

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

1 SB83

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4 ENGROSSED

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7 A BILL

8 TO BE ENTITLED

9 AN ACT

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11 To amend Sections 11-47-170, 11-80-1, and 18-1B-2,
12 Code of Alabama 1975, relating to the power of eminent domain;
13 to prohibit the use of eminent domain by the state, any
14 municipality or county, and other entities organized by or
15 under the control of the state, municipalities, and counties,
16 to acquire mortgages or deeds of trust.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

20 "§11-47-170.

21 "(a) Except as otherwise provided in subsection (b),
22 whenever in the judgment of the council, commission, or other
23 governing body of a city or town it may be necessary or
24 expedient for the carrying out and full exercise of any power
25 granted by the applicable provisions of this title or any
26 other applicable provision of law, the town or city shall have
27 full power and authority to acquire by purchase the necessary

1 lands or rights, easements, or interests therein, thereunder,
2 or thereover or, for the purposes for which private property
3 may be acquired by condemnation, may proceed to condemn the
4 same in the manner provided by this article, or by the general
5 laws of this state governing the taking of lands or the
6 acquiring of interests therein for the uses for which private
7 property may be taken, and such proceedings shall be governed
8 in every respect by the general laws of this state pertaining
9 thereto or by the provisions on the subject contained in this
10 article when the same are followed.

11 "(b) Notwithstanding any other provision of law, a
12 municipality or county may not condemn property for the
13 purposes of private retail, office, commercial, industrial, or
14 residential development; or primarily for enhancement of tax
15 revenue; or for transfer to a person, nongovernmental entity,
16 public-private partnership, corporation, or other business
17 entity; or for the primary purpose of acquiring a mortgage or
18 deed of trust. Provided, however, the provisions of this
19 subsection shall not apply to the use of eminent domain by any
20 municipality, housing authority, or other public entity based
21 upon a finding of blight in an area covered by any
22 redevelopment plan or urban renewal plan pursuant to Chapters
23 2 and 3 of Title 24, provided the primary purpose of the use
24 of eminent domain pursuant to Chapters 2 and 3 of Title 24 is
25 not primarily to acquire a mortgage or deed of trust, but just
26 compensation, in all cases, shall continue to be first made to
27 the owner. Nothing in this article shall limit the exercise of

1 eminent domain by or for the benefit of public utilities or
2 other entities engaged in the generation, transmission, or
3 distribution of telephone, gas, electricity, water, sewer, or
4 other utility products or services. Nothing in this article
5 shall be interpreted to prohibit a municipal or county
6 governing body from exercising the power of eminent domain to
7 condemn real property, irrespective of whether the property
8 may be subject to a mortgage or deed of trust, for the purpose
9 of constructing, maintaining, or operating streets and
10 roadways, government buildings, or park and recreation
11 facilities.

12 "(c) Property condemned pursuant to the
13 authorizations as described in subsections (a) and (b), if not
14 ever used for the purpose or purposes for which it was
15 condemned or for some other public use, that is subsequently
16 determined to be sold, shall be first offered for sale to the
17 person or persons from whom the property was condemned, or his
18 or her known or ascertainable heirs or assigns, at the price
19 which was paid for the property, less such amount, if any, as
20 the person or persons from whom the property was condemned
21 shall show by good and sufficient documentation to be the
22 amount of income and transaction taxes, if any, actually paid
23 in connection therewith, and if the offer shall not be
24 accepted within 90 days from the date it is made, the property
25 may be sold to any other person, but only at public sale after
26 legal notice is given.

27 "§11-80-1.

1 "(a) Counties and municipal corporations may condemn
2 lands for public building sites or additions thereto, or for
3 enlargements of sites already owned, or for public roads or
4 streets or alleys, or for material for the construction of
5 public roads or streets or for any other public use.

6 "(b) Notwithstanding any other provision of law, a
7 municipality or county may not condemn property for the
8 purposes of private retail, office, commercial, industrial, or
9 residential development; or primarily for enhancement of tax
10 revenue; or for transfer to a person, nongovernmental entity,
11 public-private partnership, corporation, or other business
12 entity; or for the primary purpose of acquiring a mortgage or
13 deed of trust. Provided, however, the provisions of this
14 subsection shall not apply to the use of eminent domain by any
15 municipality, housing authority, or other public entity based
16 upon a finding of blight in an area covered by any
17 redevelopment plan or urban renewal plan pursuant to Chapters
18 2 and 3 of Title 24, provided the purpose of the use of
19 eminent domain pursuant to Chapters 2 and 3 of Title 24 is not
20 primarily to acquire a mortgage or deed of trust, but just
21 compensation, in all cases, shall continue to be first made to
22 the owner. Nothing in this article shall limit the exercise of
23 eminent domain by or for the benefit of public utilities or
24 other entities engaged in the generation, transmission, or
25 distribution of telephone, gas, electricity, water, sewer, or
26 other utility products or services. Nothing in this article
27 shall be interpreted to prohibit a municipal or county

1 governing body from exercising the power of eminent domain to
2 condemn real property, irrespective of whether the property
3 may be subject to a mortgage or deed of trust, for the purpose
4 of constructing, maintaining, or operating streets and
5 roadways, government buildings, or park and recreation
6 facilities.

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

22 "§18-1B-2.

23 "(a) Neither the State of Alabama, nor any of its
24 departments, divisions, agencies, commissions, corporations,
25 boards, authorities, or other entities, nor any agency,
26 corporation, district, board, or other entity organized by or
27 under the control of any municipality or county in the state

1 and vested by law to any extent whatsoever with the power of
2 eminent domain may condemn property for the purpose of
3 nongovernmental retail, office, commercial, residential, or
4 industrial development or use or to primarily condemn a
5 mortgage or deed of trust; provided, however, the foregoing
6 provisions of this subsection shall not apply to the exercise
7 of the powers of eminent domain by any county, municipality,
8 housing authority, or other public entity based upon a finding
9 of blight in an area covered by any redevelopment plan or
10 urban renewal plan pursuant to Chapters 2 and 3 of Title 24,
11 provided the purpose of the exercise of the powers of eminent
12 domain pursuant to Chapters 2 and 3 of Title 24 is not
13 primarily to acquire a mortgage or deed of trust, or to the
14 exercise of eminent domain by or for the benefit of public
15 utilities or other entities engaged in the generation,
16 transmission, or distribution of telephone, gas, electricity,
17 water, sewer, or other utility products or services. Nothing
18 in this section shall be interpreted to prohibit the state or
19 a municipal or county governing body from exercising the power
20 of eminent domain for the purpose of constructing,
21 maintaining, or operating streets and roadways, government
22 buildings, or park and recreation facilities.

23 "(b) Property condemned by an entity described in
24 subsection (a), if not ever used for the purpose or purposes
25 for which it was condemned or for some other public use, that
26 is subsequently determined to be sold, shall be first offered
27 for sale to the person or persons from whom the property was

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

Section 2. Nothing in this act shall be construed to limit the power of a governmental entity to condemn through powers of eminent domain property that may be encumbered by a mortgage or deed of trust if there is a public use for the property as authorized under Alabama's constitution and the laws of this state; provided, however, that under no circumstances shall condemnation of a mortgage or deed of trust exclusively be deemed a public use.

Section 3. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

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3 Senate

4 Read for the first time and referred to the Senate
5 committee on Governmental Affairs.....

03-MAR-15

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7 Read for the second time and placed on the calen-
8 dar.....

10-MAR-15

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10 Read for the third time and passed as amended 17-MAR-15

11 Yeas 32
12 Nays 0

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Patrick Harris
Secretary