

109TH CONGRESS
1ST SESSION

H. R. 4128

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

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
5 Rights 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

1 be used for economic development or over property that
2 is subsequently used for economic development, if that
3 State or political subdivision receives Federal economic de-
4 velopment funds during any fiscal year in which it does
5 so.

6 (b) INELIGIBILITY FOR FEDERAL FUNDS.—A viola-
7 tion of subsection (a) by a State or political subdivision
8 shall render such State or political subdivision ineligible
9 for any Federal economic development funds for a period
10 of 2 fiscal years following a final judgment on the merits
11 by a court of competent jurisdiction that such subsection
12 has been violated, and any Federal agency charged with
13 distributing those funds shall withhold them for such 2-
14 year period, and any such funds distributed to such State
15 or political subdivision shall be returned or reimbursed by
16 such State or political subdivision to the appropriate Fed-
17 eral agency or authority of the Federal Government, or
18 component thereof.

19 (c) OPPORTUNITY TO CURE VIOLATION.—A State or
20 political subdivision shall not be ineligible for any Federal
21 economic development funds under subsection (b) if such
22 State or political subdivision returns all real property the
23 taking of which was found by a court of competent juris-
24 diction to have constituted a violation of subsection (a)

1 and replaces any other property destroyed and repairs any
2 other property damaged as a result of such violation.

3 **SEC. 3. PROHIBITION ON EMINENT DOMAIN ABUSE BY THE**
4 **FEDERAL GOVERNMENT.**

5 The Federal Government or any authority of the Fed-
6 eral Government shall not exercise its power of eminent
7 domain to be used for economic development.

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

9 (a) CAUSE OF ACTION.—Any owner of private prop-
10 erty who suffers injury as a result of a violation of any
11 provision of this Act may bring an action to enforce any
12 provision of this Act in the appropriate Federal or State
13 court, and a State shall not be immune under the eleventh
14 amendment to the Constitution of the United States from
15 any such action in a Federal or State court of competent
16 jurisdiction. Any such property owner may also seek any
17 appropriate relief through a preliminary injunction or a
18 temporary restraining order.

19 (b) LIMITATION ON BRINGING ACTION.—An action
20 brought under this Act may be brought if the property
21 is used for economic development following the conclusion
22 of any condemnation proceedings condemning the private
23 property of such property owner, but shall not be brought
24 later than seven years following the conclusion of any such

1 proceedings and the subsequent use of such condemned
2 property for economic development.

3 (c) ATTORNEYS' FEE AND OTHER COSTS.—In any
4 action or proceeding under this Act, the court shall allow
5 a prevailing plaintiff a reasonable attorneys' fee as part
6 of the costs, and include expert fees as part of the attor-
7 neys' fee.

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

9 (a) NOTIFICATION TO STATES AND POLITICAL SUB-
10 DIVISIONS.—

11 (1) Not later than 30 days after the enactment
12 of this Act, the Attorney General shall provide to the
13 chief executive officer of each State the text of this
14 Act and a description of the rights of property own-
15 ers under this Act.

16 (2) Not later than 120 days after the enact-
17 ment of this Act, the Attorney General shall compile
18 a list of the Federal laws under which Federal eco-
19 nomic development funds are distributed. The Attor-
20 ney General shall compile annual revisions of such
21 list as necessary. Such list and any successive revi-
22 sions of such list shall be communicated by the At-
23 torney General to the chief executive officer of each
24 State and also made available on the Internet
25 website maintained by the United States Depart-

1 ment of Justice for use by the public and by the au-
2 thorities in each State and political subdivisions of
3 each State empowered to take private property and
4 convert it to public use subject to just compensation
5 for the taking.

6 (b) NOTIFICATION TO PROPERTY OWNERS.—Not
7 later than 30 days after the enactment of this Act, the
8 Attorney General shall publish in the Federal Register and
9 make available on the Internet website maintained by the
10 United States Department of Justice a notice containing
11 the text of this Act and a description of the rights of prop-
12 erty owners under this Act.

13 **SEC. 6. REPORT.**

14 Not later than 1 year after the date of enactment
15 of this Act, and every subsequent year thereafter, the At-
16 torney General shall transmit a report identifying States
17 or political subdivisions that have used eminent domain
18 in violation of this Act to the Chairman and Ranking
19 Member of the Committee on the Judiciary of the House
20 of Representatives and to the Chairman and Ranking
21 Member of the Committee on the Judiciary of the Senate.

