

Chapter 213

CONDEMNATION

CONDEMNATION BY STATE

Act 236 of 1911

AN ACT to authorize proceedings by the state to condemn private property for public use.

History: 1911, Act 236, Eff. Aug. 1, 1911

The People of the State of Michigan enact:

213.1 Condemnation of private property for state use; authority delegated; jurisdiction.

Sec. 1.

It shall be lawful for the governor or any other person or persons, or any board of regents, board of control or other governing body of any state educational, penal or reformatory institution, when by law authorized to secure for the state or such institution, land as a site for any state building or buildings, state institution or public use, and for the board of regents, board of control or other governing body of any state institution desirous of obtaining the right of way over lands for the benefit of such state institution, when such persons, board of regents, board of control or other governing body, or a majority thereof shall have by resolution declared the taking thereof necessary for the public use of such state institution, to institute or cause to be instituted proceedings in the name and behalf of the state of Michigan against the land sought to be acquired, and against the owners and persons interested therein, in the circuit court of the county where the land is situated, for the purpose of acquiring by the state title to such land by judicial condemnation. And the said court in which such proceeding may be instituted, shall have and possess full jurisdiction of the subject matter of such proceedings, and power to hear, adjudge, and determine all matters touching the proceedings, and the rights and interests of all concerned.

History: 1911, Act 236, Eff. Aug. 1, 1911 ;-- CL 1915, 349 ;-- CL 1929, 3759 ;-- CL 1948, 213.1

Compiler's Notes: This act undoubtedly supersedes Sections 1-4 of Act 3 of 1874, being How. 5196-5199, as Am. 1897, Act 128, Eff. Aug. 30, 1897; and CL 1897, 1253-1256, which act was expressly repealed 1915, Act 240, Eff. Aug. 24, 1915. See CL 1929, 120.

213.2 Attorney general; duty; petition; contents; summons; issuance and return; incompetents; non-residents; service; notice by publication.

Sec. 2.

Upon request of the governor, board of regents, board of control or other governing body of any state institution, or other person or persons authorized as aforesaid, it shall be the duty of the attorney general of the state, or when directed by the attorney general, the prosecuting attorney of the county where the land is situated, on behalf of the board of regents, board of control or other governing body, if a body corporate under the law of its creation, and in behalf of the people of the state of Michigan if such governing body is not a body corporate, of any state institution, to cause a petition to be made in the name of the people of the state of Michigan and filed in the proper court, signed by the attorney general, or prosecuting attorney of the county, and by the secretary of such governing board, if a body corporate, and if not a majority of such trustees, board of control or other governing body, or other properly authorized person, as the case may be, addressed to the court setting forth, with reasonable certainty a description of the land sought to be acquired, the names of all persons owning or having an interest therein, so far as disclosed by the records of titles of the county in which the land is situated, or can be ascertained from actual occupants; that the petition is made and presented for the purpose of acquiring the title and ownership of the land described in the petition, to and for the use of the state of Michigan, and specifying generally the purpose for which it is to be used. And the petition shall ask that all persons interested in the premises, or any part

thereof, be summoned to appear and answer the petition, and show cause, if any they have, against the same. Upon filing the petition, summons shall issue in accordance with the prayer thereof, against the persons named therein, returnable on a day to be named, which shall not be less than 5 days from the issuing and test thereof, and shall be served at least 3 days before the return day, by the sheriff or other officer authorized to serve process of summons according to the rules and practice of the circuit court in other cases at law. If there are minors or persons of unsound mind interested in the premises, service may be made upon the guardian of any such person or the court may appoint a guardian ad litem for any such person, who may appear and defend for the person he represents. If there are non-resident or absent persons upon whom service cannot be obtained within the county, the court may order service upon any such person wherever he may be found, and in such manner as may be directed. The person serving any such process on such non-resident or absent person shall make proof of service by affidavit, stating the place, time, and manner of service. Or the court may order and cause notice to be given to such absent or non-resident person, by publication in such newspaper printed and published in the county as the court shall designate, and for such length of time as the court may think proper, not less than 3 weeks, once in each week; and any such service out of the county, or notice by publication, shall be as effectual for all the purposes of such proceeding and in the condemnation of the land as though the persons had been personally served within the county.

History: 1911, Act 236, Eff. Aug. 1, 1911 ;-- CL 1915, 350 ;-- CL 1929, 3760 ;-- CL 1948, 213.2

213.3 Petition; hearing on necessity and compensation; commissioners procedure; jury, procedure.

Sec. 3.

When all the parties named in the petition have been summoned or notified, in the manner provided, and the time for their appearance shall have expired, the court shall hear any and all persons who shall have appeared and interposed objections to the petition or proceedings, and proceed to decide the questions raised, and may vacate the petition, or any part of the proceedings for cause, and may allow amendments of the petition, in form or substance, as the right of the matter shall demand. If any person having an interest in the land has been overlooked, or not summoned or notified, the court may continue the proceedings and cause such person to be served or notified. If the petition and proceedings are sustained, the court shall appoint 3 commissioners, residents and freeholders within the county, not interested or of kin to any of the persons interested in the land to ascertain and determine the necessity of the proposed public use, the necessity for using such property and the just compensation to be paid therefor by the state, which ought to be paid by the state to each of the owners and persons interested in the premises, as and for his, her or their just compensation for the land sought to be taken. Such commissioners before entering upon their duties as such shall take an oath in substantially the following form: "We do each of us solemnly swear that we will faithfully and justly determine the public necessity of the proposed use, the necessity of taking the property described in the petition filed in this cause and the amount of compensation which ought to be paid to each of the owners and persons interested in the premises described in said petition according to our best ability." They shall visit the land sought to be acquired, shall ascertain the separate interest of each person owning or interested in any part of the premises, and the description of his or her separate interest in the parcel; shall hear, in the presence and under direction of the court, evidence touching the matters they are to find, brought forward by any person having an interest, and shall find all necessary facts to possess the court with the truth and right of the matter, but shall not be required to find what evidence was offered or given, and shall report to the court, in writing, their findings. Instead of commissioners, the court, with or without the request of any person interested in any portion of the premises described in the petition, may, and upon the request of any such person shall, order a venire to issue to the sheriff, to summon 12 jurors who shall be residents and freeholders of the county where the land is situated, to attend at a time to be named, before the court, to serve as a jury. Any person interested in any part of the premises may object for cause to any of the jurors, but there shall be no peremptory challenge allowed. In case any juror fails to appear, is excused, or set aside from the panel, the court may order the sheriff, or other proper officer in attendance, to summon forthwith the requisite number of talesmen to form the jury. The jury shall be sworn, as is required of commissioners, and they shall view the premises, hear evidence if offered, determine the necessity of the public use, the necessity for taking such property and the amount of compensation to be paid therefor and the same proceedings be had as near as may be, as hereinbefore required in reference to commissioners.

History: 1911, Act 236, Eff. Aug. 1, 1911 ;-- CL 1915, 351 ;-- CL 1929, 3761 ;-- CL 1948, 213.3

213.4 Objections to report filed; confirmation; deposit; vesting of title; payment of compensation; dismissal; expenses; record.

Sec. 4.

The court shall hear objections, if any, to the report of the commissioners or jury, as the case may be, and may set aside the report and finding, or confirm the same, and if confirmed, shall enter a judgment of confirmation, and that all right, title and interest of, in, and to the land and premises, vest in the state of Michigan: Provided, That the state, within such time as shall be therein prescribed, shall deposit in the court the amount found by the report of the commissioners or jury, as the just compensation and damages to be paid to the owners and persons interested. If, within the time so prescribed, the state shall cause to be deposited the sum so found, the court shall thereupon enter an order and judgment that the title of the state in and to said land and every part thereof is perfect, and has become absolute, and may issue the necessary writ of assistance, commanding the sheriff to deliver the possession of such land to the state; and thereupon the title and right of the state to such land shall be absolute and binding against all persons whomsoever. The persons owning and interested in said land according to the report and finding aforesaid, shall be entitled, on applying to the court, to be paid on the order of the court the amount or sum to which they are respectively entitled, according to such report or finding; for the sum received they shall respectively give to the clerk their receipt, in writing, to be by the clerk forwarded to the state treasurer. In case the state does not, within the time so prescribed, deposit in court the amount of compensation and damages awarded, the court shall order the proceedings dismissed, and the state take nothing thereby. In the proceedings authorized by this act the court shall, as to the practice and mode of proceedings, be governed by the rules applicable in cases at law, except as is in this act otherwise expressly provided. The expense of the proceedings shall be paid by the state, and a certified copy of the record of the proceedings and judgment of the court shall, together with the record thereof in the office of the register of deeds of the county, be evidence in all courts and places.

History: 1911, Act 236, Eff. Aug. 1, 1911 ;-- CL 1915, 352 ;-- CL 1929, 3762 ;-- CL 1948, 213.4

ACQUISITION OF PROPERTY BY STATE AGENCIES AND PUBLIC CORPORATIONS

Act 149 of 1911

AN ACT to provide for the acquisition by purchase, condemnation and otherwise by state agencies and public corporations of private property for the use or benefit of the public, and to define the terms "public corporations," "state agencies" and "private property" as used herein.

History: 1911, Act 149, Eff. Aug. 1, 1911 ;-- Am. 1966, Act 351, Imd. Eff. Dec. 21, 1966

The People of the State of Michigan enact:

213.21 Public corporation and state agency; definition.

Sec. 1.

The term "public corporations" as herein used shall include all counties, cities, villages, boards, commissions and agencies made corporations for the management and control of public business and property; and the term "state agencies" shall include all unincorporated boards, commissions and agencies of the state given by law the management and control of public business and property, and the office of governor or a division thereof.

History: 1911, Act 149, Eff. Aug. 1, 1911 ;-- CL 1915, 353 ;-- Am. 1925, Act 37, Eff. Aug. 27, 1925 ;-- CL 1929, 3763 ;-- CL 1948, 213.21 ;-- Am. 1966, Act 351, Imd. Eff. Dec. 21, 1966

213.22 Private property; definition.

Sec. 2.

The term "private property" as herein used shall include lands, tenements, hereditaments and tangible and intangible property whether real, personal or mixed.

History: 1911, Act 149, Eff. Aug. 1, 1911 ;-- CL 1915, 354 ;-- CL 1929, 3764 ;-- CL 1948, 213.22

213.23 Authority to take private property for public use; acquisition of property; scope of "public use"; condemnation action; compensation; preservation of right, grant, or benefit to property owner; "blighted" defined.

Sec. 3.

(1) Any public corporation or state agency is authorized to take private property necessary for a public improvement or for the purposes of its incorporation or for public use and to institute and prosecute proceedings for that purpose. When funds have been appropriated by the legislature to a state agency, a division of a state agency, the office of the governor, or a division of the office of the governor for the purpose of acquiring lands or property for a designated public use, the unit of a state agency to which the appropriation has been made is authorized on behalf of the people of the state of Michigan to acquire the lands or property either by purchase, condemnation, or otherwise. For the purpose of condemnation, the unit of a state agency may proceed under this act.

(2) The taking of private property by a public corporation or a state agency for transfer to a private entity is not a public use unless the proposed use of the property is invested with public attributes sufficient to fairly deem the entity's activity governmental by 1 or more of the following:

(a) A public necessity of the extreme sort exists that requires collective action to acquire property for instrumentalities of commerce, including a public utility or a state or federally regulated common carrier, whose very existence depends on the use of property that can be assembled only through the coordination that central government alone is capable of achieving.

(b) The property or use of the property will remain subject to public oversight and accountability after the transfer of the property and will be devoted to the use of the public, independent from the will of the private entity to which the property is transferred.

(c) The property is selected on facts of independent public significance or concern, including blight, rather than the private interests of the entity to which the property is eventually transferred.

(3) As used in subsection (1), "public use" does not include the taking of private property for the purpose of transfer to a private entity for either general economic development or the enhancement of tax revenue.

(4) In a condemnation action, the burden of proof is on the condemning authority to demonstrate, by the preponderance of the evidence, that the taking of a private property is for a public use, unless the condemnation action involves a taking of private property because the property is blighted, in which case the burden of proof is on the condemning authority to demonstrate, by clear and convincing evidence, that the taking of that property is for a public use.

(5) If private property consisting of an individual's principal residence is taken for public use, the amount of compensation made and determined for that taking shall be not less than 125% of that property's fair market value, in addition to any other reimbursement allowed by law. In order to be eligible for reimbursement under this subsection, the individual's principal residential structure must be actually taken or the amount of the individual's private property taken leaves less property contiguous to the individual's principal residential structure than the minimum lot size if the local governing unit has implemented a minimum lot size by zoning ordinance.

(6) A taking of private property for public use, as allowed under this section, does not include a taking for a public use that is a pretext to confer a private benefit on a known or unknown private entity. For purposes of this subsection, the taking of private property for the purposes of a drain project by a drainage district as allowed under the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, does not constitute a pretext to confer a private benefit on a private entity.

(7) Any existing right, grant, or benefit afforded to property owners as of December 22, 2006, whether provided by the state constitution of 1963, by this section or other statute, or otherwise, shall be preserved and shall not be

abrogated or impaired by the 2006 amendatory acts that added or amended this subsection.

(8) As used in this section, "blighted" means property that meets any of the following criteria:

(a) Has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance.

(b) Is an attractive nuisance because of physical condition or use.

(c) Is a fire hazard or is otherwise dangerous to the safety of persons or property.

(d) Has had the utilities, plumbing, heating, or sewerage disconnected, destroyed, removed, or rendered ineffective for a period of 1 year or more so that the property is unfit for its intended use.

(e) Is tax reverted property owned by a municipality, by a county, or by this state. The sale, lease, or transfer of tax reverted property by a municipality, a county, or this state shall not result in the loss to the property of the status as blighted for purposes of this act.

(f) Is property owned or under the control of a land bank fast track authority under the land bank fast track act, 2003 PA 258, MCL 124.751 to 124.774. The sale, lease, or transfer of the property by a land bank fast track authority shall not result in the loss to the property of the status as blighted for purposes of this act.

(g) Is improved real property that has remained vacant for 5 consecutive years and that is not maintained in accordance with applicable local housing or property maintenance codes or ordinances.

(h) Any property that has code violations posing a severe and immediate health or safety threat and that has not been substantially rehabilitated within 1 year after the receipt of notice to rehabilitate from the appropriate code enforcement agency or final determination of any appeal, whichever is later.

History: 1911, Act 149, Eff. Aug. 1, 1911 ;-- CL 1915, 355 ;-- Am. 1925, Act 37, Eff. Aug. 27, 1925 ;-- CL 1929, 3765 ;-- CL 1948, 213.23 ;-- Am. 1966, Act 351, Imd. Eff. Dec. 21, 1966 ;-- Am. 2006, Act 367, Eff. Dec. 23, 2006 ;-- Am. 2006, Act 368, Eff. Dec. 23, 2006 ;-- Am. 2006, Act 656, Imd. Eff. Jan. 9, 2007

213.23a Scope of act; rights conferred by act.

Sec. 3a.

The provisions of this act shall be deemed to extend to and include the right to acquire and take the fee to property; to acquire property adjacent to that required for public highway purposes for the purpose of exchanging it for the property required or for the purpose of replatting or re-arranging the property abutting on the highway after the taking so as to conform with the plan or arrangement in effect before the taking; and to acquire and to take the fee to a whole of a particular parcel of land whenever the acquisition of the portion thereof actually needed would destroy the practical value or utility of the remainder of such parcel, and the question as to whether or not such land is so taken shall be determined by the jury and incorporated in its findings: Provided, however, That before any proceedings are taken under this act involving the taking of any property or property rights in any city or village for the changing, altering, opening or widening of any street or highway, the consent of the village or city council by resolution shall be first obtained.

History: Add. 1945, Act 288, Imd. Eff. May 25, 1945 ;-- CL 1948, 213.23a

213.24 Condemnation proceedings; necessity declared; authorization; jurisdiction.

Sec. 4.

Proceedings may be commenced and prosecuted under this act whenever a public corporation or state agency shall have declared a public improvement or the purposes of its incorporation or public purposes within the scope of its powers make it necessary, and shall declare that it deems it necessary to take private property for such public improvement or for the purposes of its incorporation or for the public purposes within the scope of its powers, designating the same, and that the improvement is for the use or benefit of the public. It shall by resolution direct its attorney to institute the necessary proceedings in its behalf in the circuit court of the county where the private property sought to be taken is located, or if said property is in a city, the proceeding may be instituted in the court in said city having general jurisdiction of condemnation proceedings for the opening of streets and highways.

History: 1911, Act 149, Eff. Aug. 1, 1911 ;-- CL 1915, 356 ;-- CL 1929, 3766 ;-- CL 1948, 213.24

213.25 Condemnation proceedings; resolution; petition; contents; jury to determine necessity; compensation.

Sec. 5.

