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## CONDEMNATION: RESUBMIT OFFER

### Senate Bill 519 as passed by the Senate First Analysis (5-25-99)

**Sponsor: Sen. Mat J. Dunaskiss**  
**House Committee: Local Government and  
Urban Policy**  
**Senate Committee: Local Government,  
Urban, and State Affairs**

#### ***THE APPARENT PROBLEM:***

Under the Uniform Condemnation Procedures Act, when property is acquired by a public or private agency, the agency must first establish an amount that it believes is just compensation for the property. The agency must promptly submit to the property owner a good faith written offer to acquire the property for that amount. If the agency and the owner cannot reach an agreement for the purchase of the property, the agency can file an action in court to acquire the property. If the parties disagree on the purchase, the circuit court makes a determination. There have been several recent important revisions to the act, including Public Act 308 of 1993, which took effect January 28, 1994, and Public Act 474 of 1996, which took effect December 26, 1996. The 1993 amendatory act dealt, generally speaking, with issues related to the costs of remediating environmental contamination of property. The 1996 amendatory act made a number of revisions with the stated aim of expediting the process and reducing litigation. Some parties say that the 1996 act had the unintended effect of altering the application of certain provisions regarding the withdrawal and resubmission of good faith offers that had been added by the 1993 act. Legislation has been introduced to address this matter and restore what some say was the original intent of the 1993 good faith offer amendments.

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

The bill would amend the Uniform Condemnation Procedures Act to specify that in cases in which an agency made a good faith written offer prior to January 28, 1994 and filed a complaint for acquisition of the property on or after December 26, 1996, and if the action was still pending, the agency could withdraw the good faith offer first submitted and resubmit a revised good faith offer. The amount of the resubmitted written offer could differ from the amount of the withdrawn written offer only to the extent necessary to reflect the reservation or waiver of rights to bring a

federal or state cost recovery action arising out of a release of hazardous substances at the property.

The bill would replace current language that specifies: "If an agency has made a good faith written offer pursuant to this section before January 28, 1994 but has not filed a complaint for acquisition of the property, the agency may withdraw the good faith written offer and resubmit a good faith written offer that complies with this act as amended."

MCL 213.55

#### ***BACKGROUND INFORMATION:***

Section 5. The section being amended by the bill was first added by Public Act 308 of 1993 (House Bill 4719) to say:

If an agency has made a good faith offer pursuant to this section prior to the effective date of section 6a but has not filed a complaint for acquisition of the property, the agency may withdraw the original offer and resubmit a good faith offer that complies with this act as amended by the amendatory act that added section 6a. If a good faith offer is resubmitted pursuant to this section, attorney fees under section 16 shall be based on the resubmitted good faith offer.

The section was changed by "cleanup" language in Public Act 474 of 1996 (Senate Bill 778) to read:

If an agency made a good faith written offer pursuant to this section before January 28, 1994 but has not filed a complaint for acquisition of the property, the agency may withdraw the good faith written offer and

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resubmit a good faith written offer that complies with this act as amended. If a good faith offer is resubmitted pursuant to this subsection, attorney fees under section 16 shall be based on the resubmitted good faith offer. [Note that "before January 28, 1994" replaced "prior to the effective date of section 6a;" and the phrase "complies with this act as amended by the amendatory act that added section 6a" was replaced by "complies with this act as amended."]

**Section 6a.** This section, referred to in Section 5 in the 1993 act, was added by the same act and addresses cases in which a condemning agency elects to reserve its rights to bring a state or federal cost recovery claim against an owner but, upon the motion of the owner of the property, the court reverses the election and orders the agency to waive its claims. In such cases, the act requires the agency to submit to the owner a revised good faith offer, which would be considered the good faith offer for purposes of sections 5 and 16. The court would take action if the owner establishes by affidavit, and after an evidentiary hearing if requested by the agency in the time prescribed to provide an answer to a motion, one or more of the following circumstances exists with respect to the property: it is a single family residence; it is agricultural property; or the owner is the only identified potentially responsible party, the extent of contamination and cost of remediation has been reasonably quantified, and the estimated cost of remediation does not exceed agency's appraised value of the property.

**Section 16.** This section of the act addresses attorney's fees (among other things) and specifies:

"If the amount finally determined to be just compensation for the property acquired exceeds the amount of the good faith written offer under section 5, the court shall order reimbursement in whole or in part to the owner by the agency of the owner's reasonable attorney's fees, but not in excess of one-third of the amount by which the ultimate award exceeds the agency's written offer as defined by section 5."

### **FISCAL IMPLICATIONS:**

The Senate Fiscal Agency reports that the bill would result in potential costs to the state and local units of government. The number of cases that would be affected cannot be determined. (SFA committee summary dated 5-5-99)

### **ARGUMENTS:**

#### **For:**

The apparent aim of this legislation is to restore the original intent of a provision (which first took effect in 1994) regarding the withdrawal and resubmission of certain good faith offers in condemnation cases and to correct what is understood to be an unintentional potential broadening of its application by subsequent technical amendments. The bill would restrict the provision to the revision of good faith written offers first made prior to January 28, 1994 in cases involving potential environmental contamination.

#### **Against:**

There is concern among some parties that the bill will have the effect of interfering with ongoing litigation related to this issue.

#### **Response:**

Reportedly, supporters of this bill and those with concerns about its impact on ongoing litigation are engaged in conversations about those concerns.

### **POSITIONS:**

The Department of Transportation is neutral on the bill. (5-21-99)

A representative of the Wayne County, Department of Corporation Counsel, has indicated opposition to the bill. (5-20-99)

Analyst: C. Couch

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.