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BILL ANALYSIS

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House Bill 5060 (Substitute S-1 as reported by the Committee of the Whole)

Sponsor: Representative Glenn Steil, Jr.

House Committee: Government Operations

Senate Committee: Transportation

## **CONTENT**

The bill would amend Public Act 149 of 1911, which regulates the acquisition of property by State agencies and public corporations, to prohibit the taking of private property for transfer to a private entity unless the proposed use of the land were "invested with public attributes sufficient to fairly deem the entity's activity governmental by one or more of the following":

- "A public necessity of the extreme sort exists that requires collective action to acquire property for instrumentalities of commerce...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."
- The property or its use would remain subject to public oversight and accountability after the transfer, and would be devoted to public use, independent from the will of the entity to which it was transferred.
- The property was selected on facts of independent public significance or concern, including blight, rather than the private interests of the entity to which the property eventually would be transferred.

"Public use" would 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. A taking of private property for public use would not include a taking for a public use that was a pretext to confer a private benefit on a particular private entity. The taking of private property for a drain project would not constitute a pretext.

In a condemnation action, the burden of proof would be on the condemning authority to demonstrate by the preponderance of the evidence—or by clear and convincing evidence, if the property were blighted—that the taking was for a public use.

The owner of a private residence taken for public use would have to be compensated for at least 125% of the property's fair market value (FMV) under certain circumstances.

The bill is tie-barred to Senate Bill 693, which (as H-3) would amend the Act to delete the authority to take private property for public "benefit", but allow taking for public "use". The bill also is tie-barred to Senate Joint Resolution E which, if approved by voters, would amend the State Constitution regarding the term "public use", the burden of proof in a condemnation proceeding, and 125% FMV compensation for taking a private residence.

MCL 213.23

Legislative Analyst: Julie Koval

## **FISCAL IMPACT**

The impact that this bill would have on the cost of future land acquisitions by State agencies and public corporations is not determinable.

Date Completed: 6-21-06

Fiscal Analyst: Bill Bowerman

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