

103D CONGRESS  
2D SESSION

# H. R. 3875

To require certain Federal agencies to protect the rights of private property owners.

---

## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1994

Mr. TAUZIN (for himself, Mr. FIELDS of Texas, Mr. HAYES, Mr. TAYLOR of North Carolina, Mr. STENHOLM, Mr. YOUNG of Alaska, Mr. MONTGOMERY, Mr. STUPAK, Mr. SHUSTER, Mr. STUMP, Mr. POMBO, Mr. BREWSTER, Mr. CALLAHAN, Mr. HUTTO, Mr. ORTIZ, Mr. LAUGHLIN, Mrs. BENTLEY, Mr. BONILLA, Mr. CUNNINGHAM, Ms. DANNER, Mr. PICKETT, and Mr. PACKARD) introduced the following bill; which was referred jointly to the Committees on Merchant Marine and Fisheries, Public Works and Transportation, and the Judiciary

APRIL 25, 1994

Additional sponsors: Mr. COMBEST, Mr. OXLEY, Mr. HEFLEY, Mr. MCCREERY, Mr. DOOLITTLE, Mr. HANSEN, Mr. DORNAN, Mr. PARKER, Mr. McCANDLESS, Mr. ROBERTS, Mr. WILSON, Mr. EMERSON, Mr. INHOFE, Mr. THOMAS of Wyoming, Mr. BOEHNER, Mr. HUTCHINSON, Mr. LIVINGSTON, Mr. HANCOCK, Mr. EVERETT, Mr. BAKER of Louisiana, Mr. LIGHTFOOT, Mr. BARCIA of Michigan, Mr. BATEMAN, Mr. SKEEN, Mr. INGLIS of South Carolina, Mr. BALLENGER, Mr. BARTLETT of Maryland, Mr. CRAPO, Mr. DICKEY, and Mr. ROYCE

---

# A BILL

To require certain Federal agencies to protect the rights of private property owners.

1       *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

1   **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Private Property Own-  
3    ers Bill of Rights”.

4   **SEC. 2. FINDINGS AND PURPOSE.**

5       (a) FINDINGS.—The Congress finds the following:

6           (1) Our democracy was founded on principles of  
7    ownership, use, and control of private property.  
8    These principles are embodied in the fifth amend-  
9    ment to the Constitution prohibiting the taking of  
10   private property without the payment of just com-  
11   pensation.

12          (2) A number of Federal environmental pro-  
13    grams, specifically the Endangered Species Act of  
14    1973 (16 U.S.C. 1531 et seq.) and section 404 of  
15    the Federal Water Pollution Control Act (33 U.S.C.  
16    1344) have been implemented by employees, agents,  
17    and representatives of the Federal Government in a  
18    manner that deprives private property owners of the  
19    use and control of their property.

20          (3) As new Federal programs are proposed that  
21    would limit and restrict the use of private property  
22    to provide habitat for plant and animal species, the  
23    rights of private property owners must be recognized  
24    and respected.

25          (4) Private property owners are being forced by  
26    Federal policy to resort to extensive, lengthy, and

1       expensive litigation to protect certain basic civil  
2       rights guaranteed by the Constitution.

3                 (5) Since many private property owners do not  
4       have the financial resources or the extensive commit-  
5       ment of time to proceed in litigation against the  
6       Federal Government, a clear Federal policy is need-  
7       ed to guide and direct Federal agencies with respect  
8       to their implementation of environmental laws that  
9       directly impact private property.

10               (6) While all private property owners should  
11       and must abide by current nuisance laws and should  
12       not use their property in a manner that harms their  
13       neighbors, these laws have traditionally been en-  
14       acted, implemented, and enforced at the State and  
15       local levels where they are best able to protect the  
16       rights of all private property owners and local  
17       citizens.

18               (7) While traditional pollution control laws are  
19       intended to protect the general public's health and  
20       physical welfare, current habitat protection pro-  
21       grams are intended to protect the welfare of plant  
22       and animal species, while allowing the recreational  
23       and esthetic opportunities for the public.

24               (b) PURPOSES.—It is the purpose of this Act to pro-  
25       vide a consistent Federal policy to encourage, support, and

1 promote the private ownership of property and to ensure  
2 that the constitutional and legal rights of private property  
3 owners are protected by the Federal Government, its em-  
4 ployees, agents, and representatives.

5 **SEC. 3. PROTECTION OF PRIVATE PROPERTY RIGHTS.**

6 (a) In implementing and enforcing the Acts, each  
7 agency head shall comply with applicable State and tribal  
8 government laws, including laws relating to private prop-  
9 erty rights and privacy; and shall administer and imple-  
10 ment the Acts in a manner that has the least impact on  
11 private property owners' constitutional and other legal  
12 rights.

13 (b) Each agency head shall develop and implement  
14 rules and regulations for ensuring that the constitutional  
15 and other legal rights of private property owners are pro-  
16 tected when the agency head makes, or participates with  
17 other agencies in the making of, any final decision that  
18 restricts the use of private property.

