

**SUBSTITUTE FOR
HOUSE BILL NO. 5078**

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), as amended by 2006 PA 368.

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 use and to institute and prosecute proceedings for that purpose.
5 When funds have been appropriated by the legislature to a state
6 agency, a division of a state agency, the office of the governor,
7 or a division of the office of the governor for the purpose of

1 acquiring lands or property for a designated public use, the unit
2 of a state agency to which the appropriation has been made is
3 authorized on behalf of the people of the state of Michigan to
4 acquire the lands or property either by purchase, condemnation, or
5 otherwise. For the purpose of condemnation, the unit of a state
6 agency may proceed under this act.

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

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

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

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

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

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

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

24 (6) A taking of private property for public use, as allowed
25 under this section, does not include a taking for a public use that
26 is a pretext to confer a private benefit on a known or unknown
27 private entity. For purposes of this subsection, the taking of

1 private property for the purposes of a drain project by a drainage
2 district as allowed under the drain code of 1956, 1956 PA 40, MCL
3 280.1 to 280.630, does not constitute a pretext to confer a private
4 benefit on a private entity.

5 (7) Any existing right, grant, or benefit afforded to property
6 owners as of December 22, 2006, whether provided by the state
7 constitution of 1963, by this section or other statute, or
8 otherwise, shall be preserved and shall not be abrogated or
9 impaired by the 2006 amendatory ~~act~~ ACTS that added OR AMENDED
10 this subsection.

11 (8) AS USED IN THIS SECTION, "BLIGHTED" MEANS PROPERTY THAT
12 MEETS ANY OF THE FOLLOWING CRITERIA:

13 (A) HAS BEEN DECLARED A PUBLIC NUISANCE IN ACCORDANCE WITH A
14 LOCAL HOUSING, BUILDING, PLUMBING, FIRE, OR OTHER RELATED CODE OR
15 ORDINANCE.

16 (B) IS AN ATTRACTIVE NUISANCE BECAUSE OF PHYSICAL CONDITION OR
17 USE.

18 (C) IS A FIRE HAZARD OR IS OTHERWISE DANGEROUS TO THE SAFETY
19 OF PERSONS OR PROPERTY.

20 (D) HAS HAD THE UTILITIES, PLUMBING, HEATING, OR SEWERAGE
21 DISCONNECTED, DESTROYED, REMOVED, OR RENDERED INEFFECTIVE FOR A
22 PERIOD OF 1 YEAR OR MORE SO THAT THE PROPERTY IS UNFIT FOR ITS
23 INTENDED USE.

24 (E) IS TAX REVERTED PROPERTY OWNED BY A MUNICIPALITY, BY A
25 COUNTY, OR BY THIS STATE. THE SALE, LEASE, OR TRANSFER OF TAX
26 REVERTED PROPERTY BY A MUNICIPALITY, A COUNTY, OR THIS STATE SHALL
27 NOT RESULT IN THE LOSS TO THE PROPERTY OF THE STATUS AS BLIGHTED

1 FOR PURPOSES OF THIS ACT.

2 (F) IS PROPERTY OWNED OR UNDER THE CONTROL OF A LAND BANK FAST
3 TRACK AUTHORITY UNDER THE LAND BANK FAST TRACK ACT, 2003 PA 258,
4 MCL 124.751 TO 124.774. THE SALE, LEASE, OR TRANSFER OF THE
5 PROPERTY BY A LAND BANK FAST TRACK AUTHORITY SHALL NOT RESULT IN
6 THE LOSS TO THE PROPERTY OF THE STATUS AS BLIGHTED FOR PURPOSES OF
7 THIS ACT.

8 (G) IS IMPROVED REAL PROPERTY THAT HAS REMAINED VACANT FOR 5
9 CONSECUTIVE YEARS AND THAT IS NOT MAINTAINED IN ACCORDANCE WITH
10 APPLICABLE LOCAL HOUSING OR PROPERTY MAINTENANCE CODES OR
11 ORDINANCES.

12 (H) ANY PROPERTY THAT HAS CODE VIOLATIONS POSING A SEVERE AND
13 IMMEDIATE HEALTH OR SAFETY THREAT AND THAT HAS NOT BEEN
14 SUBSTANTIALLY REHABILITATED WITHIN 1 YEAR AFTER THE RECEIPT OF
15 NOTICE TO REHABILITATE FROM THE APPROPRIATE CODE ENFORCEMENT AGENCY
16 OR FINAL DETERMINATION OF ANY APPEAL, WHICHEVER IS LATER.