

Union Calendar No. 143

109TH CONGRESS
1ST SESSION

H. R. 4128

[Report No. 109-262]

To protect private property rights.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 25, 2005

Mr. SENSENBRENNER (for himself, Mr. GOODLATTE, Mr. CONYERS, Ms. WATERS, Mr. BONILLA, Ms. HERSETH, Mr. DELAY, and Mr. BLUNT) introduced the following bill; which was referred to the Committee on the Judiciary

OCTOBER 31, 2005

Additional sponsors: Mr. POMBO, Mr. ADERHOLT, Mr. BONNER, Mr. FRANKS of Arizona, Mr. GINGREY, Mr. GRAVES, Mr. POE, Mr. RYUN of Kansas, Ms. HARRIS, Mr. BOEHNER, Mr. AKIN, Mr. BACHUS, Mr. BAKER, Mr. BARROW, Mr. BURTON of Indiana, Mr. CANNON, Mr. CARTER, Mrs. JO ANN DAVIS of Virginia, Mr. DOOLITTLE, Mrs. DRAKE, Mr. DUNCAN, Mr. HERGER, Mr. WAMP, Mr. RAMSTAD, Mr. McCAUL of Texas, Mr. PENCE, Mr. JENKINS, Mrs. BLACKBURN, Mr. SAM JOHNSON of Texas, Mr. JONES of North Carolina, Mr. KING of Iowa, Mr. GIBBONS, Mr. DANIEL E. LUNGREN of California, Mr. LOBIONDO, Mr. SIMPSON, Mr. STEARNS, Ms. GINNY BROWN-WAITE of Florida, Mr. GENE GREEN of Texas, Mr. SODREL, Mr. CAMP, Mr. BRADLEY of New Hampshire, Mrs. CUBIN, Mr. KLINE, Mrs. MUSGRAVE, Mr. NORWOOD, Mr. OTTER, Mr. PITTS, Mr. WESTMORELAND, Mr. BRADY of Texas, Mr. RYAN of Wisconsin, Mr. SCOTT of Georgia, Mr. HEFLEY, Mr. PRICE of Georgia, Mrs. WILSON of New Mexico, Ms. FOXX, Mr. SHIMKUS, Miss McMORRIS, Mr. WOLF, Mrs. MILLER of Michigan, Mr. HENSARLING, Mr. KENNEDY of Minnesota, Mr. GALLEGLY, Mr. DAVIS of Kentucky, Mr. BUYER, Mr. GILLMOR, Mr. HALL, Mrs. SCHMIDT, Mr. HOSTETTTLER, Mr. HAYES, Mr. RENZI, Mr. SESSIONS, Mr. MACK, Mr. SULLIVAN, Mr. CALVERT, Mr. MARCHANT, Mrs. MYRICK, Mr. NEUGEBAUER, Mr. SALAZAR, Mr. WALDEN of Oregon, Mr. REICHERT, Mr. SHUSTER, Mr. DAVIS of Tennessee, Mr. KOLBE, Mr. MURPHY, Mr. MANZULLO, Mr. McCOTTER, Mr. DEFazio, Mr. WICKER, Mr. FLAKE, and Mr. MCHENRY

OCTOBER 31, 2005

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on October 25, 2005]

A BILL

To protect private property rights.

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 Rights*
5 *Protection Act of 2005”.*

6 **SEC. 2. PROHIBITION ON EMINENT DOMAIN ABUSE BY**
7 **STATES.**

8 *(a) IN GENERAL.—No State or political subdivision*
9 *of a State shall exercise its power of eminent domain, or*
10 *allow the exercise of such power by any person or entity*
11 *to which such power has been delegated, over property to*
12 *be used for economic development or over property that is*
13 *subsequently used for economic development, if that State*
14 *or political subdivision receives Federal economic develop-*
15 *ment funds during any fiscal year in which it does so.*

16 *(b) INELIGIBILITY FOR FEDERAL FUNDS.—A violation*
17 *of subsection (a) by a State or political subdivision shall*
18 *render such State or political subdivision ineligible for any*

1 *Federal economic development funds for a period of 2 fiscal*
2 *years following a final judgment on the merits by a court*
3 *of competent jurisdiction that such subsection has been vio-*
4 *lated, and any Federal agency charged with distributing*
5 *those funds shall withhold them for such 2-year period, and*
6 *any such funds distributed to such State or political sub-*
7 *division shall be returned or reimbursed by such State or*
8 *political subdivision to the appropriate Federal agency or*
9 *authority of the Federal Government, or component thereof.*

