

STOPP ACT OF 2005

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OCTOBER 31, 2005.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed
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Mr. GOODLATTE, from the Committee on Agriculture,
submitted the following

R E P O R T

[To accompany H.R. 3405]

[Including cost estimate of the Congressional Budget Office]

The Committee on Agriculture, to whom was referred the bill (H.R. 3405) to prohibit the provision of Federal economic development assistance for any State or locality that uses the power of eminent domain power to obtain property for private commercial development or that fails to pay relocation costs to persons displaced by use of the power of eminent domain for economic development purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Strengthening the Ownership of Private Property Act of 2005” or the “STOPP Act of 2005”.

SEC. 2. CONDITIONS OF FINANCIAL ASSISTANCE UNDER FEDERAL ECONOMIC DEVELOPMENT PROGRAMS.

(a) PROHIBITION OF ASSISTANCE.—

(1) PROHIBITION.—If, after the date of the enactment of this Act, an entity using the power of a State engages in any conduct described in subsection (b), no officer or employee of the Federal Government having responsibility over Federal financial assistance under any Federal economic development program shall make such assistance available to the relevant entity during the period described in paragraph (3).

(2) ENTITY TO WHICH ASSISTANCE IS PROHIBITED.—In this subsection, the term “relevant entity” means—

(A) the entity engaging in the conduct described in subsection (b), if that entity is a State or a unit of general local government of a State; and

(B) the State or unit of general local government that gave authority for the entity to engage in that conduct, in any other case.

(3) DURATION OF PROHIBITION.—The period referred to in paragraph (1) is the period that begins on the date the officer or employee of the Federal Government having responsibility over Federal financial assistance under the Federal economic development program determines that the relevant entity has engaged in the conduct described in subsection (b) and ends with the earlier of—

(A) the day that is two years after the date the period began; or

(B) the day that the property is returned to the entity from whom the property was taken.

(b) CONDUCT RESULTING IN PROHIBITION OF ASSISTANCE.—The conduct described in this subsection is the following:

(1) Any use of the power of eminent domain to take property from a private entity and transfer the ownership of, or a leasehold interest, in the property (or a portion thereof) to another private entity, except for a transfer—

(A) for use by a public utility;

(B) for a road or other right of way or means, open to the public or common carriers, for transportation;

(C) for an aqueduct, pipeline, or similar use;

(D) for a prison or hospital; or

(E) for any use during and in relation to a national emergency or national disaster declared by the President under other law.

(2) FAILURE TO PROVIDE RELOCATION ASSISTANCE FOR PERSONS DISPLACED BY USE OF EMINENT DOMAIN FOR ECONOMIC DEVELOPMENT.—Failing to provide, to any person displaced from property by the use of the power of eminent domain for any economic development purpose, relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) in the same manner and to the same extent as relocation assistance would be required under such Act to be provided by a Federal agency that undertakes a program or project that results in displacement of the person.

SEC. 3. PRIVATE RIGHT OF ACTION.

The owner of any real property taken by conduct resulting in the prohibition by this Act of assistance may, in a civil action, obtain injunctive and declaratory relief to require the enforcement of that prohibition.

SEC. 4. DEFINITIONS.

In this Act:

(1) FEDERAL ECONOMIC DEVELOPMENT PROGRAM.—The term “Federal economic development program” means any of the following programs:

(A) DEPARTMENT OF AGRICULTURE.—

(i) FOREST SERVICE.—

(I) Programs under the National Forest-Dependent Rural Communities Economic Diversification Act of 1990 (7 U.S.C. 6611 et seq.).

(II) The rural development through forestry program authorized by the Department of the Interior and Related Agencies Appropriations Act, 2006 (Public Law 109–54; 119 Stat. 538), and subsequent appropriations laws.

(ii) RURAL BUSINESS–COOPERATIVE SERVICE.—

(I) The intermediary relending program under section 1323 of the Food Security Act of 1985 (7 U.S.C. 1932 note).

