

# HOUSE BILL No. 4030

January 22, 2013, Introduced by Rep. Geiss and referred to the Committee on Tax Policy.

A bill to amend 1980 PA 87, entitled  
"The uniform condemnation procedures act,"  
by amending section 5 (MCL 213.55), as amended by 2006 PA 439.

**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, if the taking of  
6 the property might require relocation, the agency shall provide  
7 written notice to the occupants of the property stating that an  
8 eminent domain proceeding has commenced and outlining the

1 occupants' basic legal rights in the process, including, but not  
2 limited to, the fact that any person who has a leasehold interest  
3 of less than 6 months is entitled to a \$3,500.00 moving allowance  
4 as provided under section 2 of 1965 PA 40, MCL 213.352, and that an  
5 individual who is a residential occupant may not be displaced until  
6 moving expenses or a moving allowance is paid as provided under  
7 1965 PA 40, MCL 213.351 to 213.355, and the person has had a  
8 reasonable opportunity, not to exceed 180 days after the payment  
9 date of moving expenses or the moving allowance as provided under  
10 1965 PA 40, MCL 213.351 to 213.355, to relocate to a comparable  
11 replacement dwelling. If there is more than 1 owner of a parcel,  
12 the agency may make a single, unitary good faith written offer. The  
13 good faith offer shall state whether the agency reserves or waives  
14 its rights to bring federal or state cost recovery actions against  
15 the present owner of the property arising out of a release of  
16 hazardous substances at the property, and the agency's appraisal of  
17 just compensation for the property shall reflect ~~such~~**THE**  
18 reservation or waiver. The amount shall not be less than the  
19 agency's appraisal of just compensation for the property. If the  
20 owner fails to provide documents or information as required by  
21 subsection (2), the agency may base its good faith written offer on  
22 the information otherwise known to the agency whether or not the  
23 agency has sought a court order under subsection (2). The agency  
24 shall provide the owner of the property and the owner's attorney  
25 with an opportunity to review the written appraisal, if an  
26 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 the  
3 property. If an agency is unable to agree with the owner for the  
4 purchase of the property, after making a good faith written offer  
5 to purchase the property, the agency may file a complaint for the  
6 acquisition of the property in the circuit court in the county in  
7 which the property is located. If a parcel of property is situated  
8 in 2 or more counties and an owner resides in 1 of the counties,  
9 the complaint shall be filed in the county in which the owner is a  
10 resident. If a parcel of property is situated in 2 or more counties  
11 and an owner does not reside in 1 of the counties, the complaint  
12 may be filed in any of the counties in which the property is  
13 situated. The complaint shall ask that the court ascertain and  
14 determine just compensation to be made for the acquisition of the  
15 described property. As used in this subsection, "comparable  
16 replacement dwelling" means any dwelling that is all of the  
17 following:

- 18 (a) Decent, safe, and sanitary.
- 19 (b) Adequate in size to accommodate the occupants.
- 20 (c) Within the financial means of the individual.
- 21 (d) Functionally equivalent.
- 22 (e) In an area not subject to unreasonable adverse  
23 environmental conditions.
- 24 (f) In a location generally not less desirable than the  
25 location of the individual's dwelling with respect to public  
26 utilities, facilities, services, and the individual's place of  
27 employment.

1           (2) During the period in which the agency is establishing just  
2 compensation for the owner's parcel, the agency ~~has the right to~~  
3 **MAY** secure tax returns, financial statements, and other relevant  
4 financial information for a period not to exceed 5 years before the  
5 agency's request. The owner shall produce the information within 21  
6 business days after receipt of a written request from the agency.  
7 The agency shall reimburse the owner for actual, reasonable costs  
8 incurred in reproducing any requested documents, plus other actual,  
9 reasonable costs of not more than \$1,000.00 incurred to produce the  
10 requested information. Within 45 days after production of the  
11 requested documents and other information, the owner shall provide  
12 to the agency a detailed invoice for the costs of reproduction and  
13 other costs sought. The owner is not entitled to a reimbursement of  
14 costs under this subsection if the reimbursement would be  
15 duplicative of any other reimbursement to the owner. If the owner  
16 fails to provide all documents and other information requested by  
17 the agency under this ~~section~~, **SUBSECTION**, the agency may file a  
18 complaint and proposed order to show cause in the circuit court in  
19 the county specified in subsection (1). The court shall immediately  
20 hold a hearing on the agency's proposed order to show cause. The  
21 court shall order the owner to provide documents and other  
22 information requested by the agency that the court finds to be  
23 relevant to a determination of just compensation. An agency shall  
24 keep documents and other information that an owner provides to the  
25 agency under this ~~section~~ **SUBSECTION** confidential. However, the  
26 agency and its experts and representatives may utilize the  
27 documents and other information to determine just compensation, may

1 utilize the documents and other information in legal proceedings  
2 under this act, and may utilize the documents and other information  
3 as provided by court order. If the owner unreasonably fails to  
4 timely produce the documents and other information, the owner shall  
5 be responsible for all expenses incurred by the agency in obtaining  
6 the documents and other information. This section does not affect  
7 any right a party may otherwise have to discovery or to require the  
8 production of documents and other information upon commencement of  
9 an action under this act. A copy of this section shall be provided  
10 to the owner with the agency's request.

