

1 SB91  
2 77171-1  
3 By Senators French, Erwin, Byrne, Marsh, and Biddle  
4 (Constitutional Amendment)  
5 RFD: Finance and Taxation General Fund  
6 First Read: 19-JUL-05

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8 SYNOPSIS: This bill proposes an amendment to the  
9 Constitution of Alabama of 1901, to change the  
10 scope 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.

5  
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 to prohibit the  
12 government from seizing private property and turning it over  
13 to private individuals, corporations, or other entities for  
14 the sole purpose of increasing tax revenue or creating jobs,  
15 and would provide further for the elements of property  
16 ownership which must be compensated if taken for public use,  
17 to provide that any reduction in the rights of ownership  
18 occurring due to eminent domain is a taking that must be  
19 justly compensated, prior to any taking, in the form of  
20 monetary compensation based on fair market value of the  
21 highest and best use, including relocation costs ad comparable  
22 replacement costs.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. The following amendment to the  
25 Constitution of Alabama of 1901, as amended, is proposed and  
26 shall become valid as a part thereof when approved by a  
27 majority of the qualified electors voting thereon and in

1 accordance with Sections 284, 285, and 287 of the Constitution  
2 of Alabama of 1901, as amended:

3 PROPOSED AMENDMENT

4 Sections 23 and 235 of the Constitution of Alabama  
5 of 1901, are amended to read as follows:

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

1 other than municipal, or for the benefit of any individual or  
2 association. Neither the state nor any county, city, or town,  
3 or any political subdivision thereof, shall use eminent domain  
4 to condemn or confiscate property or property rights for the  
5 purpose of a commercial enterprise, industrial development,  
6 revenue enhancement, perceived public good, or any purpose  
7 other than actual use by the public.

8 "Section 235.

9 "Municipal and other corporations, ~~and individuals,~~  
10 and other entities including counties, cities, towns, or any  
11 political subdivisions thereof, invested with the privilege of  
12 taking property for public use, shall make just compensation,  
13 ~~to be ascertained as may be provided by law,~~ for the property  
14 taken, or for property that is injured, or destroyed by the  
15 construction or enlargement of its works, highways, or  
16 improvements, which compensation shall be paid before such  
17 taking, injury, or destruction. As property ownership entails  
18 not just the title to, but also the unrestricted usage and  
19 benefits of ownership thereof, any reduction of property  
20 rights through the use of eminent domain below those usages  
21 and benefits enjoyed under clear title or fee simple  
22 ownership, for the purposes of this article, shall constitute  
23 a taking and the owner of the property shall receive just  
24 compensation before any such taking may occur. Just  
25 compensation shall be in the form of monetary compensation,  
26 shall be based on the fair market value of the highest and  
27 best use for which the property could reasonably be used in

1 the foreseeable future, and shall include compensation for  
2 reasonable documented relocation costs and closing costs on  
3 comparable replacement property. The legislature is hereby  
4 prohibited from denying the right of appeal of any valuation  
5 for just compensation or from any preliminary assessment of  
6 damages against any such corporations or individuals made by  
7 viewers or otherwise, but such appeal shall not deprive those  
8 who have obtained the judgment of condemnation from a right of  
9 entry, provided the amount of damages assessed shall have been  
10 paid into court in money, and a bond shall have been given in  
11 not less than double the amount of the damages assessed, with  
12 good and sufficient sureties, to pay such damages as the  
13 property owner may sustain; and the amount of just  
14 compensation or damages in all cases of appeals shall on  
15 demand of either party, be determined by a jury according to  
16 law."

17 Section 2. An election upon the proposed amendment  
18 shall be held in accordance with Sections 284 and 285 of the  
19 Constitution of Alabama of 1901, as amended, and the election  
20 laws of this state.

21 Section 3. The appropriate election official shall  
22 assign a ballot number for the proposed constitutional  
23 amendment on the election ballot and shall set forth the  
24 following description of the substance or subject matter of  
25 the proposed constitutional amendment:

26 "Proposing an amendment to the Constitution of  
27 Alabama of 1901, to amend Sections 23 and 235 forbidding the

1 State of Alabama, and all political subdivisions thereof, from  
2 seizing private property using eminent domain powers and  
3 giving, selling, or leasing that property to other private  
4 individuals or corporations for their own use; providing that  
5 any reduction of property rights through the use of eminent  
6 domain constitutes a taking for which the owner shall be  
7 compensated based on fair market value of the highest and best  
8 use; and providing that eminent domain shall be used only for  
9 actual public use."

10 "Proposed by Act \_\_\_\_\_."

11 This description shall be followed by the following  
12 language:

13 "Yes ( ) No ( )."