

105TH CONGRESS
1ST SESSION

S. 1181

To amend the Internal Revenue Code of 1986 to provide Federal tax incentives to owners of environmentally sensitive lands to enter into conservation easements for the protection of endangered species habitat, to allow a deduction from the gross estate of a decedent in an amount equal to the value of real property subject to an endangered species conservation agreement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16, 1997

Mr. KEMPTHORNE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide Federal tax incentives to owners of environmentally sensitive lands to enter into conservation easements for the protection of endangered species habitat, to allow a deduction from the gross estate of a decedent in an amount equal to the value of real property subject to an endangered species conservation agreement, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Endangered Species Habitat Protection Act of 1997”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Nonrefundable credit for the agreement to manage land to preserve en-
dangered species.

Sec. 4. Enhanced deduction for the donation of a conservation easement.

Sec. 5. Additional deduction for certain State and local real property taxes im-
posed with respect to property subject to an endangered species
conservation agreement.

Sec. 6. Exclusion from estate for real property subject to endangered species
conservation agreement.

Sec. 7. Exclusion of 75 percent of gain on sales of land to certain persons for
the protection of habitat.

Sec. 8. Right to compensation.

6 **SEC. 2. FINDINGS.**

7 The Senate finds and declares the following:

8 (1) The majority of American property owners
9 recognize the importance of protecting the environ-
10 ment, including the habitats upon which endangered
11 and threatened species depend.

12 (2) Current Federal tax laws discourage place-
13 ment of privately held lands into endangered and
14 threatened species conservation agreements.

15 (3) The Federal Government should assist land-
16 owners in the goal of conserving endangered and
17 threatened species and their habitat.

18 (4) If the environment is to be protected and
19 preserved, existing Federal tax laws must be modi-

1 fied or changed to provide tax incentives to land-
 2 owners to attain the goal of conservation of endan-
 3 gered and threatened species and the habitats on
 4 which they depend.

5 **SEC. 3. NONREFUNDABLE CREDIT FOR THE AGREEMENT**
 6 **TO MANAGE LAND TO PRESERVE ENDAN-**
 7 **GERED SPECIES.**

8 (a) IN GENERAL.—Subpart A of part IV of sub-
 9 chapter A of chapter 1 of the Internal Revenue Code of
 10 1986 (relating to nonrefundable personal credits) is
 11 amended by inserting after section 25A the following new
 12 section:

13 **“SEC. 25B. CREDIT FOR AGREEMENT TO MANAGE LAND TO**
 14 **PRESERVE ENDANGERED SPECIES.**

15 “(a) ALLOWANCE OF CREDIT.—There shall be al-
 16 lowed as a credit against the tax imposed by this chapter
 17 for the taxable year an amount equal to the lesser of—

18 “(1) the applicable acreage rate of the qualified
 19 acreage, or

20 “(2) \$50,000.

21 “(b) APPLICABLE ACREAGE RATE.—For purposes of
 22 subsection (a), the applicable acreage rate is the rate es-
 23 tablished by the Secretary of the Interior for the taxable
 24 year utilizing rates comparable to rental payments under

1 the conservation reserve program under section 1234 of
2 the Food Security Act of 1985 (16 U.S.C. 3834).

3 “(c) QUALIFIED ACREAGE.—For purposes of this
4 section, the term ‘qualified acreage’ means any acreage—

5 “(1) which is subject to an endangered species
6 conservation agreement under the Endangered Spe-
7 cies Act (16 U.S.C. 1531 et seq.) and accepted into
8 the expanded conservation reserve program pursuant
9 to section 1231(d)(2) of the Food Security Act of
10 1985 (16 U.S.C. 3831(d)(2)),

11 “(2) which is owned by one or more individuals
12 directly or indirectly through a partnership or S cor-
13 poration that is held entirely by individuals, and

14 “(3) subject to a perpetual restriction that is
15 valued pursuant to section 170(h)(7).

