

EMINENT DOMAIN

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Senate Bill 693 as passed by the Senate
Sponsor: Sen. Cameron S. Brown
House Committee: Government Operations
Senate Committee: Transportation

Complete to 5-1-06

A SUMMARY OF SENATE BILL 693 AS PASSED BY THE SENATE 11-9-05

Public Act 149 of 1911 permits state agencies and other public corporations to take private property, when necessary, under the following circumstances: (1) for a public improvement; (2) for the purposes to be advanced by the corporation's or agency's incorporation; or (3) for public purposes within the scope of the corporation's or agency's powers for the use or benefit of the public.

Under the act, when the Legislature appropriates funds to a state agency or the Office of the Governor to acquire land or property for a designated public purpose, the unit to which the appropriation has been made is authorized to acquire the property either by purchase, condemnation, or otherwise, and may proceed under the act for the purpose of condemnation

Senate Bill 693 specifies that public corporations could proceed only pursuant to its specific delegated statutory powers of condemnation. Within those statutory powers, a public corporation would have to commence proceedings under the Uniform Condemnation Procedures Act.

The bill would prohibit the taking of private property for transfer to a private entity unless the proposed use of the land is "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 land for instrumentalities of commerce, including a public utility or a state or federally regulated common carrier, whose very existence depends on the use of land that can be assembled only through the coordination that central government alone is capable of achieving.
- The property or use of the property would remain subject to public oversight and accountability after the transfer of the property and would be devoted to the public use, independent from the will of the entity taking it.
- The property was selected on facts of independent public significance or concern rather than the private interests of the entity to which the property eventually was transferred.

The bill specifies that "public use" would not include the taking of private property for transfer to a private entity for either general economic development or the enhancement of tax revenue. Also, an allowable taking of private property for public use would not include a taking that is a pretext to confer a private benefit on a known or unknown private entity.

The bill provides that in a condemnation action, the burden of proof is on the condemning authority to demonstrate, by a preponderance of the evidence, that the taking of private property is for a public use. If, however, the action involves the taking a property for the purposes of eradicating blight, the condemning authority would have to demonstrate by clear and convincing evidence that the taking is for a public use.

The bill specifies that any existing right, grant, or benefit afforded to property owners as of November 1, 2005, whether provided by the State Constitution, by Section 3 of the act or another statute, or otherwise, would not be abrogated or impaired by the bill.

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.)

FISCAL IMPACT:

The bill would have an indeterminate impact on the land acquisition costs for the state and local governmental units.

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