

106TH CONGRESS  
1ST SESSION

# H. R. 2550

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 19, 1999

Mr. DELAY introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

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 1999”.

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

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

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

6 **SEC. 3. RIGHT TO COMPENSATION.**

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

18 (b) DURATION OF LIMITATION ON USE.—Property  
19 with respect to which compensation has been paid under  
20 this Act shall not thereafter be used contrary to the limita-  
21 tion imposed by the agency action, even if that action is  
22 later rescinded or otherwise vitiated. However, if that ac-  
23 tion is later rescinded or otherwise vitiated, and the owner  
24 elects to refund the amount of the compensation, adjusted

1 for inflation, to the Treasury of the United States, the  
2 property may be so used.

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

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

8 **SEC. 5. EXCEPTIONS.**

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

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

15 (2) damage to specific property other than the  
16 property whose use is limited.

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

22 **SEC. 6. PROCEDURE.**

23 (a) REQUEST OF OWNER.—An owner seeking com-  
24 pensation under this Act shall make a written request for  
25 compensation to the agency whose agency action resulted

1 in the limitation. No such request may be made later than  
2 180 days after the owner receives actual notice of that  
3 agency action.

4 (b) NEGOTIATIONS.—The agency may bargain with  
5 that owner to establish the amount of the compensation.  
6 If the agency and the owner agree to such an amount,  
7 the agency shall promptly pay the owner the amount  
8 agreed upon.

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

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

23 (e) CIVIL ACTION.—An owner who does not choose  
24 arbitration, or who does not receive prompt payment when  
25 required by this section, may obtain appropriate relief in

1 a civil action against the agency. An owner who prevails  
2 in a civil action under this section shall be entitled to, and  
3 the agency shall be liable for, a reasonable attorney's fee  
4 and other litigation costs (including appraisal fees). The  
5 court shall award interest on the amount of any compensa-  
6 tion from the time of the limitation.

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

23 **SEC. 7. LIMITATION.**

24 Notwithstanding any other provision of law, any obli-  
25 gation of the United States to make any payment under

1 this Act shall be subject to the availability of appropria-  
2 tions.

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

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

10 **SEC. 9. RULES OF CONSTRUCTION.**

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

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

21 **SEC. 9. DEFINITIONS.**

22 For the purposes of this Act—

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

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

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

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

13          (5) the term “specified regulatory law”  
14          means—

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

17                (B) the Endangered Species Act of 1973  
18                (16 U.S.C. 1531 et seq.);

19                (C) title XII of the Food Security Act of  
20                1985 (16 U.S.C. 3801 et seq.); or

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

23                       (i) the Act of June 17, 1902, and all  
24                       Acts amendatory thereof or supplementary

1           thereto, popularly called the “Reclamation  
2           Acts” (43 U.S.C. 371 et seq.);

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

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

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

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

19          (8) the term “law of the State” includes the  
20          law of a political subdivision of a State.

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