The public corporation or state agency shall make and deliver to its attorney a copy of such resolution certified under seal, and it shall be the duty of such attorney to prepare and file in the name of the corporation or state agency in the court having jurisdiction of the proceedings a petition signed by him in his official character and duly verified by him, to which petition a certified copy of the resolution of the corporation or state agency shall be annexed, which certified copy shall be prima facie evidence of the action taken by the corporation or state agency and of the passage of said resolution. The petition shall state among other things that it is made and filed as commencement of judicial proceedings by the corporation or state agency in pursuance of this act to acquire the right to take private property for the use or benefit of the public, without the consent of the owners, for a public improvement or for the purposes of its incorporation or for public purposes within the scope of its power, designating the same, for a just compensation to be made. A description of the property to be taken shall be given, and also the names of the owners and others interested in the property so far as can be ascertained. The petition shall also state that the corporation or state agency has declared such improvement or purpose to be necessary, and that it deems it necessary to take the private property described for such improvement or purpose, for the use or benefit of the public. The petition shall ask that a jury be summoned and impanelled to ascertain and determine whether it is necessary to make such public improvement or fulfill such purpose and whether it is necessary to take such property as it is proposed to do for the use or benefit of the public, and to ascertain and determine the just compensation to be made therefor. The petition may state any other pertinent matter or things, and may pray for any other or further relief to which the public corporation or state agency may be entitled within the objects of this act.

History: 1911, Act 149, Eff. Aug. 1, 1911 ;-- CL 1915, 357 ;-- CL 1929, 3767 ;-- CL 1948, 213.25

213.26-213.41 Repealed. 1980, Act 87, Eff. Apr. 1, 1983.

Compiler's Notes: The repealed sections pertained to orders for hearing on petition, orders for impaneling jury, court actions, and petitions to condemn land.

THE UNIFORM CONDEMNATION PROCEDURES ACT

Act 87 of 1980

AN ACT to provide procedures for the condemnation, acquisition, or exercise of eminent domain of real or personal property by public agencies or private agencies; to provide for an agency's entry upon land for certain purposes; to provide for damages; to prescribe remedies; and to repeal certain acts and parts of acts.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980 ;-- Am. 1988, Act 189, Eff. July 1, 1988

The People of the State of Michigan enact:

213.51 Definitions.

Sec. 1.

As used in this act:

- (a) "Acquire" or "take" means to secure transfer of ownership of property to an agency by involuntary expropriation.
- (b) "Acquisition" or "taking" means the transfer of ownership of property to an agency by involuntary expropriation.
- (c) "Agency" means a public agency or private agency.
- (d) "Appraisal" means an expert opinion of the value of property taken or damaged, or other expert opinion pertaining to the amount of just compensation.
- (e) "Constructive taking" or "de facto taking" means conduct, other than regularly established judicial proceedings, sufficient to constitute a taking of property within the meaning of section 2 of article X of the state constitution of 1963.
- (f) "Owner" means a person, fiduciary, partnership, association, corporation, or a governmental unit or agency having an estate, title, or interest, including beneficial, possessory, and security interest, in a property sought to be condemned.
- (g) "Parcel" means an identifiable unit of land, whether physically contiguous or not, having substantially common beneficial ownership, all or part of which is being acquired, and treated as separate for valuation purposes.
- (h) "Private agency" means a person, partnership, association, corporation, or entity, other than a public agency, authorized by law to condemn property.
- (i) "Property" means land, buildings, structures, tenements, hereditaments, easements, tangible and intangible property, and property rights whether real, personal, or mixed, including fluid mineral and gas rights.
- (j) "Public agency" means a governmental unit, officer, or subdivision authorized by law to condemn property.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980 ;-- Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996

213.51a Short title.

Sec. 1a.

This act shall be known and may be cited as "the uniform condemnation procedures act".

History: Add. 1980, Act 309, Imd. Eff. Dec. 4, 1980

213.52 Standards provided; limitations; applicable laws and court rules; commencement of condemnation action; proof of taking of property; certificate of public necessity as condition of instituting judicial proceedings.

Sec. 2.

(1) This act provides standards for the acquisition of property by an agency, the conduct of condemnation actions, and the determination of just compensation. It does not confer the power of eminent domain, and does not prescribe or restrict the purposes for which or the persons by whom that power may be exercised. All laws and court rules applicable to civil actions shall apply to condemnation proceedings except as otherwise provided in this act.

(2) If property is to be acquired by an agency through the exercise of its power of eminent domain, the agency shall commence a condemnation action for that purpose. An agency shall not intentionally make it necessary for an owner of property to commence an action, including an action for constructive taking or de facto taking, to prove the fact of the taking of the property.

(3) If a private agency is required by law to secure a certificate of public necessity from the public service commission or other public agency before it may acquire property, the private agency shall not institute judicial proceedings to acquire the property until it has secured the required certificate.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980

213.53 Fluid mineral and gas rights.

Sec. 3.

Fluid mineral and gas rights shall be considered excluded from an instrument by which an agency acquires an interest in land unless specifically included in the instrument. The exercise of the fluid mineral and gas rights, as permitted by law, shall not interfere with the use of the property acquired for a public purpose.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980

213.54 Payment of just compensation for property if practical value or utility of remainder destroyed; zoning variance; entry upon property; purpose; notice; restitution for actual damages; "actual damage" defined; civil action for order permitting entry; contents of complaint; granting limited license for entry; terms; manner of entry under subsection (3); "environmental inspection" defined.

Sec. 4.

(1) If the acquisition of a portion of a parcel of property actually needed by an agency would destroy the practical value or utility of the remainder of that parcel, the agency shall pay just compensation for the whole parcel. The agency may elect whether to receive title and possession of the remainder of the parcel. The question as to whether the practical value or utility of the remainder of the parcel of property is in fact destroyed shall be determined by the court or jury and incorporated in its verdict.

(2) If the acquisition of a portion of a parcel of property actually needed by an agency would leave the remainder of the parcel in nonconformity with a zoning ordinance, the agency, before or after acquisition, may apply for a zoning variance for the remainder of the parcel. In determining whether to grant the zoning variance, the governmental entity having jurisdiction to grant the variance shall consider the potential benefits of the public use for which the property would be acquired, in addition to those criteria applicable under the relevant zoning statute, ordinance, or regulation. The agency must actually acquire the portion of the parcel of property for the proposed public use for the zoning variance to become effective for the remainder. If a variance is granted under this subsection, the property shall be considered by the governmental entity to be in conformity with the zoning ordinance for all future uses with respect to the nonconformity for which that variance was granted. However, if the property was also nonconforming for other reasons, the grant of that variance has no effect on the status of those other preexisting nonconformities. An owner shall not increase the nonconformity for which a variance is granted under this section without the consent of the governmental entity. An agency has the same right to appeal action on a zoning variance as would a property owner seeking a zoning variance. This section does not deprive a governmental entity of its discretion to grant or deny a variance.

(3) An agency or an agent or employee of an agency may enter upon property before filing an action for the purpose of making surveys, measurements, examinations, tests, soundings, and borings; taking photographs or samplings; appraising the property; conducting an environmental inspection; conducting archaeological studies pursuant to section 106 of title I of the national historic preservation act, Public Law 89-665, 16 U.S.C. 470f; or determining whether the property is suitable to take for public purposes. The entry may be made upon reasonable notice to the owner and at reasonable hours. An entry made pursuant to this subsection shall not be construed as a taking. The owner or his or her representative shall be given a reasonable opportunity to accompany the agency's agent or employee during the entry upon the property. The agency shall make restitution for actual damage resulting from the entry, which may be recovered by special motion before the court or by separate action if an action for condemnation has not been filed. The term "actual damage" as used in this subsection does not include, and an agency shall not make restitution for, response activity, as defined in section 20101 of part 201 (environmental remediation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.20101 of the Michigan Compiled Laws, or diminution in the value or utility of a parcel that is caused by the discovery of information as the result of a survey, an appraisal, a measurement, photography, or an environmental inspection made pursuant to this section.

(4) If reasonable efforts to enter under subsection (3) have been obstructed or denied, the agency may commence

a civil action in the circuit court in the county in which the property or any part of the property is located for an order permitting entry. The complaint shall state the facts making the entry necessary, the date on which entry is sought, and the duration and the method proposed for protecting the defendant against damage. The court may grant a limited license for entry upon such terms as justice and equity require, including the following:

- (a) A description of the purpose of the entry.
- (b) The scope of activities that are permitted.
- (c) The terms and conditions of the entry with respect to the time, place, and manner of the entry.
- (5) An entry made under subsection (3) or (4) shall be made in a manner that minimizes any damage to the property and any hardship, burden, or damage to a person in lawful possession of the property.
- (6) As used in this section, "environmental inspection" means the testing or inspection including the taking of samples of the soil, groundwater, structures, or other materials or substances in, on, or under the property for the purpose of determining whether chemical, bacteriological, radioactive, or other environmental contamination exists and, if it exists, the nature and extent of the contamination.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980 ;-- Am. 1988, Act 189, Eff. July 1, 1988 ;-- Am. 1996, Act 58, Imd. Eff. Feb. 26, 1996 ;-- Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996

213.55 Just compensation; amount; written notice to occupants; offer; review of appraisal; filing complaint for acquisition; "comparable replacement dwelling" defined; financial information; documents; determination of just compensation; items annexed to complaint; deposit; payment of additional amount for property which is principal residence; "taxable value" defined.

Sec. 5.

(1) Before initiating negotiations for the purchase of property, the agency shall establish an amount that it believes to be just compensation for the property and promptly shall submit to the owner a good faith written offer to acquire the property for the full amount so established. At the same time, if the taking of the property might require relocation, the agency shall provide written notice to the occupants of the property stating that an eminent domain proceeding has commenced and outlining the occupants' basic legal rights in the process, including, but not limited to, the fact that any person who has a leasehold interest of less than 6 months is entitled to a \$3,500.00 moving allowance as provided under section 2 of 1965 PA 40, MCL 213.352, and that an individual who is a residential occupant may not be displaced until moving expenses or a moving allowance is paid as provided under 1965 PA 40, MCL 213.351 to 213.355, and the person has had a reasonable opportunity, not to exceed 180 days after the payment date of moving expenses or the moving allowance as provided under 1965 PA 40, MCL 213.351 to 213.355, to relocate to a comparable replacement dwelling. If there is more than 1 owner of a parcel, the agency may make a single, unitary good faith written offer. The good faith offer shall state whether the agency reserves or waives its rights to bring federal or state cost recovery actions against the present owner of the property arising out of a release of hazardous substances at the property and the agency's appraisal of just compensation for the property shall reflect such reservation or waiver. The amount shall not be less than the agency's appraisal of just compensation for the property. If the owner fails to provide documents or information as required by subsection (2), the agency may base its good faith written offer on the information otherwise known to the agency whether or not the agency has sought a court order under subsection (2). The agency shall provide the owner of the property and the owner's attorney with an opportunity to review the written appraisal, if an appraisal has been prepared, or if an appraisal has not been prepared, the agency shall provide the owner or the owner's attorney with a written statement and summary, showing the basis for the amount the agency established as just compensation for the property. If an agency is unable to agree with the owner for the purchase of the property, after making a good faith written offer to purchase the property, the agency may file a complaint for the acquisition of the property in the circuit court in the county in which the property is located. If a parcel of property is situated in 2 or more counties and an owner resides in 1 of the counties, the complaint shall be filed in the county in which the owner is a resident. If a parcel of property is situated in 2 or more counties and an owner does not reside in 1 of the counties, the complaint may be filed in any of the counties in which the property is situated. The complaint shall ask that the court ascertain and determine just compensation to be made for the acquisition of the described property. As used in this subsection, "comparable replacement dwelling" means any dwelling that is all of the following:

- (a) Decent, safe, and sanitary.
- (b) Adequate in size to accommodate the occupants.
- (c) Within the financial means of the individual.
- (d) Functionally equivalent.
- (e) In an area not subject to unreasonable adverse environmental conditions.

(f) In a location generally not less desirable than the location of the individual's dwelling with respect to public utilities, facilities, services, and the individual's place of employment.

(2) During the period in which the agency is establishing just compensation for the owner's parcel, the agency has the right to secure tax returns, financial statements, and other relevant financial information for a period not to exceed 5 years before the agency's request. The owner shall produce the information within 21 business days after receipt of a written request from the agency. The agency shall reimburse the owner for actual, reasonable costs incurred in reproducing any requested documents, plus other actual, reasonable costs of not more than \$1,000.00 incurred to produce the requested information. Within 45 days after production of the requested documents and other information, the owner shall provide to the agency a detailed invoice for the costs of reproduction and other costs sought. The owner is not entitled to a reimbursement of costs under this subsection if the reimbursement would be duplicative of any other reimbursement to the owner. If the owner fails to provide all documents and other information requested by the agency under this section, the agency may file a complaint and proposed order to show cause in the circuit court in the county specified in subsection (1). The court shall immediately hold a hearing on the agency's proposed order to show cause. The court shall order the owner to provide documents and other information requested by the agency that the court finds to be relevant to a determination of just compensation. An agency shall keep documents and other information that an owner provides to the agency under this section confidential. However, the agency and its experts and representatives may utilize the documents and other information to determine just compensation, may utilize the documents and other information in legal proceedings under this act, and may utilize the documents and other information as provided by court order. If the owner unreasonably fails to timely produce the documents and other information, the owner shall be responsible for all expenses incurred by the agency in obtaining the documents and other information. This section does not affect any right a party may otherwise have to discovery or to require the production of documents and other information upon commencement of an action under this act. A copy of this section shall be provided to the owner with the agency's request.

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

(a) If an owner claims that the agency is taking property other than the property described in the good faith written offer or claims a right to compensation for damage caused by the taking, apart from the value of the property taken, and not described in the good faith written offer, the owner shall file a written claim with the agency stating the nature and substance of that property or damage. The owner's written claim shall provide sufficient information and detail to enable the agency to evaluate the validity of the claim and to determine its value. The owner shall file the claim within 90 days after the good faith written offer is made pursuant to section 5(1) or 180 days after the complaint is served, whichever is later, unless a later date is set by the court for reasonable cause. If the appraisal or written estimate of value is provided within the established period for filing written claims, the owner's appraisal or written estimate of value may serve as the written claim under this act. If the owner fails to timely file the written claim under this subsection, the claim is barred.

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

(c) For any claim that has not fully accrued or is continuing in nature when the claim is filed, the owner shall provide information then reasonably available that would enable the agency to evaluate the claim, subject to the owner's continuing duty to supplement that information as it becomes available. The owner shall provide all supplementary information at least 90 days before trial, and the court shall afford the agency a reasonable opportunity for discovery once all supplementary information is provided and allow that discovery to proceed until 30 days before trial. For reasonable cause, the court may extend the time for the owner to provide information to the agency and for the agency to complete discovery. If the owner fails to provide supplementary information as required under this subdivision, the court may assess an appropriate sanction in accordance with the Michigan court rules for failing to comply with discovery orders, including, but not limited to, barring the claim. In addition, the court also shall consider any failure to provide timely supplemental information when it determines the maximum reimbursable attorney fees under section 16.

(d) After receiving a written claim from an owner, the agency may provide written notice that it contests the compensability of the claim, establish an amount that it believes to be just compensation for the claim, or reject the claim. If the agency establishes an amount it believes to be just compensation for the claim, the agency shall submit a good faith written offer for the claim. The sum of the good faith written offer for all claims submitted under this subsection or otherwise disclosed in discovery for all items of property or damage plus the original good faith

written offer constitutes the good faith written offer for purposes of determining the maximum reimbursable attorney fees under section 16.

(e) If the owner files a claim that is frivolous or in bad faith, the agency is entitled to recover from the owner its actual and reasonable expenses incurred to evaluate the validity and to determine the value of the claim.

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

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

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

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

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

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

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

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

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

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

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

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

(6) If the property being taken is a principal residence for which an exemption from certain local taxation is granted under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc, the agency is obligated to pay an additional amount to the owner or owners, which shall be deposited along with the amount estimated to be just compensation as provided in subsection (5). The additional amount shall be determined by subtracting the taxable value from the state equalized value, multiplying that amount by the total property tax millage rate applicable to the property taken, and multiplying that result by the number of years the owner or owners have owned the principal residence, but not more than 5 years.

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

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980 ;-- Am. 1985, Act 68, Imd. Eff. July 1, 1985 ;-- Am. 1993, Act 308, Eff. Jan. 28, 1994 ;-- Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996 ;-- Am. 2006, Act 439, Eff. Dec. 23, 2006

213.56 Challenge by owner; motion to review necessity; hearing; determination by public agency binding on court; judicial determination of public necessity in acquisition by private agency; certificate by public service commission or federal agency as prima facie case; decision of court; final judgment; appeal; conclusive presumption of necessity.

Sec. 6.

