

By: Representative Evans (70th)

To: Constitution

## HOUSE CONCURRENT RESOLUTION NO. 39

1 A CONCURRENT RESOLUTION TO BRING FORWARD THE PROPOSED  
2 AMENDMENT TO THE MISSISSIPPI CONSTITUTION OF 1890 CONTAINED IN  
3 INITIATIVE MEASURE NO. 31, WHICH RELATES TO THE SUBJECT OF EMINENT  
4 DOMAIN, FOR THE PURPOSE OF THE POSSIBLE CONSIDERATION OF A  
5 LEGISLATIVE ALTERNATIVE TO THE ORIGINAL INITIATIVE MEASURE; TO  
6 BRING FORWARD SECTIONS 17, 110, 190 AND 233, MISSISSIPPI  
7 CONSTITUTION OF 1890, WHICH RELATE TO THE SUBJECT OF EMINENT  
8 DOMAIN, FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED  
9 PURPOSES.

10 WHEREAS, under Section 273 of the Mississippi Constitution of  
11 1890, the people have the power to propose and enact  
12 constitutional amendments by initiative, and the procedure for  
13 doing so is set forth in Chapter 17, Title 23, Mississippi Code of  
14 1972.

15 WHEREAS, following those provisions, the people have proposed  
16 Initiative Measure No. 31 relating to the subject of eminent  
17 domain, and this initiative measure will be presented to the  
18 qualified electors at the November 2011 election.

19 WHEREAS, when an initiative measure is proposed under this  
20 procedure, the Legislature may submit an alternative measure  
21 regarding the subject matter of the original initiative measure,  
22 to be presented to the qualified electors at the same election at  
23 which the original measure is proposed, and under Section  
24 23-17-29, Mississippi Code of 1972, such a constitutional  
25 initiative may be adopted or amended by a majority vote of each  
26 house of the Legislature:

27 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE  
28 STATE OF MISSISSIPPI, That the following amendment to the  
29 Mississippi Constitution of 1890 being proposed to the qualified  
30 electors of the state at the November 2011 election, under Section



31 273 of the Mississippi Constitution of 1890 and Chapter 17, Title  
32 23, Mississippi Code of 1972, designated as Initiative Measure No.  
33 31 and relating to the subject of eminent domain, is brought  
34 forward for the purpose of the possible consideration of a  
35 legislative alternative to the original initiative measure:

36 I.

37 Bring forward the language contained in Initiative Measure  
38 No. 31 that proposes to amend the Mississippi Constitution of  
39 1890, by creating a new section to read as follows:

40 "No property acquired by the exercise of the power of eminent  
41 domain under the laws of the State of Mississippi shall, for a  
42 period of ten (10) years after its acquisition, be transferred or  
43 any interest therein transferred to any person, nongovernmental  
44 entity, public-private partnership, corporation, or other business  
45 entity with the following exceptions:

46 (1) The above provisions shall not apply to drainage and  
47 levee facilities and usage, roads and bridges for public  
48 conveyance, flood control projects with a levee component,  
49 seawalls, dams, toll roads, public airports, public ports, public  
50 harbors, public wayports, common carriers or facilities for public  
51 utilities and other entities used in the generation, transmission,  
52 storage or distribution of telephone, telecommunication, gas,  
53 carbon dioxide, electricity, water, sewer, natural gas, liquid  
54 hydrocarbons or other utility products.

55 (2) The above provisions shall not apply where the use of  
56 eminent domain (a) removes a public nuisance; (b) removes a  
57 structure that is beyond repair or unfit for human habitation or  
58 use; (c) is used to acquire abandoned property; or (d) eliminates  
59 a direct threat to public health or safety caused by the property  
60 in its current condition."

