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HOUSE JOINT RESOLUTION NO. 723

Offered January 10, 2007

Prefiled January 10, 2007

Proposing an amendment to Section 11 of Article I of the Constitution of Virginia, relating to takings of private property.

Patrons—Bell, Joannou, Albo, Athey, Bowling, Crockett-Stark, Frederick, Gilbert, Iaquinto, Janis, Jones, S.C., Kilgore, Lohr, Miller, J.H., Orrock, Peace, Phillips, Sherwood and Welch; Senator: Hanger

Referred to Committee on Privileges and Elections

RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 11 of Article I of the Constitution of Virginia as follows:

ARTICLE I

BILL OF RIGHTS

Section 11. Due process of law; obligation of contracts; taking of private property; prohibited discrimination; jury trial in civil cases.

That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts; ~~nor any law whereby private property shall be taken or damaged for public uses, without just compensation, the term "public uses" to be defined by the General Assembly;~~ and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination.

That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

That the General Assembly shall not pass any law whereby private property shall be taken or damaged without just compensation; nor shall it pass any law pursuant to which private property shall be taken other than for a public use.

A taking of private property shall constitute a taking for a public use only if (i) the property is to be used by the Commonwealth or political subdivision solely to provide a service or facility to or for the public generally or (ii) the taking of the property is necessary to remove an immediate threat to public health or safety caused by the existing condition of the property.

A taking of private property shall not constitute a taking for a public use if a purpose of the taking is to transfer the private property's ownership, possession, or occupancy to a private entity. However, a taking of private property by a private entity pursuant to a delegation by the General Assembly of the power of eminent domain that authorizes the private entity to take private property for the purpose of providing its utility or transportation services or facilities to or for the public shall constitute a taking for a public use.

Statements by the Commonwealth or other entity that a taking of private property is for a public use or that a taking of private property will further economic development, increase public revenue, or increase employment shall not be considered in any judicial determination of whether the taking is for a public use.

This section shall not impair the authority of a condemnor from disposing, in accordance with such requirements as may be established by the General Assembly by general law, of property taken for a public use, following a determination by the condemnor that the property is not necessary or appropriate for the provision of the service or facility for which it was taken or, if the property was acquired for the purpose of removing an immediate threat to public health or safety, that the condition of the property no longer poses such a threat.

INTRODUCED

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