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HOUSE JOINT RESOLUTION NO. 725

Offered January 14, 2009

Prefiled January 14, 2009

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

Patrons—Bell and Cole

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. "Public use" embraces only the acquisition of property where:

(a) the property is taken for the possession, ownership, occupation, and enjoyment of property by the public or the Commonwealth or any political subdivision thereof or any incorporated municipality therein or any public agency of the Commonwealth or of any political subdivision thereof or of any municipality therein;

(b) the property is taken for construction, maintenance, or operation of (i) airports, landing fields, and air navigation facilities; (ii) educational facilities; (iii) flood control, bank and shore protection, watershed protection, and dams; (iv) hospital facilities; (v) judicial and court facilities; (vi) correctional facilities, including jails and penitentiaries; (vii) library facilities; (viii) military installations; (ix) parks so designated by the Commonwealth or by the locality in its comprehensive plan; (x) properties of historical significance so designated by the Commonwealth; (xi) law-enforcement, fire, emergency medical, and rescue facilities; (xii) sanitary sewer, water, or stormwater facilities; (xiii) transportation facilities including highways, roads, streets, and bridges, traffic signals, related easements and rights-of-way, mass transit, ports, and any components of federal, state, or local transportation facilities; (xiv) waste management facilities for hazardous, radioactive, or other waste; (xv) office facilities occupied by a public corporation; and (xvi) such other facilities that are necessary to the construction, maintenance, or operation of a public facility as listed in clauses (i) through (xv) and directly related thereto by the Commonwealth or any political subdivision thereof or any incorporated municipality therein or any public agency of the Commonwealth or of any political subdivision thereof or of any municipality therein, or by a private entity if there exists a written agreement between the private entity and the Commonwealth or any political subdivision thereof or any incorporated municipality therein or any public agency of the Commonwealth or of any political subdivision thereof or of any municipality therein that provides for use of the facility by the public;

(c) the property is taken for the creation or functioning of any public service corporation, public service company, or railroad;

(d) the property is taken for the provision of any authorized utility service by a county or municipality, or entity or agency thereof, that provides or operates one or more of the following authorized utility services: gas, pipeline, electric light, heat, power, water supply, sewer, telephone, or

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59 telegraph;

60 (e) the property is taken for the elimination of blight, provided that the property itself is property
61 that endangers the public health or safety in its condition at the time of the filing of the petition for
62 condemnation and is (i) a public nuisance or (ii) an individual commercial, industrial, or residential
63 structure or improvement that is beyond repair or unfit for human occupancy or use; or

64 (f) the property taken is in a redevelopment or conservation area and is abandoned or the
65 acquisition is needed to clear title where one of the owners agrees to such acquisition or the acquisition
66 is by agreement of all the owners.

67 No more private property may be taken than that which is necessary to achieve the stated public use.
68 If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the
69 condemnor shall offer to acquire the entire property for its fair market value as otherwise provided by
70 law, but the condemnor shall not acquire an uneconomic remnant if the owner objects and desires to
71 maintain ownership of the excess property.

72 Except where property is taken for the creation or functioning of a public service corporation, public
73 service company, or railroad, or for the provision of any authorized utility service by a government
74 utility corporation, private property can only be taken if (i) the public interest dominates the private
75 gain and (ii) the primary purpose is not private financial gain, private benefit, an increase in tax base
76 or tax revenues, or an increase in employment. Subject to the foregoing provisions, the limitations
77 contained in this section shall not abrogate any other provision of law that authorizes a condemnor to
78 dispose of property taken for a public use as surplus property, as otherwise provided by general law.