(1) Within the time prescribed to responsively plead after service of a complaint, an owner of the property desiring to challenge the necessity of acquisition of all or part of the property for the purposes stated in the complaint may file a motion in the pending action asking that the necessity be reviewed. The hearing shall be held within 30 days after the filing of the motion.

(2) With respect to an acquisition by a public agency, the determination of public necessity by that agency is binding on the court in the absence of a showing of fraud, error of law, or abuse of discretion.

(3) Except as otherwise provided in this section, with respect to an acquisition by a private agency, the court at

the hearing shall determine the public necessity of the acquisition of the particular parcel. The granting of a permanent or temporary certificate by the public service commission or by a federal agency authorized by federal law to make determinations of public convenience and necessity as to condemnation constitutes a prima facie case that the project in furtherance of which the particular parcel would be acquired is required by the public convenience and necessity. The granting of a certificate of public convenience and necessity by the public service commission pursuant to the electric transmission line certification act, Act No. 30 of the Public Acts of 1995, being sections 460.561 to 460.575 of the Michigan Compiled Laws, is binding on the court.

(4) The court shall render a decision within 60 days after the date on which the hearing is first scheduled.

(5) The court's determination of a motion to review necessity is a final judgment.

(6) Notwithstanding section 309 of the revised judiciary act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.309 of the Michigan Compiled Laws, an order of the court upholding or determining public necessity or upholding the validity of the condemnation proceeding is appealable to the court of appeals only by leave of that court pursuant to the general court rules. In the absence of a timely filed appeal of the order, an appeal shall not be granted and the order is not appealable as part of an appeal from a judgment as to just compensation.

(7) If a motion to review necessity is not filed as provided in this section, necessity shall be conclusively presumed to exist and the right to have necessity reviewed or further considered is waived.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980 ;-- Am. 1995, Act 31, Imd. Eff. May 17, 1995 ;-- Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996

213.56a Reversal of agency's election of reservation of rights; revised good faith offer; stipulation to reverse agency election and waive cost recovery claim against owner.

Sec. 6a.

(1) If an agency elects to reserve its rights to bring a state or federal cost recovery claim against an owner, the court upon motion of the owner, which must be filed within the time prescribed to responsively plead after service of a complaint, may reverse that election and order the agency to waive its claims, 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, 1 or more of the following circumstances exist with respect to the property:

(a) The property is a single family residence and has been used solely for residential purposes.

(b) The property is "agricultural property" as defined in section 20101 of part 201 (environmental remediation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.20101 of the Michigan Compiled Laws, and the reservation of rights arises out of a release of hazardous substances caused by the application of a fertilizer, soil conditioner, agronomically applied manure, or a pesticide or a combination of these substances according to label directions and according to generally accepted agricultural and management practices, as defined by the Michigan right to farm act, Act No. 93 of the Public Acts of 1981, being sections 286.471 to 286.474 of the Michigan Compiled Laws.

(c) 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 the agency's appraised value of the property.

(2) If the court reverses the agency's election of reservation of rights under subsection (1), the agency shall submit to the owner a revised good faith offer. The revised good faith offer shall be considered the good faith offer for purposes of sections 5 and 16.

(3) An agency and an owner may stipulate that the agency will reverse its election and waive its rights to bring a state or federal cost recovery claim against an owner.

History: Add. 1993, Act 308, Eff. Jan. 28, 1994 ;-- Am. 1996, Act 58, Imd. Eff. Feb. 26, 1996

213.57 Vesting of title in agency; vesting of right to just compensation; delay or denial.

Sec. 7.

(1) If a motion to review necessity is not filed under section 6, the title to the property described in the petition shall vest in the agency as of the date on which the complaint was filed. The right to just compensation shall then

vest in the persons entitled to the compensation and be secured as provided in this act. If the motion to review necessity is denied after a hearing and after any further right to appeal has terminated, title to the property shall also vest in the agency as of the date on which the complaint was filed or such other date as the court may set upon motion of the agency.

(2) Vesting of title in the agency shall not be delayed or denied because of any of the following:

(a) A motion filed under section 6a, challenging the agency's election to reserve its rights to bring federal or state cost recovery actions.

(b) A motion challenging the agency's escrow under section 8.

(c) An allegation that the agency should have offered a higher amount for the property.

(d) An allegation that the agency should have included additional property in its good faith written offer.

(e) Any other reason except a challenge to the necessity of the acquisition filed under section 6.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980 ;-- Am. 1993, Act 308, Eff. Jan. 28, 1994 ;-- Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996

213.58 Payment by escrowee of money deposited; funds remaining in escrow as security for remediation costs; court order; released funds; circumstances; reversal of agency's election under MCL 213.56a(1); applicability of subsections (2) and (3); "principal residence" defined.

Sec. 8.

(1) Except as provided in subsections (2) and (3), if a motion for review under section 6 is not filed or is denied and the right to appeal has terminated or if interim possession is granted under section 9, the court shall order the escrowee to pay the money deposited under section 5 for or on account of the just compensation that may be awarded under section 13. Except as provided in subsections (2) and (3), if a motion for review under section 6 is not filed, the court shall, within 30 days, order the escrowee to pay the money deposited under section 5 for or on account of the just compensation that may be awarded under section 13. Upon the motion of any party, the court shall apportion the estimated compensation among the claimants to the compensation.

(2) Except as provided in subsection (5), if the agency reserves its rights to bring a state or federal cost recovery claim against an owner, under circumstances that the court considers just, the court may allow any portion of the money deposited under section 5 to remain in escrow as security for remediation costs of environmental contamination on the condemned parcel. An agency shall present an affidavit and environmental report establishing that the funds placed on deposit under section 5 are likely to be required to remediate the property. The amount in escrow shall not exceed the likely costs of remediation if the property were used for its highest and best use. This subsection does not limit or expand an owner's or agency's rights to bring federal or state cost recovery claims.

(3) Notwithstanding any order entered by the court requiring money deposited pursuant to section 5 to remain in escrow for the payment of estimated remediation costs of contaminated property, the funds in escrow, plus interest subject to section 15, shall be released among the claimants to the just compensation under circumstances that the court considers just, including any of the following circumstances:

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

(b) The court finds that the anticipated need for the remediation of the alleged environmental contamination is not required or is not required to the extent of the funds remaining on deposit.

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

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

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

(4) If the court orders the agency to reverse its election under section 6a(1), the court shall order the escrowee to pay the amount of the revised good faith written offer for or on account of the just compensation that may be awarded pursuant to section 13, and to pay the balance of the escrow to the agency. If the agency seeks possession before the court decides whether to reverse the agency's election or before submitting a revised good faith offer, the agency may request that the court order a portion of the escrow withheld in anticipation of a reduction in the revised good faith offer, with the balance to be paid by the escrowee for or on account of the just compensation that may be awarded pursuant to section 13. If the court denies the request to reverse the agency's election or when the revised good faith offer is submitted, the court shall order the escrowee to pay any unpaid portion of it for or on account of the owner and to pay any balance to the agency.

(5) Subsections (2) and (3) do not apply to money deposited under section 5 in escrow for the payment of just

compensation for an owner's principal residence, if the principal residential structure is actually taken or the amount of the property taken leaves less property contiguous to the principal residential structure than the minimum lot size if the local governing unit has implemented a minimum lot size by zoning ordinance. This subsection does not limit or expand an owner's or agency's rights to bring federal or state cost recovery claims. As used in this subsection, "principal residence" means a principal residence for which an exemption from certain local taxation is granted under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980 ;-- Am. 1993, Act 308, Eff. Jan. 28, 1994 ;-- Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996 ;-- Am. 2006, Act 438, Eff. Dec. 23, 2006

213.59 Surrender of possession of property to agency; time and terms; enforcement; granting interim possession to private agency; indemnity bond; appeal; liability for damages; repayment as condition of order setting aside determination of public necessity; delay or denial; escrow payment; relocation; "comparable replacement dwelling" defined.

Sec. 9.

(1) If a motion for review under section 6 is not filed, upon expiration of the time for filing the motion for review, or, if a motion for review is filed, upon final determination of the motion, the court shall fix the time and terms for surrender of possession of the property to the agency and enforce surrender by appropriate order or other process. The court also may require surrender of possession of the property after the motion for review filed under section 6 has been heard, determined and denied by the circuit court, but before a final determination on appeal, if the agency demonstrates a reasonable need.

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

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

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

(5) Although the court shall not order possession to be surrendered to the agency before it orders that the escrow be distributed under section 8(1) or (4) or retained under section 8(2), the court shall not delay or deny surrender of possession because of any of the following:

(a) A motion filed pursuant to section 6a, challenging the agency's decision to reserve its rights to bring federal or state cost recovery actions.

(b) A motion challenging the agency's escrow under section 8.

(c) An allegation that the agency should have offered a higher amount for the property.

(d) An allegation that the agency should have included additional property in its good faith written offer.

(e) Any other reason except a challenge to the necessity of the acquisition filed under section 6.

(6) The payment of escrow, as ordered under subsection (5), must be made no later than 30 days before physical dispossession. If there is a dispute after the payment is made, the dispute shall be resolved at an apportionment hearing held before physical dispossession.

(7) The following special provisions apply if the surrender of possession of property pursuant to the transfer of title to the property in condemnation proceedings requires the relocation of the owner or another occupant:

(a) If the surrender or possession of property requires the relocation of any individual who occupies a residential dwelling on the property, the individual shall not be required to move from his or her dwelling unless he or she has had a reasonable opportunity not to exceed 180 days after the payment date of moving expenses or the moving allowance provided under 1965 PA 40, MCL 213.351 to 213.355, to relocate to a comparable replacement dwelling.

(b) However, if the agency is complying with applicable federal regulations and procedures regarding payment of compensation or relocation requirements, those federal regulations and procedures take precedence over any conflicting provisions in this section.

(8) As used in this section, "comparable replacement dwelling" means any dwelling that is all of the following:

(a) Decent, safe, and sanitary.

(b) Adequate in size to accommodate the occupants.

(c) Within the financial means of the individual.

- (d) Functionally equivalent.
- (e) In an area not subject to unreasonable adverse environmental conditions.
- (f) In a location generally not less desirable than the location of the individual's dwelling with respect to public utilities, facilities, services, and the individual's place of employment.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980 ;-- Am. 1993, Act 308, Eff. Jan. 28, 1994 ;-- Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996 ;-- Am. 2006, Act 371, Eff. Dec. 23, 2006

213.60 Order fixing date for hearing.

Sec. 10.

Upon filing the complaint, the court shall enter an order fixing a day for a hearing which shall not be less than 21 days after the complaint is served. The order shall recite or have annexed to the order the names of the persons mentioned in the complaint as owners, reasonably describe the property to be taken, state the purpose of the complaint, and order the persons to appear before the court at the time fixed in the order for the hearing on the complaint.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980

213.61 Scheduling order; exchange of appraisal reports; opportunity for discovery; appraisal report; testimony relating to value of real property; orders to facilitate compliance.

Sec. 11.

(1) Upon motion of either party, the court shall issue a scheduling order to assure that the appraisal reports are exchanged and the parties are afforded a reasonable opportunity for discovery before a case is submitted to mediation, alternative dispute resolution, or trial.

(2) An appraisal report provided pursuant to this section shall fairly and reasonably describe the methodology and basis for the amount of the appraisal. If the testimony or opinion of a person relating to the value of real property would require a license under article 26 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.2601 to 339.2637 of the Michigan Compiled Laws, the appraisal shall comply with section 2609 of Act No. 299 of the Public Acts of 1980, being section 339.2609 of the Michigan Compiled Laws, and the standards adopted under section 2609 of Act No. 299 of the Public Acts of 1980 and the person shall not be permitted to testify or otherwise render an opinion relating to the value of real property unless the person is licensed under that article. An owner is not required to be licensed or to comply with professional appraisal standards to testify to the value of the owner's property.

(3) The court may issue orders to facilitate compliance with this section, including but not limited to orders to require mutual simultaneous exchange of the agency's updated appraisal report, if any, and the owner's appraisal report. If an appraisal report has not been provided pursuant to this section, the appraisal report shall not be considered in mediation or alternative dispute resolution proceedings unless specifically authorized by court order. If an appraisal report has not been provided pursuant to this section, the court may bar the taking of appraisal testimony from the appraisal expert, unless the court finds good cause for the failure and finds that the interests and opportunity of the other party to prepare have not been prejudiced.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980 ;-- Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996

213.62 Just compensation; trial by jury.

Sec. 12.

(1) A plaintiff or defendant may demand a trial by jury as to the issue of just compensation pursuant to applicable law and court rules. The jury shall consist of 6 qualified electors selected pursuant to chapter 13 of Act No. 236 of the Public Acts of 1961, as amended, being sections 600.1301 to 600.1376 of the Michigan Compiled Laws, and shall be governed by court rules applicable to juries in civil cases in circuit court.

(2) Unless there is good cause shown to the contrary, there shall be a separate trial as to just compensation with respect to each parcel.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980

213.63 Just compensation; verdict; division of award.

Sec. 13.

The jury or the court shall award in its verdict just compensation for each parcel. After awarding the verdict, on request of any party, the court shall divide the award among the respective parties in interest, whether the interest is that of mortgagee, lessee, lienor, or otherwise, in accordance with proper evidence submitted by the parties in interest.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980

213.63a Duplicative payment prohibited.

Sec. 13a.

A person is not entitled to a payment in connection with the acquisition of all or part of that person's property under this act if that payment would be duplicative of any grant or other payment received under any state or federal statute or regulation.

History: Add. 1996, Act 474, Imd. Eff. Dec. 26, 1996

213.64 Notes and exhibits to assist jury.

Sec. 14.

To assist the jury in arriving at its verdict the court may allow the jury when it retires to take with it notes and any map, plan, or other exhibit admitted in the case as an exhibit.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980

213.65 Interest on judgment amount.

Sec. 15.

(1) The court shall award interest on the judgment amount or part of the amount from the date of the filing of the complaint to the date that payment of the amount or part of the amount is tendered. However, if a portion of the judgment is attributable to damages incurred after the date of surrender of possession, the court shall award interest

on that portion of the judgment from the date the damage is incurred.

(2) Interest shall be computed at the interest rate applicable to a federal income tax deficiency or penalty. However, an owner remaining in possession after the date that the complaint is filed waives the interest for the period of the possession.

(3) If it is determined that a de facto acquisition occurred at a date earlier than the date of filing the complaint, interest awarded under this section shall be calculated from the earlier date.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980 ;-- Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996

213.66 Witness fees and compensation; reimbursement of owner's attorney fees and other expenses; matters involving relocation of indigent person; "indigent person" defined.

Sec. 16.

(1) Except as provided in this section, an ordinary or expert witness in a proceeding under this act shall receive from the agency the reasonable fees and compensation provided by law for similar services in ordinary civil actions in circuit court, including the reasonable expenses for preparation and trial.

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

(3) 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 1/3 of the amount by which the ultimate award exceeds the agency's written offer as defined by section 5. The reasonableness of the owner's attorney fees shall be determined by the court. If the agency or owner is ordered to pay attorney fees as sanctions under MCR 2.403 or 2.405, those attorney fee sanctions shall be paid to the court as court costs and shall not be paid to the opposing party unless the parties agree otherwise.

(4) If the agency settles a case before entry of a verdict or judgment, it may stipulate to pay reasonable attorney and expert witness fees.

(5) Expert witness fees provided for in this section shall be allowed with respect to an expert whose services were reasonably necessary to allow the owner to prepare for trial. For the purpose of this section, for each element of compensation, each party is limited to 1 expert witness to testify on that element of compensation unless, upon showing of good cause, the court permits additional experts. The agency's liability for expert witness fees shall not be diminished or affected by the failure of the owner to call an expert as a witness if the failure is caused by settlement or other disposition of the case or issue with which the expert is concerned.

(6) Except as provided in subsection (7), an agency is not required to reimburse attorney or expert witness fees attributable to an unsuccessful challenge to necessity or to the validity of the proceedings.

(7) In any matter under this act involving the relocation of an indigent person, other than a proceeding concerning the taking of property for the construction of a government-owned transportation project, the court may award reasonable attorney and expert witness fees attributable to an unsuccessful challenge to necessity or to the validity of the proceedings if the court finds that there was a reasonable and good faith claim that the property was not being taken for a public use. This subsection does not affect the right of an indigent person who successfully challenges the agency's right to acquire the property to recover attorney fees, ordinary or expert witness fees, and other expenses incurred in defending against the improper acquisition, as authorized by subsections (1) to (5). As used in this subsection, "indigent person" means an individual whose annual income is at or below 200% of the federal poverty guidelines published by the United States department of health and human services. This subsection does not apply after December 31, 2007.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980 ;-- Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996 ;-- Am. 2006, Act 370, Eff. Dec. 23, 2006

213.67 Discontinuance.

Sec. 17.

