HOUSE CONCURRENT RESOLUTION NO. 39

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That the following amendment to the Mississippi Constitution of 1890 being proposed to the qualified electors of the state at the November 2011 election, under Section...
273 of the Mississippi Constitution of 1890 and Chapter 17, Title 23, Mississippi Code of 1972, designated as Initiative Measure No. 31 and relating to the subject of eminent domain, is brought forward for the purpose of the possible consideration of a legislative alternative to the original initiative measure:

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

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

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

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

II. Bring forward Section 17, Mississippi Constitution of 1890, which reads as follows:
"Section 17. Private property shall not be taken or damaged for public use, except on due compensation being first made to the owner or owners thereof, in a manner to be prescribed by law; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be a judicial question, and, as such, determined without regard to legislative assertion that the use is public."

III.
Bring forward Section 110, Mississippi Constitution of 1890, which reads as follows:

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

IV.
Bring forward Section 190, Mississippi Constitution of 1890, which reads as follows:

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

V.
Bring forward Section 233, Mississippi Constitution of 1890, which reads as follows:

"Section 233. The levee boards shall have, and are hereby granted, authority and full power to appropriate private property in their respective districts for the purpose of constructing,
maintaining, and repairing levees therein; and when any owner of
land, or any other person interested therein, shall object to the
location or building of the levee thereon, or shall claim
compensation for any land that may be taken, or for any damages he
may sustain in consequence thereof, the president, or other proper
officer or agent of such levee board, or owner of such land, or
other person interested therein, may forthwith apply for an
assessment of the damages to which said person claiming the same
may be entitled; whereupon the proceedings as now provided by law
shall be taken, viz.: In the Mississippi levee district, in
accordance with the terms and provisions of Section Three of an
act entitled "An act to amend an act to incorporate the Board of
Levee Commissioners for Bolivar, Washington, and Issaquena
counties, and for other purposes, approved November 27, A.D.
1865, and to revise acts amendatory thereof," approved March 13,
A.D. 1884; and in the Yazoo-Mississippi Delta Levee District, in
accordance with the terms and provisions of Section Three of an
act entitled "An act to incorporate the Board of Levee
Commissioners for the Yazoo-Mississippi Delta, and for other
purposes," approved February 28, A.D. 1884, and the amendments
thereto; but the Legislature shall have full power to alter and
amend said several acts, and to provide different manners of

procedure."

BE IT FURTHER RESOLVED, That any amendments proposed by the
Legislature in this resolution as an alternative measure to
Initiative Measure No. 31 shall be submitted by the Secretary of
State to the qualified electors at an election to be held on the
first Tuesday after the first Monday of November 2011, in the
manner prescribed by Section 273 of the Constitution and by
Chapter 17, Title 23, Mississippi Code of 1972, and those
amendments shall be voted on as one (1) amendment because they
pertain to one (1) subject.
BE IT FURTHER RESOLVED, That the explanation of this proposed
amendment for the ballot shall read as follows: "This
constitutional amendment is proposed as a legislative alternative
measure to Initiative Measure No. 31, which relates to the subject
of eminent domain."

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