19 **SEC. 4. PROPERTY OWNER CONSENT FOR ENTRY.**

20 (a) An agency head may not enter privately-owned  
21 property to collect information regarding the property, un-  
22 less the private property owner has—

23 (1) consented in writing to that entry;  
24 (2) after providing that consent, been provided  
25 notice of that entry; and

**7 SEC. 5. RIGHT TO REVIEW AND DISPUTE DATA COLLECTED  
8 FROM PRIVATE PROPERTY.**

9 An agency head may not use data that is collected  
10 on privately-owned property to implement or enforce any  
11 of the Acts, unless—

12                   (1) the agency head has provided to the private  
13                   property owner—

14 (A) access to the information;

15 (B) a detailed description of the manner in  
16 which the information was collected; and

17 (C) an opportunity to dispute the accuracy  
18 of the information; and

1   **SEC. 6. RIGHT TO AN ADMINISTRATIVE APPEAL OF WET-**  
2                   **LANDS DECISIONS.**

3       Section 404 of the Federal Water Pollution Control  
4   Act (33 U.S.C. 1344) is amended by adding at the end  
5   the following new subsection:

6       “(u) ADMINISTRATIVE APPEALS.—

7               “(1) The Secretary or Administrator shall, after  
8   notice and opportunity for public comment, issue  
9   rules to establish procedures to allow private prop-  
10   erty owners or their authorized representatives an  
11   opportunity for an administrative appeal of the fol-  
12   lowing actions under this section:

13              “(A) A determination of regulatory juris-  
14   diction over a particular parcel of property.

15              “(B) The denial of a permit.

16              “(C) The terms and conditions of a permit.

17              “(D) The imposition of an administrative  
18   penalty.

19              “(E) The imposition of an order requiring  
20   the private property owner to restore or other-  
21   wise alter the property.

22              “(2) Rules issued under paragraph (1) shall  
23   provide that any administrative appeal of an action  
24   described in paragraph (1) shall be heard and de-  
25   cided by an official other than the official who took  
26   the action, and shall be conducted at a location

1       which is in the vicinity of the property involved in  
2       the action.”.

3 **SEC. 7. RIGHT TO ADMINISTRATIVE APPEAL UNDER THE**  
4 **ENDANGERED SPECIES ACT OF 1973.**

5       Section 11 of the Endangered Species Act of 1973  
6 (16 U.S.C. 1540) is amended by adding at the end the  
7 following new subsection:

8       “(i) ADMINISTRATIVE APPEALS.—

9           “(1) The Secretary shall, after notice and op-  
10         portunity for public comment, issue rules to estab-  
11         lish procedures to allow private property owners or  
12         their authorized representatives an opportunity for  
13         an administrative appeal of the following actions  
14         under this Act:

15           “(A) A determination that a particular  
16          parcel of property is critical habitat of a listed  
17          species.

18           “(B) The denial of a permit for an inciden-  
19          tal take.

20           “(C) The terms and conditions of an inci-  
21          dental take permit.

22           “(D) The imposition of an administrative  
23          penalty.

1               “(E) The imposition of an order prohibi-  
2               ting or substantially limiting the use of the prop-  
3               erty.

4               “(2) Rules issued under paragraph (1) shall  
5               provide that any administrative appeal of an action  
6               described in paragraph (1) shall be heard and de-  
7               cided by an official other than the official who took  
8               the action, and shall be conducted at a location  
9               which is in the vicinity of the parcel of property in-  
10              volved in the action.”.

11 **SEC. 8. COMPENSATION FOR TAKING OF PRIVATE PROP-**  
12               **ERTY.**

13               (a) **ELIGIBILITY.**—A private property owner that, as  
14 a consequence of a final qualified agency action of an  
15 agency head, is deprived of 50 percent or more of the fair  
16 market value, or the economically viable use, of the af-  
17 fected portion of the property, as determined by a qual-  
18 fied appraisal expert, is entitled to receive compensation  
19 in accordance with this section.

20               (b) **DEADLINE.**—Within 90 days after receipt of a  
21 final decision of an agency head that deprives a private  
22 property owner of fair market value or viable use of prop-  
23 erty for which compensation is required under subsection  
24 (a), the private property owner may submit in writing a

1 request to the agency head for compensation in accordance  
2 with subsection (c).

3 (c) AGENCY HEAD'S OFFER.—The agency head,  
4 within 180 days after the receipt of a request for com-  
5 pensation, shall stay the decision and shall provide to the  
6 private property owner—

7 (1) an offer to purchase the affected property  
8 of the private property owner at a fair market value  
9 assuming no use restrictions under the Acts; and

10 (2) an offer to compensate the private property  
11 owner for the difference between the fair market  
12 value of the property without those restrictions and  
13 the fair market value of the property with those re-  
14 strictions.

