CHAPTER 564

An Act to provide for the submission to the voters of a proposed amendment to Section 11 of Article I of the Constitution of Virginia, relating to taking or damaging of private property.

[S 240]

Approved April 4, 2012

Be it enacted by the General Assembly of Virginia:

1. § 1. It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 2012, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution of Virginia, contained herein and in the joint resolution proposing such amendment, to wit:

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 *or damaging* 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 pass no law whereby private property, the right to which is fundamental, shall be damaged or taken except for public use. No private property shall be damaged or taken for public use without just compensation to the owner thereof. No more private property may be taken than necessary to achieve the stated public use. Just compensation shall be no less than the value of the property taken, lost profits and lost access, and damages to the residue caused by the taking. The terms "lost profits" and "lost access" are to be defined by the General Assembly. A public service company, public service corporation, or railroad exercises the power of eminent domain for public use when such exercise is for the authorized provision of utility, common carrier, or railroad services. In all other cases, a taking or damaging of private property is not for public use if the primary use is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development, except for the elimination of a public nuisance existing on the property. The condemnor bears the burden of proving that the use is public, without a presumption that it is.

§ 2. The ballot shall contain the following question:

Question: "Shall Section 11 of Article I (Bill of Rights) of the Constitution of Virginia be amended (i) to require that eminent domain only be exercised where the property taken or damaged is for public use and, except for utilities or the elimination of a public nuisance, not where the primary use is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development; (ii) to define what is included in just compensation for such taking or damaging of property; and (iii) to prohibit the taking or damaging of more private property than is necessary for the public use?"

The ballots shall be prepared, distributed and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § 24.2-684 of the Code of Virginia. The State Board of Elections shall comply with § 30-19.9 of the Code and shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day.

The electoral board of each county and city shall make out, certify and forward an abstract of the votes cast for and against such proposed amendment in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such amendment in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office, and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall, without delay, make proclamation of the

result, stating therein the aggregate vote for and against the amendment.

If a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2013.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.