ACQUISITION OF PROPERTY BY STATE AGENCIES AND PUBLIC CORPORATIONS

Act 149 of 1911

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.

History: 1911, Act 149, Eff. Aug. 1, 1911 ;-- Am. 1966, Act 351, Imd. Eff. Dec. 21, 1966

The People of the State of Michigan enact:

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213.21 Public corporation and state agency; definition.

Sec. 1.

The term "public corporations" as herein used shall include all counties, cities, villages, boards, commissions and agencies made corporations for the management and control of public business and property; and the term "state agencies" shall include 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 thereof.

History: 1911, Act 149, Eff. Aug. 1, 1911 ;-- CL 1915, 353 ;-- Am. 1925, Act 37, Eff. Aug. 27, 1925 ;-- CL 1929, 3763 ;-- CL 1948, 213.21 ;-- Am. 1966, Act 351, Imd. Eff. Dec. 21, 1966

213.22 Private property; definition.

Sec. 2.

The term "private property" as herein used shall include lands, tenements, hereditaments and tangible and intangible property whether real, personal or mixed.

History: 1911, Act 149, Eff. Aug. 1, 1911 ;-- CL 1915, 354 ;-- CL 1929, 3764 ;-- CL 1948, 213.22

213.23 Authority to take private property for public use; acquisition of property; scope of "public use"; condemnation action; compensation; preservation of right, grant, or benefit to property owner; "blighted" defined.

Sec. 3.

(1) Any public corporation or state agency is authorized to take private property necessary for a public improvement or for the purposes of its incorporation or for public use and to institute and prosecute proceedings for that purpose. When funds have been appropriated by the legislature to a state agency, a division of a state agency, the office of the governor, or a division of the office of the governor for the purpose of acquiring lands or property for a designated public use, the unit of a state agency to which the appropriation has been made is authorized on behalf of the people of the state of Michigan to acquire the lands or property either by purchase, condemnation, or otherwise. For the purpose of condemnation, the unit of a state agency may proceed under this act.

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

(a) A public necessity of the extreme sort exists that requires collective action to acquire property for instrumentalities of commerce, including a public utility or a state or federally regulated common carrier, 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.

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

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

(3) As used in subsection (1), "public use" does 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.

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

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

(6) A taking of private property for public use, as allowed under this section, does not include a taking for a public use that is a pretext to confer a private benefit on a known or unknown private entity. For purposes of this subsection, the taking of private property for the purposes of a drain project by a drainage district as allowed under the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, does not constitute a pretext to confer a private benefit on a private entity.

(7) Any existing right, grant, or benefit afforded to property owners as of December 22, 2006, whether provided by the state constitution of 1963, by this section or other statute, or otherwise, shall be preserved and shall not be abrogated or impaired by the 2006 amendatory acts that added or amended this subsection.

(8) As used in this section, "blighted" means property that meets any of the following criteria:

(a) Has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance.

(b) Is an attractive nuisance because of physical condition or use.

(c) Is a fire hazard or is otherwise dangerous to the safety of persons or property.

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(d) Has had the utilities, plumbing, heating, or sewerage disconnected, destroyed, removed, or rendered ineffective for a period of 1 year or more so that the property is unfit for its intended use.

(e) Is tax reverted property owned by a municipality, by a county, or by this state. The sale, lease, or transfer of tax reverted property by a municipality, a county, or this state shall not result in the loss to the property of the status as blighted for purposes of this act.

(f) Is property owned or under the control of a land bank fast track authority under the land bank fast track act, 2003 PA 258, MCL 124.751 to 124.774. The sale, lease, or transfer of the property by a land bank fast track authority shall not result in the loss to the property of the status as blighted for purposes of this act.

(g) Is improved real property that has remained vacant for 5 consecutive years and that is not maintained in accordance with applicable local housing or property maintenance codes or ordinances.

(h) Any property that has code violations posing a severe and immediate health or safety threat and that has not been substantially rehabilitated within 1 year after the receipt of notice to rehabilitate from the appropriate code enforcement agency or final determination of any appeal, whichever is later.