The agency shall not discontinue the action after the granting of possession or vesting of title to the property taken. In case of a discontinuance, the agency, as a condition of discontinuance, shall pay the actual expenses, reasonable attorney fees, and actual damages to all the parties affected by the discontinuance as determined by the court.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980

213.68 Reimbursement of expenses in evaluating agency's offer, preparing for trial, or negotiating settlement; enforcement of rights; filing claim.

Sec. 18.

(1) If any agency acquires property without commencement of an action or abandons its efforts to acquire property after making the jurisdictional good faith written offer required by section 5 to the owners of the property and if the owners of the property reasonably relied upon the agency's action, the owners shall be reimbursed by the agency for the reasonable expenses incurred in evaluating the agency's good faith written offer, in preparing for trial, or in negotiating a settlement, if those expenses would have been taxable as costs under section 16. For the purpose of this section, the jurisdictional written offer includes only written offers made under threat of institution of judicial proceedings to acquire the property.

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

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

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980 ;-- Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996

213.69 Agreement on compensation or method of determining compensation.

Sec. 19.

At any stage of the proceedings, the agency and the owner may agree upon all or part of the compensation, or upon a method for determining all or a part of the compensation, and may proceed to have those parts not agreed upon determined as provided in this act. The agency may make payment of a part of the compensation agreed upon, or enter into a contract to pay in the future based upon an agreed method of determining the compensation.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980

213.70 Determination of fair market value.

Sec. 20.

(1) A change in the fair market value before the date of the filing of the complaint which the agency or the owner establishes was substantially due to the general knowledge of the imminence of the acquiring by the agency, other than that due to physical deterioration of the property within the reasonable control of the owner, shall be disregarded in determining fair market value. Except as provided in section 23, the property shall be valued in all cases as though the acquisition had not been contemplated.

(2) The general effects of a project for which property is taken, whether actual or anticipated, that in varying degrees are experienced by the general public or by property owners from whom no property is taken, shall not be considered in determining just compensation. A special effect of the project on the owner's property that, standing alone, would constitute a taking of private property under section 2 of article X of the state constitution of 1963 shall be considered in determining just compensation. To the extent that the detrimental effects of a project are considered to determine just compensation, they may be offset by consideration of the beneficial effects of the project.

(3) The date of acquiring and of valuation in a proceeding pursuant to this act shall be the date of filing unless the parties agree to a different date, or unless a different date is determined by a counterclaim filed under section 21. The value of each parcel, and of a part of a parcel remaining after the acquisition of a part of the parcel, shall be determined with respect to the condition of the property and the state of the market on the date of valuation. However, if anticipated damages are avoided because of changes in the taking or project or changes in the actual effect of the taking or project on the remaining property, the property shall be valued as if those damages had not been anticipated.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980 ;-- Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996

213.71 Counterclaim.

Sec. 21.

A defendant may assert as a counterclaim, any claim for damages based on conduct by an agency which constitutes a constructive or de facto taking of property.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980

Compiler's Notes: Former MCL 213.71 to 213.94, deriving from Act 124 of 1883 and pertaining to the taking of property by cities, villages, and counties, were repealed by Act 120 of 1967.

213.72 Lease, sale, or conveyance of property; terms; record.

Sec. 22.

If property is acquired by an agency, the agency may lease, sell, or convey any portion not needed, on whatever terms the agency considers proper. A record of the leases and sales, showing the appraised value, the sale price, and other pertinent information, shall be kept in the office of the agency.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980

Compiler's Notes: Former MCL 213.71 to 213.94, deriving from Act 124 of 1883 and pertaining to the taking of property by cities, villages, and counties, were repealed by Act 120 of 1967.

213.73 Enhancement in value as consideration in determining compensation; complaint; compensation; requiring agency to acquire portion claimed to be enhanced; burden of proof.

Sec. 23.

(1) Enhancement in value of the remainder of a parcel, by laying out, altering, widening, or other types of improvement; by changing the scope or location of the improvement; or by either action in combination with discontinuing an improvement, shall be considered in determining compensation for the taking.

(2) When enhancement in value is to be considered in determining compensation, the agency shall set forth in the complaint the fact that enhancement benefits are claimed and describe the construction proposed to be made which will create the enhancement. If the construction is not completed in substantial compliance with the plan upon

which the agency based its claim of enhancement benefits, the owner may reopen the question of compensation within 1 year after the termination of construction. If the construction is not in substantial compliance, the owner is entitled to the difference between the value of the property as affected by the actual construction and the value of the property as it would have been, had construction been completed according to plan. The owner shall not recover more compensation than would have been payable if there was not a claim of enhancement benefits.

(3) Upon demand of the owner before trial, the court may require the agency to acquire that portion of the remainder of the tract which the agency claims to be enhanced if the agency claims enhancement. This subsection shall not apply if the agency withdraws its claim of enhancement benefits before trial.

(4) The agency has the burden of proof with respect to the existence of enhancement benefits.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980

Compiler's Notes: Former MCL 213.71 to 213.94, deriving from Act 124 of 1883 and pertaining to the taking of property by cities, villages, and counties, were repealed by Act 120 of 1967.

213.74 Coercive actions prohibited.

Sec. 24.

In order to compel an agreement on the price to be paid for the property, an agency may not advance the time of condemnation, defer negotiations or condemnation, defer the deposit of funds for the use of the owner, nor take any other action coercive in nature.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980

Compiler's Notes: Former MCL 213.71 to 213.94, deriving from Act 124 of 1883 and pertaining to the taking of property by cities, villages, and counties, were repealed by Act 120 of 1967.

213.75 Commencement of actions for acquisition of property.

Sec. 25.

All actions for the acquisition of property by an agency under the power of eminent domain shall be commenced pursuant to and be governed by this act. Amendments made to this act by the amendatory act that added this sentence shall apply to all good faith written offers made after the effective date of the amendatory act that added this sentence.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980 ;-- Am. 1980, Act 309, Imd. Eff. Dec. 4, 1980 ;-- Am. 1985, Act 68, Imd. Eff. July 1, 1985 ;-- Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996

Compiler's Notes: Former MCL 213.71 to 213.94, deriving from Act 124 of 1883 and pertaining to the taking of property by cities, villages, and counties, were repealed by Act 120 of 1967.

213.76, 213.77 Repealed. 1996, Act 474, Imd. Eff. Dec. 26, 1996.

Compiler's Notes: The repealed sections pertained to repeal of MCL 213.26 to 213.41, 213.366 to 213.390, and 486.252a to 486.252j.

TAKING OF PUBLIC UTILITY BY CITY

Act 119 of 1919

AN ACT to authorize any city having a population of 25,000 or more to take for public use the absolute title in fee to any public utility for supplying water, light, heat, power or transportation to the municipality and the inhabitants thereof within or without its corporate limits.

History: 1919, Act 119, Eff. Aug. 14, 1919

The People of the State of Michigan enact:

213.111 Cities, authority to take over public utilities.

Sec. 1.

Any city in this state having a population of 25,000 or more is hereby authorized to take for public use the absolute title in fee to any public utility for supplying water, light, heat, power or transportation to the municipality and the inhabitants thereof within or without its corporate limits, the same being then and there the private property of any person or of any corporation, within the limits of the state constitution, and to institute and prosecute proceedings for that purpose.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3811 ;-- CL 1948, 213.111

213.112 Institution of proceedings; council's resolution of necessity, contents; circuit court, jurisdiction.

Sec. 2.

Such proceedings may be begun and prosecuted under this act whenever the common council of such city shall have declared by resolution that it deems it necessary that such city take for public use the absolute title in fee to any such public utility. Such resolution shall describe the property sought to be taken for public use and direct the city attorney, corporation counsel or other law officer of the city by whatsoever name or title designated, to institute the necessary proceedings on behalf of such city to carry out the object of such resolution to take the absolute title in fee to private property by such city. Jurisdiction is hereby conferred upon the circuit court for the county in which such city is situated.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3812 ;-- CL 1948, 213.112

213.113 Institution of proceedings; petition, contents; separate juries on request to determine necessity, damages.

Sec. 3.

The city clerk shall make and deliver to such attorney or other law officer of the city, as may be, a copy of such resolution certified under the seal of the city and it shall be the duty of such attorney, corporation counsel or other law officer of the city to prepare and file in the name of the city, in such circuit court a petition signed by him in his official character and duly verified by him, to which petition a certified copy of the resolution of the common council shall be annexed. Said certified copy shall be prima facie evidence of the action taken by the common council and of the passage of said resolution. The petition shall state, among other things, that it is made and filed as commencement of judicial proceedings by the city in pursuance of this act to acquire the right to take, for public use, either within or without its corporate limits, the absolute title in fee to public utilities for supplying water, light, heat, power or transportation to the municipality and the inhabitants thereof, the same being then and there the private property of any person or of any corporation, without the consent of the owners, for a just compensation to be made. A description of the property to be taken shall be given and, generally, the nature and extent of the use

thereof that will be required in making and maintaining the property shall be stated, and also the names of the owners and others interested in the property, so far as can be ascertained, including those in possession of the premises. The petition shall ask that a jury be summoned and empaneled to ascertain and determine whether it is necessary to take for public use the absolute title in fee to such private property as it is proposed to take and to ascertain and determine the just compensation to be made therefor. The petition may state any other pertinent matters or things and may pray for any other or further relief to which the city may be entitled within the objects of this act: Provided always, That upon request of said city attorney, corporation counsel or other law officer of the city, made at any time before the empaneling of a jury, such jury shall be empaneled to try only the question of the necessity of taking the absolute title in fee to such private property for public use, and if such jury determine that it is necessary to take the absolute title in fee to such private property for such public use, that another jury be empaneled to determine the compensation to which any person or persons may be entitled because of the taking of such property for public use, in manner and form as is hereinafter provided.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3813 ;-- CL 1948, 213.113

213.114 Summons; issuance, contents.

Sec. 4.

Upon receiving such petition it shall be the duty of the clerk of said court to issue a summons against the respondents named in said petition, stating briefly the object of said petition, and commanding them in the name of the people of the state of Michigan to appear before said court, at a time and place to be named in said summons, not less than 20 nor more than 40 days from the date of the same, there to show cause, if any they have, why the prayer of said petition should not be granted.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3814 ;-- CL 1948, 213.114

213.115 Summons; service; guardian ad litem; alias, pluries summons; return, evidence.

Sec. 5.

Said summons shall be served by the sheriff, under-sheriff, deputy sheriff of the county, or by any member of the metropolitan police of the city of Detroit, at least 5 days before the return day thereof upon all of the respondents found within the county by exhibiting the original and delivering a copy to each of them. If any respondent who is a resident of the county can not be found, the summons shall be served by leaving a copy thereof at his or her usual or last place of abode, with some person of suitable age and discretion. If any minor or person of unsound mind is interested in the premises to be taken, service may be made upon the guardian of such person, if any, and if there is no guardian the court may appoint some discreet and proper person to be guardian of such person in such proceedings; any such guardian shall have authority to represent such person in said proceedings. The proceedings to appoint such guardian shall be the same as in other cases provided by statute. If it shall appear on the return day of the summons that any respondent can not be found within the county and has not been served in the manner provided, or is a non-resident and has not voluntarily appeared, the court may make an order requiring such respondent or respondents to appear and show cause why the prayer of the petition should not be granted on a day to be named in the order not less than 30 days from the date thereof, and may require that a certified copy of such order be personally served on such respondents wherever found, if practicable, at least 6 days before the time named in the order for appearance, or the court may make such order for appearance and require as to any or all such respondents who shall not have been personally served and have not appeared, that service be made by publishing a certified copy of such order for 3 successive weeks at least once in each week in at least 1 newspaper published within the county, if there be one, and if not then in a paper published in the county nearest thereto, the last publication to be at least 6 days before the day fixed in the order for appearance. Alias and pluries summons may be issued and the court may adjourn the proceedings from time to time as there shall be occasion and as in other civil cases. Service of such order for appearance in either mode prescribed shall be sufficient notice of the proceedings to bind the respondents and the property represented by them. The return of the officer upon the summons and an affidavit of the due service or the publication of the order for appearance, if any, shall be filed in

the clerk's office before a jury shall be empaneled and shall be sufficient evidence of service on the respondents and of the manner of service.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3815 ;-- CL 1948, 213.115

213.116 Jury to be empaneled.

Sec. 6.

On the return day of the summons or on some subsequent day to which the proceedings shall have been adjourned, if no sufficient cause to the contrary has been shown, the court shall make an order that a jury be empaneled in the cause. Such jury shall be composed of 12 freeholders of the county and not directly interested in said proceedings and shall be selected and empaneled as follows: The sheriff, under-sheriff or deputy sheriff of the county shall, on the same day or at an adjourned day, make a list of 24 resident freeholders of such county, and the city attorney, corporation counsel or other law officer of the city, in person or by an assistant or deputy, and the respondents collectively, shall each have the right to strike 6 names from the list of persons written down as aforesaid, and, subject to objection for cause, the 12 persons whose names are left on the list shall compose the jury for the trial of the cause, and shall be summoned to attend at such time as the court shall direct, by a venire issued by the clerk of the court, and to be served by 1 of the officers aforesaid. If the respondents neglect or refuse to strike 6 names from said list, it shall be done by the judge of the court, and in case any of the persons to be summoned cannot be found in the county, or being summoned do not attend, or shall be excused for cause or otherwise, talesmen possessing the necessary qualifications may be summoned as jurors in the case by such sheriff or sheriff's officer, or other authorized person, and the practice and proceedings under this act, except as herein provided, relative to empaneling, summoning and excusing jurors and talesmen, and imposing penalties or fines upon them for non-attendance, shall be the same as the practice and proceedings of the circuit courts of the state relative to petit jurors in civil cases in such courts.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3816 ;-- CL 1948, 213.116

213.117 Jury; oath; duties; instruction; written verdict.

Sec. 7.

The jurors so empaneled shall be sworn or shall affirm in substance as follows: "You do solemnly swear (or affirm) that you will well and truly ascertain and determine whether it is necessary to take for public use the absolute title in fee to the private property which the petition describes and prays may be taken for such public use, and if you determine that it is necessary to take the absolute title in fee to such private property for public use, that then you ascertain, determine and award the just compensation to be made therefor, and faithfully and impartially discharge all other duties as devolve upon you in this case, and unless discharged by the court a true verdict give according to the law and the evidence, so help you God, (or under the pains and penalties of perjury)." The jury shall hear the proofs and allegations of the parties and, if so ordered by the court, shall go to the place where the public utility sought to be taken for public use is situated, in the charge of an officer. They shall be instructed as to their duties and the laws of the case by the judge of the court and shall retire under the charge of an officer and render their verdict in the same manner as on the trial of an ordinary civil case, but the same shall be in writing and be signed by the foreman or by all the jurors.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3817 ;-- CL 1948, 213.117

213.118 Jury; determination and award; title vested in petitioner.

Sec. 8.

The jury shall determine by their verdict the necessity for taking the absolute title in fee to such private property for public use, and in case they find such necessity exists, they shall award just compensation therefor to the owners of the property taken as well as to the owners of any mortgage, lease, agreement or other lien, estate or other interest therein. But the petitioner may take the absolute title in fee to said property subject to any mortgage or other lien thereon whenever its intention so to do is declared in the resolution of the common council, provided for in section 2 of this act, as well as in the petition of the city attorney, corporation counsel or other legal representative of the city under section 3 of this act, and in that event no compensation shall be awarded to the holder of such mortgage or lien.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3818 ;-- CL 1948, 213.118

213.119 Jury; use of petition, map, blank verdict, form.

Sec. 9.

To assist the jury in arriving at their verdict the court may allow the jury, when they retire, to take with them the petition filed in the case and a map showing the location of the public utility proposed to be taken for public use and may also submit to them a blank verdict, which may be as follows:

PART I.

We find that it is necessary to take the absolute title in fee to the private property described in the petition in this cause, for the use of the public.

PART II.

The just compensation to be paid for such private property we have ascertained and determined, and hereby award as follows:

Description of the property to be taken.	Owners, occupants and others interested in each parcel.	Compensation.	To whom payable.
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The different descriptions of the property and the names of the occupants, owners and others interested therein, may be inserted in said blank verdict, under the direction of the court, before it is submitted to the jury, or it may be done by the jury.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3819 ;-- CL 1948, 213.119

213.120 Jury to determine necessity; oath; duties; instruction; written verdict.

Sec. 10.