(II) The rural business opportunities grant program under section 306(a)(11) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(11)).

(III) The program for assistance to cooperatives for economic development under the Act of July 2, 1926 (7 U.S.C. 451 et seq.) and subtitle A of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.).

(IV) The rural business enterprise grants program under section 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(c)).

(V) The rural economic development loans and grants program under title III of the Rural Electrification Act of 1936 (7 U.S.C. 930 et seq.).

(iii) RURAL UTILITIES SERVICE.—

(I) The program for grants, direct loans, and guaranteed loans for water and waste disposal systems for rural communities under paragraphs (1) and (2) of section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)).

(II) The Rural Utilities Service program for grants and loans to the Denali Commission under section 19(a)(2) of the Rural Electrification Act of 1936 (7 U.S.C. 918a(a)(2)).

(iv) RURAL HOUSING SERVICE.—

(I) The rural community development initiative pursuant to the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106–387; 114 Stat. 1549A–17) and the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 2826).

(II) The program for loans and grants for essential community facilities under section 306(a)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(1)).

(v) FARM SERVICE AGENCY.—The program for loans to Indian tribes and tribal corporations under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.).

(vi) RURAL BUSINESS INVESTMENT PROGRAM.—The rural business investment program under subtitle H of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009cc et seq.).

(B) DEPARTMENT OF COMMERCE—ECONOMIC DEVELOPMENT ADMINISTRATION.—Any program for financial assistance under the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 et seq.).

(C) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(i) The community development block grant programs under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.), including the entitlement grants, small cities, special purpose and insular areas grants, States, Indian tribe grants, and loan guarantee programs.

(ii) The brownfields economic development initiative under section 108(q) of the Housing and Community Development Act of 1974 (42 U.S.C. 5308(q)).

(iii) The rural housing and economic development program of the Department of Housing and Urban Development pursuant to title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 3300) and title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Public Law 105–276; 112 Stat. 2475).

(iv) The Indian housing block grant program under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.).

(D) DEPARTMENT OF THE INTERIOR—BUREAU OF INDIAN AFFAIRS.—The programs for grants, loans, and loan guarantees for Indian economic development of the Office of Economic Development, Bureau of Indian Affairs of the Department of the Interior.

(E) DEPARTMENT OF THE TREASURY.—The community development financial institutions fund program under subtitle A of title I of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.).

(F) APPALACHIAN REGIONAL COMMISSION.—Any program for assistance for Appalachian regional development under subtitle IV of title 40, United States Code.

(G) NATIONAL CREDIT UNION ADMINISTRATION.—The community development revolving loan fund program for credit unions under the Community Development Credit Union Revolving Loan Fund Transfer Act (42 U.S.C. 9822 note).

(H) DENALI COMMISSION.—The Denali Commission program under the Denali Commission Act of 1998 (42 U.S.C. 2131 et seq.).

(I) DELTA REGIONAL AUTHORITY.—The program for Delta regional development under subtitle F of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009aa et seq.).

(J) DEPARTMENT OF HEALTH AND HUMAN SERVICES.—The discretionary award program relating to local community economic development under section 680 of the Community Services Block Grant Act (42 U.S.C. 9921).

(2) FEDERAL FINANCIAL ASSISTANCE.—The term “Federal financial assistance” has the meaning given such term in section 101 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601).

(3) STATE.—The term “State” means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth

of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

SEC. 5. SEVERABILITY.

If any provision of this Act, or the application thereof, is held invalid, the validity of the remainder of this Act and the application of such provision to other persons and circumstances shall not be affected thereby.

