

1 SB297
2 80062-1
3 By Senators French, Dixon, Waggoner, Biddle, Erwin, Lee, Dial,
4 Mitchell, Byrne, and Means (Constitutional Amendment)
5 RFD: Judiciary
6 First Read: 19-JAN-06

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8 SYNOPSIS: This bill proposes an amendment to the
9 Constitution of Alabama of 1901, to limit the scope
10 of application for eminent domain property
11 seizures.

12 The proposed amendment would prohibit the
13 use of eminent domain for private economic activity
14 that would generate tax revenue, job creations, or
15 other economic benefits for the government if the
16 property so seized would be given, sold, or leased
17 to a private individual, corporation, or other
18 entity.

19 The bill would provide that any reduction of
20 property rights through the use of eminent domain
21 below those usages and benefits enjoyed under clear
22 title or fee simple ownership would constitute a
23 taking and the owner of the property would receive
24 just compensation before any such taking may occur.
25 Just compensation would be in the form of monetary
26 compensation, based on the fair market value of the
27 highest and best use for which the property could

1 reasonably be used in the foreseeable future, and
2 would include compensation for reasonable
3 documented relocation costs and closing costs on
4 comparable replacement property.

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6 A BILL
7 TO BE ENTITLED
8 AN ACT
9

10 Proposing an amendment to the Constitution of
11 Alabama of 1901, to amend Sections 23 and 235, now appearing
12 as Sections 23 and 235 of the Official Recompilation of the
13 Constitution of Alabama of 1901, as amended, to prohibit the
14 government from seizing private property and turning it over
15 to private individuals, corporations, or other entities for
16 the sole purpose of increasing tax revenue or creating jobs,
17 and would provide further for the elements of property
18 ownership which must be compensated if taken for public use,
19 to provide that any reduction in the rights of ownership
20 occurring due to eminent domain is a taking that must be
21 justly compensated, prior to any taking, in the form of
22 monetary compensation based on fair market value of the
23 highest and best use, including relocation costs and
24 comparable replacement costs.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. The following declaratory amendment to
27 the Constitution of Alabama of 1901, as amended, is proposed

1 and shall become valid as a part thereof when approved by a
2 majority of the qualified electors voting thereon and in
3 accordance with Sections 284, 285, and 287 of the Constitution
4 of Alabama of 1901, as amended:

5 PROPOSED AMENDMENT

6 Sections 23 and 235 of the Constitution of Alabama
7 of 1901, now appearing as Section 23 and 235 of the Official
8 Recompilation of the Constitution of Alabama of 1901, as
9 amended, are amended to read as follows:

10 "Section 23. That the exercise of the right of
11 eminent domain shall never be abridged nor so construed as to
12 prevent the legislature from taking the property and
13 franchises of incorporated companies, and subjecting them to
14 public use in the same manner in which the property and
15 franchises of individuals are taken and subjected; but private
16 property shall not be taken or damaged for, or applied to
17 public use, unless just compensation be first made therefor;
18 nor shall private property be taken for private use, or for
19 the use of corporations, other than municipal, or for the use
20 of limited liability corporations, limited liability
21 partnerships, partnerships, public-private partnerships,
22 associations, or any business enterprises, or variation
23 thereof, without the consent of the owner; provided, however,
24 the legislature may by law secure the persons or corporations
25 the right of way over the lands of other persons or
26 corporations, and by general laws provide for and regulate the
27 exercise by persons and corporations of the rights herein

