

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

1 SB83

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4 ENROLLED, An Act,

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

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

14 "§11-47-170.

15 "(a) Except as otherwise provided in subsection (b),
16 whenever in the judgment of the council, commission, or other
17 governing body of a city or town it may be necessary or
18 expedient for the carrying out and full exercise of any power
19 granted by the applicable provisions of this title or any
20 other applicable provision of law, the town or city shall have
21 full power and authority to acquire by purchase the necessary
22 lands or rights, easements, or interests therein, thereunder,
23 or thereover or, for the purposes for which private property
24 may be acquired by condemnation, may proceed to condemn the
25 same in the manner provided by this article, or by the general

1 laws of this state governing the taking of lands or the
2 acquiring of interests therein for the uses for which private
3 property may be taken, and such proceedings shall be governed
4 in every respect by the general laws of this state pertaining
5 thereto or by the provisions on the subject contained in this
6 article when the same are followed.

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

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

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

25 "§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

1 other utility products or services. Nothing in this article
2 shall be interpreted to prohibit a municipal or county
3 governing body from exercising the power of eminent domain to
4 condemn real property, irrespective of whether the property
5 may be subject to a mortgage or deed of trust, for the purpose
6 of constructing, maintaining, or operating streets and
7 roadways, government buildings, or park and recreation
8 facilities.

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

24 "§18-1B-2.

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

1 maintaining, or operating streets and roadways, government
2 buildings, or park and recreation facilities.

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

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

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB83
 Senate 17-MAR-15
 I hereby certify that the within Act originated in and passed
 the Senate, as amended.

Patrick Harris
 Secretary

House of Representatives
 Passed: 07-APR-15

By: Senator Holley