BRIEF EXPLANATION

H.R. 3405 prohibits Federal agencies from providing funding to a state or local government under specified Federal economic development programs for two years under certain conditions. Two conditions result in the prohibition of funding. First, H.R. 3405 prohibits funding to a state or local government that uses the eminent domain power to transfer property from a private entity to another private entity unless the transfer is for a use listed as an exception. The exceptions include use by a public utility; a road or other right of way or means, open to the public or common carriers for transportation; an aqueduct, pipeline, or similar use; a prison or hospital; or any use during and in relation to a national emergency or national disaster declared by the President. Second, H.R. 3405 prohibits funding to a state or local government that fails to provide relocation assistance to a person displaced from property by any use of eminent domain for a economic development purpose. Relocation assistance must meet the level and be of the same manner as that required under the Uniform Relocation and Real Property Acquisition Policies Act of 1970. H.R. 3405 provides landowners a private right of action to enforce the prohibition of funds under this Act.

PURPOSE AND NEED

Private ownership of property is vital to our freedom and our prosperity, and is one of the most fundamental principles embedded in our Constitution. The founders realized the importance of property rights when they codified the Takings Clause of the Fifth Amendment to the Constitution, which requires that private property shall not be taken “for public use, without just compensation.” This clause created two conditions to the government taking private property: that the subsequent use of the property is for the public and that the government gives the property owners just compensation.

However, the Supreme Court’s recent 5–4 decision in *Kelo v. City of New London* is a step in the opposite direction. This controversial ruling expands the ability of state and local governments to exercise eminent domain powers to seize property under the guise of “economic development” when the “public use” is as incidental as generating tax revenues or creating jobs, even in situations where the government takes property from one private individual and gives it to another private entity.

By defining “public use” so expansively, the Court essentially erased any protection for private property as understood by the founders of our nation. In the wake of this decision, state and local governments can use eminent domain powers to take the property of any individual for nearly any reason. Cities may now bulldoze private citizens’ homes, farms, and small businesses to make way for shopping malls or other developments.

For example, in California a local government used eminent domain to acquire 24 acres of land consisting of single family homes, a motel and other small businesses. After reaching deals with 11 of the 34 property owners, the city approved eminent domain proceedings to take the remaining property to make way for a warehouse store. Congress must take steps to stop these types of abuses.

H.R. 3405, the Strengthening The Ownership of Private Property (STOPP) Act of 2005, as amended by the House Agriculture Committee, would create a strong incentive for state and local governments to refrain from using eminent domain powers to take private property from one owner and give it to another private owner. Specifically, this legislation prohibits all federal economic development funding for localities and states that use eminent domain in this way. The legislation also withholds federal economic development funding from any state or local government that uses eminent domain for economic development purposes, and does not then comply with the procedures in the Uniform Relocation Act, which would require state and local governments to pay relocation costs for individuals affected by eminent domain proceedings.

SECTION-BY-SECTION

Section 1. Short title

Section 2. Conditions of financial assistance under federal economic development programs

(a) Prohibits the Federal government from providing financial assistance, as defined in Section 4, to relevant entities when a State or unit of local government engages in conduct defined under subsection (b). The relevant entity is either the entity engaging in the conduct described in subsection (b) or the State or unit of general local government that gave authority for the entity to engage in that conduct in any other case. The period of prohibition shall begin on the date that a Federal officer or employee determines the entity engaged in such conduct and continue until either 2 years have passed or the entity returns the property to the owner.

(b) Defines two types of conduct that result in prohibition of assistance. The first conduct described is any use of eminent domain to take property and transfer ownership or leasehold from a private entity to another private entity. Provides an exception for transfers for the following purposes:

- (1) Use by a public utility;
- (2) A road or other right of way or means, open to the public or common carriers, for transportation;
- (3) An aqueduct, pipeline or similar use;
- (4) A prison or hospital, or;
- (5) Any use during and in relation to a national emergency or national disaster declared by the President under other law.

The second type of conduct is failure to provide relocation assistance to any person displaced by the use of eminent domain for any economic development purpose. This assistance must be of the same manner and extent as that required of the Federal government under the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970.

Section 3. Private right of action

Provides any property owner whose property is taken by conduct resulting in prohibition of assistance under this Act the right to obtain injunctive and declaratory relief to enforce the prohibition.

