

3 (A) THE REASONABLE ATTORNEY FEES SHALL NOT EXCEED 1/3 OF THE
4 AMOUNT BY WHICH THE ULTIMATE AWARD EXCEEDS THE AGENCY'S FINAL
5 GOOD FAITH WRITTEN OFFER.

6 (B) SUBJECT TO SUBDIVISION (A) AND EXCEPT AS PROVIDED IN
7 SUBDIVISION (C), THE REASONABLE ATTORNEY FEES SHALL BE THE PROD-
8 UCT OF THE REASONABLE HOURS OF LEGAL SERVICES PROVIDED TIMES A
9 REASONABLE HOURLY RATE, NOT TO EXCEED \$100.00 PER HOUR.

10 (C) SUBJECT TO SUBDIVISION (A), IF THE PROPERTY ACQUIRED IS
11 THE PRINCIPAL RESIDENCE OF ITS OWNER, THE FIRST \$25,000.00 OF
12 ACTUAL ATTORNEY FEES IS PRESUMED TO BE REASONABLE.

13 (D) IF THE AGENCY IS ORDERED TO PAY ATTORNEY FEES UNDER
14 ANOTHER STATUTE OR COURT RULE, AS REIMBURSEMENT, SANCTION, OR
15 OTHERWISE, THE ATTORNEY FEES OTHERWISE PAYABLE UNDER THIS SECTION
16 SHALL BE REDUCED BY A CORRESPONDING AMOUNT.

17 (4) IF THE AGENCY SETTLES A CASE BEFORE ENTRY OF A VERDICT
18 OR JUDGMENT, IT MAY AGREE TO PAY REASONABLE ATTORNEY AND EXPERT
19 WITNESS FEES.

20 (5) Expert witness fees provided for in subsection (1) shall
21 be allowed with respect to ~~an~~ 1 expert whose services were rea-
22 sonably necessary to allow the owner to prepare for trial.

23 EXPERT WITNESS FEES PROVIDED FOR IN SUBSECTION (1) SHALL NOT BE
24 ALLOWED FOR ADDITIONAL EXPERT WITNESSES UNLESS, BEFORE THE OWNER
25 INCURS THE FEES, THE COURT DETERMINES, UPON A PROPER SHOWING MADE
26 BY THE OWNER, THAT THE ADDITIONAL EXPERTS ARE REASONABLY
27 NECESSARY TO ALLOW THE OWNER TO PREPARE FOR TRIAL. The agency's

1 liability for expert witness fees shall not be diminished or
2 affected by the failure of the owner to call an expert as a wit-
3 ness if the failure is caused by settlement or other disposition
4 of the case or issue with which the expert is concerned.

5 (6) EXPERT WITNESS FEES PROVIDED UNDER THIS SECTION SHALL BE
6 ALLOWED ONLY FOR THE EXPERT WITNESS'S ARRIVING AT AN OPINION AND
7 TESTIFYING ABOUT THAT OPINION AND NOT FOR REVIEWING OPINIONS OF
8 OTHER EXPERTS OR CONFERRING WITH LEGAL COUNSEL. THE REASONABLE
9 EXPERT WITNESS FEE SHALL BE THE PRODUCT OF THE REASONABLE HOURS
10 EXPENDED TIMES THE REASONABLE HOURLY RATE, NOT TO EXCEED \$100.00
11 PER HOUR.

12 (7) IF THE PARTIES ARE UNABLE TO AGREE UPON THE AMOUNT OF A
13 REASONABLE ATTORNEY OR EXPERT WITNESS FEE, THE AGENCY IS ENTITLED
14 TO A FULL EVIDENTIARY HEARING ON THE AMOUNT OF THE ATTORNEY OR
15 EXPERT WITNESS FEE AND TO FULL RIGHTS OF DISCOVERY IN ADVANCE OF
16 THE EVIDENTIARY HEARING.

17 (8) AN AGENCY SHALL NOT BE REQUIRED TO REIMBURSE ATTORNEY OR
18 EXPERT WITNESS FEES WHICH ARE ATTRIBUTABLE TO AN UNSUCCESSFUL
19 CHALLENGE TO NECESSITY OR TO THE VALIDITY OF THE PROCEEDINGS.

20 (9) NEITHER PARTY IS ENTITLED TO RECOVER THE ATTORNEY OR
21 EXPERT WITNESS FEES ATTRIBUTABLE TO A DISPUTE OVER THE AMOUNT OF
22 ATTORNEY FEES, EXPERT WITNESS FEES, OR COSTS TO BE AWARDED.

23 (10) THE AGENCY IS NOT REQUIRED TO REIMBURSE THE OWNER FOR
24 ATTORNEY FEES, EXPERT WITNESS FEES, OR EXPENSES INCURRED TO
25 ADDRESS LIABILITY, DAMAGES, OR REMEDIATION COSTS, FOR ENVIRONMEN-
26 TAL CONTAMINATION OF THE PROPERTY.

1 Sec. 18. (1) If any agency acquires property without
2 commencement of an action or abandons its efforts to acquire
3 property after making the ~~jurisdictional~~ FINAL GOOD FAITH writ-
4 ten offer required by section 5 to the owners of the property and
5 if the owners of the property reasonably relied upon the agency's
6 action, the owners shall be reimbursed by the agency for the rea-
7 sonable expenses incurred in evaluating the agency's final good
8 faith written offer, in preparing for trial, or in negotiating a
9 settlement, if those expenses would have been taxable as costs
10 under section 16. ~~For the purpose of this section the jurisdic-~~
11 ~~tional written offer shall include only written offers made under~~
12 ~~threat of institution of judicial proceedings to acquire the~~
13 ~~property.~~

14 (2) The rights created by this section may be enforced in a
15 court having jurisdiction over claims for damages against the
16 agency, or in a court in which an action under this act for the
17 acquisition of the property could have been filed.