Whenever the city attorney, corporation council [counsel] or the law officer of the city shall request that the jury be empaneled under the proviso contained in section 3 of this act, such jury shall be sworn or shall affirm in substance as follows: "You do solemnly swear (or affirm) that you will well and truly ascertain and determine whether it is necessary to take for public use the absolute title in fee to the public utility which the petition describes and prays may be taken for public use, and faithfully and impartially discharge all other duties as devolve upon you in this case and unless discharged by the court a true verdict give according to the laws and the evidence, so help you God (or under the pains and penalties of perjury)." The jury shall hear the proofs and allegations of the parties and if so ordered by the court shall, in charge of an officer, go to the place where the public utility sought to be taken is situated and upon or as near thereto as practicable and examine the premises. They shall be instructed as to their duties and the law of the case by the judge of the court and shall retire under the charge of an officer and

render their verdict in the same manner as on the trial of an ordinary civil case, but the same shall be in writing and be signed by the foreman or by all the jurors.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3820 ;-- CL 1948, 213.120

213.121 Finding of no necessity to take absolute fee; further proceedings.

Sec. 11.

If the jury find that it is not necessary to take the absolute title in fee to the public utility mentioned in the petition for public use, such finding may be set aside either on a motion for a new trial or on appeal to the supreme court, as herein provided, but such finding shall in no event be a bar to the institution of new proceedings.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3821 ;-- CL 1948, 213.121

213.122 Finding of necessity; right to possession on giving security; writ of assistance.

Sec. 12.

If the jury find that it is necessary to take for public use the absolute title in fee to such public utility, the petitioner may at once take possession of said property upon giving security to be approved by the court, after due notice to all parties concerned, to make just compensation to all persons entitled thereto for the taking the absolute title in fee to said public utility for public use by petitioner, under this act and in case said verdict is set aside said city to account to the owner or persons interested for all rents or profits derived by it from such possession and to indemnify them for all damages they may sustain thereby, and in the event said petitioner shall be entitled, on making a sufficient showing, to a writ of assistance to put it in possession of the property, as if the compensation for the taking of the absolute title in fee to such property awarded by the jury had been awarded and paid into the city treasury in accordance with section 20 of this act.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3822 ;-- CL 1948, 213.122

213.123 Finding of necessity; determination of compensation; oath of jurors; duties; instruction; award.

Sec. 13.

If the jury find that it is necessary to take for public use the absolute title in fee to the public utility mentioned in the petition, and no motion for a new trial having been made or determined, and no appeal from such finding of said jury being pending in the supreme court, then either the petitioner or any person entitled to compensation for the taking of said property may move the court for the empaneling of a jury to determine the just compensation therefor, and thereupon a jury shall be summoned and empaneled in accordance with section 6 of this act. All jurors so empaneled shall be sworn or shall affirm in substance as follows: "You do solemnly swear (or affirm) that you will well and truly ascertain, determine and award the just compensation to be made for the taking for public use the absolute title in fee to the utility mentioned in the petition and faithfully and impartially discharge all other duties that devolve upon you in this case and unless discharged by the court a true verdict give according to the law and the evidence, so help you God (or under the pains and penalties of perjury)." The jury shall hear the proofs and allegations of the parties and if so ordered by the court shall, in the charge of an officer, go to the place where said public utility sought to be taken is situated, and upon or as near thereto as practicable and examine the premises. They shall be instructed in their duties and the law of the case by the judge of the court and shall retire under the charge of an officer and render their verdict in the same manner as on the trial of an ordinary civil case, but the same shall be in writing and be signed by the foreman or by all the jurors. The jury shall award just compensation

therefor to the owners of the absolute title in fee of the property taken, as well as to the owners of any mortgage, lease, agreement, lien, estate, or other interest therein, but the petitioner may take such property subject to any mortgage or lien therein in manner and form as provided in section 8 of this act.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3823 ;-- CL 1948, 213.123

213.124 Setting aside verdict; new trial; amendments.

Sec. 14.

The verdict of the jury may be set aside by the court, either wholly or in part, and a new trial ordered either upon the whole case or upon such parts thereof as the court may deem just. Amendments either in form or substance may be allowed in any paper, petition, process, record or proceedings, or in the description of property proposed to be taken, or the name of any person, whether contained in a resolution passed by the common council, or otherwise, whenever the amendment will not interfere with the substantial rights of the parties. Any such amendment may be made after as well as before judgment confirming the verdict of the jury.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3824 ;-- CL 1948, 213.124

213.125 Motions for new trial; proceedings arrested; confirmation, judgment, finality.

Sec. 15.

Motions for a new trial or to arrest the proceedings shall be made within 2 days after the rendition of the verdict unless further time is allowed by the court; and if no such motion is made, or being made is overruled, the court shall enter an order or judgment confirming the verdict of the jury; and such judgment of confirmation, unless reversed by the supreme court, shall be final and conclusive as to all persons interested therein.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3825 ;-- CL 1948, 213.125

213.126 Appeal; procedure.

Sec. 16.

Any person whose property may be taken, as well as the petitioner, considering himself aggrieved, may appeal to the supreme court from the judgment of the court confirming the verdict of the jury by filing in writing with the clerk of said court a notice of such appeal within 5 days after the confirmation and within the same time serving a copy thereof on the city attorney, corporation counsel or other law officer of the city and filing a bond in said court, to be approved by the judge thereof, conditioned for the prosecution of said appeal to judgment and the payment of all costs, damages and expenses that may be awarded against him, in case the judgment or confirmation shall be affirmed. Such appeal shall be perfected within the same time and prosecuted as an appeal in chancery, as near as may be, subject to the provisions of this act.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3826 ;-- CL 1948, 213.126

213.127 Appeal; records transmitted, fees; settlement of case by judge.

Sec. 17.

In case of such appeal the clerk of the court, on payment of his legal fees and charges, shall transmit to the supreme court a certified copy of the necessary files, records and proceedings in the case; and the judge of the court shall, at the request of the appellant, settle a case according to the usual practice of said court, showing the material evidence and instructions given to the jury bearing upon any disputed points to which exception was taken, and the objections, rulings, and exceptions in the case, all of which shall be returned by said clerk as part of the records, to the clerk of the supreme court.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3827 ;-- CL 1948, 213.127

213.128 Appeal; hearing; determination; expenses, compensation, damage.

Sec. 18.

The said appeal may be brought on for hearing at any term of the supreme court, and said court may affirm, or for any substantial error reverse the judgment, either in whole or in part, and may grant a new trial, either upon the whole case or upon such parts as the court may deem just. The said court shall allow the prevailing party his reasonable costs and expenses to be taxed, and all costs, damages and expenses awarded to the city, if it so elect, may be applied on or deducted from the compensation, if any, to be paid, or execution may issue on the judgment. Damages may be awarded against a party appealing without reasonable cause.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3828 ;-- CL 1948, 213.128

213.129 Verdict; copy transmitted to council; collection of award.

Sec. 19.

When the verdict of the jury shall have been finally confirmed by the court, and the time in which to take an appeal has expired, or, if an appeal is taken, on the filing in the court below of a certified copy of the order of the supreme court affirming the judgment of confirmation, it shall be the duty of the clerk of the court to transmit to the common council a certified copy of the verdict of the jury, and of the judgment of confirmation, and of the judgment, if any, of affirmance; and thereupon the proper and necessary proceedings, in due course, shall be taken for the collection of the sum or sums awarded by the jury.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3829 ;-- CL 1948, 213.129

213.130 Verdict; collection resolution; treasurer, duties; borrowing power; right to possession; writ of assistance.

Sec. 20.

Within 1 year after the confirmation of the verdict of the jury or after the judgment of confirmation shall on appeal be confirmed, the common council shall set apart and cause to be provided in the treasury, unless already provided, the amount required to make compensation to the owners and persons interested for the absolute title in fee to the private property taken as awarded by the jury, and shall, in the resolution setting apart and providing said sum, if not already provided, direct the city treasurer to pay to the persons respectively entitled to the money so set apart and provided, to each his or her proportion, as ascertained and awarded by said verdict. And it shall be the duty of the treasurer to securely hold such money in the treasury for the purpose of paying for the property taken, and pay the same to the persons entitled thereto, according to the verdict of the jury, on demand, and not pay out

the money for any other purpose whatever. The common council may provide the necessary amount by borrowing from any other money or fund in the treasury and to repay the same from money raised to pay the compensation awarded by the jury when collected, or otherwise, as they may provide. Whenever the necessary sum is actually in the treasury for such purpose, the treasurer shall make and sign duplicate certificates, verified by his oath, showing that the amount of compensation awarded by the jury is actually in the treasury for payment of the private property taken in the case, giving the title of the case; he shall cause 1 of the certificates to be filed in the office of the clerk of the court in which the proceedings were had, and the other to be filed with the city clerk, which certificates shall be prima facie evidence of the matters therein stated. Whenever the amount of such compensation is in the treasury and this secured to be paid, the city may enter upon and take possession of and use such private property and said city, its successors and assigns shall be seized and possessed of the absolute title in fee to the property so taken. In case of resistance or refusal on the part of any one to the common council or its agents and servants entering upon and taking possession of such private property for the use and purpose for which it is taken, at any time, after the amount of the compensation aforesaid is actually in the treasury, ready to be paid to those entitled thereto, the common council, by the city attorney, corporation counsel or other law officer of the city, may apply to the court, and shall be entitled, on making a sufficient showing, to a writ of assistance to put them in possession of the property: Provided always, That when the money awarded by the jury for just compensation for the taking of any such public utility shall have been paid into the city treasury as above provided, or the payment thereof secured to the satisfaction of the court, after due notice to all concerned, then the petitioners shall be entitled to enter into and take possession of any such public utility and to have the writ of assistance of need to, notwithstanding the pendency of an appeal to the supreme court.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3830 ;-- CL 1948, 213.130

213.131 Jury fees; compensation.

Sec. 21.

Officers, jurors and witnesses in any proceedings under this act shall be entitled to receive from the city instituting the proceedings the same fees and compensation as are provided by law for similar services in an ordinary action at law in the circuit courts of this state.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3831 ;-- CL 1948, 213.131

213.132 Attorney fees; expenses, costs; payment by municipality.

Sec. 22.

All the expenses and costs of the proceedings to take and use private property under this act incurred by the city shall be paid out of the general fund, contingent fund, or a fund provided for such purposes, as the case may be; and it shall be lawful for the judge in any case to order the payment by the city to any respondent of such a reasonable attorney fee as he may deem just not exceeding 25 dollars, which may be taxed with the costs.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3832 ;-- CL 1948, 213.132

213.133 Discontinuance prohibited after verdict; further proceedings.

Sec. 23.

The common council shall not have the power to discontinue proceedings under this act after the rendition of the verdict of the jury that it is necessary to take the absolute title in fee to the property for public use and awarding

compensation therefor, but they may direct the city attorney, corporation counsel, or other law officer of the city, to move for a new trial, or to arrest the proceedings, or to take an appeal to the supreme court, and in any such case the same proceedings shall be taken as are hereinbefore prescribed in the case of like proceedings on the part of any respondent, except that no bond shall be required.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3833 ;-- CL 1948, 213.133

213.134 Property ownership; prima facie evidence.

Sec. 24.

It shall be prima facie evidence as to who are owners of and persons interested in any property proposed to be taken in the proceedings instituted under this act if the register or deputy register of deeds of the county shall testify in open court that he has examined the records and titles in his office, and states who such records show are the owners of and persons interested in such property, and the nature and extent of such ownership and interest; and an abstract of the title of such property, or of any parcel or parcels thereof, certified by the register or deputy register of deeds, shall also be prima facie evidence as to ownership, and persons having an interest in any such property, and the extent and nature of such interest.

History: 1919, Act 119, Eff. Aug. 14, 1919 ;-- CL 1929, 3834 ;-- CL 1948, 213.134

ACQUIRING RAILROAD OR PUBLIC UTILITY RIGHT OF WAY FOR TRUNK LINE HIGHWAY

Act 215 of 1925

AN ACT to authorize and empower the state highway commissioner to purchase or condemn property or interests in property to exchange for the property, rights of way, or any part thereof or interests therein, owned by railroads, railways or public utilities, having the right of eminent domain, when such property, rights of way, or any part thereof or interest therein, is necessary to be acquired for establishing, constructing, widening, straightening, altering, relocating or otherwise improving a trunk line highway, and to make such exchange.

History: 1925, Act 215, Imd. Eff. May 6, 1925 ;-- Am. 1957, Act 260, Imd. Eff. June 6, 1957

The People of the State of Michigan enact:

213.151 Public utility right-of-way; acquisition by state highway commissioner; acquisition and exchange of other property.

Sec. 1.

Whenever, in the discretion of the state highway commissioner, it is necessary to acquire the property or rights of way, or any part of or interest in said property or rights of way, owned by a railroad, railway or public utility having the right of eminent domain, in order to establish, construct, widen, straighten, alter, relocate or otherwise improve a trunk line highway, the state highway commissioner shall be authorized to enter into negotiations with such railroad, railway or public utility for the purchase of said property, rights of way, or any part thereof or interest therein, and to enter into an agreement with any such railroad, railway or public utility to exchange other designated property or interests in property for such property, rights of way, or any part thereof or interests therein, whenever such other designated property or interests in property shall be acquired by him; and whenever any such agreement has been entered into, the said state highway commissioner shall be authorized and he is hereby empowered to acquire such other property or interests in property by purchase or condemnation, and when acquired to execute the necessary conveyances and releases thereof to such railroad, railway or public utility for its

use, and to take in exchange therefor the railroad, railway or public utility property, rights of way or any part thereof or interests therein for such public highway purposes in accordance with such agreement.

History: 1925, Act 215, Imd. Eff. May 6, 1925 ;-- CL 1929, 3881 ;-- CL 1948, 213.151 ;-- Am. 1957, Act 260, Imd. Eff. June 6, 1957

213.152 Public utility property; condemnation procedure.

Sec. 2.

The procedure that is, or may be, prescribed for condemnation proceedings instituted by boards of county road commissioners or the procedure that is, or may be, provided for the condemnation by state agencies and public corporations of private property for the use or benefit of the public, is hereby expressly made applicable to any proceeding brought by the state highway commissioner under the provisions of this act.

History: 1925, Act 215, Imd. Eff. May 6, 1925 ;-- CL 1929, 3882 ;-- CL 1948, 213.152

213.153 Public utility property; payment.

Sec. 3.

Whenever any property or interests in property shall be acquired by the state highway commissioner under and by virtue of the provisions of this act, the consideration or compensation to be paid therefor shall be paid out of the state highway funds.

History: 1925, Act 215, Imd. Eff. May 6, 1925 ;-- CL 1929, 3883 ;-- CL 1948, 213.153 ;-- Am. 1957, Act 260, Imd. Eff. June 6, 1957

ACQUIRING PROPERTY FOR HIGHWAY PURPOSES

Act 352 of 1925

AN ACT to provide for the purchase and condemnation of private property for public highway purposes.

History: 1925, Act 352, Imd. Eff. May 27, 1925

The People of the State of Michigan enact:

213.171 Property; acquisition by county road or state highway commissioners; approval of required officials.

Sec. 1.

Boards of county road commissioners, with the approval of the board of supervisors, and the state highway commissioner are hereby authorized and empowered to secure from the owners thereof:

(a) Property for the right of way for any highway to be laid out, altered, or widened, or for changing the line thereof;

(b) Gravel, rock, sand, dirt and any and all other materials that may be needed for the proper construction, improvement or maintenance of a highway;

(c) Property deemed by the board or commissioner to be necessary to give to persons using a highway a clear view of approaching persons and vehicles, cars, trains and other instruments of travel, at any intersection of a highway with another highway or with a railroad track;

(d) Property deemed by the board or commissioner to be necessary to change the channel of any water course, natural or artificial, in order to maintain a proper alignment of any highway without crossing such water course and the riparian rights of any person, firm or corporation in or pertaining to any such water course;

(e) The fee or any lesser estate in land abutting on any highway right of way and deemed by the board or commissioner to be necessary for the storage of road machinery, equipment or materials;

(f) Property deemed by the board or commissioner to be necessary for the location, development and construction of off-street parking places for vehicles, to facilitate the flow of traffic on sections of the highways forming by-passes around and connections into and through municipalities and metropolitan areas, upon which sections parking is permanently prohibited;

(g) Property deemed by the board or commissioner to be necessary for the construction, adjacent to the highways, of flight strips for the landing and take off of aircraft in order to insure greater safety for traffic. For the purpose of uniformity the size, location, layout, lighting and markings of such flight strips shall be in conformity with rules and regulations to be prescribed by the commissioner;

(h) Any and all other property and property rights deemed by the board or commissioner having jurisdiction over a highway to be necessary for the proper construction, improvement, landscaping, or maintenance thereof, including the development, construction and maintenance, adjacent to such highways, of roadside springs, parking spaces, and information lodges, in the interest of the beneficial use of such highways by the traveling public;

(i) The state highway commissioner and boards of county road commissioners are authorized and empowered to take property and property rights under the provisions of this act within the limits of any incorporated city or village in this state: Provided, however, That before any proceedings are taken under this act involving the taking of any property or property rights in any city or village for the changing, altering, opening or widening of any street or highway, said street or highway shall be taken over as county road or designated as a state trunk line or federal aid highway, as the case may be, and the consent of the village or city council by resolution so to take over or designate said street or highway as a county road or state trunk line or federal aid highway shall be first obtained.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- Am. 1927, Act 92, Imd. Eff. Apr. 30, 1927 ;-- CL 1929, 3884 ;-- Am. 1937, Act 237, Eff. Oct. 29, 1937 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- Am. 1942, 2nd Ex. Sess., Act 21, Imd. Eff. Mar. 2, 1942 ;-- CL 1948, 213.171

213.172 Property for county and trunk line; conveyances, name, fluid mineral and gas rights, recording.

Sec. 2.