History: 1911, Act 149, Eff. Aug. 1, 1911 ;-- CL 1915, 355 ;-- Am. 1925, Act 37, Eff. Aug. 27, 1925 ;-- CL 1929, 3765 ;-- CL 1948, 213.23 ;-- Am. 1966, Act 351, Imd. Eff. Dec. 21, 1966 ;-- Am. 2006, Act 367, Eff. Dec. 23, 2006 ;-- Am. 2006, Act 368, Eff. Dec. 23, 2006 ;-- Am. 2006, Act 656, Imd. Eff. Jan. 9, 2007

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213.23a Scope of act; rights conferred by act.

Sec. 3a.

The provisions of this act shall be deemed to extend to and include the right to acquire and take the fee to property; to acquire property adjacent to that required for public highway purposes for the purpose of exchanging it for the property required or for the purpose of replatting or re-arranging the property abutting on the highway after the taking so as to conform with the plan or arrangement in effect before the taking; and to acquire and to take the fee to a whole of a particular parcel of land whenever the acquisition of the portion thereof actually needed would destroy the practical value or utility of the remainder of such parcel, and the question as to whether or not such land is so taken shall be determined by the jury and incorporated in its findings: Provided, however, That before any proceedings are taken under this act involving the taking of any property or property rights in any city or village for the changing, altering, opening or widening of any street or highway, the consent of the village or city council by resolution shall be first obtained.

History: Add. 1945, Act 288, Imd. Eff. May 25, 1945 ;-- CL 1948, 213.23a

213.24 Condemnation proceedings; necessity declared; authorization; jurisdiction.

Sec. 4.

Proceedings may be commenced and prosecuted under this act whenever a public corporation or state agency shall have declared a public improvement or the purposes of its incorporation or public purposes within the scope of its powers make it necessary, and shall declare that it deems it necessary to take private property for such public improvement or for the purposes of its incorporation or for the public purposes within the scope of its powers, designating the same, and that the improvement is for the use or benefit of the public. It shall

by resolution direct its attorney to institute the necessary proceedings in its behalf in the circuit court of the county where the private property sought to be taken is located, or if said property is in a city, the proceeding may be instituted in the court in said city having general jurisdiction of condemnation proceedings for the opening of streets and highways.

History: 1911, Act 149, Eff. Aug. 1, 1911 ;-- CL 1915, 356 ;-- CL 1929, 3766 ;-- CL 1948, 213.24

213.25 Condemnation proceedings; resolution; petition; contents; jury to determine necessity; compensation.

Sec. 5.

The public corporation or state agency shall make and deliver to its attorney a copy of such resolution certified under seal, and it shall be the duty of such attorney to prepare and file in the name of the corporation or state agency in the court having jurisdiction of the proceedings a petition signed by him in his official character and duly verified by him, to which petition a certified copy of the resolution of the corporation or state agency shall be annexed, which certified copy shall be prima facie evidence of the action taken by the corporation or state agency and of the passage of said resolution. The petition shall state among other things that it is made and filed as commencement of judicial proceedings by the corporation or state agency in pursuance of this act to acquire the right to take private property for the use or benefit of the public, without the consent of the owners, for a public improvement or for the purposes of its incorporation or for public purposes within the scope of its power, designating the same, for a just compensation to be made. A description of the property to be taken shall be given, and also the names of the owners and others interested in the property so far as can be ascertained. The petition shall also state that the corporation or state agency has declared such improvement or purpose to be necessary, and that it deems it necessary to take the private property described for such improvement or purpose, for the use or benefit of the public. The petition shall ask that a jury be summoned and impanelled to ascertain and determine whether it is necessary to make such public improvement or fulfill such purpose and whether it is necessary to take such property as it is proposed to do for the use or benefit of the public, and to ascertain and determine the just compensation to be made therefor. The petition may state any other pertinent matter or things, and may pray for any other or further relief to which the public corporation or state agency may be entitled within the objects of this act.

History: 1911, Act 149, Eff. Aug. 1, 1911 ;-- CL 1915, 357 ;-- CL 1929, 3767 ;-- CL 1948, 213.25

213.26-213.41 Repealed. 1980, Act 87, Eff. Apr. 1, 1983.

Compiler's Notes: The repealed sections pertained to orders for hearing on petition, orders for impaneling jury, court actions, and petitions to condemn land.

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