



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
LANSING

ROBERT W. SWANSON  
DIRECTOR

### **Analysis of Enrolled House Bills 5820-1**

**Topic:** Eminent Domain  
**Sponsor:** Representatives Lemmons III and McConico  
**Co-sponsors:** Representatives Jones, Gosselin, Stahl, Brandenburg, Baxter, Elsenheimer, Mortimer, Rocca, Lipsey, and Acciavatti on the original bills.  
**Committee:** House Government Operations  
Senate Transportation

**Date Introduced:** March 2, 2006

**Date Enrolled:** September 21, 2006

**Date of Analysis:** September 18, 2006

**Position:** The Department of Labor & Economic Growth supports the bills. The Michigan Department of Transportation also supports the latest version of the bills.

**Problem/Background:** Michigan, like many other states, has joined over 30 other states in considering legislation that limits the power of government agencies to condemn private property. These initiatives stem from a 2005 decision by the United States Supreme Court in *Kelo v. City of New London (04-108)*. In that case, the court upheld a taking of waterfront property in the Connecticut city of New London for an office and condominium development. Although a recent Michigan Supreme Court case has overturned a previous ruling that gave Michigan municipalities reasonably broad authority to condemn property for economic development purposes, Michigan legislators have been working on bills to deal with this issue. These bills include a proposed constitutional amendment and amendments to various eminent domain statutes.

Many people believe that the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 enacted by Congress provides for uniform and equitable treatment for persons displaced by public projects. The provisions in these bills were modeled after the federal law and are intended to extend these provisions to local projects that would not be otherwise covered by the federal law.

**Description of Bills:** Both bills amend the Uniform Condemnation Procedures Act.

House Bill 5820 amends Section 8 of the act to clarify that provisions relating to funds held in escrow for remediation do not apply to funds held in escrow for the payment of just compensation for an owner's principal residence under certain circumstances. The principal residence structure must be actually taken or the amount of property taken must reduce the minimum lot size below the minimum provided in the local zoning ordinance. The bill contains a disclaimer that the new language does not limit or expand an owner's or agency's rights to

bring federal or state cost recovery claims. “Principal residence” is defined as a residence for which an exemption from local property taxes has been granted under Section 7cc of the General Property Tax Act.

House Bill 5821 amends Section 5 of the act to require written notice to occupants of the property stating that an eminent domain proceeding has commenced and outlining the occupants’ basic legal rights. The bill lists several of these rights.

- Any person who has a leasehold interest of less than 6 months is entitled to a \$3,500 moving allowance;
- An individual who is a residential occupant may not be displaced until moving expenses or a moving allowance is paid;
- The person has had a reasonable opportunity, not to exceed 180 days after the payment date of moving expenses or the moving allowance, to relocate to a comparable replacement dwelling.

The bill defines “comparable replacement dwelling as:

- Decent, safe, and sanitary.
- Adequate in size to accommodate the occupants.
- Within the financial means of the individual.
- Functionally equivalent.
- In an area not subject to unreasonable adverse environmental conditions.
- In a location generally not less desirable than the location of the individual’s dwelling with respect to public utilities, facilities, services, and the individual’s place of employment.

The bill defines “just compensation” in terms of the procedures related to filing a claim for property or damage beyond the property described in the good faith written offer and submission of good faith written offer that are provided in the act and amended by the bill. A residential tenant’s leasehold interest of less than 6 months is not a compensable claim.

The bill requires compensation related to the increased property taxes resulting from a property owner being relocated from a homestead where assessments are capped to a comparable homestead where assessments will be increased as a result of the sale.

The bills are tie-barred.

**Arguments For:** Eminent domain is an important tool of government, but it is important that the procedures used by agencies in dealing with displaced persons be consistent and fair. It is neither consistent nor fair to use one set of procedures for federal projects and another set of procedures and payment schedules for non-federal projects.

The bills are substantially improved from the versions that passed the House. In particular, language relating to “categories of claims” that was problematic for the Michigan Department of Transportation has been removed. The replacement of the word “condemnation” by “eminent domain” in the required notice is also a significant improvement.

**Arguments Against:** There is no compelling need for these bills. The vast majority of projects in Michigan are covered by federal law, because federal money is involved to some extent in the project. These bills would impose additional costs on the taxpayers of cash-strapped local governments.

**Fiscal/Economic Impact:**

**a) Department:** The bills will have no budgetary impact on the department and will generate no revenue.

**b) State of Michigan:** The bills will have no budgetary impact on the state and will generate no additional revenue. MDOT had concerns regarding the original bills, but these concerns have been addressed.

**c) Local Government:** Although the bills contain amendments designed to deal with concerns from the Michigan Municipal League, the Drain Commissioners, and other organizations, the bills will impose additional costs on some projects not funded with federal funds.

**Other Pertinent Information:** The Michigan Association of Realtors and the Michigan Homebuilders Association support the bills. A representative of the Real Property Law Section of the State Bar of Michigan testified in Senate committee that they were neutral on the Senate substitutes. The Michigan Municipal League put in a card in Senate committee indicated that they continue to be opposed to the bill.

These bills are part of a larger package of bills and a Senate Joint Resolution designed to address eminent domain issues, including the *Kelo* decision, closing the blight loophole, and dealing with compensation issues. Originally, House Bills 5820-21 were tie-barred to three other bills, House Bills 5817-9. House Bill 5821 was particularly problematic to MDOT, because it allowed compensation for “categories of claims”. Ultimately, the Senate Transportation Committee broke the tie bars and retained the two bills before reporting the rest of the package.

**Administrative Rules Impact:** The bills should not require new or revised administrative rules.