16 “(d) CREDIT RECAPTURE.—If, during the period of
17 the endangered species conservation agreement, the tax-
18 payer transfers the qualified acreage without also transfer-
19 ring the taxpayer’s obligations under the expanded con-
20 servation reserve program under subchapter B of chapter
21 1 of subtitle D of the Food Security Act of 1985 (16
22 U.S.C. 3831 et seq.) and the endangered species conserva-
23 tion agreement, then the taxpayer’s tax under this chapter
24 for the taxable year shall be increased by the amount of
25 the credit received under this section during all prior years

1 by such taxpayer, plus interest at the overpayment rate
2 established under section 6621 on such amount for each
3 prior taxable year for the period beginning on the due date
4 for filing the return for the prior taxable year involved.
5 No deduction shall be allowed under this chapter for inter-
6 est described in the preceding sentence, and any increase
7 in tax under the preceding sentence shall not be treated
8 as a tax imposed by this chapter for purposes of determin-
9 ing the amount of any credit under subpart A, B, D, or
10 G of this part.

11 “(e) JOINT OWNERS.—For purposes of this section,
12 the amount of credit under this section that any joint
13 owner is entitled to constitutes the total credit allowable
14 under this section with respect to the qualified acreage
15 multiplied by the individual’s percentage ownership in the
16 qualified acreage. Each joint owner shall include on the
17 return of tax in which the credit is claimed the names and
18 taxpayer identification numbers of all other joint owners
19 in the property.

20 “(f) REGULATORY AUTHORITY.—

21 “(1) TREASURY DEPARTMENT.—The Secretary
22 shall promulgate regulations to ensure that a tax-
23 payer cannot subdivide property to determine such
24 taxpayer’s qualified acreage unless all of the acreage
25 such taxpayer owns within a significant region is

1 submitted to the expanded conservation reserve pro-
2 gram, whether or not such acreage is eligible for a
3 credit under this section.

4 “(2) SECRETARY OF THE INTERIOR.—As nec-
5 essary, the Secretary of the Interior shall determine
6 the applicable acreage rate for regions within the
7 United States based on rates comparable to those
8 under the expanded conservation reserve program.
9 Once a rate is prescribed under an endangered spe-
10 cies conservation agreement, however, such rate
11 shall remain in effect for the duration of that agree-
12 ment.”

13 (b) CONFORMING AMENDMENTS.—Subchapter B of
14 chapter 1 of subtitle D of the Food Security Act of 1985
15 (16 U.S.C. 3831 et seq.) is amended—

16 (1) in section 1231(b)—

17 (A) by striking the period at the end and
18 inserting “; or”; and

19 (B) by adding at the end the following new
20 paragraph:

21 “(5) lands with respect to which the owner or
22 operator and the Secretary of the Interior or the
23 Secretary of Commerce have entered into an endan-
24 gered species conservation agreement.”;

1 (2) in section 1231(d), by striking “(d)” and
2 inserting “(d)(1)” and by adding at the end the fol-
3 lowing new paragraph:

4 “(2) The Secretary of the Interior and the Secretary
5 of Commerce shall enter into endangered species conserva-
6 tion agreements under this section to enroll acreage, in
7 addition to the 38,000,000 acres authorized by paragraph
8 (1), into the expanded conservation reserve, for which no
9 payment is due under section 3834, totaling 5,000,000
10 acres during calendar years 1997 through 2002. In enroll-
11 ing such acres, the Secretary of the Interior and the Sec-
12 retary of Commerce shall reserve 1,000,000 acres for en-
13 rollment under this section in calendar year 1997.”;

14 (3) in section 1232, by adding at the end the
15 following new subsection:

16 “(f) This section shall not apply to owners and opera-
17 tors subject to endangered species conservation agree-
18 ments.”;

19 (4) in section 1234, by adding at the end the
20 following new subsection:

21 “(i) This section shall not apply to owners and opera-
22 tors subject to endangered species conservation agree-
23 ments.”; and

24 (5) by inserting after section 1234 the following
25 new section:

1 **“SEC. 1234A. NO PAYMENTS TO PROPERTIES FOR WHICH AN**
 2 **INCOME TAX CREDIT OR DEDUCTION IS**
 3 **TAKEN.**

4 “The Secretary shall ensure that no payment be
 5 made under this subchapter to any owner if that owner
 6 has indicated an intention to claim an income tax credit
 7 (under section 25B of the Internal Revenue Code of 1986)
 8 for participation in this program, or an income tax deduc-
 9 tion (under section 170(h)(4)(A)(iii) of such Code).”