Section 4. Definitions

Defines Federal Economic Development Program, Federal Financial Assistance, and State.

Section 5. Severability

Provides that if any portion of this Act is held invalid, the remainder of the Act is not affected by the ruling.

COMMITTEE CONSIDERATION

I. Hearings

On September 7, 2005, the Committee on Agriculture held a hearing on the impact of the *Kelo v. City of New London* Decision and to analyze the merits of H.R. 3405, the “Strengthening the Ownership of Private Property (STOPP) Act of 2005.

The panel of witnesses included The Honorable Henry Bonilla, Member of Congress from Texas and author of the bill, H.R. 3405; The Honorable Maxine Waters, Member of Congress from California; Mr. Bob Stallman, President, American Farm Bureau of Washington, D.C.; Mr. Christopher Bartolomucci, Partner, Hogan & Hartson L.L.P., of Washington, D.C.; Mr. Alva J. Hopkins, III, Chairman, Government Affairs Committee, Forest Landowners Association, Inc., of Atlanta, Georgia; Ms. Dana Berliner, Senior Attorney, Institute for Justice of Washington, D.C.; The Honorable William J. Howell, Speaker of the House, House of Delegates, Virginia General Assembly, on behalf of the American Legislative Exchange Council of Washington, D.C.; Dr. Roger Pilon, Founder and Director, Center for Constitutional Studies, CATO Institute of Washington, D.C.; and Mr. Jonathan Turley, Professor of Public Interest Law, George Washington Law School of Washington, D.C.

II. Full Committee consideration

The Committee on Agriculture met, pursuant to notice, with a quorum present, on October 7, 2005, to consider H.R. 3405, legislation to prohibit the provision of Federal economic development assistance for any State or locality that uses the power of eminent domain to obtain property for private commercial development or that fails to pay relocation costs to persons displaced by use of the power of eminent domain for economic development purposes.

Chairman Goodlatte called the meeting to order and made an opening statement as did Ranking Member Peterson, Ms. Herseth, and Mr. King. Without objection, H.R. 3405 was placed before the Committee and open for amendment at any point. Counsel was then recognized to give a brief summary of the bill.

Discussion occurred and Chairman Goodlatte then placed before the Committee an Amendment in the Nature of a Substitute to H.R. 3405, offered by himself, Mr. Peterson, Mr. Pombo, and Ms. Herseth, to be considered as original text for purposes of amendment.

Brief discussion occurred regarding the Amendment in the Nature of a Substitute to H.R. 3405. However, there being no further amendments, the Amendment in the Nature of a Substitute was adopted by a voice vote.

Mr. Peterson moved that H.R. 3405, as amended, be reported favorably to the House with the recommendation that it pass. By a recorded vote of 40 yeas—1 nay, H.R. 3405, as amended, was ordered favorably reported to the House. See Rollcall Vote No. 1.

Chairman Goodlatte then advised Members that pursuant to the Rules of the House of Representatives that Members have 2 calendar days to file such views with the Committee. Mr. Marshall indicated that he intended to submit an additional statement for the record. The Chairman stated that the record would be kept open for five business days to receive additional material.

Without objection, staff was given permission to make any necessary clerical, technical or conforming changes to reflect the intent of the Committee.

Chairman Goodlatte thanked all the Members and adjourned the meeting subject to the call of the Chair.

REPORTING THE BILL—ROLLCALL VOTES

In compliance with clause 3(b) of rule XIII of the House of Representatives, the Committee sets forth the record of the following rollcall votes taken with respect to H.R. 3405.

Rollcall No. 1

Summary: Motion to favorably report H.R. 3405, as amended to the House with the recommendation that it pass.

Offered by: Mr. Peterson.

Results: Adopted by a vote of 40 yeas/ 1 nay/ 5 not voting.