22 The report shall—

23 (1) identify all private rights of action brought
24 as a result of a State's or political subdivision's vio-
25 lation of this Act;

1 (2) identify all States or political subdivisions
2 that have lost Federal economic development funds
3 as a result of a violation of this Act, as well as de-
4 scribe the type and amount of Federal economic de-
5 velopment funds lost in each State or political sub-
6 division and the Agency that is responsible for with-
7 holding such funds; and

8 (3) discuss all instances in which a State or po-
9 litical subdivision has cured a violation as described
10 in section 2(c) of this Act.

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

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

13 (1) The founders realized the fundamental im-
14 portance of property rights when they codified the
15 Takings Clause of the Fifth Amendment to the Con-
16 stitution, which requires that private property shall
17 not be taken “for public use, without just compensa-
18 tion”.

19 (2) Rural lands are unique in that they are not
20 traditionally considered high tax revenue-generating
21 properties for state and local governments. In addi-
22 tion, farmland and forest land owners need to have
23 long-term certainty regarding their property rights
24 in order to make the investment decisions to commit
25 land to these uses.

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

5 (4) In the wake of the Supreme Court’s deci-
6 sion in *Kelo v. City of New London*, abuse of emi-
7 nent domain is a threat to the property rights of all
8 private property owners, including rural land own-
9 ers.

10 (b) SENSE OF CONGRESS.—It is the sense of Con-
11 gress that the use of eminent domain for the purpose of
12 economic development is a threat to agricultural and other
13 property in rural America and that the Congress should
14 protect the property rights of Americans, including those
15 who reside in rural areas. Property rights are central to
16 liberty in this country and to our economy. The use of
17 eminent domain to take farmland and other rural property
18 for economic development threatens liberty, rural econo-
19 mies, and the economy of the United States. Americans
20 should not have to fear the government’s taking their
21 homes, farms, or businesses to give to other persons. Gov-
22 ernments should not abuse the power of eminent domain
23 to force rural property owners from their land in order
24 to develop rural land into industrial and commercial prop-

1 erty. Congress has a duty to protect the property rights
2 of rural Americans in the face of eminent domain abuse.

3 **SEC. 8. DEFINITIONS.**

4 In this Act the following definitions apply:

5 (1) ECONOMIC DEVELOPMENT.—The term
6 “economic development” means taking private prop-
7 erty, without the consent of the owner, and con-
8 veying or leasing such property from one private
9 person or entity to another private person or entity
10 for commercial enterprise carried on for profit, or to
11 increase tax revenue, tax base, employment, or gen-
12 eral economic health, except that such term shall not
13 include—

14 (A) conveying private property to public
15 ownership, such as for a road, hospital, or mili-
16 tary base, or to an entity, such as a common
17 carrier, that makes the property available for
18 use by the general public as of right, such as
19 a railroad, public utility, or public facility, or
20 for use as a right of way, aqueduct, pipeline, or
21 similar use;

22 (B) removing harmful uses of land pro-
23 vided such uses constitute an immediate threat
24 to public health and safety;

1 (C) leasing property to a private person or
2 entity that occupies an incidental part of public
3 property or a public facility, such as a retail es-
4 tablishment on the ground floor of a public
5 building;

6 (D) acquiring abandoned property; and

7 (E) clearing defective chains of title.

8 (2) FEDERAL ECONOMIC DEVELOPMENT
9 FUNDS.—The term “Federal economic development
10 funds” means any Federal funds distributed to
11 States or political subdivisions of States under Fed-
12 eral laws designed to improve or increase the size of
13 the economies of States or political subdivisions of
14 States.

15 (3) STATE.—The term “State” means each of
16 the several States, the District of Columbia, the
17 Commonwealth of Puerto Rico, or any other terri-
18 tory or possession of the United States.

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

20 (a) SEVERABILITY.—The provisions of this Act are
21 severable. If any provision of this Act, or any application
22 thereof, is found unconstitutional, that finding shall not
23 affect any provision or application of the Act not so adju-
24 dicated.

1 (b) EFFECTIVE DATE.—This Act shall take effect
2 upon the first day of the first fiscal year that begins after
3 the date of the enactment of this Act, but shall not apply
4 to any project for which condemnation proceedings have
5 been initiated prior to the date of enactment.

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