

104TH CONGRESS  
2D SESSION

# S. 2070

To ensure that homeowners receive adequate notice of and opportunity to comment on activities likely to adversely affect the value of their homes; and to create procedures for homeowners to receive financial compensation for development which produces pollution and other impacts adversely affecting the value of their homes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 12, 1996

Mr. WYDEN (for himself and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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## A BILL

To ensure that homeowners receive adequate notice of and opportunity to comment on activities likely to adversely affect the value of their homes; and to create procedures for homeowners to receive financial compensation for development which produces pollution and other impacts adversely affecting the value of their homes.

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 “Homeowners  
5       Empowerment and Protection Act of 1996”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds and declares that—

3 (1) there are 65,000,000 homeowners in the  
4 United States, representing approximately two-thirds  
5 of all households, who have a strong and justified in-  
6 terest in preserving and enhancing the value of their  
7 property;

8 (2) the value of a homeowner's home is based  
9 in large part on the location of the property relative  
10 to other features of the built and natural environ-  
11 ment, and the increase or decrease in the value of  
12 a home over time is inextricably linked to changes  
13 in the quality of the neighborhood and environment  
14 in which the home is located, including—

15 (A) the quality of the water for drinking,  
16 fishing, and swimming;

17 (B) the clarity and healthfulness of the air;

18 (C) the risk of flooding;

19 (D) the scenic beauty of the community;

20 (E) the presence or absence of offensive  
21 odors and excessive noise;

22 (F) the health and abundance of wildlife  
23 resources; and

24 (G) other factors;

25 (3) the value of homes in the United States is  
26 frequently reduced, and sometimes destroyed, by cer-

tain types of land development, industrial activity,  
and other actions that occur on neighboring prop-  
erties or at other locations, including sites upwind,  
upstream, or upslope from private homes;

(4) protecting private homeowners from the ad-  
verse affects of irresponsible actions of certain enti-  
ties and individuals which cause injury to home-  
owners' property values is important not only to  
homeowners but also to their communities and soci-  
ety as a whole; and

(5) current public information and participation  
procedures are often insufficient to provide individ-  
ual homeowners with notice of activities and the op-  
portunity to effectively participate in decisionmaking  
procedures that have the potential to significantly  
affect the value of their homes.

**SEC. 3. HOMEOWNER RIGHT OF ACCESS TO INFORMATION**  
**ABOUT ACTIVITIES THAT COULD REDUCE**  
**THE VALUE OF THEIR HOMES.**

(a) NOTICE.—

(1) GENERAL REQUIREMENT.—Within 90 days  
after the enactment of this Act, the Director of the  
Office of Management and Budget shall establish  
uniform Federal procedures applicable to all agen-  
cies under this section. In accordance with such pro-

cedures, each agency shall require any person required to file any application to conduct property impacting activity with the agency to provide the notice described in this section. The Director shall designate a lead agency in the case of any application under this section that involves more than one agency.

(2) APPLICATION TO CONDUCT PROPERTY IMPACTING ACTIVITY.—For purposes of this section, the term an “application to conduct property impacting activity” means an application for a permit, license, or other approval form, or contract, lease, or other arrangement, with an agency, that would authorize the applicant, pursuant to Federal law, to conduct an activity that generates pollutants or produces other adverse impacts with the potential to reduce the value of any private home.

(3) HOMEOWNERS REQUIRED TO RECEIVE NOTICE.—The notice under this section shall be provided by delivery, by certified mail, of individual written notice to each homeowner whose property lies within  $\frac{1}{4}$  mile of the perimeter of the site at which the activity that is the subject of the application will be carried out. The applicant shall also publish notice under this subsection at least 3 times in

1 the newspapers of general circulation in the affected  
2 community. The agency may also provide notice  
3 under this subsection by mail to the owner of any  
4 home identified by the agency as reasonably likely  
5 to suffer a reduction in value as a result of the pro-  
6 posed activity.

7 (4) NOTICE CONTENTS.—The notice referred to  
8 in paragraph (2) shall describe the nature of the ap-  
9 plication to conduct property impacting activity, the  
10 potential impacts of the proposed activity on the  
11 value of private homes, potential impacts on home-  
12 owners and other members of the public, the name  
13 and telephone number of the applicant and an agen-  
14 cy representative assigned to provide further infor-  
15 mation about the application, and any opportunities  
16 available for homeowner or other affected members  
17 of the public to comment on the proposed activity.

18 (b) PUBLIC RESPONSE; IDENTIFICATION OF ALTER-  
19 NATIVES TO REDUCE PROPERTY IMPACTS.—In addition  
20 to and not in lieu of any other procedures established by  
21 law, each agency shall establish a toll-free telephone num-  
22 ber which homeowners may call to register concerns about  
23 the potential effects on property values of an application  
24 for a proposed activity or to request additional information  
25 concerning applications to conduct property impacting ac-

1 tivities filed with the agency and opportunities to submit  
 2 public comment. If requested by an applicant or any home-  
 3 owner whose property is reasonably likely to suffer a re-  
 4 duction in value as a result of the activity to be authorized  
 5 by such application, the agency shall thoroughly inves-  
 6 tigate the potential impact of the proposed activity on the  
 7 value of private homes, and seek to identify alternatives  
 8 to the proposed action which reduce the adverse effects  
 9 on the value of private homes.

10 **SEC. 4. HOMEOWNER RIGHT OF ACTION.**

11 (a) RIGHT OF ACTION.—Whenever any person has  
 12 carried out any activity that—

13 (1) is authorized (or required to be authorized)  
 14 by a permit, license, or other approval issued by an  
 15 agency or pursuant to Federal law to such person,  
 16 or by a contract, lease, or other arrangement be-  
 17 tween such person and an agency, and

18 (2) generates pollutants or produces other ad-  
 19 verse impacts that cause or significantly contribute  
 20 to a total reduction in the value of one or more pri-  
 21 vate homes of \$10,000 or more,

22 any owner of a private home, the value of which is reduced  
 23 by such activity, may commence an action against such  
 24 person under this section.

