

HOUSE No. 1778

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to eminent domain takings..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 79 of the General Laws, as appearing in the 2006 Official Edition,
2 is hereby amended by inserting after section 1 the following new section:

3 Section 1A. The taking of real estate or of any interest therein by right of eminent
4 domain under this chapter or Chapter 80A shall be effected only when necessary for the
5 possession, occupation, and enjoyment of land by the public at large or by public agencies and
6 shall not be effected for the purpose of commercial enterprise, private economic development, or
7 any private use of the property. Property shall not be taken from one owner and transferred to
8 another on the grounds that the public will benefit from a more profitable use. Whenever an
9 attempt is made to take property for a use alleged to be public, the question whether the
10 contemplated use is truly public shall be a judicial question and determined as such without
11 regard to any legislative assertion that the use is public. In the event that property taken pursuant
12 to this chapter or Chapter 80A is not used for the purpose for which it was taken within five (5)
13 years of the taking, the governmental authority that took the property must offer to sell the
14 property to the owner from whom it was acquired, or his or her known or ascertainable heirs or

15 assigns, at the price which was paid for the property or for the fair market value of the property
16 at the time of the sale, whichever is less, and if the offer is not accepted within 180 days from the
17 date it is made, the property may be sold to any other person, but only at public sale after legal
18 notice is given.