

104TH CONGRESS  
1ST SESSION

# S. 145

To provide appropriate protection for the Constitutional guarantee of private property rights, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1995

Mr. GRAMM (for himself, Mr. LOTT, Mr. BURNS, Mrs. HUTCHISON, Mr. THOMAS, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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## A BILL

To provide appropriate protection for the Constitutional guarantee of private property rights, and for other purposes.

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  
5       Rights Restoration Act”.

6       **SEC. 2. PRIVATE PROPERTY RIGHTS RESTORATION.**

7       (a) CAUSE OF ACTION.—(1) The owner of any real  
8       property shall have a cause of action against the United  
9       States if—

1 (A) the application of a statute, regulation,  
2 rule, guideline, or policy of the United States re-  
3 stricts, limits, or otherwise takes a right to real  
4 property that would otherwise exist in the absence of  
5 such application; and

6 (B) such application described under subpara-  
7 graph (A) would result in a discrete and non-neg-  
8 ligible reduction in the fair market value of the af-  
9 fected portion of real property.

10 (2) Notwithstanding paragraph (1)(B), a prima facie  
11 case against the United States shall be established if the  
12 Government action described under paragraph (1)(A) re-  
13 sults in a temporary or permanent diminution of fair mar-  
14 ket value of the affected portion of real property of the  
15 lesser of—

16 (A) 25 percent or more; or

17 (B) \$10,000 or more.

18 (b) JURISDICTION.—An action under this Act shall  
19 be filed in the United States Court of Federal Claims  
20 which shall have exclusive jurisdiction.

21 (c) RECOVERY.—In any action filed under this Act,  
22 the owner may elect to recover—

23 (1) a sum equal to the diminution in the fair  
24 market value of the portion of the property affected  
25 by the application of a statute, regulation, rule,

1 guideline, or policy described under subsection  
2 (a)(1)(A) and retain title; or

3 (2) the fair market value of the affected portion  
4 of the regulated property prior to the government  
5 action and relinquish title to the portion of property  
6 regulated.

7 (d) PUBLIC NUISANCE EXCEPTION.—(1) No com-  
8 pensation shall be required by virtue of this Act if the own-  
9 er's use or proposed use of the property amounts to a pub-  
10 lic nuisance as commonly understood and defined by back-  
11 ground principles of nuisance and property law, as under-  
12 stood under the law of the State within which the property  
13 is situated.

14 (2) To bar an award of damages under this Act, the  
15 United States shall have the burden of proof to establish  
16 that the use or proposed use of the property is a public  
17 nuisance as defined under paragraph (1) of this sub-  
18 section.

19 **SEC. 3. APPLICATION; STATUTE OF LIMITATIONS.**

20 (a) APPLICATION.—This Act shall apply to the appli-  
21 cation of any statute, regulation, rule, guideline, or policy  
22 to real property, if such application occurred or occurs on  
23 or after January 1, 1994.

24 (b) STATUTE OF LIMITATIONS.—The statute of limi-  
25 tations for actions brought under this Act shall be six

1 years from the application of any statute, regulation, rule,  
2 guideline, or policy of the United States to any affected  
3 parcel of property under this Act.

4 **SEC. 4. AWARD OF COSTS; LITIGATION COSTS.**

5 (a) IN GENERAL.—The court, in issuing any final  
6 order in any action brought under this Act, shall award  
7 costs of litigation (including reasonable attorney and ex-  
8 pert witness) to any prevailing plaintiff.

9 (b) PAYMENT.—All awards or judgments for plain-  
10 tiff, including recovery for damages and costs of litigation,  
11 shall be paid out of funds of the agency or agencies re-  
12 sponsible for issuing the statute, regulation, rule, guideline  
13 or policy affecting the reduction in the fair market value  
14 of the affected portion of property. Payments shall not be  
15 made from a judgment fund.

16 **SEC. 5. CONSTITUTIONAL OR STATUTORY RIGHTS NOT RE-**  
17 **STRICTED.**

18 Nothing in this Act shall restrict any remedy or any  
19 right which any person (or class of persons) may have  
20 under any provision of the United States Constitution or  
21 any other law.

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