10 (c) CLERICAL AMENDMENT.—The table of sections
 11 for subpart A of part IV of subchapter A of chapter 1
 12 of the Internal Revenue Code of 1986 is amended by in-
 13 serting after the item relating to section 25A the following
 14 new item:

“Sec. 25B. Credit for agreement to manage land to preserve endangered spe-
 cies.”

15 (d) EFFECTIVE DATES.—

16 (1) CREDIT.—The amendments made by sub-
 17 sections (a) and (c) shall apply to taxable years be-
 18 ginning after December 31, 1995.

19 (2) CONFORMING AMENDMENTS.—The amend-
 20 ments made by subsection (b) shall take effect on
 21 the date of enactment of the Endangered Species
 22 Habitat Protection Act of 1997.

1 **SEC. 4. ENHANCED DEDUCTION FOR THE DONATION OF A**
2 **CONSERVATION EASEMENT.**

3 (a) IN GENERAL.—Subparagraph (A) of section
4 170(h)(4) of the Internal Revenue Code of 1986 (defining
5 conservation purpose) is amended by striking “or” at the
6 end of clause (iii), by striking the period at the end of
7 clause (iv) and inserting “, or”, and by adding at the end
8 the following new clause:

9 “(v) the protection of a species des-
10 ignated endangered by the Secretary of the
11 Interior or the Secretary of Commerce.”

12 (b) ENHANCED VALUATION.—Section 170(h) of the
13 Internal Revenue Code of 1986 (defining qualified con-
14 servation contribution) is amended by adding at the end
15 the following new paragraph:

16 “(7) ENHANCED VALUATION OF PROPERTY
17 WITH ENDANGERED SPECIES.—For purposes of this
18 section, the valuation of a perpetual restriction
19 granted to the Secretary of the Interior or the Sec-
20 retary of Commerce or to a State agency implement-
21 ing an endangered species program for the purpose
22 described in paragraph (4)(A)(iii) shall be made by
23 comparing the value of the property after the re-
24 striction is granted with the value of that same
25 property without either the encumbrance of such re-
26 striction or any of the restrictions placed on such

1 property by the Endangered Species Act of 1973 (16
2 U.S.C. 1531 et seq.).”

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to contributions made after the
5 date of the enactment of this Act.

6 **SEC. 5. ADDITIONAL DEDUCTION FOR CERTAIN STATE AND**
7 **LOCAL REAL PROPERTY TAXES IMPOSED**
8 **WITH RESPECT TO PROPERTY SUBJECT TO**
9 **AN ENDANGERED SPECIES CONSERVATION**
10 **AGREEMENT.**

11 (a) IN GENERAL.—Section 164 of the Internal Reve-
12 nue Code of 1986 (relating to deductions for taxes) is
13 amended by redesignating subsection (g) as subsection (h)
14 and by inserting after subsection (f) the following new
15 subsection:

16 “(g) ADDITIONAL DEDUCTION FOR CERTAIN STATE
17 AND LOCAL REAL PROPERTY TAXES IMPOSED WITH RE-
18 SPECT TO PROPERTY SUBJECT TO AN ENDANGERED SPE-
19 CIES CONSERVATION AGREEMENT.—

20 “(1) GENERAL RULE.—Except as provided in
21 paragraph (3), in the case of property—

22 “(A) which, on the last day of the taxable
23 year, is described in section 25B(c)(1), and

24 “(B) with respect to which no recapture
25 event described in section 25B(d) has occurred,

1 a deduction in the amount determined under
2 paragraph (2) shall be allowed for all State and
3 local real property taxes paid or accrued with
4 respect to such property during such year. The
5 deduction allowed by this subsection shall be in
6 addition to any other deduction allowed by this
7 section.

8 “(2) AMOUNT OF ADDITIONAL DEDUCTION.—
9 The deduction allowed by this subsection shall equal
10 25 percent of the amount of State and local real
11 property taxes that are otherwise deductible under
12 this section without regard to this subsection.

13 “(3) DEDUCTION NOT ALLOWED.—No deduc-
14 tion shall be allowed under this subsection for taxes
15 imposed upon real property—

16 “(A) with respect to which a credit under
17 section 25B is allowable, or

18 “(B) subject to a perpetual restriction that
19 is valued pursuant to section 170(h)(7).”