61 II.

62 Bring forward Section 17, Mississippi Constitution of 1890,  
63 which reads as follows:



64 "Section 17. Private property shall not be taken or damaged  
65 for public use, except on due compensation being first made to the  
66 owner or owners thereof, in a manner to be prescribed by law; and  
67 whenever an attempt is made to take private property for a use  
68 alleged to be public, the question whether the contemplated use be  
69 public shall be a judicial question, and, as such, determined  
70 without regard to legislative assertion that the use is public."

71 III.

72 Bring forward Section 110, Mississippi Constitution of 1890,  
73 which reads as follows:

74 "Section 110. The Legislature may provide, by general law,  
75 for condemning rights-of-way for private roads, where necessary  
76 for ingress and egress by the party applying, on due compensation  
77 being first made to the owner of the property; but such  
78 rights-of-way shall not be provided for in incorporated cities and  
79 towns."

80 IV.

81 Bring forward Section 190, Mississippi Constitution of 1890,  
82 which reads as follows:

83 "Section 190. The exercise of the right of eminent domain  
84 shall never be abridged, or so construed as to prevent the  
85 Legislature from taking the property and franchises of  
86 incorporated companies, and subjecting them to public use; and the  
87 exercise of the police powers of the state shall never be  
88 abridged, or so construed as to permit corporations to conduct  
89 their business in such manner as to infringe upon the rights of  
90 individuals or general well-being of the state."

91 V.

92 Bring forward Section 233, Mississippi Constitution of 1890,  
93 which reads as follows:

94 "Section 233. The levee boards shall have, and are hereby  
95 granted, authority and full power to appropriate private property  
96 in their respective districts for the purpose of constructing,



97 maintaining, and repairing levees therein; and when any owner of  
98 land, or any other person interested therein, shall object to the  
99 location or building of the levee thereon, or shall claim  
100 compensation for any land that may be taken, or for any damages he  
101 may sustain in consequence thereof, the president, or other proper  
102 officer or agent of such levee board, or owner of such land, or  
103 other person interested therein, may forthwith apply for an  
104 assessment of the damages to which said person claiming the same  
105 may be entitled; whereupon the proceedings as now provided by law  
106 shall be taken, viz.: In the Mississippi levee district, in  
107 accordance with the terms and provisions of Section Three of an  
108 act entitled "An act to amend an act to incorporate the Board of  
109 Levee Commissioners for Bolivar, Washington, and Issaquena  
110 counties, and for other purposes, approved November 27, A.D.  
111 1865, and to revise acts amendatory thereof," approved March 13,  
112 A.D. 1884; and in the Yazoo-Mississippi Delta Levee District, in  
113 accordance with the terms and provisions of Section Three of an  
114 act entitled "An act to incorporate the Board of Levee  
115 Commissioners for the Yazoo-Mississippi Delta, and for other  
116 purposes," approved February 28, A.D. 1884, and the amendments  
117 thereto; but the Legislature shall have full power to alter and  
118 amend said several acts, and to provide different manners of  
119 procedure."

120 BE IT FURTHER RESOLVED, That any amendments proposed by the  
121 Legislature in this resolution as an alternative measure to  
122 Initiative Measure No. 31 shall be submitted by the Secretary of  
123 State to the qualified electors at an election to be held on the  
124 first Tuesday after the first Monday of November 2011, in the  
125 manner prescribed by Section 273 of the Constitution and by  
126 Chapter 17, Title 23, Mississippi Code of 1972, and those  
127 amendments shall be voted on as one (1) amendment because they  
128 pertain to one (1) subject.



129 BE IT FURTHER RESOLVED, That the explanation of this proposed  
130 amendment for the ballot shall read as follows: "This  
131 constitutional amendment is proposed as a legislative alternative  
132 measure to Initiative Measure No. 31, which relates to the subject  
133 of eminent domain."

134 BE IT FURTHER RESOLVED, That the Attorney General of the  
135 State of Mississippi shall submit this resolution, immediately  
136 upon adoption by the Legislature, to the Attorney General of the  
137 United States or to the United States District Court for the  
138 District of Columbia, in accordance with the provisions of the  
139 Voting Rights Act of 1965, as amended and extended.

