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Senate Bills 693 and 694 (as introduced 8-31-05)
Senate Joint Resolution E (as introduced 8-31-05)
Sponsor: Senator Cameron S. Brown (S.B. 693 & 694)
 Senator Tony Stamas (S.J.R. E)
Committee: Transportation

Date Completed: 9-6-05

CONTENT

Senate Bill 693 would amend Public Act 149 of 1911, which regulates the acquisition of property by State agencies and public corporations, and **Senate Joint Resolution E** would amend the State Constitution, to provide that the taking of private property would not be considered to be for public use if the property were transferred to a private entity for its primary benefit.

Senate Bill 694 would amend the Uniform Condemnation Procedures Act to require an agency to give written notice to a property owner at least 30 days before entering upon the property, and to require that entry be conducted in compliance with the State and United States Constitutions.

The proposals are described below in further detail.

Senate Bill 693

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 public's use or benefit 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 either by purchase, condemnation, or otherwise.

The bill specifies that a taking under these provisions would not be considered to be for the use or benefit of the public if the property were transferred to a private entity for its primary benefit of the private entity.

(Under the Act, "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.)

Senate Bill 694

The Uniform Condemnation Procedures Act prescribes procedures for an agency to follow when acquiring private property for a public use. The agency first must make good faith

offer in the amount it believes to be just compensation for the property, and must negotiate with the property owner for the purchase. If the parties do not reach an agreement, the agency may file an action in circuit court for the acquisition of the property and a determination of just compensation.

Under the Act, an agency, or its agent or employee, may enter upon property before filing an action for the purpose of making surveys, measurements, examinations, tests, soundings, and borings; taking photographs or samplings; appraising the property; conducting an environmental inspection; conducting archaeological studies; or determining whether the property is suitable to take for public purposes.

The entry may be made at reasonable hours and upon reasonable notice to the owner. The bill would delete reference to reasonable notice. Under the bill, the entry could not be made unless the owner were given written notice at least 30 days before the entry was made. Any entry under these provisions would have to be conducted in compliance with both the State and U.S. Constitutions.

(The Act defines "agency" as a public or private agency. "Public agency" means a governmental unit, officer, or subdivision authorized by law to condemn property. "Private agency" means a person, partnership, association, corporation, or entity, other than a public agency, authorized by law to condemn property.)

Senate Joint Resolution E

Article X, Section 2 of the State Constitution prohibits the taking of private property for public use without just compensation first being made or secured in a manner prescribed by law.

The joint resolution would amend Section 2 to provide that a taking of private property would not be considered to be for public use if the property were transferred to a private entity or entities for the primary benefit of the private entity or entities.

The joint resolution would have to be submitted to the voters at the next general election, if two-thirds of the members elected to and serving in each house of the Legislature approved it.

MCL 213.23 (S.B. 693)
213.54 (S.B. 694)

Legislative Analyst: Julie Koval

FISCAL IMPACT

Senate Bill 693

The bill would have no fiscal impact on State or local government. The bill would amend Public Act 149 of 1911 consistent with the 2004 Michigan Supreme Court decision in *County of Wayne v Hathcock et al.* (471 Mich 445).

Senate Bill 694

The proposed notice requirement would have a minimal impact on State and local government.

Senate Joint Resolution E

The joint resolution would have no fiscal impact on State or local government. It would amend Article X, Section 2 of the Michigan Constitution of 1963 consistent with the Michigan Supreme Court opinion in *County of Wayne v Hathcock, et al.*

Fiscal Analyst: Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.