Property for a county road shall be secured by the board of county road commissioners and shall be taken in the name of the county. Property for trunk line highway purposes shall be secured by the state highway commissioner and shall be taken in the name of the state, excepting that excess property taken for highway purposes shall be taken in the name of the state highway commissioner. All such property shall be acquired by a release or other appropriate conveyance duly executed by the owner or owners of the lands and acknowledged and witnessed in the manner provided by law for the acknowledging and witnessing of deeds: Provided, That fluid mineral and gas rights shall be deemed excluded from such release or conveyance unless specifically included therein. The exercise of such fluid mineral and gas rights, as permitted by law, shall not interfere with the use of such property. All such releases and conveyances shall be recorded in the office of the register of deeds of the county in which the land is situated.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- Am. 1927, Act 92, Imd. Eff. Apr. 30, 1927 ;-- CL 1929, 3885 ;-- Am. 1935, Act 258, Eff. Sept. 21, 1935 ;-- Am. 1937, Act 237, Eff. Oct. 29, 1937 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.172 ;-- Am. 1962, Act 22, Eff. Mar. 28, 1963

213.173 Payment of purchase price for property.

Sec. 3.

Property for highway purposes shall be paid for by the board or commissioner out of any funds under their control, available for that purpose. Any payment or tender of money under this act may be made in the form of a warrant drawn on the county or state treasury as the case may be.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- Am. 1927, Act 92, Imd. Eff. Apr. 30, 1927 ;-- CL 1929, 3886 ;-- Am. 1937, Act 237, Eff. Oct. 29, 1937 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.173

213.174 Determination of necessity by board or commissioner; hearing.

Sec. 4.

Whenever the board or commissioner shall be unable to agree with any person interested in any such property for the purchase thereof, or whenever such person shall be unknown or a non-resident of the county, or a minor or an insane or incompetent person, the board or commissioner may make a written determination of the necessity of the particular highway construction, improvement, landscaping or maintenance project for which such property is desired, the necessity for taking the particular property described, and the damages which, in the opinion of the board or the commissioner, should be paid as compensation for the taking of each parcel of such property. Such determination shall also describe the property desired and shall give the name of each person interested therein, so far as known to the commissioner or commissioners making the determination: Provided, That unless such determination shall specifically include fluid mineral and gas rights, such rights shall be deemed excluded therefrom. The exercise of such fluid mineral and gas rights, as permitted by law, shall not interfere with the use of such property. The declaration of the board or commissioner that he or it has made a good faith effort and has been unable to agree with the owner, or owners, for the purchase of such property and his or its determination of the necessity of the project and of taking the particular property described therefor, if received in evidence at the necessity hearing provided in this section, shall not thereafter be questioned: Provided, That no such determination shall be made except after a hearing, of which written notice shall be given of the time and place for such hearing to all persons interested so far as known in the property desired, at least 7 days before the time of hearing, such notice to be served as hereinafter provided in section 29 of this act.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- Am. 1927, Act 92, Imd. Eff. Apr. 30, 1927 ;-- CL 1929, 3887 ;-- Am. 1931, Act 216, Eff. Sept. 18, 1931 ;-- Am. 1937, Act 237, Eff. Oct. 29, 1937 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.174 ;-- Am. 1962, Act 22, Eff. Mar. 28, 1963

213.174a Determination of necessity by circuit court commissioner if board or commissioner is disqualified.

Sec. 4a.

In the event the board or commissioner shall for any reason be disqualified to hear and determine the matter of necessity, as provided in this act, such matter of necessity only shall be heard by a circuit court commissioner of the county in which the property sought to be condemned is located or by a circuit court commissioner acting in such county, as provided by law, and in case any disqualification shall be alleged against any board or commissioner before or during such hearing on necessity, such board or commissioner if they deem such allegation well-founded, may call upon a circuit court commissioner, qualified as hereinbefore provided, to hear the matter and make the determination herein prescribed, and on the day set for hearing a continuance for such purpose to a day certain, may be had if necessary. Upon the day fixed by the notice or the day certain set by such continuance, or upon such other date as said matter may be continued to, such circuit court commissioner shall hear the issue of necessity involved. Any determination on the matter of necessity made hereunder by a circuit court commissioner shall have the same force and effect and shall be filed with and acted upon by the board or commissioner in the same manner and be subject to all the provisions of this act, as are determinations made by such board or commissioner.

History: Add. 1931, Act 216, Eff. Sept. 18, 1931 ;-- Am. 1937, Act 237, Eff. Oct. 29, 1937 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.174a

213.175 Determination of necessity; filing and recording; compensation for property.

Sec. 5.

Such determination may be filed with the county clerk if with reference to a county road, and in the office of the state highway commissioner if with reference to a state trunk line highway, and a certified copy thereof recorded in the office of the register of deeds of the county in which the property is situated. Such register of deeds shall receive such instrument for record only from the highway officials in charge of the matter. Compensation for the taking of the property therein described shall promptly thereafter be paid or tendered to the owner thereof if known and residing in the county in which the land is situated, and if such tender be not accepted or the owner shall be unknown, or a non-resident of the county, by depositing with the county or state treasurer, as the case may be, the amount determined as the damages to be paid as such compensation, the same to be paid to the person or persons entitled thereto upon the execution or delivery of the proper release or releases or subject to the order of the court in case of defaults or an award of damages by court commissioners as hereinafter provided. In case it shall be so determined that the benefits equal or exceed the damage, payment, tender or deposit as aforesaid shall not be necessary, but such fact shall be clearly set forth in the notice required by section 6 hereof.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- CL 1929, 3888 ;-- Am. 1937, Act 237, Eff. Oct. 29, 1937 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.175

213.176 Possession notice; vesting of title; removal of obstructions on property.

Sec. 6.

Upon the filing of such determination and proof of payment, tender or deposit as above provided, the board or commissioner having the matter in charge shall give notice thereof to the owners or occupants of the property therein described, which notice shall be served as provided in section 29 of this act. Said notice shall state that the said board or commissioner is about to take possession of said property for the highway purposes in said determination stated, and in cases where it is determined that benefits equal or exceed damage, such fact shall be clearly set forth in said notice, which may also direct the owners or occupants of such property to remove their fence or fences or other obstructions and encroachments within 10 days thereafter. Upon the filing of such determination and the giving of such notice, the title, and the right of possession to all of the property and property rights described in the determination shall vest in the county or state, as the case may be, for the purpose or purposes therein stated, and in case the owners or occupants thereof shall neglect or refuse to remove their fence, fences and other obstructions and encroachments within 10 days, the board or commissioner shall have the full power, and it shall be their duty to enter upon the premises with such aid and assistance as shall be necessary and remove such fence or fences, obstructions or encroachments without delay: Provided, That no person interested as owner, or otherwise, in any of the property described in such determination, shall be required to vacate any lands or premises or move any dwelling house or other building until after the damages, if any, determined as aforesaid, for the taking of such property have been paid or tendered, and the notices given, in accordance with the provisions of sections 4, 4a, 5 and 6 of this act.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- Am. 1927, Act 92, Imd. Eff. Apr. 30, 1927 ;-- CL 1929, 3889 ;-- Am. 1931, Act 216, Eff. Sept. 18, 1931 ;-- Am. 1937, Act 237, Eff. Oct. 29, 1937 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.176

213.177 Petition; circuit court to appoint commissioners to determine damages.

Sec. 7.

Within 90 days after the filing of any such determination of damages, as aforesaid, the board or commissioner having the matter in charge, unless the parties interested in the property therein described having accepted the

amount tendered or offered and delivered the proper conveyances, shall file with the circuit court or probate court of the county in which such property is situated a petition, describing the highway improvement for which the property has been taken, reciting that the said board or commissioner has made and filed the determination as hereinabove provided, and that he or it has taken possession of the property therein described for public highway purposes, and that compensation has not been paid to the owners, stating as to each parcel whether the fee of said property, or an easement therein, has been taken, giving the name of each person interested in each such piece or parcel of property, and praying for the appointment of 3 court commissioners to appraise the damages to be paid as compensation for the taking of each such piece or parcel of property for such highway purposes.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- CL 1929, 3890 ;-- Am. 1937, Act 237, Eff. Oct. 29, 1937 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.177

213.178 Petition; order for hearing, service.

Sec. 8.

Upon the filing of the petition, the court shall make an order fixing a day for the hearing on such petition, which shall not be less than 15 days thereafter. Such order shall recite the names of the persons mentioned in the petition and the descriptions of each piece or parcel of property and shall state the purpose of the petition. A copy of such order shall be served at least 10 days before the day of hearing, upon each person named therein as being interested in the property to be taken, who is a resident of the county in which the property is located, and also upon the person or persons in possession of such property, if other than the owner. Such service may be made as provided in section 29 of this act. Service may also be made upon persons interested in the property who are non-residents of the county.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- Am. 1927, Act 92, Imd. Eff. Apr. 30, 1927 ;-- CL 1929, 3891 ;-- Am. 1931, Act 216, Eff. Sept. 18, 1931 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.178

213.179 Petition; service upon guardians; guardian ad litem.

Sec. 9.

In cases where a minor or an insane or incompetent person has an interest in such property, service of a copy of the order shall be made upon the guardian, if any, and if such person has no guardian, the board or commissioner may petition the court for the appointment of a guardian ad litem. Upon the filing of such petition the court shall appoint a guardian ad litem, who shall be a resident of the county and upon whom service of a copy of the said order shall be made.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- CL 1929, 3892 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.179

213.180 Petition; constructive service; order for appearance.

Sec. 10.

Upon, or at any time after, the filing of such petition, the judge shall make an order for the appearance of any persons interested in the property, or any part thereof on or before the day of hearing therein stated, upon proof by affidavit either:

1. That such person resides out of or is absent from the county, or his whereabouts unknown;
2. That it cannot be ascertained in what county, state or country such person resides.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- CL 1929, 3893 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.180

213.181 Order for appearance; publication; mailing and service of order.

Sec. 11.

Such order shall be published in some newspaper published and circulated in the county, or in such other paper as the court may direct, at least once in each week for 2 successive weeks immediately preceding the day set for the hearing, and a copy of such order shall be mailed to each absent or non-resident person having a last known postoffice address, by registered mail, and a return receipt demanded. Proof by affidavit shall be made of such mailing, and whether or not a return receipt was received, and if one was received, it shall be attached to said affidavit; but such publication and mailing shall not be necessary in any case in which a copy of such order has been served personally or by registered mail on each such absent or non-resident person.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- Am. 1927, Act 92, Imd. Eff. Apr. 30, 1927 ;-- CL 1929, 3894 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.181

213.182 Order for appearance; proof of publication and service; filing.

Sec. 12.

Proof of publication and service may be made by affidavit of any person having knowledge of the facts. Such proof shall be filed with the court on or before the day of hearing, and thereupon the court shall have jurisdiction of the subject matter involved in the proceedings and of the parties interested therein.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- CL 1929, 3895 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.182

213.183 Default of persons not appearing; court-appointed commissioners; discontinuance.

Sec. 13.

On the day fixed as aforesaid, the court shall enter the default of all persons interested in the property described who have not appeared, and shall direct the payment to such persons of the sums stated in the determination aforesaid, as compensation for the taking of the pieces or parcels of property in which they are interested; and the court shall also, unless sufficient cause to the contrary be shown, appoint 3 disinterested persons commissioners, herein called court commissioners, whose duty it shall be to appraise the damages to be paid as compensation for the taking of the property described in the petition, in respect to which an appearance is made, for highway purposes. Said commissioners shall not be residents of the township in which the property sought to be taken is situated. The court shall fix the time and place for the first meeting of such court commissioners, and require their attendance; it may also authorize the court commissioners to adjourn their meeting from time to time not later than to a day to be named, and shall fix the time for filing their report. After the appointment of court commissioners, no discontinuance shall be filed and no order of discontinuance may be entered except upon payment of expenses of the proceeding and reasonable attorney fees of all parties in interest who have appeared in said proceedings, under the order of the court.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- CL 1929, 3896 ;-- Am. 1937, Act 237, Eff. Oct. 29, 1937 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.183

213.184 Commissioners; meetings, adjournments; witnesses.

Sec. 14.

The court commissioners shall meet at the time and place ordered by the court and shall be sworn faithfully to discharge their duties. If all do not then appear, a less number may adjourn to a time certain, but no adjournment shall be made to a day later than the time allowed by the court. All adjournments shall be publicly announced. The court or the clerk thereof may issue writs of subpoena to compel the attendance of witnesses before the court or before the said court commissioners. Either of such court commissioners may administer oaths to witnesses.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- CL 1929, 3897 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.184

213.185 Commissioners; view of premises; hearing; evidence of ownership.

Sec. 15.

The court commissioners, at the time fixed by the court or at the time fixed by adjournment, shall view the premises described in the petition and shall hear the proofs and allegations of the parties. At such hearing the determination hereinabove provided for, or a certified copy thereof, shall be read in evidence before said court commissioners and shall be prima facie evidence of the ownership of the property therein described.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- CL 1929, 3898 ;-- CL 1948, 213.185

213.186 Commissioners; appraisal of damages; reports.

Sec. 16.

The court commissioners shall appraise the damages to be paid as compensation for each such piece or parcel of property, and shall report such decision in writing, signed by them or a majority of them, at or before the time fixed for that purpose, but it shall not be necessary for said court commissioners to report on all of such property at one time.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- CL 1929, 3899 ;-- Am. 1937, Act 237, Eff. Oct. 29, 1937 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.186

213.187 Commissioners; not necessary to include all parcels of property in same petition.

Sec. 17.

It shall not be necessary for the board or commissioner to include in one determination the descriptions of all of the property necessary to be taken for any single project, or to include in one petition, the descriptions of all of the property described in the determination upon which such petition is based.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- CL 1929, 3900 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.187

213.188 Benefits to owners; deduction from damage costs.

Sec. 18.

If any discontinued highway shall be upon lands through which a new highway shall be laid out, the same may be taken into consideration in estimating the damages sustained by the owner of such lands; and in like manner the benefits accruing to owners of lands by reason of laying-out, altering, widening or otherwise improving any highway or of changing the line thereof, shall be taken into consideration in determining the damages to be paid to any such owner as compensation for the taking of any of his property for any such highway purpose. In each such case, the board or commissioner having the matter in charge, or the court commissioners, as the case may be, shall state such fact and the amount deducted on account thereof in the determination, or report, as the case may be: Provided, however, That benefits shall not be taken into consideration as above stated in case there is any assessment levied on the abutting property by reason of the laying out, altering, widening or otherwise improving said highway.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- CL 1929, 3901 ;-- Am. 1931, Act 216, Eff. Sept. 18, 1931 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.188

213.189 Orders of court upon determination and in regarding commissioners.

Sec. 19.

The court may, at the time of the filing of the report or at such other time to which it may adjourn the proceedings, on cause shown, set aside the report and refer it back to such court commissioners or appoint other commissioners to re-try the questions involved, whereupon such proceedings shall be had as are hereinbefore provided for. The court may permit the amendment of any determination, petition, affidavit, order, report or proceeding filed or had in the premises in such manner as shall be just and proper; it may fill any vacancy that shall occur among the court commissioners, by reason of death, resignation, removal or inability to act; it may at any time, in its discretion, remove any or all of said commissioners and fill the vacancy or vacancies thereby created; it may permit a defective proceeding to be set aside and other proceedings in compliance with law to be had in place thereof; it may determine the division of any award among the several claimants thereto; it may adjourn such proceedings or any part thereof from time to time, and may make all such orders in the premises as may be just and proper to further and accomplish the purpose thereof.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- CL 1929, 3902 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.189

213.190 Confirmation of commissioner's report; witness, attorney, damage fees.

Sec. 20.

