

1                                   **HOUSE JOINT RESOLUTION NO. 24**

2  
3                                    (By Delegates Overington, Lane, Carmichael,  
4                                    Sobonya, Sumner, Walters, Canterbury,  
5                                    J. Miller and Andes)

6                                   [Introduced January 18, 2011; referred to the  
7                                   Committee on Constitutional Revision then the  
8                                   Judiciary.]

9  
10 Proposing an amendment to the Constitution of the State of West  
11 Virginia, amending section nine, article three thereof,  
12 relating to prohibiting the taking of private property for  
13 private use; numbering and designating such proposed  
14 amendment; and providing a summarized statement of the purpose  
15 of such proposed amendment.

16       *Resolved by the Legislature of West Virginia, two thirds of*  
17 *the members elected to each house agreeing thereto:*

18       That the question of ratification or rejection of an amendment  
19 to the Constitution of the State of West Virginia be submitted to  
20 the voters of the state at the next general election to be held in  
21 the year 2012, which proposed amendment is that section nine,  
22 article three thereof be amended, to read as follows:

23 **ARTICLE III.**

24 **§9. Private property, how taken.**

25       (a) Private property shall not be taken or damaged for public

1 use, without just compensation; nor shall the same be taken by any  
2 company, incorporated for the purposes of internal improvement,  
3 until just compensation shall have been paid, or secured to be  
4 paid, to the owner; and when private property shall be taken, or  
5 damaged for public use, or for the use of such corporation, the  
6 compensation to the owner shall be ascertained in such manner as  
7 may be prescribed by general law: *Provided*, That when required by  
8 either of the parties, such compensation shall be ascertained by an  
9 impartial jury of twelve freeholders.

10 (b) Notwithstanding any other provision of law, the State of  
11 West Virginia, or any of its departments, divisions, agencies,  
12 commissions, corporations, boards, authorities, or other entities,  
13 or any municipality or county, or any agency, corporation,  
14 district, board, or other entity organized by or under the control  
15 of any municipality or county in the state and vested by law to any  
16 extent whatsoever with the power of eminent domain, may not condemn  
17 property for the purposes of private retail, office, commercial,  
18 industrial, or residential development; or primarily for  
19 enhancement of tax revenue; or for transfer to a person,  
20 nongovernmental entity, public-private partnership, corporation, or  
21 other business entity. Nothing in this amendment shall limit the  
22 exercise of eminent domain by or for the benefit of public  
23 utilities or other entities engaged in the generation,  
24 transmission, or distribution of telephone, gas, petroleum

1 products, electricity, water, sewer, or other utility products; or  
2 services by or for the benefit of any airport authority for  
3 airport-related activities. Nothing in this amendment shall be  
4 interpreted to prohibit the state or a municipal or county  
5 governing body from exercising the power of eminent domain for the  
6 purpose of constructing, maintaining, or operating streets, roads  
7 or railroads.

8       (c) Property condemned pursuant to the power of eminent domain  
9 in this state, if not ever used for the purpose or purposes for  
10 which it was condemned, that is subsequently determined to be sold,  
11 shall be first offered for sale to the person or persons from whom  
12 the property was condemned, or his or her known or ascertainable  
13 heirs or assigns, at the price which was paid for the property,  
14 less such amount, if any, as the person or persons from whom the  
15 property was condemned shall show by good and sufficient  
16 documentation to be the amount of income and transaction taxes, if  
17 any, actually paid in connection therewith, and if the offer shall  
18 not be accepted within ninety days from the date it is made, the  
19 property may be sold to any other person, but only at public sale  
20 after legal notice is given.

21       *Resolved further,* That in accordance with the provisions of  
22 article eleven, chapter three of the Code of West Virginia, 1931,  
23 as amended, such proposed amendment is hereby numbered "Amendment  
24 No. 1" and designated as the "Prohibiting the Governmental Taking

1 of Private Property for Private Use Amendment" and the purpose of  
2 the proposed amendment is summarized as follows: "To prohibit the  
3 taking of private property for private use."

NOTE: The purpose of this resolution is to amend the State  
Constitution to prohibit the taking of private property for private  
use.

Strike-throughs indicate language that would be stricken from  
the present Constitution, and underscoring indicates new language  
that would be added.