

SENATE SUBSTITUTE FOR HOUSE 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

1 legislature to a state agency, ~~or~~ A division ~~thereof~~ ~~or~~ OF A  
2 STATE AGENCY, the office of the governor, or a division ~~thereof~~  
3 OF THE OFFICE OF THE GOVERNOR for the purpose of acquiring lands or  
4 property for a designated public ~~purpose, such~~ USE, THE unit OF A  
5 STATE AGENCY to which the appropriation has been made is authorized  
6 on behalf of the people of the state of Michigan to acquire the  
7 lands or property either by purchase, condemnation, or otherwise.  
8 For the purpose of condemnation, the unit OF A STATE AGENCY may  
9 proceed under ~~the provisions of~~ this act.

10 (2) THE TAKING OF PRIVATE PROPERTY BY A PUBLIC CORPORATION OR  
11 A STATE AGENCY FOR TRANSFER TO A PRIVATE ENTITY IS NOT A PUBLIC USE  
12 UNLESS THE PROPOSED USE OF THE PROPERTY IS INVESTED WITH PUBLIC  
13 ATTRIBUTES SUFFICIENT TO FAIRLY DEEM THE ENTITY'S ACTIVITY  
14 GOVERNMENTAL BY 1 OR MORE OF THE FOLLOWING:

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

22 (B) THE PROPERTY OR USE OF THE PROPERTY WILL REMAIN SUBJECT TO  
23 PUBLIC OVERSIGHT AND ACCOUNTABILITY AFTER THE TRANSFER OF THE  
24 PROPERTY AND WILL BE DEVOTED TO THE USE OF THE PUBLIC, INDEPENDENT  
25 FROM THE WILL OF THE PRIVATE ENTITY TO WHICH THE PROPERTY IS  
26 TRANSFERRED.

27 (C) THE PROPERTY IS SELECTED ON FACTS OF INDEPENDENT PUBLIC

1 SIGNIFICANCE OR CONCERN, INCLUDING BLIGHT, RATHER THAN THE PRIVATE  
2 INTERESTS OF THE ENTITY TO WHICH THE PROPERTY IS EVENTUALLY  
3 TRANSFERRED.

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

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

16 (5) IF PRIVATE PROPERTY CONSISTING OF AN INDIVIDUAL'S  
17 PRINCIPAL RESIDENCE IS TAKEN FOR PUBLIC USE, THE AMOUNT OF  
18 COMPENSATION MADE AND DETERMINED FOR THAT TAKING SHALL BE NOT LESS  
19 THAN 125% OF THAT PROPERTY'S FAIR MARKET VALUE, IN ADDITION TO ANY  
20 OTHER REIMBURSEMENT ALLOWED BY LAW. IN ORDER TO BE ELIGIBLE FOR  
21 REIMBURSEMENT UNDER THIS SUBSECTION, THE INDIVIDUAL'S PRINCIPAL  
22 RESIDENTIAL STRUCTURE MUST BE ACTUALLY TAKEN OR THE AMOUNT OF THE  
23 INDIVIDUAL'S PRIVATE PROPERTY TAKEN LEAVES LESS PROPERTY CONTIGUOUS  
24 TO THE INDIVIDUAL'S PRINCIPAL RESIDENTIAL STRUCTURE THAN THE  
25 MINIMUM LOT SIZE IF THE LOCAL GOVERNING UNIT HAS IMPLEMENTED A  
26 MINIMUM LOT SIZE BY ZONING ORDINANCE.

27 (6) A TAKING OF PRIVATE PROPERTY FOR PUBLIC USE, AS ALLOWED

1 UNDER THIS SECTION, DOES NOT INCLUDE A TAKING FOR A PUBLIC USE THAT  
2 IS A PRETEXT TO CONFER A PRIVATE BENEFIT ON A KNOWN OR UNKNOWN  
3 PRIVATE ENTITY. FOR PURPOSES OF THIS SUBSECTION, THE TAKING OF  
4 PRIVATE PROPERTY FOR THE PURPOSES OF A DRAIN PROJECT BY A DRAINAGE  
5 DISTRICT AS ALLOWED UNDER THE DRAIN CODE OF 1956, 1956 PA 40, MCL  
6 280.1 TO 280.630, DOES NOT CONSTITUTE A PRETEXT TO CONFER A PRIVATE  
7 BENEFIT ON A PRIVATE ENTITY.

8 (7) ANY EXISTING RIGHT, GRANT, OR BENEFIT AFFORDED TO PROPERTY  
9 OWNERS AS OF DECEMBER 22, 2006, WHETHER PROVIDED BY THE STATE  
10 CONSTITUTION OF 1963, BY THIS SECTION OR OTHER STATUTE, OR  
11 OTHERWISE, SHALL BE PRESERVED AND SHALL NOT BE ABROGATED OR  
12 IMPAIRED BY THE 2006 AMENDATORY ACT THAT ADDED THIS SUBSECTION.

13 Enacting section 1. This amendatory act takes effect December  
14 23, 2006.

15 Enacting section 2. This amendatory act does not take effect  
16 unless both of the following occur:

17 (a) House Bill No. 5060 of the 93rd Legislature is enacted  
18 into law.

19 (b) Senate Joint Resolution E of the 93rd Legislature becomes  
20 part of the state constitution of 1963 as provided in section 1 of  
21 article XII of the state constitution of 1963.