11 (3) In determining just compensation, all of the following  
12 apply:

13 (a) If an owner claims that the agency is taking property  
14 other than the property described in the good faith written offer  
15 or claims a right to compensation for damage caused by the taking,  
16 apart from the value of the property taken, and not described in  
17 the good faith written offer, the owner shall file a written claim  
18 with the agency stating the nature and substance of that property  
19 or damage. The owner's written claim shall provide sufficient  
20 information and detail to enable the agency to evaluate the  
21 validity of the claim and to determine its value. The owner shall  
22 file the claim within 90 days after the good faith written offer is  
23 made pursuant to ~~section 5(1)~~ **SUBSECTION (1)** or 180 days after the  
24 complaint is served, whichever is later, unless a later date is set  
25 by the court for reasonable cause. If the appraisal or written  
26 estimate of value is provided within the established period for  
27 filing written claims, the owner's appraisal or written estimate of

1 value may serve as the written claim under this act. If the owner  
2 fails to timely file the written claim under this subsection, the  
3 claim is barred.

4 (b) The parties shall exchange the agency's updated appraisal  
5 reports, if any, and the owner's appraisal report within 90 days  
6 after the expiration of the period for filing written claims,  
7 unless a later date is set by the court in accordance with section  
8 11(1) for reasonable cause. If the agency believes that the  
9 information provided by the owner is not sufficient to allow the  
10 evaluation of the claim, the agency may request additional  
11 information from the owner and, if that information is not  
12 provided, may ask the court to compel the owner to provide  
13 additional information to enable the agency to evaluate the  
14 validity of the claim and to determine its value. If the owner  
15 fails to provide sufficient information after being ordered to do  
16 so by the court, the court may assess an appropriate sanction in  
17 accordance with the Michigan court rules for failing to comply with  
18 discovery orders, including, but not limited to, barring the claim.  
19 In addition, the court also shall consider any failure to provide  
20 timely information when it determines the maximum reimbursable  
21 attorney fees under section 16.

22 (c) For any claim that has not fully accrued or is continuing  
23 in nature when the claim is filed, the owner shall provide  
24 information then reasonably available that would enable the agency  
25 to evaluate the claim, subject to the owner's continuing duty to  
26 supplement that information as it becomes available. The owner  
27 shall provide all supplementary information at least 90 days before

1 trial, and the court shall afford the agency a reasonable  
2 opportunity for discovery once all supplementary information is  
3 provided and allow that discovery to proceed until 30 days before  
4 trial. For reasonable cause, the court may extend the time for the  
5 owner to provide information to the agency and for the agency to  
6 complete discovery. If the owner fails to provide supplementary  
7 information as required under this subdivision, the court may  
8 assess an appropriate sanction in accordance with the Michigan  
9 court rules for failing to comply with discovery orders, including,  
10 but not limited to, barring the claim. In addition, the court also  
11 shall consider any failure to provide timely supplemental  
12 information when it determines the maximum reimbursable attorney  
13 fees under section 16.

14 (d) After receiving a written claim from an owner, the agency  
15 may provide written notice that it contests the compensability of  
16 the claim, establish an amount that it believes to be just  
17 compensation for the claim, or reject the claim. If the agency  
18 establishes an amount it believes to be just compensation for the  
19 claim, the agency shall submit a good faith written offer for the  
20 claim. The sum of the good faith written offer for all claims  
21 submitted under this subsection or otherwise disclosed in discovery  
22 for all items of property or damage plus the original good faith  
23 written offer constitutes the good faith written offer for purposes  
24 of determining the maximum reimbursable attorney fees under section  
25 16.

26 (e) If the owner files a claim that is frivolous or in bad  
27 faith, the agency is entitled to recover from the owner its actual

1 and reasonable expenses incurred to evaluate the validity and to  
2 determine the value of the claim.

3 (f) A residential tenant's leasehold interest of less than 6  
4 months in the property is not a compensable claim under this act.

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

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

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

12 (c) The name of each known owner of the property being 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 be  
15 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 declaration  
22 shall include all of the following:

23 (i) A description of the property to be acquired sufficient for  
24 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 to  
27 and over the highway are excluded from the rights acquired unless



1 the rights are specifically included.

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

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

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

14 (6) If the property being taken is a principal residence for  
15 which an exemption from certain local taxation is granted under  
16 section 7cc of the general property tax act, 1893 PA 206, MCL  
17 211.7cc, the agency ~~is obligated to~~ **SHALL** pay an additional amount  
18 to the owner or owners, which shall be deposited along with the  
19 amount estimated to be just compensation as provided in subsection  
20 (5). The additional amount shall be determined by subtracting the  
21 taxable value from the state equalized value, multiplying that  
22 amount by the total property tax millage rate applicable to the  
23 property taken, and multiplying that result by the number of years  
24 the owner or owners have owned the principal residence, but not  
25 more than ~~5 years.~~ **THE FOLLOWING NUMBER OF YEARS:**

26 (A) **EXCEPT AS PROVIDED IN SUBDIVISION (B), 5 YEARS.**

27 (B) **TEN YEARS, IF, WITHIN 180 DAYS AFTER TITLE TO THE PROPERTY**

1 BEING TAKEN VESTS IN THE AGENCY, THE OWNER OR OWNERS PURCHASE A  
2 REPLACEMENT DWELLING TO BE USED AS THEIR PRINCIPAL RESIDENCE THAT  
3 IS LOCATED IN THE SAME CITY, VILLAGE, OR TOWNSHIP AS THE PROPERTY  
4 BEING TAKEN.

5 (7) As used in this section, "taxable value" means that value  
6 determined under section 27a of the general property tax act, 1893  
7 PA 206, MCL 211.27a.