

104TH CONGRESS
1ST SESSION

H. R. 925

IN THE SENATE OF THE UNITED STATES

MARCH 7 (legislative day, MARCH 6), 1995

Received; read twice and referred to the Committee on Environment and
Public Works

AN ACT

To compensate owners of private property for the effect
of certain regulatory restrictions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Private Property Pro-
5 tection Act of 1995”.

1 **SEC. 2. FEDERAL POLICY AND DIRECTION.**

2 (a) GENERAL POLICY.—It is the policy of the Federal
3 Government that no law or agency action should limit the
4 use of privately owned property so as to diminish its value.

5 (b) APPLICATION TO FEDERAL AGENCY ACTION.—
6 Each Federal agency, officer, and employee should exer-
7 cise Federal authority to ensure that agency action will
8 not limit the use of privately owned property so as to di-
9 minish its value.

10 **SEC. 3. RIGHT TO COMPENSATION.**

11 (a) IN GENERAL.—The Federal Government shall
12 compensate an owner of property whose use of any portion
13 of that property has been limited by an agency action,
14 under a specified regulatory law, that diminishes the fair
15 market value of that portion by 20 percent or more. The
16 amount of the compensation shall equal the diminution in
17 value that resulted from the agency action. If the diminu-
18 tion in value of a portion of that property is greater than
19 50 percent, at the option of the owner, the Federal Gov-
20 ernment shall buy that portion of the property for its fair
21 market value.

22 (b) DURATION OF LIMITATION ON USE.—Property
23 with respect to which compensation has been paid under
24 this Act shall not thereafter be used contrary to the limita-
25 tion imposed by the agency action, even if that action is
26 later rescinded or otherwise vitiated. However, if that ac-

1 tion is later rescinded or otherwise vitiated, and the owner
2 elects to refund the amount of the compensation, adjusted
3 for inflation, to the Treasury of the United States, the
4 property may be so used.

5 **SEC. 4. EFFECT OF STATE LAW.**

6 If a use is a nuisance as defined by the law of a State
7 or is already prohibited under a local zoning ordinance,
8 no compensation shall be made under this Act with respect
9 to a limitation on that use.

10 **SEC. 5. EXCEPTIONS.**

11 (a) PREVENTION OF HAZARD TO HEALTH OR SAFE-
12 TY OR DAMAGE TO SPECIFIC PROPERTY.—No compensa-
13 tion shall be made under this Act with respect to an agen-
14 cy action the primary purpose of which is to prevent an
15 identifiable—

16 (1) hazard to public health or safety; or

17 (2) damage to specific property other than the
18 property whose use is limited.

19 (b) NAVIGATION SERVITUDE.—No compensation
20 shall be made under this Act with respect to an agency
21 action pursuant to the Federal navigation servitude, as de-
22 fined by the courts of the United States, except to the
23 extent such servitude is interpreted to apply to wetlands.

1 **SEC. 6. PROCEDURE.**

2 (a) REQUEST OF OWNER.—An owner seeking com-
3 pensation under this Act shall make a written request for
4 compensation to the agency whose agency action resulted
5 in the limitation. No such request may be made later than
6 180 days after the owner receives actual notice of that
7 agency action.

8 (b) NEGOTIATIONS.—The agency may bargain with
9 that owner to establish the amount of the compensation.
10 If the agency and the owner agree to such an amount,
11 the agency shall promptly pay the owner the amount
12 agreed upon.

13 (c) CHOICE OF REMEDIES.—If, not later than 180
14 days after the written request is made, the parties do not
15 come to an agreement as to the right to and amount of
16 compensation, the owner may choose to take the matter
17 to binding arbitration or seek compensation in a civil ac-
18 tion.

19 (d) ARBITRATION.—The procedures that govern the
20 arbitration shall, as nearly as practicable, be those estab-
21 lished under title 9, United States Code, for arbitration
22 proceedings to which that title applies. An award made
23 in such arbitration shall include a reasonable attorney's
24 fee and other arbitration costs (including appraisal fees).
25 The agency shall promptly pay any award made to the
26 owner.

