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BILL ANALYSIS

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House Bill 5060 (Substitute H-5 as passed by the House)
Sponsor: Representative Glenn Steil, Jr.
House Committee: Government Operations
Senate Committee: Transportation

Date Completed: 6-6-06

CONTENT

The bill would amend Public Act 149 of 1911, which authorizes State agencies and public corporations to acquire private property for public use, to do the following:

- Provide that public use would not include taking property for transfer to a private entity for the purpose of economic development or tax revenue enhancement.**
- Require the owner of a principal residence that was taken for public use to be compensated for at least 125% of the property's fair market value.**
- Place the burden of proof on the condemning authority to demonstrate--by the preponderance of the evidence or, if the property were blighted, by clear and convincing evidence--that the taking was for a public use.**

Public Act 149 authorizes any public corporation or State agency to take private property necessary for a public improvement, for the purposes of its incorporation, or for public purposes within the scope of the corporation's or agency's powers for the use or benefit of the public, and to institute and prosecute proceedings for that purpose. When the Legislature appropriates funds to acquire land or property for a designated public purpose, the unit to which the appropriation has been made is authorized on behalf of the people of the State to acquire the property by purchase, condemnation, or otherwise. The bill would eliminate the authority to take property for public "benefit".

The bill specifies that "public use" would not include the taking of private property for transfer to a private entity for the purpose of economic development or enhancement of tax revenue. Private property otherwise could be taken for reasons of public use as that term was understood on the bill's effective date.

Under the bill, if private property consisting of an individual's principal residence were taken for public use, the amount of compensation made and determined for that taking would have to be at least 125% of that property's fair market value, in addition to any other reimbursement allowed by law.

The bill provides that, in a condemnation action, the burden of proof would be on the condemning authority to demonstrate, by the preponderance of the evidence, that the taking of a private property was for a public use, unless the condemnation action involved a taking of private property because the property was blighted, in which case the burden of proof would be on the condemning authority to demonstrate, by clear and convincing evidence, that the taking was for a public use.

"Blighted" would mean property that meets any of the following criteria:

- Has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance.
- Is an attractive nuisance because of physical condition or use.
- Is a fire hazard or is otherwise dangerous to the safety of people or property.
- Has had the utilities, plumbing, heating, or sewerage disconnected, destroyed, removed, or rendered ineffective for at least one year so that the property is unfit for its intended use.
- Is improved real property that has remained vacant for five consecutive years and is not maintained in accordance with applicable local housing or property maintenance codes or ordinances.
- Has code violations posing a severe and immediate health or safety threat and has not been substantially rehabilitated within one year after the receipt of notice to rehabilitate from the appropriate code enforcement agency or final determination of any appeal, whichever is later.
- Is tax reverted property owned by a qualified local governmental unit, a county, or the State.
- Is owned or under the control of a land bank fast track authority under the Land Bank Fast Track Act, whether or not located within a qualified local governmental unit.

With regard to the last two criteria, the sale, lease, or transfer of tax reverted property or property owned or under the control of a land bank fast track authority would not result in the loss to the property of the status as blighted for the purposes of Public Act 149.

(Under the Act, the term "public corporations" includes all counties, cities, villages, boards, commissions, and agencies made corporations for the management and control of public business and property. "State agencies" includes 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 of the Office of Governor.)

The bill would take effect on January 1, 2007, and is tie-barred to Senate Bill 693. Senate Bill 693 (H-3) also would amend the Act to delete the authority to take private property for public benefit.

MCL 213.23

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bill would have an indeterminate impact on land acquisition costs for the State and local units of government.

Fiscal Analyst: Bill Bowerman

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