

SENATE BILL NO. 519

April 15, 1999, Introduced by Senators DUNASKISS, BULLARD,
JOHNSON and MC MANUS and referred to the Committee on
Local, Urban and State Affairs.

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
2 of property, the agency shall establish an amount that it
3 believes to be just compensation for the property and promptly
4 shall submit to the owner a good faith written offer to acquire
5 the property for the full amount so established. If there is
6 more than 1 owner of a parcel, the agency may make a single, uni-
7 tary good faith written offer. The good faith offer shall state
8 whether the agency reserves or waives its rights to bring federal
9 or state cost recovery actions against the present owner of the
10 property arising out of a release of hazardous substances at the
11 property and the agency's appraisal of just compensation for the

1 property shall reflect such reservation or waiver. The amount
2 shall not be less than the agency's appraisal of just compensa-
3 tion for the property. If the owner fails to provide documents
4 or information as required by subsection (2), the agency may base
5 its good faith written offer on the information otherwise known
6 to the agency whether or not the agency has sought a court order
7 under subsection (2). The agency shall provide the owner of the
8 property and the owner's attorney with an opportunity to review
9 the written appraisal, if an appraisal has been prepared, or if
10 an appraisal has not been prepared, the agency shall provide the
11 owner or the owner's attorney with a written statement and summa-
12 ry, showing the basis for the amount the agency established as
13 just compensation for the property. If an agency is unable to
14 agree with the owner for the purchase of the property, after
15 making a good faith written offer to purchase the property, the
16 agency may file a complaint for the acquisition of the property
17 in the circuit court in the county in which the property is
18 located. If a parcel of property is situated in 2 or more coun-
19 ties and an owner resides in 1 of the counties, the complaint
20 shall be filed in the county in which the owner is a resident.
21 If a parcel of property is situated in 2 or more counties and an
22 owner does not reside in 1 of the counties, the complaint may be
23 filed in any of the counties in which the property is situated.
24 The complaint shall ask that the court ascertain and determine
25 just compensation to be made for the acquisition of the described
26 property. If an agency made a good faith written offer pursuant
27 to this section before January 28, 1994 ~~but has not~~ AND filed a

1 complaint for acquisition of the property ON OR AFTER DECEMBER
2 26, 1996, AND IF THE ACTION IS STILL PENDING, the agency may
3 withdraw the good faith written offer and resubmit a good faith
4 written offer. ~~that complies with this act as amended.~~ HOWEVER,
5 THE AMOUNT OF THE RESUBMITTED GOOD FAITH WRITTEN OFFER MAY DIFFER
6 FROM THE AMOUNT OF THE WITHDRAWN GOOD FAITH WRITTEN OFFER ONLY TO
7 THE EXTENT NECESSARY TO REFLECT THE RESERVATION OR WAIVER OF
8 RIGHTS TO BRING A FEDERAL OR STATE COST RECOVERY ACTION ARISING
9 OUT OF A RELEASE OF HAZARDOUS SUBSTANCES AT THE PROPERTY. If a
10 good faith offer is resubmitted pursuant to this subsection,
11 attorney fees under section 16 shall be based on the resubmitted
12 good faith offer.

13 (2) During the period in which the agency is establishing
14 just compensation for the owner's parcel, the agency has the
15 right to secure tax returns, financial statements, and other rel-
16 evant financial information for a period not to exceed 5 years
17 before the agency's request. The owner shall produce the infor-
18 mation within 21 business days after receipt of a written request
19 from the agency. The agency shall reimburse the owner for
20 actual, reasonable costs incurred in reproducing any requested
21 documents, plus other actual, reasonable costs of not more than
22 \$1,000.00 incurred to produce the requested information. Within
23 45 days after production of the requested documents and other
24 information, the owner shall provide to the agency a detailed
25 invoice for the costs of reproduction and other costs sought.
26 The owner is not entitled to a reimbursement of costs under this
27 subsection if the reimbursement would be duplicative of any other

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

24 (3) If an owner believes that the good faith written offer
25 made under subsection (1) did not include or fully include 1 or
26 more items of compensable property or damage for which the owner
27 intends to claim a right to just compensation, the owner shall,

1 for each item, file a written claim with the agency. The owner's
2 written claim shall provide sufficient information and detail to
3 enable the agency to evaluate the validity of the claim and to
4 determine its value. The owner shall file all such claims within
5 90 days after the good faith written offer is made pursuant to
6 ~~section 5(1)~~ SUBSECTION (1) or 60 days after the complaint is
7 filed, whichever is later. Within 60 days after the date the
8 owner files a written claim with the agency, the agency may ask
9 the court to compel the owner to provide additional information
10 to enable the agency to evaluate the validity of the claim and to
11 determine its value. For good cause shown, the court shall, upon
12 motion filed by the owner, extend the time in which claims may be
13 made, if the rights of the agency are not prejudiced by the
14 delay. Only 1 such extension may be granted. After receiving a
15 written claim from an owner, the agency may provide written
16 notice that it contests the compensability of the claim, estab-
17 lish an amount that it believes to be just compensation for the
18 item of property or damage, or reject the claim. If the agency
19 establishes an amount it believes to be just compensation for the
20 item of property or damage, the agency shall submit a good faith
21 written offer for the item of property or damage. The sum of the
22 good faith written offer for all such items of property or damage
23 plus the original good faith written offer constitutes the good
24 faith written offer for purposes of determining the maximum reim-
25 bursable attorney fees under section 16. If an owner fails to
26 file a timely written claim under this subsection, the claim is
27 barred. If the owner files a claim that is frivolous or in bad

1 faith, the agency is entitled to recover from the owner its
2 actual and reasonable expenses incurred to evaluate the validity
3 and to determine the value of the claim.

4 (4) In addition to other allegations required or permitted
5 by law, the complaint shall 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
12 taken.

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

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

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

25 (ii) A statement of the estate or interest in the property
26 being taken. Fluid mineral and gas rights and rights of access

1 to and over the highway are excluded from the rights acquired
2 unless the rights are specifically included.

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

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

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