After the court shall confirm the report of the court commissioners, it shall enter an order authorizing the board or commissioner to pay the several sums awarded for damages, and they shall pay the same accordingly. The court may determine and include in said order an allowance to the person, partnership or corporation from whom property is taken for attorney fees and witness fees as taxed before and determined by the court. Such attorney fees and witness fees shall be paid at the same time and in the same manner as sums awarded for damages in such proceeding: Provided, That it shall not be lawful for the court to make such order allowing witnesses and attorney fees to more than 1 title interest and such lien interests as are adverse thereto and to each other in any single parcel of real estate as set up and described in the determination of necessity on file: And provided further, That in the case of a parcel whose value is under \$100.00, no such attorney fee shall exceed \$5.00, and in the case of a parcel valued at \$100.00 or more, no such attorney fee shall exceed \$25.00. Such payment shall be made in money or by an order drawn on the proper county or state treasurer, to the several persons entitled thereto, and if refused, or if there be no person properly authorized to receive the same, or if the person entitled thereto is a non-resident of the county or cannot be found, it shall be deposited as directed by the court.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- CL 1929, 3903 ;-- Am. 1937, Act 237, Eff. Oct. 29, 1937 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.190

213.191 Compensation of highway condemnation commissioners; expenses.

Sec. 21.

The court shall fix the compensation of the court commissioners, not to exceed \$50.00 per day, and determine the amount of necessary expenses incurred in connection with such proceedings, and the whole cost thereof.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- CL 1929, 3904 ;-- CL 1948, 213.191 ;-- Am. 1961, Act 172, Eff. Sept. 8, 1961

213.192 Prima facie evidence; certificate, report, or determination.

Sec. 22.

Any certificate, report or determination authorized or required by this chapter, or the record thereof, or a certified copy of any such certificate, report, determination or record, shall be prima facie evidence of the facts recited therein and of the title to the property therein described or referred to in the county or state, as the case may be, and of the right of the board or commissioner to take the same for highway purposes.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- CL 1929, 3905 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.192

213.193 Right to acquire property of municipalities and cemetery associations; exchange.

Sec. 23.

The provisions of this chapter shall be deemed to extend to and include the right to acquire and take property and property rights held, reserved, owned, used or occupied by any cemetery association or municipality, or by any person, firm, society, association or corporation for cemetery or municipal purposes; to acquire and take property desired by the board or commissioner to exchange for other property which in his or their opinion it is necessary to acquire for highway purposes, whenever he or they have agreed in writing with the owner or owners of such property for such exchange; and to acquire and take the fee to the whole of a particular lot or parcel of land whenever in the opinion of the board or commissioner it is advisable to provide for the proper construction, improvement or maintenance of highways.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- Am. 1927, Act 92, Imd. Eff. Apr. 30, 1927 ;-- CL 1929, 3906 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.193

213.194 Sale of excess land; conveyance; record.

Sec. 24.

Whenever the whole of a lot or parcel of land is, or has been, taken by any board or the commissioner, as provided in the preceding section, such board or commissioner, or his or their successors in office shall have the right, and are hereby authorized, to sell and convey the portion not needed, on whatever terms such board or commissioner may deem proper: Provided, That in those cases where the title to excess lands, acquired by the state

highway commissioner under any law of this state, has been taken in the name of the state of Michigan, it shall be lawful for the state highway commissioner, and he is hereby authorized and empowered to sell and convey said lands as if the title thereto had originally been taken in his name as hereinbefore provided: And provided further, A record of all such sales, showing the appraised value, the sale price and other pertinent information, shall be kept in the office of the state highway commissioner.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- CL 1929, 3907 ;-- Am. 1935, Act 258, Eff. Sept. 21, 1935 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.194

213.195 Repealed. 1958, Act 77, Eff. Sept. 13, 1958.

Compiler's Notes: The repealed section applied the act to pending condemnation proceedings.

213.197 Review by certiorari; procedure; time limitations.

Sec. 27.

Any proceeding taken under the provisions of this act shall be subject to review upon certiorari. The procedure therefor shall be the same as is required in case of certiorari to review judgments rendered by judges of the circuit courts: Provided, That the application for certiorari must be filed within 20 days after the report of the court commissioners shall have been confirmed: And provided further, That the determination of necessity provided in section 4 of this act may be reviewed by certiorari only within 10 days after such determination of necessity and the procedure shall be the same as review of judgments rendered by a justice of the peace, except that such certiorari may be heard by the court during term or at chambers upon 5 days' notice given to the opposing party.

History: 1925, Act 352, Imd. Eff. May 27, 1925 ;-- Am. 1927, Act 92, Imd. Eff. Apr. 30, 1927 ;-- CL 1929, 3910 ;-- Am. 1941, Act 279, Eff. Jan. 10, 1942 ;-- CL 1948, 213.197

213.198 State highway commissioner or deputy may conduct proceedings.

Sec. 28.

Any act or proceeding herein directed or authorized to be performed or conducted by the state highway commissioner may be done by said state highway commissioner in person, or by 1 of his deputies; or the state highway commissioner may generally or specifically depute any person to hold or conduct any hearing directed by this act and said deputized person shall report his conclusions and recommendations to the state highway commissioner, who shall then make his determination thereon. Any action by such deputy, or any hearing or other proceeding conducted by him shall be deemed to be for the purpose of this act, and have the same legal force and significance as though personally performed by the said state highway commissioner.

History: Add. 1927, Act 92, Imd. Eff. Apr. 30, 1927 ;-- CL 1929, 3911 ;-- CL 1948, 213.198

213.199 All notices and orders; service.

Sec. 29.

All notices and orders heretofore mentioned in this act, unless otherwise provided, shall be served as follows:

- (a) Personally; or
- (b) By leaving a copy at the residence of the person or persons interested; or
- (c) By mailing a copy thereof by registered mail at the last known post office address of each person or persons, so far as is known, and by publication in some newspaper printed or circulated in the county in which such lands are located at least 7 days prior to the date of hearing; or
- (d) Non-residents of the county may be served in any of the above methods or by posting copies thereof in 5 conspicuous places in the township, 1 of which shall be on the property.

History: Add. 1931, Act 216, Eff. Sept. 18, 1931 ;-- CL 1948, 213.199

ACQUIRING PROPERTY FOR BOULEVARD, STREET, OR ALLEY

Act 190 of 1929

AN ACT to authorize municipalities to purchase or condemn the fee to real estate to be used for acquiring, opening or widening of any boulevard, street or alley within such municipality and authorizing such municipalities to purchase or condemn the fee to private property adjacent to such proposed improvement whenever it is necessary to take such adjacent private property in order to carry out such proposed improvement most advantageously, and authorizing such municipalities to lease or sell any such real estate so taken after the proposed improvement is completed and which is not needed directly for such boulevards, streets or alleys.

History: 1929, Act 190, Imd. Eff. May 20, 1929

The People of the State of Michigan enact:

213.221 Boulevard, street and alley; fee of adjacent property, acquisition.

Sec. 1.

Whenever the legislative body of any municipality shall determine that it is necessary to acquire, open or widen any boulevard, street or alley within said municipality, and whenever such legislative body shall determine that in order to carry out such proposed improvement most advantageously that it is necessary to take private property adjacent to the proposed improvement, the fee to such private property may be purchased or taken by condemnation proceedings and the taking of such private property for the purpose of advantageously carrying out the proposed improvement contemplated is hereby declared to be a taking for a public purpose.

History: 1929, Act 190, Imd. Eff. May 20, 1929 ;-- CL 1929, 3912 ;-- CL 1948, 213.221

213.222 Boulevard, street and alley; condemnation proceedings.

Sec. 2.

If condemnation proceedings are resorted to for the purpose of securing any such fee to such private property such condemnation proceedings may be brought in accordance with the provisions of the charter of such municipality or in accordance with any other appropriate provisions therefor as exist or shall be made by law.

History: 1929, Act 190, Imd. Eff. May 20, 1929 ;-- CL 1929, 3913 ;-- CL 1948, 213.222

213.223 Boulevard, street and alley; sale of unused portion.

Sec. 3.

After the completion of said improvements such municipality may lease or sell such parts of said property as are not to be actually used for such boulevard, street or alley, with or without such restrictions as may be appropriate to the improvements made.

History: 1929, Act 190, Imd. Eff. May 20, 1929 ;-- CL 1929, 3914 ;-- CL 1948, 213.223

ACQUISITION OF OVERHEAD AND UNDERGROUND RIGHTS

Act 140 of 1945

AN ACT to provide for the acquisition of overhead and underground rights, and rights of access, air, view and light by public corporations, authorities or agencies of this state for the laying out, establishment or development of public streets and highways.

History: 1945, Act 140, Imd. Eff. May 4, 1945

The People of the State of Michigan enact:

213.251 Overhead and underground rights; acquisition; purposes.

Sec. 1.

Any public corporation, authority or agency of this state empowered by law to acquire private property for the laying out, establishment or development of public streets and highways within their respective jurisdictions is hereby authorized to acquire overhead and underground rights, and rights of access, air, view and light for the laying out, establishment and development of such public streets and highways. Such rights may be acquired by gift, devise, purchase or condemnation in the same manner as such public corporation, authority or agency is now or hereafter may be authorized by law to acquire property or property rights for public purposes within the scope of its powers, either separately or in conjunction with any other property right or rights, and may also be acquired for the establishment or development of limited access highways as defined and provided for by the provisions of Act No. 205 of the Public Acts of 1941.

History: 1945, Act 140, Imd. Eff. May 4, 1945 ;-- CL 1948, 213.251

Compiler's Notes: For provisions of Act 205 of 1941, referred to in this section, see MCL 252.51 et seq.

SERVICE ON UNKNOWN OWNERS OR CLAIMANTS IN CONDEMNATION PROCEEDINGS

Act 379 of 1927

AN ACT to provide for service of process or notice on unknown owners or claimants to land in condemnation proceedings.

History: 1927, Act 379, Eff. Sept. 5, 1927

The People of the State of Michigan enact:

213.261 Condemnation; service of process on unknown claimants.

Sec. 1.

If there be any person interested in any land that is now or may hereafter be subject to any condemnation proceedings, whose name appears in the records of any public office as having at any time claimed any right, title, interest or estate in the subject matter of such proceedings, or any portion thereof, or any lien or charge thereon, without having conveyed or released the same or who might at any time under the provisions or legal effect of any instrument of record, claim or be entitled to claim any benefits thereunder, and it is not known whether such person is living or dead, or where he may reside, if living, or whether the title, interest, claim, lien or possible right has been by him assigned to any person or persons, or if dead, whether he has personal representatives or heirs living, or where they or some of them may reside, or whether such title, interest, claim, lien or possible right has been disposed of by will, it shall be lawful to make such person, and everyone claiming under him, defendants in such suit or proceeding, by naming such person and adding the words, "or his unknown heirs, devisees, legatees and assigns", and he or they shall be served by process or notice, as required by law to be served in condemnation proceedings, by publication or otherwise, as provided in sections 12371 to 12378 inclusive, and sections 12449 to 12452 inclusive, as amended, of the Compiled Laws of the state of Michigan of 1915, the same being the several sections providing for substituted service on unknown, concealed or non-resident defendants. Upon such publication as hereinbefore provided, the said owner or claimant so named and described and/or his unknown heirs, devisees, legatees, and assigns, and the land in said notice described, shall thereby be subjected to the jurisdiction of the court, the commission or the commissioners, as the case may be.

History: 1927, Act 379, Eff. Sept. 5, 1927 ;-- CL 1929, 3915 ;-- CL 1948, 213.261

Compiler's Notes: Sections 12371 to 12378 and sections 12449 to 12452, referred to in this section, were repealed by Act 236 of 1961. See now MCL 600.101 et seq.

DAMAGES IN CONDEMNATION PROCEEDINGS

Act 323 of 1931

213.271, 213.272 Repealed. 1958, Act 77, Eff. Sept. 13, 1958.

APPLICATION OF CONDEMNATION AWARDS AGAINST TAXES AND SPECIAL ASSESSMENTS

Act 270 of 1931

AN ACT to provide for the application of awards in condemnation proceedings against taxes and/or special assessments, and to prescribe the effect thereof.

History: 1931, Act 270, Eff. Sept. 18, 1931 ;-- Am. 1941, Act 365, Eff. Jan. 10, 1942

The People of the State of Michigan enact:

213.291 Condemnation awards; application to payment of taxes and special assessments.

Sec. 1.

In the case of property taken in any condemnation proceedings, the award shall first be applied to the payment of all delinquent taxes and/or delinquent special assessments and current taxes and current special assessments which have become due and payable. In case such award shall be insufficient to pay all of such taxes and/or special assessments, such award shall be applied pro rata to the payment of such taxes and/or special assessments, and such payment shall be deemed satisfaction of such taxes and/or special assessments as to the property so taken and the petitioner shall be entitled to a receipt from the proper tax collecting officer or officers so stating. In case title to such property passes, by virtue of such proceedings after the date upon which the assessment roll is required to be completed and before the tax becomes due and payable, the unit of government, board, department or commission that is the petitioner in the condemnation proceeding shall pay such taxes and special assessments when the same become due and payable. Where lands have been bid in to the state at tax sales and the period of redemption has not expired, the amount required to redeem from such sale shall be considered as unpaid taxes.

History: 1931, Act 270, Eff. Sept. 18, 1931 ;-- Am. 1941, Act 365, Eff. Jan. 10, 1942 ;-- Am. 1947, Act 24, Imd. Eff. Apr. 3, 1947 ;-- CL 1948, 213.291

TAKING PROPERTY OF PUBLIC HOSPITAL, COLLEGE, OR UNIVERSITY

Act 288 of 1957

AN ACT to prescribe procedure for taking property of a public hospital or public college or public university for public use.

History: 1957, Act 288, Imd. Eff. June 14, 1957

The People of the State of Michigan enact:

213.301 Property of public college, university or hospital; condemnation, definitions.

Sec. 1.

As used in this act

(a) "Public hospital" means a hospital whose property, or any portion of whose property, is exempt from taxation under the provisions of Act No. 206 of the Public Acts of 1893, as amended, being sections 211.1 to 211.157 of the Compiled Laws of 1948.

(b) "Public college" and "public university" mean any such institution which has been established for at least the 10 years immediately preceding any proposed taking of any of its property and which is empowered by the state to grant degrees.

History: 1957, Act 288, Imd. Eff. June 14, 1957

213.302 Property of public college, university or hospital; determination of relative necessity.

Sec. 2.

No property of any public hospital or public college or public university shall be taken by the public or by any corporation for public use unless there has been a determination that the public use for which the property is to be taken is more necessary to the public than the present use or any reasonably contemplated future use to which it is or may be put by the public hospital or public college or public university.

History: 1957, Act 288, Imd. Eff. June 14, 1957

213.303 Property of public college, university or hospital; judicial determination of necessity.

Sec. 3.

The judicial determination of relative necessity hereby required shall be obtained in the same manner as is prescribed for a declaration of rights under Act No. 36 of the Public Acts of 1929, being sections 691.501 to 691.507 of the Compiled Laws of 1948, and shall be a condition precedent to the commencement hereafter of any other judicial proceedings for the taking of any such property.

History: 1957, Act 288, Imd. Eff. June 14, 1957

213.304 Judicial determination; abatement of pending proceedings.

Sec. 4.

This act shall abate all pending judicial proceedings for the taking of any such property in which judgment has not become final prior to the effective date hereof.

History: 1957, Act 288, Imd. Eff. June 14, 1957

PRORATION OF TAXES ON PROPERTY ACQUIRED FOR PUBLIC PURPOSES

Act 207 of 1965

213.311, 213.312 Repealed. 1976, Act 67, Imd. Eff. Apr. 5, 1976.

RELOCATION ASSISTANCE

Act 227 of 1972

AN ACT to provide financial assistance, advisory services and reimbursement of certain expenses to persons displaced from real property or deprived of certain rights in real property; and to repeal certain acts and parts of act.

History: 1972, Act 227, Imd. Eff. July 25, 1972

The People of the State of Michigan enact:

213.321 Definitions.

Sec. 1.

As used in this act:

(a) "Business" means a lawful activity, except farming operations, conducted primarily for the purchase, sale, lease or rental of real or personal property, for the manufacture, processing or marketing of products, commodities or other personal property, the sale of services to the public or outdoor advertising and includes nonprofit organizations.

(b) "Displaced person" means a person who vacates real property or removes his personal property therefrom pursuant to a program undertaken by a state agency which results in the acquisition of the real property in whole or in part, or in an order to vacate the real property.

(c) "Farming operations" means a lawful activity conducted primarily for the production of an agricultural product or commodity, including timber, for sale or home use, in customarily sufficient quantities as to be capable of contributing materially to the income of the owner or operator.

(d) "State agency" means any department, agency or instrumentality of the state or of a political subdivision of the state; a combination thereof or a corporation within the state which has the power of eminent domain. No state agency shall supersede any already established boards, commissions or agencies created by the state statute or federal rules that remove citizens' participation in any city of 1,000,000 or more.

History: 1972, Act 227, Imd. Eff. July 25, 1972

213.322 Relocation assistance advisory services for displaced persons and certain occupants of real property.

Sec. 2.

When a program is undertaken by a state agency which will require the acquisition of real property or its vacation by its occupants, the state agency shall provide a relocation assistance advisory services program for displaced persons offering the assistance provided by this act. If the state agency determines that a person occupying real property immediately adjacent to real property acquired under such program is caused substantial economic injury because of the acquisition, the person may be offered relocation assistance advisory services under this act.