1       (b) NOTICE OF INTENT TO SUE AND VOLUNTARY  
 2 CLAIM RESOLUTION PROCEDURES.—At least 30 days  
 3 prior to filing an action under this section, a homeowner  
 4 shall deliver a notice of intent to sue to the defendant and  
 5 to the head of the agency to which the application to con-  
 6 duct property impacting activity is submitted or required  
 7 to be submitted or which has authority to enter into the  
 8 contract, lease, or other arrangement. If either the home-  
 9 owner or the defendant requests that the agency resolve  
 10 the claim, the agency head shall convene a meeting of the  
 11 parties and use the best efforts of the agency to arrive  
 12 at a just resolution of the claim in order to avoid unneces-  
 13 sary litigation costs. Such efforts shall not affect the right  
 14 of the homeowner to bring an action under this section  
 15 at any time after the expiration of the 30-day period re-  
 16 ferred to in this subsection.

17       (c) BURDEN OF PROOF.—In any action under this  
 18 section, the homeowner shall have the burden of dem-  
 19 onstrating that the activity conducted by the defendant  
 20 caused or contributed to a reduction in the value of the  
 21 homeowner's home.

22       (d) CLASS ACTIONS.—Similarly affected homeowners  
 23 are authorized to file suit under this section in accordance  
 24 with rule 23 of the Federal Rules of Civil Procedure in

1 Federal district court in the district where such homes are  
2 located.

3 (e) REMEDY.—Any homeowner authorized to bring  
4 suit under this section shall be entitled to recover an  
5 amount equal to the reduction in the value of the home-  
6 owner's home caused or significantly contributed to by the  
7 activity referred to in subsection (a), except that such  
8 compensation may not exceed the greater of—

9 (1) the median value (as determined by the  
10 court based on tax assessments) of all private homes  
11 in the immediate vicinity of the homeowner's home;  
12 or

13 (2) \$500,000.

14 (f) ATTORNEYS FEES.—Any homeowner who receives  
15 compensation under this section shall be awarded reason-  
16 able attorney's fees, including the cost of expert witnesses  
17 and other reasonable costs.

18 (g) INJUNCTION.—In addition to providing com-  
19 pensation under this section, whenever any activity that  
20 is the subject of an action under this section constitutes  
21 a violation of any Federal statute, regulation, permit, li-  
22 cense, contract, lease, or other arrangement or form of  
23 approval, the court may enjoin such activity.

1 (h) JURISDICTION.—The United States district court  
2 shall have original jurisdiction, concurrent with State  
3 courts, of any action brought under this section.

4 (i) FRIVOLOUS OR OTHERWISE IMPROPER LAW-  
5 SUITS.—If the court dismisses any action under this sec-  
6 tion after finding that the plaintiff’s case was frivolous,  
7 dilatory, abusive, or brought to harass the defendant or  
8 for any other improper purpose, in addition to any other  
9 sanction available to the court under the Federal Rules  
10 of Civil Procedure, the court may, upon motion by the de-  
11 fendant, order the plaintiff to pay the defendant’s reason-  
12 able attorney’s fees and other expenses reasonably in-  
13 curred by the defendant in participating in the litigation.

14 (j) STATUTE OF LIMITATIONS.—No action may be  
15 brought under this section with respect to any private  
16 home after the date 5 years after the date on which the  
17 total reduction in the value of such home is \$10,000.

18 (k) SAVINGS PROVISIONS.—

19 (1) PROHIBITION OF LIMITATION ON OTHER  
20 CLAIMS.—No provision of this Act shall be construed  
21 to limit the rights of any person to pursue any claim  
22 or cause of action under the Constitution or any  
23 other law (including a claim or cause of action con-  
24 cerning real or personal property).

1           (2) PROHIBITION OF USE AS CONDITION  
2 PRECEDENT.—Commencement of a suit under this  
3 Act, or receipt of compensation under this Act, shall  
4 not be a condition precedent for any claim or cause  
5 of action under any other authority of law.

6 **SEC. 5. POTENTIAL TO REDUCE THE VALUE.**

7       An activity that generates pollutants or produces  
8 other adverse impacts shall be considered to have the po-  
9 tential to reduce the value of any private home whenever  
10 such activity may result in physical damage or any other  
11 unlawful or objectively unreasonable interference with the  
12 use and enjoyment of a private home.

13 **SEC. 6. DEFINITIONS.**

14       As used in this Act:

15           (1) AGENCY.—The term “agency” has the  
16 meaning given that term in section 551(1) of title 5,  
17 United States Code.

18           (2) PRIVATE HOME.—The term “private home”  
19 means any owner occupied dwelling, including any  
20 multi-family dwelling and any condominium.

21           (3) REDUCTION IN VALUE.—The term “reduc-  
22 tion in value” means, with respect to private home  
23 affected by an activity referred to in section 4, the  
24 difference (estimated based on values at the time an  
25 action is brought under this section) between the

1 fair market value of the home, and the fair market  
2 value of the home in the absence of such activity.

3 (4) PERSON.—The term “person” means any  
4 individual, corporation, partnership, or other organi-  
5 zation or entity other than a Federal, State, or local  
6 government agency.

7 **SEC. 7. EFFECTIVE DATE.**

8 This Act shall apply to each permit, license, or other  
9 form of approval issued by an agency after the date 180  
10 days after the enactment of this Act and to each contract,  
11 lease, or other arrangement entered into by an agency  
12 after the date 180 days after the enactment of this Act.

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