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to taxable years beginning after
22 December 31, 1995.

1 **SEC. 6. EXCLUSION FROM ESTATE FOR REAL PROPERTY**
2 **SUBJECT TO ENDANGERED SPECIES CON-**
3 **SERVATION AGREEMENT.**

4 (a) **IN GENERAL.**—Part IV of subchapter A of chap-
5 ter 11 of the Internal Revenue Code of 1986 (relating to
6 taxable estate) is amended by adding at the end the follow-
7 ing new section:

8 **“SEC. 2057. CERTAIN REAL PROPERTY SUBJECT TO ENDAN-**
9 **GERED SPECIES CONSERVATION AGREE-**
10 **MENT.**

11 “(a) **GENERAL RULE.**—For purposes of the tax im-
12 posed by section 2001, the value of the taxable estate shall
13 be determined by deducting from the value of the gross
14 estate an amount equal to the adjusted value of real prop-
15 erty included in the gross estate which is subject to an
16 endangered species conservation agreement.

17 “(b) **PROPERTY SUBJECT TO AN ENDANGERED SPE-**
18 **CIES CONSERVATION AGREEMENT.**—For purposes of this
19 section—

20 “(1) **IN GENERAL.**—Real property shall be
21 treated as subject to an endangered species con-
22 servation agreement if—

23 “(A) each person who has an interest in
24 such property (whether or not in possession)
25 has entered into—

1 “(i) an endangered species conserva-
2 tion agreement with respect to such prop-
3 erty, and

4 “(ii) a written agreement with the
5 Secretary consenting to the application of
6 subsection (d), and

7 “(B) the executor of the decedent’s es-
8 tate—

9 “(i) elects the application of this sec-
10 tion, and

11 “(ii) files with the Secretary such en-
12 dangered species conservation agreement.

13 “(2) ADJUSTED VALUE.—The adjusted value of
14 any real property shall be its value for purposes of
15 this chapter, reduced by any amount deductible
16 under section 2053(a)(4) or 2055(f) with respect to
17 the property.

18 “(c) ENDANGERED SPECIES CONSERVATION AGREE-
19 MENT.—For purposes of this section—

20 “(1) IN GENERAL.—The term ‘endangered spe-
21 cies conservation agreement’ means a written agree-
22 ment entered into with the Secretary of the Interior
23 or the Secretary of Commerce—

24 “(A) which commits each person who
25 signed such agreement to carry out on the real

1 property activities or practices not otherwise re-
2 quired by law or to refrain from carrying out on
3 such property activities or practices that could
4 otherwise be lawfully carried out,

5 “(B) which is certified by such Secretary
6 as assisting in the conservation of any species
7 which is—

8 “(i) designated by such Secretary as
9 an endangered or threatened species under
10 the Endangered Species Act of 1973 (16
11 U.S.C. 1531 et seq.),

12 “(ii) proposed for such designation, or

13 “(iii) officially identified by such Sec-
14 retary as a candidate for possible future
15 protection as an endangered or threatened
16 species, and

17 “(C) which applies to at least one-half of
18 the total area of the property.

19 “(2) ANNUAL CERTIFICATION TO THE SEC-
20 RETARY BY THE SECRETARY OF THE INTERIOR OR
21 THE SECRETARY OF COMMERCE OF THE STATUS OF
22 ENDANGERED SPECIES CONSERVATION AGREE-
23 MENTS.—If the executor elects the application of
24 this section, the executor shall promptly give written
25 notice of such election to the Secretary of the Inte-

1 rior or the Secretary of Commerce. The Secretary of
2 the Interior or the Secretary of Commerce shall
3 thereafter annually certify to the Secretary that the
4 endangered species conservation agreement applica-
5 ble to any property for which such election has been
6 made remains in effect and is being satisfactorily
7 complied with.