History: 1972, Act 227, Imd. Eff. July 25, 1972

213.323 Functions of relocation assistance advisory services program.

Sec. 3.

(1) A relocation assistance advisory services program shall:

(a) Determine the needs of displaced persons for relocation assistance.

(b) Assist owners of displaced businesses and farming operations in obtaining and becoming established in comparable facilities.

(c) Supply information on federal, state and local programs offering assistance to displaced persons.

(d) Assist in minimizing hardships to displaced persons in adjusting to relocation.

(e) Coordinate the relocation activities with the plans and programs of other state agencies which may affect the carrying out of the relocation program.

(f) Assure that there will be available, within a reasonable time prior to displacement, decent, safe and sanitary dwellings in areas not less desirable with regard to public utilities and public and commercial facilities, within the geographical unit of government acquiring the property, at rents or prices within the financial means of the families and individuals displaced, equal in number to the number of and available to the displaced persons requiring them and reasonably accessible to their places of employment, free from discrimination of any kind.

(2) A person lawfully occupying a dwelling shall not be required to relocate until a replacement dwelling is available as provided in subdivision (f) of subsection (1). A person shall be given at least 90 days' written notice to vacate unless modified by court order for good cause.

History: 1972, Act 227, Imd. Eff. July 25, 1972

213.324 Matching federal funds; financial assistance; expenses.

Sec. 4.

When a program is undertaken by a state agency for which federal financial assistance will be available to pay all or a part of the cost, and which will require the acquisition of real property or its vacation by its occupants, the state agency may match the federal funds to the extent provided by federal law and rules and may provide financial assistance and reimbursement of expenses including but not limited to litigation expenses and expenses incident to the transfer of title as provided by the federal uniform relocation assistance and real property acquisition policies act of 1970, being Public Law 91-646.

History: 1972, Act 227, Imd. Eff. July 25, 1972

213.325 Payments where federal funds not available or used.

Sec. 5.

When federal funds are not available or used in a program which will require the acquisition of real property or its vacation by its occupants, the state agency may provide payments, assistance and reimbursement as contemplated by this act but not in excess of the provisions of this act.

History: 1972, Act 227, Imd. Eff. July 25, 1972

213.326 Displaced person defined; persons entitled to financial assistance.

Sec. 6.

(1) A person who moves or discontinues his business or moves other personal property, or moves from his dwelling on or after the effective date of this act as the direct result of code enforcement activities, or a program of rehabilitation of buildings conducted pursuant to a governmental program is deemed to be a displaced person for the purposes of this act.

(2) Where the person is displaced by any project or program which receives federal financial assistance under title 1 of the housing act of 1949, as amended, or as a result of carrying out a comprehensive city demonstration program under title 1 of the demonstration cities and metropolitan development act of 1966, shall be entitled to the financial assistance provided in section 4.

History: 1972, Act 227, Imd. Eff. July 25, 1972

213.327 Ordinances and rules.

Sec. 7.

The state agency shall adopt ordinances or promulgate rules to assure:

(a) That the payments and assistance authorized by this act shall be administered fairly and reasonably.

(b) That a displaced person who makes application for a payment authorized by this act shall be paid promptly after a move or in hardship cases, be paid in advance.

(c) Such other provisions as are reasonably necessary to carry out this act.

History: 1972, Act 227, Imd. Eff. July 25, 1972

Admin Rule: R 299.951 et seq. of the Michigan Administrative Code.

213.328 Other compensation not excluded; payments not deemed income.

Sec. 8.

(1) Financial assistance and reimbursement allowed under this act is independent of and in addition to compensation for land, buildings or property rights and shall not be considered in condemnation proceedings.

(2) Payments to a displaced person under this act shall not be deemed income or resources of the displaced person under any other state or local law, nor shall such payments be subject to state or local tax.

History: 1972, Act 227, Imd. Eff. July 25, 1972

213.329 Judicial review.

Sec. 9.

A person aggrieved by a determination made pursuant to this act shall be entitled to judicial review by the circuit court.

History: 1972, Act 227, Imd. Eff. July 25, 1972

213.330 Contracts.

Sec. 10.

A state agency may enter into contracts with any state or federal agency, or individual, firm or corporation, for the purpose of carrying out the provisions of this act.

History: 1972, Act 227, Imd. Eff. July 25, 1972

213.331 Repeal.

Sec. 11.

Act No. 95 of the Public Acts of 1971, being sections 213.341 to 213.344 of the Compiled Laws of 1948, is repealed.

History: 1972, Act 227, Imd. Eff. July 25, 1972

213.332 Effective date.

Sec. 12.

This act shall take effect June 30, 1972.

History: 1972, Act 227, Imd. Eff. July 25, 1972

FINANCIAL ASSISTANCE FOR RELOCATION OF DISPLACED PERSONS

Act 95 of 1971

213.341-213.344 Repealed. 1972, Act 227, Imd. Eff. July 25, 1972.

ALLOWANCES FOR MOVING PERSONAL PROPERTY FROM ACQUIRED REAL PROPERTY

Act 40 of 1965

AN ACT to authorize and require public agencies to pay allowances for the expense of moving personal property from real property acquired for public purposes.

History: 1965, Act 40, Imd. Eff. May 19, 1965

The People of the State of Michigan enact:

213.351 Property acquired for public purposes; definitions.

Sec. 1.

As used in this act:

(a) "Occupant" means an individual, family, business, including the operation of a farm, or a nonprofit organization, required by a public agency to vacate real property because of a public improvement project.

(b) "Family" means 2 or more persons who are living together in the same quarters.

(c) "Moving expense" means the cost of dismantling, disconnecting, crating, loading, insuring, temporary storing, transporting, unloading, reassembling, reconnecting and reinstalling of personal property, exclusive of trade fixtures and exclusive of the cost of any improvements, alterations or any other changes in or to any structure in effecting such reinstallation.

History: 1965, Act 40, Imd. Eff. May 19, 1965

213.352 Occupant who vacates real property; moving expense for personal property; conditions; "personal property" explained; attorney fees and costs; precedence of federal regulations and procedures.

Sec. 2.

(1) An occupant who vacates real property on or after May 15, 1965, pursuant to the provisions of a written agreement to purchase the property or pursuant to the provisions of a written agreement for possession and use of the property or pursuant to the transfer of title to the property in condemnation proceedings, shall be reimbursed by the public agency for the reasonable and necessary moving expense for moving his or her personal property not more than 50 miles, subject to the following conditions:

(a) The maximum payment to an individual or family shall not exceed \$5,250.00. The maximum payment to a business, including the operation of a farm, or a nonprofit organization shall not exceed \$15,000.00.

(b) An individual or a family may elect to receive a fixed moving allowance, in lieu of actual moving expense, based on a schedule of payments established by the acquiring agency taking into consideration the maximum payment allowed, the number of rooms and other factors.

(c) Instead of any other payment under this act, other state law, or federal law, an occupant of residential property who has a leasehold interest of less than 6 months is entitled to elect a fixed payment of \$3,500.00. If the occupant does not elect this fixed payment, the occupant may receive a moving allowance as determined under subdivisions (a) and (b).

(d) Except as provided in section 9 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.59, payment shall not be made to an occupant until after the occupant has vacated the real property unless the payment is required to enable the occupant to relocate.

(2) As used in this section, "personal property" does not include a fixture, whether removable or not.

(3) The court may award reasonable attorney fees and costs to an individual described in subsection (1)(c) who brings a successful action to recover a fixed payment or a moving allowance under subsection (1).

(4) Notwithstanding subsections (1) to (3), if the public agency is complying with applicable federal regulations and procedures regarding moving allowances and relocation requirements, those federal regulations and procedures take precedence over any conflicting provisions in this section.

History: 1965, Act 40, Imd. Eff. May 19, 1965 ;-- Am. 1991, Act 21, Imd. Eff. May 16, 1991 ;-- Am. 2006, Act 369, Eff. Dec. 23, 2006

213.353 Payments allowed by federal regulation; payments, number.

Sec. 3.

The maximum payments imposed by section 2 do not prohibit payments made in accordance with applicable regulations for federal reimbursement which payments are hereby authorized, provided such payments are at least equal to payments under section 2. If payment is made in accordance with applicable federal regulation, payment shall not also be made pursuant to section 2. In no event shall more than 1 payment be made to the same occupant for the same occupancy. After the occupant has vacated the property, no payment may thereafter be paid to any party with respect to the subsequent occupancy of the same property.

History: 1965, Act 40, Imd. Eff. May 19, 1965

213.354 Moving allowances; paid for highway projects.

Sec. 4.

Moving allowances paid because of highway projects are deemed to be a highway purpose and a cost of highway construction.

History: 1965, Act 40, Imd. Eff. May 19, 1965

213.355 Moving allowances; additional to compensation; not considered in condemnation proceedings.

Sec. 5.

Moving allowances are independent of and in addition to compensation for land, buildings or property rights. The cost of moving personal property is not subject to consideration in condemnation proceedings for the acquisition of land, buildings or property rights.

History: 1965, Act 40, Imd. Eff. May 19, 1965

ACQUISITION OF PROPERTY FOR PUBLIC HIGHWAYS

Act 295 of 1966

AN ACT to provide for the purchase and condemnation of property for public purposes by cities, villages, townships, drainage districts, counties, boards of county road commissions, and the state highway commission.

History: 1966, Act 295, Imd. Eff. July 14, 1966 ;-- Am. 1967, Act 206, Imd. Eff. July 10, 1967 ;-- Am. 1971, Act 220, Imd. Eff. Dec. 30, 1971 ;-- Am. 1978, Act 188, Imd. Eff. June 4, 1978

The People of the State of Michigan enact:

213.361 Securing fee simple or lesser estate in real property and other property; conditions.

Sec. 1.

Cities, villages, townships, drainage districts, counties, boards of county road commissioners, and the state highway commission, referred to in this act as the petitioner, are authorized and empowered to secure the fee simple or lesser estate in real property and other property from the owners under the following conditions:

- (a) Property for the right of way for limited access highways and other highways to be laid out, altered, or widened, or for changing the direction or line of those highways.
- (b) Gravel, rock, sand, dirt, and all other materials that may be needed for the proper construction, improvement, or maintenance of a highway.
- (c) Property the petitioner determines is necessary to give persons using a highway a clear view of approaching persons and vehicles, cars, trains, and other instruments of travel at an intersection of a highway with another highway or with a railroad track.
- (d) Property the petitioner determines is necessary to change the channel of a watercourse, natural or artificial, in order to maintain a proper alignment of a highway without crossing the watercourse and the riparian rights of a person, firm, or corporation in or pertaining to the watercourse.
- (e) Property abutting on a highway right of way that the petitioner determines is necessary for the storage of road machinery, equipment, or materials.
- (f) Property the petitioner determines is necessary for the location, development, and construction of offstreet parking places for vehicles, or to facilitate the flow of traffic on sections of the highways forming bypasses around and connections into and through municipalities and metropolitan areas, upon which sections parking is permanently prohibited.
- (g) Property the petitioner determines is necessary for the construction, adjacent to the highways, of flight strips for the landing and takeoff of aircraft or for clear zones or aviation easements in connection with those flight strips, or a combination, in order to insure greater safety for traffic. For the purpose of uniformity, the size, location, layout, lighting, and markings of the flight strips shall be in conformity with rules to be prescribed by the board or commission.
- (h) All other property and property rights the board or commission having jurisdiction over a highway determines to be necessary for the proper construction, improvement, landscaping, or maintenance of the highway including the development, construction, and maintenance, adjacent to those highways, of roadside parks, parking spaces, rest areas, scenic areas, scenic lookouts, information lodges, and other purpose authorized by law in the interest of the beneficial use of the highways by the traveling public.

(i) Nonresidential property cities and villages determine to be necessary for redevelopment or rehabilitation projects as authorized by Act No. 344 of the Public Acts of 1945, as amended, being sections 125.71 to 125.84 of

the Michigan Compiled Laws. Nonresidential property means property either zoned or used as commercial, industrial, or professional property.

(j) Property the petitioner determines is necessary for the location, development, and construction of a county water supply system, solid waste disposal system, or county sewage disposal system as authorized by Act No. 185 of the Public Acts of 1957, as amended, being sections 123.731 to 123.786 of the Michigan Compiled Laws or by Act No. 342 of the Public Acts of 1939, as amended, being sections 46.171 to 46.188 of the Michigan Compiled Laws.

(k) Property the petitioner determines is necessary for the location, establishment, construction, improvement, or relief of a drain as authorized by Act No. 40 of the Public Acts of 1956, as amended, being sections 280.1 to 280.630 of the Michigan Compiled Laws.

History: 1966, Act 295, Imd. Eff. July 14, 1966 ;-- Am. 1967, Act 206, Imd. Eff. July 10, 1967 ;-- Am. 1971, Act 220, Imd. Eff. Dec. 30, 1971 ;-- Am. 1978, Act 188, Imd. Eff. June 4, 1978

213.362 Property in city or village; designation and consent prior to acquisition for street or highway.

Sec. 2.

Before any proceedings are taken under this act by boards of county road commissioners or the state highway commission involving the taking of property or property rights in a city or village for the changing, altering, opening or widening of a street or highway, the street or highway shall be taken over as a county road or designated as a state trunk line or federal aid highway, and the consent of the village or city council by resolution so to take over or designate the street or highway as a county road or state trunk line or federal aid highway shall be first obtained.

History: 1966, Act 295, Imd. Eff. July 14, 1966 ;-- Am. 1969, Act 154, Imd. Eff. July 31, 1969

213.363 Name in which property taken; acquisition by and execution of appropriation instrument; fluid mineral and gas rights; recordation of instruments.

Sec. 3.

Property for county roads shall be secured by the board of county road commissioners and shall be taken in the name of the board. Property for trunk line highway purposes shall be secured by the state highway commission and shall be taken in the name of the state or commission. Property secured by a city or village shall be taken in the name of the city or village. Property secured by a county shall be taken in the name of the county. Property secured by a township shall be taken in the name of the township. Property secured by a drainage district shall be taken in the name of the drainage district. Property not acquired by condemnation shall be acquired by appropriation instrument duly executed by the owner or owners of the lands and acknowledged and witnessed in the manner provided by law for the acknowledging and witnessing of deeds. Fluid mineral and gas rights shall be considered excluded from those instruments unless specifically included. The exercise of fluid mineral and gas rights, as permitted by law, shall not interfere with the use of the property for highway purposes, including limited access highway purposes. The instruments shall be recorded in the office of the register of deeds of the county in which the land is situated.

History: 1966, Act 295, Imd. Eff. July 14, 1966 ;-- Am. 1967, Act 206, Imd. Eff. July 10, 1967 ;-- Am. 1971, Act 220, Imd. Eff. Dec. 30, 1971 ;-- Am. 1978, Act 188, Imd. Eff. June 4, 1978

213.364 Property; payments; source, warrants.

Sec. 4.

Property acquired shall be paid for by the petitioner out of any funds under its control and available for that purpose. Any payment or deposit of money under this act may be made in the form of a warrant drawn on the city, village, county or state treasury.

History: 1966, Act 295, Imd. Eff. July 14, 1966 ;-- Am. 1967, Act 206, Imd. Eff. July 10, 1967

213.365 Property; adjacent land, cemeteries, exchanges, parcels of property.

Sec. 5.

This act extends to and includes:

(a) The right to acquire and take property adjacent to that required for public purposes for the purpose of exchanging it for property required or of replatting or rearranging the property abutting on the public improvement after the taking so as to conform with the plan or arrangement in effect before the taking.

(b) The right to acquire and take property and property rights held, reserved, owned, used or occupied by any cemetery association, or by any person, firm, society, association or corporation for cemetery purposes.

(c) The right to acquire and take property which is to be exchanged for public property needed for highway purposes pursuant to an agreement in writing with the owner or owners of such public property for such exchange.

(d) The right and duty to acquire and take the fee to a whole of a particular parcel of land whenever the acquisition of the portion thereof actually needed would destroy the practical value or utility of the remainder of such parcel. The question as to whether or not the practical value or utility of the remainder is in fact destroyed shall be determined by the court or jury and incorporated in its verdict.

History: 1966, Act 295, Imd. Eff. July 14, 1966 ;-- Am. 1967, Act 206, Imd. Eff. July 10, 1967

213.366-213.390 Repealed. 1980, Act 87, Eff. Apr. 1, 1983.

Compiler's Notes: The repealed sections pertained to petitions for acquisition of property, claims of fraud or abuse of discretion, surrender of possession of property, appointment of guardian ad litem, hearings, juries, evidence, notice, and compensation.

213.391 Effect on other condemnation acts.

Sec. 31.

This act does not directly or by implication repeal or amend any other condemnation act or part thereof.

History: 1966, Act 295, Imd. Eff. July 14, 1966