10 *(c) OPPORTUNITY TO CURE VIOLATION.—A State or*
11 *political subdivision shall not be ineligible for any Federal*
12 *economic development funds under subsection (b) if such*
13 *State or political subdivision returns all real property the*
14 *taking of which was found by a court of competent jurisdic-*
15 *tion to have constituted a violation of subsection (a) and*
16 *replaces any other property destroyed and repairs any other*
17 *property damaged as a result of such violation.*

18 **SEC. 3. PROHIBITION ON EMINENT DOMAIN ABUSE BY THE**

19 **FEDERAL GOVERNMENT.**

20 *The Federal Government or any authority of the Fed-*
21 *eral Government shall not exercise its power of eminent do-*
22 *main to be used for economic development.*

23 **SEC. 4. PRIVATE RIGHT OF ACTION.**

24 *(a) CAUSE OF ACTION.—Any owner of private prop-*
25 *erty who suffers injury as a result of a violation of any*

1 *provision of this Act may bring an action to enforce any*
2 *provision of this Act in the appropriate Federal or State*
3 *court, and a State shall not be immune under the eleventh*
4 *amendment to the Constitution of the United States from*
5 *any such action in a Federal or State court of competent*
6 *jurisdiction. Any such property owner may also seek any*
7 *appropriate relief through a preliminary injunction or a*
8 *temporary restraining order.*

9 **(b) LIMITATION ON BRINGING ACTION.**—*An action*
10 *brought under this Act may be brought if the property is*
11 *used for economic development following the conclusion of*
12 *any condemnation proceedings condemning the private*
13 *property of such property owner, but shall not be brought*
14 *later than seven years following the conclusion of any such*
15 *proceedings and the subsequent use of such condemned prop-*
16 *erty for economic development.*

17 **(c) ATTORNEYS' FEE AND OTHER COSTS.**—*In any ac-*
18 *tion or proceeding under this Act, the court shall allow a*
19 *prevailing plaintiff a reasonable attorneys' fee as part of*
20 *the costs, and include expert fees as part of the attorneys'*
21 *fee.*

22 **SEC. 5. NOTIFICATION BY ATTORNEY GENERAL.**

23 **(a) NOTIFICATION TO STATES AND POLITICAL SUB-**
24 **DIVISIONS.**—

1 (1) *Not later than 30 days after the enactment*
2 *of this Act, the Attorney General shall provide to the*
3 *chief executive officer of each State the text of this Act*
4 *and a description of the rights of property owners*
5 *under this Act.*

6 (2) *Not later than 120 days after the enactment*
7 *of this Act, the Attorney General shall compile a list*
8 *of the Federal laws under which Federal economic de-*
9 *velopment funds are distributed. The Attorney Gen-*
10 *eral shall compile annual revisions of such list as nec-*
11 *essary. Such list and any successive revisions of such*
12 *list shall be communicated by the Attorney General to*
13 *the chief executive officer of each State and also made*
14 *available on the Internet website maintained by the*
15 *United States Department of Justice for use by the*
16 *public and by the authorities in each State and polit-*
17 *ical subdivisions of each State empowered to take pri-*
18 *vate property and convert it to public use subject to*
19 *just compensation for the taking.*

20 (b) *NOTIFICATION TO PROPERTY OWNERS.—Not later*
21 *than 30 days after the enactment of this Act, the Attorney*
22 *General shall publish in the Federal Register and make*
23 *available on the Internet website maintained by the United*
24 *States Department of Justice a notice containing the text*

1 *of this Act and a description of the rights of property own-*
2 *ers under this Act.*

3 **SEC. 6. REPORT.**

4 *Not later than 1 year after the date of enactment of*
5 *this Act, and every subsequent year thereafter, the Attorney*
6 *General shall transmit a report identifying States or polit-*
7 *ical subdivisions that have used eminent domain in viola-*
8 *tion of this Act to the Chairman and Ranking Member of*
9 *the Committee on the Judiciary of the House of Representa-*
10 *tives and to the Chairman and Ranking Member of the*
11 *Committee on the Judiciary of the Senate. The report*
12 *shall—*

13 *(1) identify all private rights of action brought*
14 *as a result of a State's or political subdivision's viola-*
15 *tion of this Act;*

16 *(2) identify all States or political subdivisions*
17 *that have lost Federal economic development funds as*
18 *a result of a violation of this Act, as well as describe*
19 *the type and amount of Federal economic development*
20 *funds lost in each State or political subdivision and*
21 *the Agency that is responsible for withholding such*
22 *funds;*

23 *(3) discuss all instances in which a State or po-*
24 *litical subdivision has cured a violation as described*
25 *in section 2(c) of this Act.*

1 **SEC. 7. SENSE OF CONGRESS REGARDING RURAL AMERICA.**

2 (a) *FINDINGS.*—*The Congress finds the following:*

3 (1) *The founders realized the fundamental im-*
4 *portance of property rights when they codified the*
5 *Takings Clause of the Fifth Amendment to the Con-*
6 *stitution, which requires that private property shall*
7 *not be taken “for public use, without just compensa-*
8 *tion”.*