YEAS

1. Goodlatte	21. Schmidt
2. Pombo	22. Peterson
3. Everett	23. Holden
4. Lucas	24. McIntyre
5. Moran	25. Etheridge
6. Jenkins	26. Baca
7. Gutknecht	27. Cardoza
8. Hayes	28. Scott
9. Johnson	29. Marshall
10. Osborne	30. Herseth
11. Pence	31. Butterfield
12. Graves	32. Cuellar
13. Bonner	33. Melancon
14. King	34. Costa
15. Musgrave	35. Salazar
16. Neugebauer	36. Barrow
17. Boustany	37. Pomeroy
18. Kuhl	38. Larsen
19. Foxx	39. Davis
20. Conaway	40. Chandler

NAYS

1. Case

NOT VOTING

1. Boehner
2. Rogers
3. Schwarz
4. Fortenberry
5. Boswell

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Agriculture's oversight findings and recommendations are reflected in the body of this report.

BUDGET ACT COMPLIANCE (SECTIONS 308, 402, AND 423)

The provisions of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and sections 402 and 423 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 19, 2005.

Hon. BOB GOODLATTE,
*Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3405, the Strengthening the Ownership of Private Property Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Gregory Waring.

Sincerely,

DONALD B. MARRON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 3405—Strengthening the Ownership of Private Property Act of 2005

H.R. 3405 would direct federal agencies to deny economic development assistance to any state or local entity that violates either of two prohibitions on its use of the power of eminent domain. First, a government could not use the power of eminent domain to transfer ownership of property from one private entity to another, unless the transfer is for one of several purposes listed in the bill. Second, a government could not use eminent domain for economic development purposes without providing relocation assistance to displaced property owners. The denial of federal assistance would continue for two years or until the affected jurisdiction returns the property at issue to its original owner. Finally, the bill would give private property owners the right to bring civil actions to seek enforcement of these prohibitions if they are subject to a prohibited action.

CBO expects that implementing the bill would have no significant impact on the federal budget because most jurisdictions would not risk the economic development assistance they receive from the federal government by using eminent domain as described in the

bill. Further, a few states are considering legislation that would restrict the authority of localities to take private property for economic development projects. By denying economic assistance for up to two years to localities using eminent domain in a way proscribed in the bill, the pace of spending for some grant programs could be marginally reduced. Enacting the bill would not affect direct spending or revenues.

The bill specifies several programs operated by the Departments of Agriculture, Commerce, Housing and Urban Development, and other agencies as subject to the potential denial of federal assistance. As a result of the bill's disincentive to use eminent domain for private property transfers and the small likelihood that a jurisdiction would put its federal assistance in jeopardy, CBO assumes that H.R. 3405 would not have a significant impact on spending for the specified federal programs.

H.R. 3405 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, but would impose significant new conditions on the receipt of federal economic development assistance by state, local, and tribal governments. These governments receive assistance totaling about \$6.5 billion each year from the programs that could be affected by the bill. Because these conditions would apply to such a large pool of funds, the bill effectively would restrict the use of eminent domain, and would have a significant impact on local governments' powers to manage land use in their jurisdictions. The requirement to pay relocation assistance also could result in additional costs for state and local governments. Further, state and local governments probably would incur significant additional legal expense to respond to private legal actions authorized by the bill.

The CBO staff contacts for this estimate are Gregory Waring (for federal costs) and Marjorie Miller (for the state and local impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to prohibit the provision of Federal economic development assistance for any State or locality that uses the power of eminent domain power to obtain property for private commercial development or that fails to pay relocation costs to persons displaced by use of the power of eminent domain for economic development purposes.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the Constitutional authority for this legislation in Article I, clause 8, section 18, that grants Congress the power to make all laws necessary and proper for carrying out the powers vested by Congress in the Constitution of the United States or in any department or officer thereof.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee report incorporates the cost estimate prepared by the Director of the Congressional Budget Office pursuant to sections 402 and 423 of the Congressional Budget Act of 1974.

ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104-1).

FEDERAL MANDATES STATEMENT

The Committee adopted as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104-4).

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