

1 SB83
2 164967-1
3 By Senator Holley
4 RFD: Governmental Affairs
5 First Read: 03-MAR-15

1 164967-1:n:03/02/2015:MCS/agb LRS2015-768

2

3

4

5

6

7

8 SYNOPSIS: Under existing law, subject to certain
9 limitations, the state, any municipality or county,
10 and other entities organized by or under the
11 control of the state, municipalities, and counties
12 are authorized to exercise the power of eminent
13 domain to condemn property.

14 This bill would prohibit the state,
15 municipalities and counties, and entities organized
16 thereunder, from using the power of eminent domain
17 to acquire mortgages or deeds of trust.

18
19 A BILL

20 TO BE ENTITLED

21 AN ACT

22
23 To amend Sections 11-47-170, 11-80-1, and 18-1B-2,
24 Code of Alabama 1975, relating to the power of eminent domain;
25 to prohibit the use of eminent domain by the state, any
26 municipality or county, and other entities organized by or

1 under the control of the state, municipalities, and counties,
2 to acquire mortgages or deeds of trust.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 11-47-170, 11-80-1, and 18-1B-2,
5 Code of Alabama 1975, are hereby amended to read as follows:

6 "§11-47-170.

7 "(a) Except as otherwise provided in subsection (b),
8 whenever in the judgment of the council, commission, or other
9 governing body of a city or town it may be necessary or
10 expedient for the carrying out and full exercise of any power
11 granted by the applicable provisions of this title or any
12 other applicable provision of law, the town or city shall have
13 full power and authority to acquire by purchase the necessary
14 lands or rights, easements, or interests therein, thereunder,
15 or thereover or, for the purposes for which private property
16 may be acquired by condemnation, may proceed to condemn the
17 same in the manner provided by this article, or by the general
18 laws of this state governing the taking of lands or the
19 acquiring of interests therein for the uses for which private
20 property may be taken, and such proceedings shall be governed
21 in every respect by the general laws of this state pertaining
22 thereto or by the provisions on the subject contained in this
23 article when the same are followed.

24 "(b) Notwithstanding any other provision of law, a
25 municipality or county may not condemn property for the
26 purposes of private retail, office, commercial, industrial, or
27 residential development; or primarily for enhancement of tax

1 revenue; or for transfer to a person, nongovernmental entity,
2 public-private partnership, corporation, or other business
3 entity; or for the purpose of acquiring a mortgage or deed of
4 trust. Provided, however, the provisions of this subsection
5 shall not apply to the use of eminent domain by any
6 municipality, housing authority, or other public entity based
7 upon a finding of blight in an area covered by any
8 redevelopment plan or urban renewal plan pursuant to Chapters
9 2 and 3 of Title 24, provided the purpose of the use of
10 eminent domain pursuant to Chapters 2 and 3 of Title 24 is not
11 to acquire a mortgage or deed of trust, but just compensation,
12 in all cases, shall continue to be first made to the owner.
13 Nothing in this article shall limit the exercise of eminent
14 domain by or for the benefit of public utilities or other
15 entities engaged in the generation, transmission, or
16 distribution of telephone, gas, electricity, water, sewer, or
17 other utility products or services. Nothing in this article
18 shall be interpreted to prohibit a municipal or county
19 governing body from exercising the power of eminent domain for
20 the purpose of constructing, maintaining, or operating streets
21 and roadways, government buildings, or park and recreation
22 facilities.

23 "(c) Property condemned pursuant to the
24 authorizations as described in subsections (a) and (b), if not
25 ever used for the purpose or purposes for which it was
26 condemned or for some other public use, that is subsequently
27 determined to be sold, shall be first offered for sale to the

1 person or persons from whom the property was condemned, or his
2 or her known or ascertainable heirs or assigns, at the price
3 which was paid for the property, less such amount, if any, as
4 the person or persons from whom the property was condemned
5 shall show by good and sufficient documentation to be the
6 amount of income and transaction taxes, if any, actually paid
7 in connection therewith, and if the offer shall not be
8 accepted within 90 days from the date it is made, the property
9 may be sold to any other person, but only at public sale after
10 legal notice is given.

11 "§11-80-1.

12 "(a) Counties and municipal corporations may condemn
13 lands for public building sites or additions thereto, or for
14 enlargements of sites already owned, or for public roads or
15 streets or alleys, or for material for the construction of
16 public roads or streets or for any other public use.