8 “(d) RECAPTURE OF TAX BENEFIT IN CERTAIN
9 CASES.—

10 “(1) DISPOSITION OF INTEREST OR MATERIAL
11 BREACH.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (C), an additional tax in the
14 amount determined under subparagraph (B)
15 shall be imposed on any person on the earlier
16 of—

17 “(i) the disposition by such person of
18 any interest in property subject to an en-
19 dangered species conservation agreement
20 (other than a disposition described in sub-
21 paragraph (C)),

22 “(ii) the failure by such person to
23 comply with the terms of the endangered
24 species conservation agreement, or

1 “(iii) the termination of the endan-
2 gered species conservation agreement.

3 “(B) AMOUNT OF ADDITIONAL TAX.—The
4 amount of the additional tax imposed by sub-
5 paragraph (A) shall be an amount that bears
6 the same ratio to the fair market value of the
7 real property at the time of the event described
8 in subparagraph (A) as the ratio of the amount
9 by which the estate tax liability was reduced by
10 virtue of this section bore to the fair market
11 value of such property at the time the executor
12 filed the agreement under subsection (b)(1).
13 For purposes of this subparagraph, the term
14 ‘estate tax liability’ means the tax imposed by
15 section 2001 reduced by the credits allowable
16 against such tax.

17 “(C) EXCEPTION IF TRANSFEREE AS-
18 SUMES OBLIGATIONS OF TRANSFEROR.—Sub-
19 paragraph (A)(i) shall not apply if the trans-
20 feror and the transferee of the property enter
21 into a written agreement pursuant to which the
22 transferee agrees—

23 “(i) to assume the obligations imposed
24 on the transferor under the endangered
25 species conservation agreement,

1 “(ii) to assume personal liability for
2 any tax imposed under subparagraph (A)
3 with respect to any future event described
4 in subparagraph (A), and

5 “(iii) to notify the Secretary of the
6 Treasury and the Secretary of the Interior
7 or the Secretary of Commerce that the
8 transferee has assumed such obligations
9 and liability.

10 If a transferee enters into an agreement de-
11 scribed in clauses (i), (ii), and (iii), such trans-
12 feree shall be treated as signatory to the endan-
13 gered species conservation agreement the trans-
14 feror entered into.

15 “(2) DUE DATE OF ADDITIONAL TAX.—The ad-
16 ditional tax imposed by paragraph (1) shall become
17 due and payable on the day that is 6 months after
18 the date of the disposition referred to in paragraph
19 (1)(A)(i) or, in the case of an event described in
20 clause (ii) or (iii) of paragraph (1)(A), on April 15
21 of the calendar year following any year in which the
22 Secretary of the Interior or the Secretary of Com-
23 merce fails to provide the certification required
24 under subsection (c)(2).

1 “(e) STATUTE OF LIMITATIONS.—If a taxpayer in-
2 curs a tax liability pursuant to subsection (d)(1)(A),
3 then—

4 “(1) the statutory period for the assessment of
5 any additional tax imposed by subsection (d)(1)(A)
6 shall not expire before the expiration of 3 years from
7 the date the Secretary is notified (in such manner
8 as the Secretary may by regulation prescribe) of the
9 incurring of such tax liability, and

10 “(2) such additional tax may be assessed before
11 the expiration of such 3-year period notwithstanding
12 the provisions of any other law or rule of law that
13 would otherwise prevent such assessment.

14 “(f) ELECTION AND FILING OF AGREEMENT.—The
15 election under this section shall be made on the return
16 of the tax imposed by section 2001. Such election, and
17 the filing under subsection (a) of an endangered species
18 conservation agreement, shall be made in such manner as
19 the Secretary shall by regulation provide.

20 “(g) APPLICATION OF THIS SECTION TO INTERESTS
21 IN PARTNERSHIPS, CORPORATIONS, AND TRUSTS.—The
22 Secretary shall prescribe regulations setting forth the ap-
23 plication of this section in the case of an interest in a part-
24 nership, corporation, or trust which, with respect to a de-
25 cedent, is an interest in a closely held business (within

1 the meaning of paragraph (1) of section 6166(b)). For
 2 purposes of the preceding sentence, an interest in a discre-
 3 tionary trust all the beneficiaries of which are heirs of the
 4 decedent shall be treated as a present interest.”

5 (b) CARRYOVER BASIS.—Section 1014(a)(4) of the
 6 Internal Revenue Code of 1986 (relating to basis of prop-
 7 erty acquired from a decedent) is amended by inserting
 8 “or 2057” after “section 2031(c)”.

