

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

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 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.