

SUBSTITUTE FOR  
SENATE BILL NO. 693

A bill to amend 1911 PA 149, entitled

"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,"

by amending section 3 (MCL 213.23).

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 3. (1) Any public corporation or state agency is  
2 authorized to take private property necessary for a public  
3 improvement or for the purposes of its incorporation or ~~for public~~  
4 ~~purposes within the scope of its powers~~ for ~~the~~ **PUBLIC** use ~~or~~  
5 ~~benefit of the public~~ and to institute and prosecute proceedings  
6 for that purpose. When funds have been appropriated by the  
7 legislature to a state agency, ~~or~~ **A** division ~~thereof~~ ~~or~~ **OF A**  
8 **STATE AGENCY**, the office of the governor, or a division ~~thereof~~

1 OF THE OFFICE OF THE GOVERNOR for the purpose of acquiring lands or  
2 property for a designated public ~~purpose, such~~ USE, THE unit OF A  
3 STATE AGENCY to which the appropriation has been made is authorized  
4 on behalf of the people of the state of Michigan to acquire the  
5 lands or property either by purchase, condemnation, or otherwise.  
6 For the purpose of condemnation, the unit OF A STATE AGENCY may  
7 proceed under ~~the provisions of~~ this act. ANY OTHER PUBLIC  
8 CORPORATION SHALL PROCEED ONLY PURSUANT TO ITS SPECIFIC DELEGATED  
9 STATUTORY POWERS OF CONDEMNATION. WITHIN ITS STATUTORY DELEGATED  
10 POWERS OF CONDEMNATION, A PUBLIC CORPORATION SHALL COMMENCE  
11 PROCEEDINGS UNDER THE UNIFORM CONDEMNATION PROCEDURES ACT, 1980 PA  
12 87, MCL 213.51 TO 213.75.

13 (2) THE TAKING OF PRIVATE PROPERTY BY A PUBLIC CORPORATION OR  
14 A STATE AGENCY FOR TRANSFER TO A PRIVATE ENTITY IS PROHIBITED  
15 UNLESS THE PROPOSED USE OF THE LAND IS INVESTED WITH PUBLIC  
16 ATTRIBUTES SUFFICIENT TO FAIRLY DEEM THE ENTITY'S ACTIVITY  
17 GOVERNMENTAL BY 1 OR MORE OF THE FOLLOWING:

18 (A) A PUBLIC NECESSITY OF THE EXTREME SORT EXISTS THAT  
19 REQUIRES COLLECTIVE ACTION TO ACQUIRE LAND FOR INSTRUMENTALITIES OF  
20 COMMERCE, INCLUDING A PUBLIC UTILITY OR A STATE OR FEDERALLY  
21 REGULATED COMMON CARRIER, WHOSE VERY EXISTENCE DEPENDS ON THE USE  
22 OF LAND THAT CAN BE ASSEMBLED ONLY THROUGH THE COORDINATION THAT  
23 CENTRAL GOVERNMENT ALONE IS CAPABLE OF ACHIEVING.

24 (B) THE PROPERTY OR USE OF THE PROPERTY WILL REMAIN SUBJECT TO  
25 PUBLIC OVERSIGHT AND ACCOUNTABILITY AFTER THE TRANSFER OF THE  
26 PROPERTY AND WILL BE DEVOTED TO THE USE OF THE PUBLIC, INDEPENDENT  
27 FROM THE WILL OF THE ENTITY TAKING IT.

1 (C) THE PROPERTY IS SELECTED ON FACTS OF INDEPENDENT PUBLIC  
2 SIGNIFICANCE OR CONCERN, INCLUDING BLIGHT, RATHER THAN THE PRIVATE  
3 INTERESTS OF THE ENTITY TO WHICH THE PROPERTY IS EVENTUALLY  
4 TRANSFERRED.

5 (3) AS USED IN SUBSECTION (1), "PUBLIC USE" DOES NOT INCLUDE  
6 THE TAKING OF PRIVATE PROPERTY FOR THE PURPOSE OF TRANSFER TO A  
7 PRIVATE ENTITY FOR EITHER GENERAL ECONOMIC DEVELOPMENT OR THE  
8 ENHANCEMENT OF TAX REVENUE.

9 (4) IN A CONDEMNATION ACTION, THE BURDEN OF PROOF IS ON THE  
10 CONDEMNING AUTHORITY TO DEMONSTRATE, BY THE PREPONDERANCE OF THE  
11 EVIDENCE, THAT THE TAKING OF PRIVATE PROPERTY IS FOR A PUBLIC USE,  
12 UNLESS THE CONDEMNATION ACTION INVOLVES A TAKING FOR THE  
13 ERADICATION OF BLIGHT, IN WHICH CASE THE BURDEN OF PROOF IS ON THE  
14 CONDEMNING AUTHORITY TO DEMONSTRATE, BY CLEAR AND CONVINCING  
15 EVIDENCE, THAT THE TAKING IS FOR A PUBLIC USE.

16 (5) A TAKING OF PRIVATE PROPERTY FOR PUBLIC USE, AS ALLOWED  
17 UNDER THIS SECTION, DOES NOT INCLUDE A TAKING FOR A PUBLIC USE THAT  
18 IS A PRETEXT TO CONFER A PRIVATE BENEFIT ON A KNOWN OR UNKNOWN  
19 PRIVATE ENTITY.

20 (6) ANY EXISTING RIGHT, GRANT, OR BENEFIT AFFORDED TO PROPERTY  
21 OWNERS AS OF NOVEMBER 1, 2005, WHETHER PROVIDED BY THE STATE  
22 CONSTITUTION OF 1963, BY THIS SECTION OR OTHER STATUTE, OR  
23 OTHERWISE, SHALL BE PRESERVED AND SHALL NOT BE ABROGATED OR  
24 IMPAIRED BY THE 2005 AMENDATORY ACT THAT ADDED THIS SUBSECTION.

25 Enacting section 1. This amendatory act takes effect January  
26 1, 2006.