9 (c) CLERICAL AMENDMENT.—The table of sections
 10 for part IV of subchapter A of chapter 11 of the Internal
 11 Revenue Code of 1986 is amended by adding at the end
 12 the following new item:

“Sec. 2057. Certain real property subject to endangered species
 conservation agreement.”

13 (d) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to estates of decedents dying after
 15 the date of the enactment of this Act.

16 **SEC. 7. EXCLUSION OF 75 PERCENT OF GAIN ON SALES OF**
 17 **LAND TO CERTAIN PERSONS FOR THE PRO-**
 18 **TECTION OF HABITAT.**

19 (a) IN GENERAL.—Part I of subchapter P of chapter
 20 1 of the Internal Revenue Code of 1986 (relating to treat-
 21 ment of capital gains) is amended by adding at the end
 22 the following new section:

1 **“SEC. 1203. 75 PERCENT EXCLUSION FOR GAIN ON SALES**
2 **OF LAND TO CERTAIN PERSONS FOR THE**
3 **PROTECTION OF HABITAT.**

4 “(a) EXCLUSION.—Gross income shall not include 75
5 percent of any gain from the sale of any land to a con-
6 servation purchaser if—

7 “(1) such land was owned by the taxpayer or a
8 member of the taxpayer’s family (as defined in sec-
9 tion 2032A(e)(2)) at all times during the 3-year pe-
10 riod ending on the date of the sale, and

11 “(2) such land is being acquired by a conserva-
12 tion purchaser for the purpose of protecting the
13 habitat of any species listed by the Secretary of the
14 Interior or the Secretary of Commerce under the
15 Endangered Species Act as endangered or threat-
16 ened, proposed for listing as endangered or threat-
17 ened, or which is a candidate for such listing.

18 “(b) CONSERVATION PURCHASER.—For purposes of
19 this section—

20 “(1) CONSERVATION PURCHASER.—The term
21 ‘conservation purchaser’ means—

22 “(A) any agency of the United States or of
23 any State or local government, and

24 “(B) any qualified organization.

25 “(2) QUALIFIED ORGANIZATION.—The term
26 ‘qualified organization’ has the meaning given such

1 term by section 170(h)(3) (determined without re-
 2 gard to section 170(b)(1)(A)(v)).”

3 (b) CLERICAL AMENDMENT.—The table of sections
 4 for part I of subchapter P of chapter 1 of the Internal
 5 Revenue Code of 1986 is amended by adding at the end
 6 the following new item:

“Sec. 1203. 75-percent exclusion for gain on sales of land to certain persons
 for the protection of habitat.”

7 (c) EFFECTIVE DATE.—The amendments made by
 8 this section shall apply to sales after December 31, 1997.

9 **SEC. 8. RIGHT TO COMPENSATION.**

10 (a) PROHIBITION.—No agency action affecting pri-
 11 vately owned property under this section shall result in
 12 the diminishment of the value of any portion of that prop-
 13 erty by 30 percent or more unless compensation is offered
 14 in accordance with this section.

15 (b) COMPENSATION FOR DIMINISHMENT.—Any agen-
 16 cy that takes an action the economic impact of which ex-
 17 ceeds the amount provided in subsection (a)—

18 (1) shall compensate the property owner for the
 19 diminution in value of the portion of that property
 20 resulting from the action; or

21 (2) if the diminution in value of a portion of
 22 that property is greater than 50 percent, at the op-
 23 tion of the owner, such agency shall buy that portion
 24 of the property and shall pay fair market value

1 based on the value of the property before the dimi-
2 nution.

3 (c) REQUEST OF OWNER.—A property owner seeking
4 compensation under this section shall make a written re-
5 quest for compensation to the agency whose action would
6 limit the otherwise lawful use of property. The request
7 shall, at a minimum, identify the affected portion of the
8 property, the nature of the diminution, and the amount
9 of compensation claimed.

10 (d) CHOICE OF REMEDIES.—If the parties have not
11 reached an agreement on compensation within 180 days
12 after the written request is made, the owner may elect
13 binding arbitration through alternative dispute resolution
14 or seek compensation due under this section in a civil ac-
15 tion. The parties may by mutual agreement extend the pe-
16 riod of negotiation on compensation beyond the 180-day
17 period without loss of remedy to the owner under this sec-
18 tion. In the event the extension period lapses the owner
19 may elect binding arbitration through alternative dispute
20 resolution or seek compensation due under this section in
21 a civil action.

