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## SENATE JOINT RESOLUTION NO. 404

Offered January 10, 2007

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*Directing the Joint Legislative Audit and Review Commission to conduct a comprehensive study of the use of eminent domain in the Commonwealth by state and local governmental entities and nongovernmental entities vested with such power. Report.*

Patron—Norment

Referred to Committee on Rules

WHEREAS, Article I, Section 11 of the Virginia Constitution confirms that private property is a fundamental right; and

WHEREAS, private property can only be taken or damaged for a public use as defined by the General Assembly; and

WHEREAS, the taking or damaging of private property for public use requires the payment of just compensation; and

WHEREAS, the Supreme Court of the United States' decision in *Kelo v. New London*, 545 U.S. 469 (2005), has significantly undermined the protection of private property under the United States Constitution; and

WHEREAS, the General Assembly wishes to use its powers under the Virginia Constitution to protect the fundamental right of private property; and

WHEREAS, there is a great deal of debate over how best to accomplish the protection of the fundamental right of private property; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Legislative Audit and Review Commission be directed to conduct a comprehensive study of the use of eminent domain in the Commonwealth by state and local governmental entities and nongovernmental entities vested with such power.

In conducting its study, Joint Legislative Audit and Review Commission should (i) study Virginia law for a complete list of entities that have the power of eminent domain. Such list shall also group the entities with eminent domain powers by category (e.g., local government, housing authorities, utilities, authorities, Department of Transportation); (ii) describe the extent to and circumstances in which each category of entities identified under clause (i) may use eminent domain; (iii) gather empirical evidence detailing the circumstances under which and the number of instances in which each category of entities identified in clause (i) have used eminent domain in each of the last three years; (iv) estimate the number of cases involving the acquisition of land by the category of entities identified in clause (i) settled without going to a trial and the percentage of those that did go to trial for each of the last three years; (v) estimate the average time a condemnation has taken from the initiation of proceedings until a final resolution for each category of entity listed in clause (i) for each of the last three years, and recommend procedures for reducing such time periods where merited; (vi) take a statistically significant sample of eminent domain cases for each of the last three years involving a sample of categories of the entities identified in clause (i) and determine the appraised values by both the condemnor and condemnee of properties subject to taking by eminent domain and estimate the average differential in the valuing properties from the perspective of the opposing parties; (vii) estimate the number of cases involving eminent domain, for each of the last three years, that proceeded to court in a dispute over: (a) title of the property, (b) price to be paid for the property, and (c) the authority to take the property under eminent domain; and (viii) estimate the direct and indirect costs associated with each category of entities identified in clause (i) use of eminent domain by year over the three previous years, including compensation paid to property owners, legal fees for condemnation proceedings, and compensation paid to property owners not subject to condemnation proceedings to the extent such information is attainable. Such estimate of costs should include benefits paid under the Uniform Relocation Act (§§ 25.1-400 et seq. of the Code of Virginia).

Technical assistance shall be provided to the Joint Legislative Audit and Review Commission by the Attorney General of the Commonwealth. All agencies of the Commonwealth shall provide assistance to the Joint Legislative Audit and Review Commission for this study, upon request.

The Joint Legislative Audit and Review Commission shall complete its meetings by November 30, 2007, and the chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2008 Regular Session of the General Assembly. The executive summary shall state whether the Joint Legislative Audit and

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59 Review Commission intends to submit to the General Assembly and the Governor a report of its  
60 findings and recommendations for publication as a House or Senate document. The executive summary  
61 and report shall be submitted as provided in the procedures of the Division of Legislative Automated  
62 Systems for the processing of legislative documents and reports and shall be posted on the General  
63 Assembly's website.