

By: Representative Blackmon

To: Judiciary A

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 918

1 AN ACT TO AMEND SECTION 11-27-1, MISSISSIPPI CODE OF 1972, TO  
2 PROHIBIT USE OF THE POWER OF EMINENT DOMAIN EXCEPT FOR A PUBLIC  
3 USE, PROVIDED DUE COMPENSATION IS MADE; TO CLARIFY THE RIGHT OF  
4 EMINENT DOMAIN SHALL NOT BE EXERCISED FOR THE PURPOSE OF TAKING OR  
5 DAMAGING PRIVATELY OWNED REAL PROPERTY FOR PRIVATE DEVELOPMENT,  
6 FOR A PRIVATE PURPOSE, FOR ENHANCEMENT OF TAX REVENUE, OR FOR  
7 TRANSFER TO A PERSON, NONGOVERNMENTAL ENTITY, PUBLIC-PRIVATE  
8 PARTNERSHIP, CORPORATION OR OTHER BUSINESS ENTITY UNLESS THE USE  
9 IS AUTHORIZED UNDER THE MISSISSIPPI MAJOR ECONOMIC IMPACT ACT,  
10 APPROVED BY LOCAL GOVERNMENT, CERTIFIED BY THE MISSISSIPPI  
11 DEVELOPMENT AUTHORITY, PASSED BY THE LEGISLATURE, AND SIGNED BY  
12 THE GOVERNOR; TO CREATE SECTION 11-27-28, MISSISSIPPI CODE OF  
13 1972, TO FURTHER CLARIFY THAT THERE IS NO ADDITIONAL TAKING WHEN  
14 NEW USES HAVE NO SUBSTANTIAL IMPACT UPON THE SERVIENT ESTATE; AND  
15 FOR RELATED PURPOSES.

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

17 **SECTION 1.** Section 11-27-1, Mississippi Code of 1972, is  
18 amended as follows:

19 11-27-1. (1) Any person or corporation having the right to  
20 condemn private property for public use shall exercise that right  
21 as provided in this chapter, except as elsewhere specifically  
22 provided under the laws of the State of Mississippi.

23 (2) (a) The right of eminent domain shall only be exercised  
24 for a public use, provided due compensation, including relocation  
25 expenses when relocation is necessary, is first made in the manner  
26 prescribed by law to the owner or owners of the property  
27 condemned.

28 (b) The right of eminent domain shall not be exercised  
29 for the purpose of taking or damaging privately owned real  
30 property for private development, for a private purpose, for  
31 enhancement of tax revenue, or for transfer to a person,  
32 nongovernmental entity, public-private partnership, corporation or



33 other business entity, unless the taking of private property is  
34 authorized for a project under the Mississippi Major Economic  
35 Impact Act as set forth in Title 57, Chapter 75, Mississippi Code  
36 of 1972, and if:

37 (i) The project is approved by the board of  
38 supervisors of any county or counties in which the project is  
39 located and, if the project is located within a municipality, by  
40 the governing authority of the municipality;

41 (ii) The Mississippi Development Authority  
42 certifies to the Legislature and the Governor that the project  
43 satisfies the requirements of the Mississippi Major Economic  
44 Impact Act; and

45 (iii) The Legislature passes a bill approving the  
46 project as a Mississippi Major Economic Impact Act project, and  
47 the Governor approves that bill.

48 (c) Any taking under subsection (2)(b) associated with  
49 a Mississippi Major Economic Impact Act project shall be subject  
50 to judicial review under Article 3, Section 17, Mississippi  
51 Constitution of 1890.

52 (d) The provisions of subsection (2)(b) shall not apply  
53 to the exercise of eminent domain in connection with projects and  
54 tier one suppliers as defined in Section 57-75-5 as it existed on  
55 June 30, 2009.

56 (e) The provisions of subsection (2)(b) shall not apply  
57 to drainage and levee facilities and usage, roads and bridges for  
58 public conveyance, flood control projects with a levee component,  
59 seawalls, dams, toll roads, public airports, public ports, public  
60 harbors, public wayports, public hospitals and health centers,  
61 housing authorities, public schools, structures in the National  
62 Register of Historic Places, common carriers or facilities for  
63 public utilities and other entities used in the generation,  
64 transmission, storage or distribution of telephone,



65 telecommunication, gas, carbon dioxide, electricity, water, sewer,  
66 natural gas, liquid hydrocarbons or other utility products.

67 **SECTION 2.** The following shall be codified as Section  
68 11-27-28, Mississippi Code of 1972:

69 11-27-28. Grants, transfers or other conveyances of  
70 easements, servitudes, rights-of-way, licenses or other rights of  
71 use of real property, including takings by way of condemnation or  
72 eminent domain proceedings, whether existing and of record as of  
73 July 1, 2010, or whether made, created or taken after July 1,  
74 2010, are declared to be and shall be treated as (a)  
75 apportionable, (b) easements in gross, as such rights of use are  
76 not appurtenances to any estate in land, and (c) granting to the  
77 purchaser, grantee, transferee or condemnor, and any successors,  
78 assigns or licensees of all or any part of such rights of use,  
79 full authority to put such real property to any use that does not  
80 impose a substantial additional burden in fact upon the  
81 landowner's servient estate, including, but not limited to, any  
82 use that may be considered a technological advance and any use  
83 that is not incompatible with the original use. No such new use  
84 is an additional taking or an additional servitude so long as it  
85 does not impose a substantial additional burden in fact upon the  
86 landowner's servient estate.

87 **SECTION 3.** This act shall take effect and be in force from  
88 and after July 1, 2010, and shall apply to all actions filed on or  
89 after July 1, 2010.

