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HOUSE JOINT RESOLUTION NO. 564

House Amendments in [] — February 4, 1997

Memorializing Congress to implement the constitutional framers' intentions in adopting the Fifth Amendment to the Constitution of the United States of America.

Patrons—Katzen, Barlow, Bryant, Councill, Croshaw, Davies, Dudley, Guest, Hargrove and Jackson

Referred to Committee for Courts of Justice

WHEREAS, the protection of individual property rights was a core concern of the framers of the United States Constitution and the Bill of Rights, and was regarded by the framers as "the first object of government"; and

WHEREAS, the framers designed the "just compensation clause" of the Constitution to bar Government from forcing a small group to bear burdens that, in all fairness and justice, should be borne by the public as a whole; and

WHEREAS, government may properly force individuals to give up the use of their property for the common good, but only upon receipt of equitable compensation; and

WHEREAS, history proves that there is no greater foundation for a successful free society than secure private property; and

WHEREAS, private property owners are being forced by federal policy to resort to lengthy and expensive litigation, with uncertain results, to protect basic rights guaranteed by the Constitution; and

[WHEREAS, private property has been subject to de facto takings from pollution derived from a variety of sources including a de facto taking of private oyster beds due to polluted runoff, a de facto taking of private wells that have been rendered undrinkable by leachate from landfills, and a de facto taking of private stands of timber that have been impaired by acid deposition; and]

[WHEREAS, some courts have failed to recognize the importance and centrality of private property rights, have failed consistently to protect this fundamental right, and have implemented insurmountable procedural and substantive legal barriers in pursuit of a taking claim; and]

WHEREAS, the General Assembly adopted House Joint Resolution No. 624 (1993) calling for the creation of a Joint Subcommittee To Study Governmental Actions Affecting Private Property Rights, which was continued by House Joint Resolution No. 74 (1994) and House Joint Resolution No. 526 (1995), all of which have completed their work; now, therefore, be it

RESOLVED by House of Delegates, the Senate concurring, That Congress be urged to pass legislation that implements the framers' constitutional intentions in adopting the Fifth Amendment to the Constitution of the United States by guaranteeing substantive protection for private property; and, be it

[RESOLVED FURTHER, That it is essential that Congress clarify that compensation is constitutionally required whenever government takes for public purposes, by regulation or otherwise, some part of an owner's land, or regulates so as to substantially diminish the value of the land; and, be it

RESOLVED FURTHER, That property owners be able to pursue their compensation claims free of complex, difficult-to-understand, and unduly burdensome procedural barriers, and to recover attorneys' fees and any and all costs associated with pursuing their claims; and, be it]

RESOLVED FURTHER, That it is essential to encourage, support, and promote the private ownership of property and to ensure that the constitutional and legal rights of private property owners are preserved as the framers intended; and, be it

RESOLVED FINALLY, That the Clerk of the House of Delegates transmit copies of this resolution to the Speaker of the House of Representatives, the President of the United States Senate, and the Congressional Delegation of Virginia to apprise them of the sense of the General Assembly of Virginia in this matter.

ENGROSSED

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