18 (3) The claim for reimbursement of expenses shall be filed
19 within 1 year after the date on which the property is acquired or
20 after the date on which notice of abandonment of the intention to
21 acquire the property is mailed to the owner.

22 Sec. 20. (1) A change in the fair market value before the
23 date of the filing of the complaint which the agency or the owner
24 establishes was substantially due to the general knowledge of the
25 imminence of the acquiring by the agency, other than that due to
26 physical deterioration of the property within the reasonable
27 control of the owner, shall be disregarded in determining fair

1 market value. ~~The~~ EXCEPT AS PROVIDED IN SECTION 23, THE
2 property shall be valued in all cases as though the acquisition
3 had not been contemplated.

4 (2) THE GENERAL EFFECTS OF A PUBLIC PROJECT FOR WHICH PROP-
5 ERTY IS TAKEN, WHETHER ACTUAL OR ANTICIPATED, THAT IN VARYING
6 DEGREES ARE EXPERIENCED BY THE GENERAL PUBLIC, OR PROPERTY OWNERS
7 FROM WHOM NO PROPERTY IS TAKEN, SHALL NOT BE CONSIDERED IN DETER-
8 MINING JUST COMPENSATION. A SPECIAL EFFECT OF THE PROJECT ON THE
9 OWNER'S PROPERTY WHICH, STANDING ALONE, WOULD CONSTITUTE A TAKING
10 OF PRIVATE PROPERTY UNDER SECTION 2 OF ARTICLE X OF THE STATE
11 CONSTITUTION OF 1963 SHALL BE CONSIDERED IN DETERMINING JUST
12 COMPENSATION. TO THE EXTENT THAT SUCH DETRIMENTAL EFFECTS OF A
13 PROJECT ARE CONSIDERED TO DETERMINE JUST COMPENSATION, THEY MAY
14 BE OFFSET BY CONSIDERATION OF THE BENEFICIAL EFFECTS OF THE
15 PROJECT.

16 (3) The date of acquiring and of valuation in a proceeding
17 pursuant to this act shall be the date of filing unless the par-
18 ties agree to a different date, or unless a different date is
19 determined by a counterclaim filed ~~pursuant to~~ UNDER section
20 21. The value of each parcel, and of a part of a parcel remain-
21 ing after the acquisition of a part of the parcel, shall be
22 determined with respect to the condition of the property and the
23 state of the market on the date of valuation. HOWEVER, IF ANTIC-
24 IPATED DAMAGES ARE AVOIDED BECAUSE OF CHANGES IN THE TAKING OR
25 PROJECT OR CHANGES IN THE ACTUAL EFFECT OF THE TAKING OR PROJECT
26 ON THE REMAINING PROPERTY, THE PROPERTY SHALL BE VALUED AS IF
27 THOSE DAMAGES HAD NOT BEEN ANTICIPATED.

1 (4) AN OWNER HAS A DUTY TO TAKE REASONABLE STEPS TO MITIGATE
2 THE DAMAGES CAUSED BY A TAKING.

3 Sec. 25. ~~(1) Except as otherwise provided by subsections~~
4 ~~(2), (3), and (4), effective May 1, 1980, all~~ ALL actions for
5 the acquisition of property by an agency under the power of emi-
6 nent domain shall be commenced pursuant to and be governed by
7 this act.

8 ~~(2) Actions for the acquisition of property by an agency~~
9 ~~under Act No. 149 of the Public Acts of 1911, as amended, being~~
10 ~~sections 213.21 to 213.41 of the Michigan Compiled Laws, Act~~
11 ~~No. 238 of the Public Acts of 1923, as amended, being sections~~
12 ~~486.251 to 486.254 of the Michigan Compiled Laws, and Act No.~~
13 ~~295 of the Public Acts of 1966, as amended, being sections~~
14 ~~213.361 to 213.391 of the Michigan Compiled Laws, may be com-~~
15 ~~menced pursuant to and be governed by this act, effective May 1,~~
16 ~~1980.~~

17 ~~(3) All actions for the acquisition of property by an agency~~
18 ~~under Act No. 149 of the Public Acts of 1911, as amended, being~~
19 ~~sections 213.21 to 213.41 of the Michigan Compiled Laws, and Act~~
20 ~~No. 295 of the Public Acts of 1966, as amended, being sections~~
21 ~~213.361 to 213.391 of the Michigan Compiled Laws, shall be com-~~
22 ~~menced pursuant to and be governed by this act, effective April~~
23 ~~1, 1983.~~

24 ~~(4) All actions for the acquisition of property by an agency~~
25 ~~under Act No. 238 of the Public Acts of 1923, as amended, being~~
26 ~~sections 486.251 to 486.254 of the Michigan Compiled Laws, shall~~
27 ~~be commenced pursuant to and be governed by this act, effective~~

~~1 April 1, 1985. If such agency initiates negotiations prior to
2 April 1, 1985 for the purchase of property without following the
3 procedure set forth in section 5(1) and does not commence an
4 action to acquire the property under Act No. 238 of the Public
5 Acts of 1923 prior to April 1, 1985, the agency may negotiate
6 after April 1, 1985 for the purchase of the property and may com-
7 mence an action under this act to acquire the property if the
8 agency first submits the good faith written offer provided in
9 section 5(1).~~

10 Section 2. Sections 26 and 27 of Act No. 87 of the Public
11 Acts of 1980, being sections 213.76 and 213.77 of the Michigan
12 Compiled Laws, are repealed.