1 reserved; but just compensation shall, in all cases, be first
2 made to the owner; and, provided, that the right of eminent
3 domain shall not be so construed as to allow taxation or
4 forced subscription for the benefit of railroads or any other
5 kind of corporations, other than municipal, or for the benefit
6 of any individual or association. Neither the state nor any
7 county, city, or town, or any political subdivision thereof,
8 or any regional authority, shall use eminent domain to condemn
9 or confiscate property or property rights for the purpose of
10 private retail, office, commercial, industrial or residential
11 development, revenue enhancement, perceived public good, or
12 any purpose other than actual use by the public. Public use
13 shall only mean the possession, occupation, and enjoyment of
14 the property by the general public or by public agencies, or
15 the use of the land for the creation or functioning of public
16 utilities, or to remediate a danger to the health and safety
17 of the public, and shall not mean the public benefits of
18 economic development, including an increase in the tax base,
19 tax revenues, employment or general economic health. Whenever
20 an attempt is made to take private property for a use alleged
21 to be public, the question whether the contemplated use be
22 public shall be judicially determined without regard to any
23 legislative declaration that the use is public.

24 "Section 235.

25 "Municipal and other corporations, and individuals,
26 and other entities including regional authorities, counties,
27 cities, towns, or any political subdivisions thereof, invested

1 with the privilege of taking property for public use, shall
2 make just compensation, ~~to be ascertained as may be provided~~
3 ~~by law,~~ for the property taken, or for property that is
4 injured, or destroyed by the construction or enlargement of
5 its works, highways, or improvements, which compensation shall
6 be paid before such taking, injury, or destruction. As
7 property ownership entails not just the title to, but also the
8 unrestricted usage and benefits of ownership thereof, any
9 reduction of property rights through the use of eminent domain
10 below those usages and benefits enjoyed under clear title or
11 fee simple ownership, for the purposes of this article, shall
12 constitute a taking and the owner of the property shall
13 receive just compensation before any such taking may occur.
14 Just compensation shall be in the form of monetary
15 compensation, shall be based on the fair market value of the
16 highest and best use for which the property could reasonably
17 be used in the foreseeable future, and shall include
18 compensation for reasonable documented relocation costs and
19 closing costs on comparable replacement property. If
20 compensation for property taken by eminent domain is
21 reinvested in replacement property within two years from the
22 date of receipt of funds, any income tax liability which would
23 otherwise result from such involuntary sale shall be deferred
24 until such time as the replacement property is sold. The
25 legislature is hereby prohibited from denying the right of
26 appeal of any valuation for just compensation or from any
27 preliminary assessment of damages against any such

1 corporations or individuals made by viewers or otherwise, but
2 such appeal shall not deprive those who have obtained the
3 judgment of condemnation from a right of entry, provided the
4 amount of damages assessed shall have been paid into court in
5 money, and a bond shall have been given in not less than
6 double the amount of the damages assessed, with good and
7 sufficient sureties, to pay such damages as the property owner
8 may sustain; and the amount of just compensation or damages in
9 all cases of appeals shall on demand of either party, be
10 determined by a jury according to law."

11 Section 2. An election upon the proposed amendment
12 shall be held in accordance with Sections 284 and 285 of the
13 Constitution of Alabama of 1901, now appearing as Sections 284
14 and 285 of the Official Recompilation of the Constitution of
15 Alabama of 1901, as amended, and the election laws of this
16 state.

17 Section 3. The appropriate election official shall
18 assign a ballot number for the proposed constitutional
19 amendment on the election ballot and shall set forth the
20 following description of the substance or subject matter of
21 the proposed constitutional amendment:

22 "Proposing a declaratory amendment to the
23 Constitution of Alabama of 1901, to amend Sections 23 and 235
24 forbidding the State of Alabama, and all political
25 subdivisions thereof, and any regional authority from seizing
26 or damaging private property using eminent domain powers and
27 giving, selling, or leasing that property to other private

1 individuals or corporations for their own use; providing that
2 any reduction of property rights through the use of eminent
3 domain constitutes a taking for which the owner shall be
4 compensated based on fair market value of the highest and best
5 use; and providing that eminent domain shall be used only for
6 actual public use."

7 "Proposed by Act _____."

8 This description shall be followed by the following
9 language:

10 "Yes () No ()."