15 (d) PRIVATE PROPERTY OWNERS' RESPONSE.—A  
16 private property owner shall have 60 days after the date  
17 of receipt of the agency head's offers under subsection (c)  
18 (1) and (2) to accept one of the offers or to reject both  
19 offers. If the private property owner rejects both offers,  
20 the private property owner may submit the matter for ar-  
21 bitration to an arbitrator appointed by the agency head  
22 from a list of arbitrators submitted to the agency head  
23 by the American Arbitration Association. The arbitration  
24 shall be conducted in accordance with the real estate val-  
25 uation arbitration rules of that association. For purposes

1 of this section, an arbitration is binding on the agency  
2 head and a private property owner as to the amount, if  
3 any, of compensation owed to the private property owner  
4 and whether for purposes of this section the private prop-  
5 erty owner has been deprived of fair market value or viable  
6 use of property for which compensation is required under  
7 subsection (a).

8 (e) JUDGMENT.—A qualified agency action of an  
9 agency head that deprives a private property owner of  
10 property as described in subsection (a), is deemed, at the  
11 option of the private property owner to be a taking under  
12 the Constitution of the United States and a judgment  
13 against the United States if the private property owner—

14 (1) accepts the agency head's offer under sub-  
15 section (c); or

16 (2) submits to arbitration under subsection (d).

17 (f) PAYMENT.—An agency head shall pay a private  
18 property owner any compensation required under the  
19 terms of an offer of the agency head that is accepted by  
20 the private property owner in accordance with subsection  
21 (d), or under a decision of an arbiter under that sub-  
22 section, by not later than 60 days after the date of the  
23 acceptance or the date of the issuance of the decision, re-  
24 spectively.

1       (g) FORM OF PAYMENT.—Payment under this sec-  
2 tion, as that form is agreed to by the agency head and  
3 the private property owner, may be in the form of—

4           (1) payment of an amount equal to the fair  
5 market value of the property on the day before the  
6 date of the final qualified agency action with respect  
7 to which the property or interest is acquired;

8           (2) a payment of an amount equal to the reduc-  
9 tion in value; or

10          (3) conveyance of real property or an interest in  
11 real property having a fair market value equal to  
12 that amount.

13       (h) OTHER RIGHTS PRESERVED.—This section does  
14 not preempt, alter, or limit the availability of any remedy  
15 for the taking of property or an interest in property that  
16 is available under the Constitution or any other law.

17       (i) FINAL JUDGMENTS.—When a private property  
18 owner unsuccessfully seeks compensation under this sec-  
19 tion and thereafter files a claim for compensation under  
20 the fifth amendment to the Constitution and is successful  
21 in obtaining a final judgment ordering compensation from  
22 the claims court for that claim, the agency head making  
23 the final agency decision resulting in the taking shall reim-  
24 burse the judgment fund for the amount of the judgment

1 against the United States from funds appropriated to the  
2 agency for the 2 fiscal years following payment.

3 **SEC. 9. DEFINITIONS.**

4 For the purpose of this Act the following definitions  
5 apply:

6 (1) “The Acts” means the Endangered Species  
7 Act of 1973 (16 U.S.C. 1531 et seq.) and the sec-  
8 tion 404 of the Federal Water Pollution Control Act  
9 (33 U.S.C. 1344).

10 (2) “Agency head” means the Secretary or Ad-  
11 ministrator with jurisdiction or authority to take a  
12 final agency action under the Endangered Species  
13 Act of 1973 (16 U.S.C. 1531 et seq.) or section 404  
14 of the Federal Water Pollution Control Act (33  
15 U.S.C. 1344).

16 (3) “Non-Federal person” means a person  
17 other than an officer, employee, agent, department,  
18 or instrumentality of—

19 (A) the Federal Government; or  
20 (B) a foreign government.

21 (4) “Private property owner” means a non-Fed-  
22 eral person (other than an officer, employee, agent,  
23 department, or instrumentality of a State, munici-  
24 pality, or political subdivision of a State, or a State,  
25 municipality, or subdivision of a State) that—

- 1                             (A) owns property referred to in paragraph  
2                             (5) (A) or (B); or  
3                             (B) holds property referred to in para-  
4                             graph (5)(C).  
5                             (5) “Property” means—  
6                             (A) land;  
7                             (B) any interest in land; and  
8                             (C) any proprietary water right.  
9                             (6) “Qualified agency action” means an agency  
10                          action (as that term is defined in section 551(13) of  
11                          title 5, United States Code) that is—  
12                             (A) under section 404 of the Federal  
13                          Water Pollution Control Act (33 U.S.C. 1344);  
14                          or  
15                             (B) under the Endangered Species Act of  
16                          1973 (16 U.S.C. 1531 et seq.).

17 **SEC. 10. PRIVATE PROPERTY OWNER PARTICIPATION IN**  
18 **COOPERATIVE AGREEMENTS.**

19                          Section 6 of the Endangered Species Act of 1973 (16  
20                          U.S.C. 1535) is amended by adding at the end the follow-  
21                          ing new subsection:

22                          “(j) Notwithstanding any other provision of this sec-  
23                          tion, when the Secretary enters into a management agree-  
24                          ment under subsection (b) with any non-Federal person  
25                          that establishes restrictions on the use of property, the

1 Secretary shall notify all private property owners or les-  
2 sees of the property that is subject to the management  
3 agreement and shall provide an opportunity for each pri-  
4 vate property owner or lessee to participate in the manage-  
5 ment agreement.”.