22 (e) ALTERNATIVE DISPUTE RESOLUTION.—

23 (1) IN GENERAL.—In the administration of this
24 section—

1 (A) arbitration procedures shall be in ac-
2 cordance with the alternative dispute resolution
3 procedures established by the American Arbi-
4 tration Association; and

5 (B) in no event shall arbitration be a con-
6 dition precedent or an administrative procedure
7 to be exhausted before the filing of a civil action
8 under this section.

9 (2) REVIEW OF ARBITRATION.—

10 (A) APPEAL OF DECISION.—Appeal from
11 arbitration decisions shall be to the United
12 States District Court for the district in which
13 the property is located or the United States
14 Court of Federal Claims in the manner pre-
15 scribed by law for the claim under this section.

16 (B) RULES OF ENFORCEMENT OF
17 AWARD.—The provisions of title 9, United
18 States Code (relating to arbitration), shall
19 apply to enforcement of awards rendered under
20 this section.

21 (f) CIVIL ACTION.—An owner who prevails in a civil
22 action against any agency pursuant to this section shall
23 be entitled to, and such agency shall be liable for, just
24 compensation, plus reasonable attorney's fees and other
25 litigation costs, including appraisal fees.

1 (g) SOURCE OF PAYMENTS.—Any payment made
2 under this section shall be paid from the responsible agen-
3 cy’s annual appropriation supporting the agency’s activi-
4 ties giving rise to the claim for compensation. If insuffi-
5 cient funds are available to the agency in the fiscal year
6 in which the award becomes final the agency shall pay the
7 award from appropriations available in the next fiscal
8 year.

9 (h) DEFINITIONS.—For the purposes of this sec-
10 tion—

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

14 (2) the term “agency action” means any action
15 or decision taken by any agency that at the time of
16 such action or decision adversely affects private
17 property rights;

18 (3) the term “fair market value” means the
19 likely price at which property would change hands,
20 in a competitive and open market under all condi-
21 tions requisite to fair sale, between a willing buyer
22 and willing seller, neither being under any compul-
23 sion to buy or sell and both having reasonable
24 knowledge of relevant facts, prior to occurrence of
25 the agency action;

1 (4) the term “just compensation”—

2 (A) means compensation equal to the full
3 extent of a property owner’s loss, including the
4 fair market value of the private property taken,
5 whether the taking is by physical occupation or
6 through regulation, exaction, or other means;
7 and

8 (B) shall include compounded interest cal-
9 culated from the date of the taking until the
10 date the United States tenders payment;

11 (5) the term “owner” means the owner or pos-
12 sessor of property or rights in property at the time
13 the taking occurs, including when—

14 (A) the statute, regulation, rule, order,
15 guideline, policy, or action is passed or promul-
16 gated; or

17 (B) the permit, license, authorization, or
18 governmental permission is denied or sus-
19 pended;

20 (6) the term “property” means land, an interest
21 in land, proprietary water rights, and any personal
22 property that is subject to use by the Federal Gov-
23 ernment or to a restriction on use;

24 (7) the term “private property” or “property”
25 means all interests constituting real property, as de-

1 fined by Federal or State law, protected under the
2 fifth amendment to the United States Constitution,
3 any applicable Federal or State law, or this section,
4 and more specifically constituting—

5 (A) real property, whether vested or
6 unvested, including—

7 (i) estates in fee, life estates, estates
8 for years, or otherwise;

9 (ii) inchoate interests in real property
10 such as remainders and future interests;

11 (iii) personalty that is affixed to or
12 appurtenant to real property;

13 (iv) easements;

14 (v) leaseholds;

15 (vi) recorded liens; and

16 (vii) contracts or other security inter-
17 ests in, or related to, real property;

18 (B) the right to use water or the right to
19 receive water, including any recorded liens on
20 such water right; or

21 (C) rents, issues, and profits of land, in-
22 cluding minerals, timber, fodder, crops, oil and
23 gas, coal, or geothermal energy.

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