17 "(b) Notwithstanding any other provision of law, a
18 municipality or county may not condemn property for the
19 purposes of private retail, office, commercial, industrial, or
20 residential development; or primarily for enhancement of tax
21 revenue; or for transfer to a person, nongovernmental entity,
22 public-private partnership, corporation, or other business
23 entity; or for the purpose of acquiring a mortgage or deed of
24 trust. Provided, however, the provisions of this subsection
25 shall not apply to the use of eminent domain by any
26 municipality, housing authority, or other public entity based
27 upon a finding of blight in an area covered by any

1 redevelopment plan or urban renewal plan pursuant to Chapters
2 and 3 of Title 24, provided the purpose of the use of
3 eminent domain pursuant to Chapters 2 and 3 of Title 24 is not
4 to acquire a mortgage or deed of trust, but just compensation,
5 in all cases, shall continue to be first made to the owner.
6 Nothing in this article shall limit the exercise of eminent
7 domain by or for the benefit of public utilities or other
8 entities engaged in the generation, transmission, or
9 distribution of telephone, gas, electricity, water, sewer, or
10 other utility products or services. Nothing in this article
11 shall be interpreted to prohibit a municipal or county
12 governing body from exercising the power of eminent domain for
13 the purpose of constructing, maintaining, or operating streets
14 and roadways, government buildings, or park and recreation
15 facilities.

16 "(c) Property condemned pursuant to the
17 authorizations as described in subsections (a) and (b), if not
18 ever used for the purpose or purposes for which it was
19 condemned or for some other public use, that is subsequently
20 determined to be sold first, shall be offered for sale to the
21 person or persons from whom the property was condemned, or his
22 or her known or ascertainable heirs or assigns, at the price
23 which was paid for the property, less such amount, if any, as
24 the person or persons from whom the property was condemned
25 shall show by good and sufficient documentation to be the
26 amount of income and transaction taxes, if any, actually paid
27 in connection therewith, and if the offer shall not be

1 accepted within 90 days from the date it is made, the property
2 may be sold to any other person but only at public sale after
3 legal notice is given.

4 "§18-1B-2.

5 (a) Neither the State of Alabama, nor any of its
6 departments, divisions, agencies, commissions, corporations,
7 boards, authorities, or other entities, nor any agency,
8 corporation, district, board, or other entity organized by or
9 under the control of any municipality or county in the state
10 and vested by law to any extent whatsoever with the power of
11 eminent domain may condemn property for the purpose of
12 nongovernmental retail, office, commercial, residential, or
13 industrial development or use or condemn a mortgage or deed of
14 trust; provided, however, the foregoing provisions of this
15 subsection shall not apply to the exercise of the powers of
16 eminent domain by any county, municipality, housing authority,
17 or other public entity based upon a finding of blight in an
18 area covered by any redevelopment plan or urban renewal plan
19 pursuant to Chapters 2 and 3 of Title 24, provided the purpose
20 of the exercise of the powers of eminent domain pursuant to
21 Chapters 2 and 3 of Title 24 is not to acquire a mortgage or
22 deed of trust, or to the exercise of eminent domain by or for
23 the benefit of public utilities or other entities engaged in
24 the generation, transmission, or distribution of telephone,
25 gas, electricity, water, sewer, or other utility products or
26 services. Nothing in this section shall be interpreted to
27 prohibit the state or a municipal or county governing body

1 from exercising the power of eminent domain for the purpose of
2 constructing, maintaining, or operating streets and roadways,
3 government buildings, or park and recreation facilities.

4 "(b) Property condemned by an entity described in
5 subsection (a), if not ever used for the purpose or purposes
6 for which it was condemned or for some other public use, that
7 is subsequently determined to be sold, shall be first offered
8 for sale to the person or persons from whom the property was
9 condemned, or his or her known or ascertainable heirs or
10 assigns, at the price which was paid for the property, less
11 such amount, if any, as the person shall show by good and
12 sufficient documentation to be the amount of income and
13 transaction taxes, if any, actually paid in connection
14 therewith, and if the offer shall not be accepted within 90
15 days from the date it is made, the property may be sold to any
16 other person or persons but only at public sale after legal
17 notice is given."

18 Section 2. This act shall become effective on the
19 first day of the third month following its passage and
20 approval by the Governor, or its otherwise becoming law.