9 (2) *Rural lands are unique in that they are not*
10 *traditionally considered high tax revenue-generating*
11 *properties for State and local governments. In addi-*
12 *tion, farmland and forest land owners need to have*
13 *long-term certainty regarding their property rights in*
14 *order to make the investment decisions to commit*
15 *land to these uses.*

16 (3) *Ownership rights in rural land are funda-*
17 *mental building blocks for our Nation’s agriculture*
18 *industry, which continues to be one of the most im-*
19 *portant economic sectors of our economy.*

20 (4) *In the wake of the Supreme Court’s decision*
21 *in Kelo v. City of New London, abuse of eminent do-*
22 *main is a threat to the property rights of all private*
23 *property owners, including rural land owners.*

24 (b) *SENSE OF CONGRESS.*—*It is the sense of Congress*
25 *that the use of eminent domain for the purpose of economic*
26 *development is a threat to agricultural and other property*

1 *in rural America and that the Congress should protect the*
2 *property rights of Americans, including those who reside*
3 *in rural areas. Property rights are central to liberty in this*
4 *country and to our economy. The use of eminent domain*
5 *to take farmland and other rural property for economic de-*
6 *velopment threatens liberty, rural economies, and the econ-*
7 *omy of the United States. Americans should not have to*
8 *fear the government’s taking their homes, farms, or busi-*
9 *nesses to give to other persons. Governments should not*
10 *abuse the power of eminent domain to force rural property*
11 *owners from their land in order to develop rural land into*
12 *industrial and commercial property. Congress has a duty*
13 *to protect the property rights of rural Americans in the face*
14 *of eminent domain abuse.*

15 **SEC. 8. DEFINITIONS.**

16 *In this Act the following definitions apply:*

17 (1) *ECONOMIC DEVELOPMENT.*—*The term “eco-*
18 *nomie development” means taking private property,*
19 *without the consent of the owner, and conveying or*
20 *leasing such property from one private person or enti-*
21 *ty to another private person or entity for commercial*
22 *enterprise carried on for profit, or to increase tax rev-*
23 *enue, tax base, employment, or general economic*
24 *health, except that such term shall not include—*

1 (A) conveying private property to public
2 ownership, such as for a road, hospital, or mili-
3 tary base, or to an entity, such as a common
4 carrier, that makes the property available for use
5 by the general public as of right, such as a rail-
6 road, or public facility, or for use as a right of
7 way, aqueduct, pipeline, or similar use;

8 (B) removing harmful uses of land provided
9 such uses constitute an immediate threat to pub-
10 lic health and safety;

11 (C) leasing property to a private person or
12 entity that occupies an incidental part of public
13 property or a public facility, such as a retail es-
14 tablishment on the ground floor of a public
15 building;

16 (D) acquiring abandoned property;

17 (E) clearing defective chains of title; and

18 (F) taking private property for use by a
19 public utility.

20 (2) *FEDERAL ECONOMIC DEVELOPMENT*
21 *FUNDS.*—The term “Federal economic development
22 funds” means any Federal funds distributed to or
23 through States or political subdivisions of States
24 under Federal laws designed to improve or increase

1 *the size of the economies of States or political subdivi-*
2 *sions of States.*

3 (3) *STATE.*—*The term “State” means each of the*
4 *several States, the District of Columbia, the Common-*
5 *wealth of Puerto Rico, or any other territory or pos-*
6 *session of the United States.*

7 **SEC. 9. SEVERABILITY AND EFFECTIVE DATE.**

8 (a) *SEVERABILITY.*—*The provisions of this Act are sev-*
9 *erable. If any provision of this Act, or any application*
10 *thereof, is found unconstitutional, that finding shall not af-*
11 *fect any provision or application of the Act not so adju-*
12 *dicated.*

13 (b) *EFFECTIVE DATE.*—*This Act shall take effect upon*
14 *the first day of the first fiscal year that begins after the*
15 *date of the enactment of this Act, but shall not apply to*
16 *any project for which condemnation proceedings have been*
17 *initiated prior to the date of enactment.*

18 **SEC. 10. SENSE OF CONGRESS.**

19 *It is the policy of the United States to encourage, sup-*
20 *port, and promote the private ownership of property and*
21 *to ensure that the constitutional and other legal rights of*
22 *private property owners are protected by the Federal Gov-*
23 *ernment.*

1 **SEC. 11. BROAD CONSTRUCTION.**

2 *This Act shall be construed in favor of a broad protec-*
3 *tion of private property rights, to the maximum extent per-*
4 *mitted by the terms of this Act and the Constitution.*

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