

1 SB202
2 79337-1
3 By Senators French, Biddle, Lee, Waggoner, Smith, Byrne,
4 Dixon, Holley, Dial, Butler, Mitchem, Erwin, Marsh, and
5 Roberts (Constitutional Amendment)
6 RFD: Economic Expansion and Trade
7 First Read: 10-JAN-06

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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.

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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 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 ()."