1 (e) CIVIL ACTION.—An owner who does not choose
2 arbitration, or who does not receive prompt payment when
3 required by this section, may obtain appropriate relief in
4 a civil action against the agency. An owner who prevails
5 in a civil action under this section shall be entitled to, and
6 the agency shall be liable for, a reasonable attorney’s fee
7 and other litigation costs (including appraisal fees). The
8 court shall award interest on the amount of any compensa-
9 tion from the time of the limitation.

10 (f) SOURCE OF PAYMENTS.—Any payment made
11 under this section to an owner, and any judgment obtained
12 by an owner in a civil action under this section shall, not-
13 withstanding any other provision of law, be made from the
14 annual appropriation of the agency whose action occa-
15 sioned the payment or judgment. If the agency action re-
16 sulted from a requirement imposed by another agency,
17 then the agency making the payment or satisfying the
18 judgment may seek partial or complete reimbursement
19 from the appropriated funds of the other agency. For this
20 purpose the head of the agency concerned may transfer
21 or reprogram any appropriated funds available to the
22 agency. If insufficient funds exist for the payment or to
23 satisfy the judgment, it shall be the duty of the head of
24 the agency to seek the appropriation of such funds for the
25 next fiscal year.

1 **SEC. 7. LIMITATION.**

2 Notwithstanding any other provision of law, any obli-
3 gation of the United States to make any payment under
4 this Act shall be subject to the availability of appropria-
5 tions.

6 **SEC. 8. DUTY OF NOTICE TO OWNERS.**

7 Whenever an agency takes an agency action limiting
8 the use of private property, the agency shall give appro-
9 priate notice to the owners of that property directly af-
10 fected explaining their rights under this Act and the proce-
11 dures for obtaining any compensation that may be due to
12 them under this Act.

13 **SEC. 9. RULES OF CONSTRUCTION.**

14 (a) EFFECT ON CONSTITUTIONAL RIGHT TO COM-
15 PENSATION.—Nothing in this Act shall be construed to
16 limit any right to compensation that exists under the Con-
17 stitution or under other laws of the United States.

18 (b) EFFECT OF PAYMENT.—Payment of compensa-
19 tion under this Act (other than when the property is
20 bought by the Federal Government at the option of the
21 owner) shall not confer any rights on the Federal Govern-
22 ment other than the limitation on use resulting from the
23 agency action.

24 **SEC. 10. DEFINITIONS.**

25 For the purposes of this Act—

1 (1) the term “property” means land and in-
2 cludes the right to use or receive water;

3 (2) a use of property is limited by an agency
4 action if a particular legal right to use that property
5 no longer exists because of the action;

6 (3) the term “agency action” has the meaning
7 given that term in section 551 of title 5, United
8 States Code, but also includes the making of a grant
9 to a public authority conditioned upon an action by
10 the recipient that would constitute a limitation if
11 done directly by the agency;

12 (4) the term “agency” has the meaning given
13 that term in section 551 of title 5, United States
14 Code;

15 (5) the term “specified regulatory law”
16 means—

17 (A) section 404 of the Federal Water Pol-
18 lution Control Act (33 U.S.C. 1344);

19 (B) the Endangered Species Act of 1979
20 (16 U.S.C. 1531 et seq.);

21 (C) title XII of the Food Security Act of
22 1985 (16 U.S.C. 3801 et seq.); or

23 (D) with respect to an owner’s right to use
24 or receive water only—

1 (i) the Act of June 17, 1902, and all
2 Acts amendatory thereof or supplementary
3 thereto, popularly called the “Reclamation
4 Acts” (43 U.S.C. 371 et seq.);

5 (ii) the Federal Land Policy Manage-
6 ment Act (43 U.S.C. 1701 et seq.); or

7 (iii) section 6 of the Forest and
8 Rangeland Renewable Resources Planning
9 Act of 1974 (16 U.S.C. 1604);

10 (6) the term “fair market value” means the
11 most probable price at which property would change
12 hands, in a competitive and open market under all
13 conditions requisite to a fair sale, between a willing
14 buyer and a willing seller, neither being under any
15 compulsion to buy or sell and both having reasonable
16 knowledge of relevant facts, at the time the agency
17 action occurs;

18 (7) the term “State” includes the District of
19 Columbia, Puerto Rico, and any other territory or
20 possession of the United States; and

21 (8) the term “law of the State” includes the
22 law of a political subdivision of a State.

Passed the House of Representatives March 3,
1995.

Attest:

ROBIN H. CARLE,

Clerk.