



Report on Public Policy Position

Name of Section:

Real Property Law Section

Contact Person:

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Bill Number:

SJR E (Stamas) Land use; condemnation; taking of private property by eminent domain for the primary benefit of private entities; prohibit. Amends sec. 54, art. X of the state constitution.

Date position was adopted:

September 14, 2005

Process used to take the ideological position:

Vote of the Council of the Section

Number of members in the decision-making body:

19

Number who voted in favor and opposed to the position:

Of the 19 voting members, 16 were present. 16 voted in favor, none were opposed

FOR SECTIONS ONLY:

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

Position:

The Council of the Real Property Law Section opposes Senate Joint Resolution E for several reasons, including the following:

The announced intention of the proposed Resolution is to "codify" and incorporate into Michigan's Constitution the taking standard embraced by the Michigan Supreme Court in the decision of *Wayne County v Hathcock*, 471 Mich. 455 (2004). As noted in *Kelo v City of New London*, 125 S.Ct. 2655 (2005), the Michigan Supreme Court's decision in *Hathcock* imposed restrictions on the use of eminent domain beyond those imposed under the United States Constitution. The proposed amendment is unnecessary because the

Hathcock decision, which interprets the existing Michigan Constitution, is the law of the land in the State of Michigan. There is no need to put Hathcock into the law or Constitution; it is already there.

The Council of the Section is also concerned that (a) the proposed amendment would make existing law uncertain, (b) could well have unintended consequences, and (c) could create ambiguities in interpretation. For example, the Council believes that the proposed amendment may actually resurrect the standard previously employed by the Michigan Supreme Court in *Poletown Neighborhood Council v Detroit*, 410 Mich. 616 (1981), the standard expressly rejected by Hathcock. Because this result is contrary to the announced intention of the amendment, it highlights the problems inherent in attempting to “codify” a Michigan Supreme Court decision.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-SJR-E>