

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5582

To authorize appropriations for the Department of Commerce and to prohibit Federal economic development funds to States that carry out public takings for private purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2010

Mr. SULLIVAN (for himself, Mr. BROUN of Georgia, Mr. LUCAS, Mr. KLINE of Minnesota, Mr. SHIMKUS, Mr. CULBERSON, Mr. BURTON of Indiana, Mr. ROONEY, Mr. MARCHANT, Mr. POSEY, Mr. HERGER, Mrs. SCHMIDT, Mr. SHADEGG, Mr. FRANKS of Arizona, Mr. HALL of Texas, Mr. ROGERS of Michigan, Mr. BURGESS, Mr. GOHMERT, Mr. GINGREY of Georgia, and Mr. FLEMING) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Transportation and Infrastructure and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To authorize appropriations for the Department of Commerce and to prohibit Federal economic development funds to States that carry out public takings for private 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.**

2 This Act may be cited as the “Private Property  
3 Rights Protection and Government Accountability Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) Congress has the power to regulate com-  
7 merce among the several States and Indian tribes;

8 (2) property rights are essential to interstate  
9 commerce, ensuring that individuals make the best  
10 economic use of their property;

11 (3) potential residents and businesses may  
12 avoid communities that have a record of taking pri-  
13 vate property for private economic development;

14 (4) public takings for private purposes are  
15 harmful to communities and to interstate commerce;

16 (5) public taking of private property for eco-  
17 nomic development is not a traditional nor sound  
18 function of State or local government; and

19 (6) in order to promote and protect interstate  
20 commerce, public takings for private purposes should  
21 be prohibited.

22 **SEC. 3. PROHIBITION ON ECONOMIC DEVELOPMENT**  
23 **FUNDS.**

24 Any State or political subdivision of a State that car-  
25 ries out a public taking for any private purpose in or af-  
26 fecting interstate commerce shall not be eligible to receive

1 any Federal economic development funds for a period of  
2 10 fiscal years.

3 **SEC. 4. INJUNCTIVE RELIEF AND RESTORATION TO OWNER.**

4 (a) CAUSE OF ACTION.—Any owner of private prop-  
5 erty that is subject to a public taking described in section  
6 3 may bring an action in the appropriate Federal or State  
7 court to obtain injunctive and declaratory relief.

8 (b) ATTORNEYS' FEE AND OTHER COSTS.—In any  
9 action or proceeding under this section, the court shall  
10 allow a prevailing plaintiff a reasonable attorneys' fee as  
11 part of the costs, and include expert fees as part of the  
12 attorneys' fee.

13 **SEC. 5. DEFINITIONS.**

14 As used in this Act, the following definitions apply:

15 (1) PRIVATE PURPOSE.—

16 (A) IN GENERAL.—The term “private pur-  
17 pose”, with regard to property that has been  
18 acquired and conveyed through a public taking,  
19 means the ownership, control, or use of such  
20 property by a private party or parties that ad-  
21 vances the economic interests of the private  
22 party or parties. Such term includes but is not  
23 limited to the following:

24 (i) Any use of such property in an  
25 economic development plan of which the

1 benefit to the public is increased tax rev-  
2 enue, increased employment, or other indi-  
3 rect benefit.

4 (ii) The lease of such property to a  
5 private party or parties for private develop-  
6 ment, including commercial, industrial, or  
7 residential development.

8 (iii) Any control of such property by a  
9 private party that—

10 (I) excludes a general public use  
11 or benefit; or

12 (II) primarily benefits the private  
13 party or parties and benefits the pub-  
14 lic indirectly.

15 (B) EXCEPTIONS.—Such term shall not in-  
16 clude—

17 (i) conveying private property to pub-  
18 lic ownership, such as for a road, hospital,  
19 or prison, or to an entity, such as a com-  
20 mon carrier, that makes the property avail-  
21 able for use by the general public as of  
22 right, such as a railroad, public utility, or  
23 public facility, or for use as a right of way,  
24 aqueduct, pipeline, or similar use;

1           (ii) acquiring property to eliminate  
2           harmful uses of the property, provided  
3           such uses present an imminent and sub-  
4           stantial danger to the public health or wel-  
5           fare;

6           (iii) leasing property to a private per-  
7           son or entity that occupies an incidental  
8           part of public property or a public facility,  
9           such as a retail establishment on the  
10          ground floor of a public building;

11          (iv) acquiring abandoned property;

12          and

13          (v) clearing defective chains of title.

14          (2) FEDERAL ECONOMIC DEVELOPMENT  
15          FUNDS.—The term “Federal economic development  
16          funds” means any Federal funds—

17               (A) administered by the Secretary of Com-  
18               merce, the Secretary of Energy, or the Adminis-  
19               trator of the Environmental Protection Agency,  
20               and distributed to or through States or political  
21               subdivisions of States, to the extent such funds  
22               are not provided to assist States or political  
23               subdivisions of States in complying with any re-  
24               quirements of Federal law or regulation; or

1           (B) distributed to or through States or po-  
2           litical subdivisions of States under Federal laws  
3           and whose purpose is to promote interstate  
4           commerce and improve or increase the size of  
5           the economies of States or political subdivisions  
6           of States.

7           (3) PUBLIC TAKING.—The term “public taking”  
8           means an action by a State or political subdivision  
9           of a State or by any person or entity to which such  
10          power has been delegated that transfers all or part  
11          of the legal rights in property from a private owner  
12          to another person or to public ownership without the  
13          consent of the private owner.

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