

104TH CONGRESS
1ST SESSION

S. 22

To require Federal agencies to prepare private property taking impact analyses.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1995

Mr. DOLE (for himself, Mr. HEFLIN, Mr. BROWN, Mr. BURNS, Mr. HATCH, Mr. NICKLES, Mr. CRAIG, and Mrs. KASSEBAUM) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To require Federal agencies to prepare private property taking impact analyses.

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. PRIVATE PROPERTY RIGHTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Private Property Rights Act of 1995”.

6 (b) FINDINGS.—The Congress finds that—

7 (1) the protection of private property from a
8 taking by the Government without just compensation
9 is an integral protection for private citizens incor-

1 porated into the United States Constitution by the
2 fifth amendment and made applicable to the States
3 by the fourteenth amendment; and

4 (2) Federal agencies should take into consider-
5 ation the impact of governmental actions on the use
6 and ownership of private property.

7 (c) PURPOSE.—The Congress, recognizing the impor-
8 tant role that the use and ownership of private property
9 plays in ensuring the economic and social well-being of the
10 Nation, declares that the Federal Government should pro-
11 tect the health, safety, and welfare of the public and, in
12 doing so, to the extent practicable, avoid takings of private
13 property.

14 (d) DEFINITIONS.—For purposes of this section—

15 (1) the term “agency” means a department,
16 agency, independent agency, or instrumentality of
17 the United States, including any military depart-
18 ment, Government corporation, Government-con-
19 trolled corporation, or other establishment in the ex-
20 ecutive branch of the United States Government;
21 and

22 (2) the term “taking of private property”
23 means any action whereby private property is taken
24 in such a way as to require compensation under the
25 fifth amendment to the United States Constitution.

1 (e) PRIVATE PROPERTY TAKING IMPACT ANALY-
2 SIS.—

3 (1) IN GENERAL.—The Congress authorizes
4 and directs that, to the fullest extent possible—

5 (A) the policies, regulations, and public
6 laws of the United States shall be interpreted
7 and administered in accordance with the poli-
8 cies under this title; and

9 (B) subject to paragraph (2), all agencies
10 of the Federal Government shall complete a pri-
11 vate property taking impact analysis before is-
12 suing or promulgating any policy, regulation,
13 proposed legislation, or related agency action
14 which is likely to result in a taking of private
15 property.

16 (2) NONAPPLICATION.—The provisions of para-
17 graph (1)(B) shall not apply to—

18 (A) an action in which the power of emi-
19 nent domain is formally exercised;

20 (B) an action taken—

21 (i) with respect to property held in
22 trust by the United States; or

23 (ii) in preparation for, or in connec-
24 tion with, treaty negotiations with foreign
25 nations;

1 (C) a law enforcement action, including
2 seizure, for a violation of law, of property for
3 forfeiture or as evidence in a criminal proceed-
4 ing;

5 (D) a communication between an agency
6 and a State or local land-use planning agency
7 concerning a planned or proposed State or local
8 activity that regulates private property, regard-
9 less of whether the communication is initiated
10 by an agency or is undertaken in response to an
11 invitation by the State or local authority;

12 (E) the placement of a military facility or
13 a military activity involving the use of solely
14 Federal property;

15 (F) any military or foreign affairs function
16 (including a procurement function under a mili-
17 tary or foreign affairs function), but not includ-
18 ing the civil works program of the Army Corps
19 of Engineers; and

20 (G) any case in which there is an imme-
21 diate threat to health or safety that constitutes
22 an emergency requiring immediate response or
23 the issuance of a regulation under section
24 553(b)(B) of title 5, United States Code, if the
25 taking impact analysis is completed after the

1 emergency action is carried out or the regula-
2 tion is published.

3 (3) CONTENT OF ANALYSIS.—A private prop-
4 erty taking impact analysis shall be a written state-
5 ment that includes—

6 (A) the specific purpose of the policy, regu-
7 lation, proposal, recommendation, or related
8 agency action;

9 (B) an assessment of the likelihood that a
10 taking of private property will occur under such
11 policy, regulation, proposal, recommendation, or
12 related agency action;

13 (C) an evaluation of whether such policy,
14 regulation, proposal, recommendation, or relat-
15 ed agency action is likely to require compensa-
16 tion to private property owners;

17 (D) alternatives to the policy, regulation,
18 proposal, recommendation, or related agency ac-
19 tion that would achieve the intended purposes
20 of the agency action and lessen the likelihood
21 that a taking of private property will occur; and

22 (E) an estimate of the potential liability of
23 the Federal Government if the Government is
24 required to compensate a private property
25 owner.

1 (4) SUBMISSION TO OMB.—Each agency shall
2 provide the analysis required by this section as part
3 of any submission otherwise required to be made to
4 the Office of Management and Budget in conjunc-
5 tion with the proposed regulation.

6 (5) PUBLIC AVAILABILITY OF ANALYSIS.—An
7 agency shall—

8 (A) make each private property taking im-
9 pact analysis available to the public; and

10 (B) to the greatest extent practicable,
11 transmit a copy of such analysis to the owner
12 or any other person with a property right or in-
13 terest in the affected property.

14 (f) GUIDANCE AND REPORTING REQUIREMENTS.—

15 (1) GUIDANCE.—The Attorney General shall
16 provide legal guidance in a timely manner, in re-
17 sponse to a request by an agency, to assist the agen-
18 cy in complying with this section.

19 (2) REPORTING.—Not later than 1 year after
20 the date of enactment of this Act and at the end of
21 each 1-year period thereafter, each agency shall pro-
22 vide a report to the Director of the Office of Man-
23 agement and Budget and the Attorney General iden-
24 tifying each agency action that has resulted in the
25 preparation of a taking impact analysis, the filing of

1 a taking claim, or an award of compensation pursu-
2 ant to the Just Compensation Clause of the Fifth
3 Amendment to the Constitution. The Director of the
4 Office of Management and Budget and the Attorney
5 General shall publish in the Federal Register, on an
6 annual basis, a compilation of the reports of all
7 agencies made pursuant to this paragraph.

8 (g) PRESUMPTIONS IN PROCEEDINGS.—For the pur-
9 pose of any agency action or administrative or judicial pro-
10 ceeding, there shall be a rebuttable presumption that the
11 costs, values, and estimates in any private property
12 takings impact analysis shall be outdated and inaccurate,
13 if—

14 (1) such analysis was completed 5 years or
15 more before the date of such action or proceeding;
16 and

17 (2) such costs, values, or estimates have not
18 been modified within the 5-year period preceding the
19 date of such action or proceeding.

20 (h) RULES OF CONSTRUCTION.—Nothing in this Act
21 shall be construed to—

22 (1) limit any right or remedy, constitute a con-
23 dition precedent or a requirement to exhaust admin-
24 istrative remedies, or bar any claim of any person
25 relating to such person's property under any other

1 law, including claims made under this Act, section
2 1346 or 1402 of title 28, United States Code, or
3 chapter 91 of title 28, United States Code; or

4 (2) constitute a conclusive determination of—

5 (A) the value of any property for purposes
6 of an appraisal for the acquisition of property,
7 or for the determination of damages; or

8 (B) any other material issue.

9 (i) EFFECTIVE DATE.—The provisions of this Act
10 shall take effect 120 days after the date of the enactment
11 of this Act.

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