

**ACQUISITION OF PROPERTY BY STATE AGENCIES AND PUBLIC CORPORATIONS
(EXCERPT)
Act 149 of 1911**

****** 213.23.amended THIS AMENDED SECTION IS EFFECTIVE DECEMBER 23, 2006 PROVIDED THAT SENATE JOINT RESOLUTION E OF THE 93rd LEGISLATURE BECOMES A PART OF THE MICHIGAN STATE CONSTITUTION OF 1963 BY AN AFFIRMATIVE VOTE OF THE PEOPLE IN THE NOVEMBER 7, 2006 GENERAL ELECTION ******

213.23.amended Authority to take private property; acquisition by purchase or condemnation; public use; burden of proof on condemning authority; reimbursement; preservation of existing right, grant, or benefit.

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 act that added this subsection.

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.