

109TH CONGRESS  
1ST SESSION

# H. R. 4128

To protect private property rights.

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## 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

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## 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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