

## Union Calendar No. 278

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

# H. R. 1433

[Report No. 112-401]

To protect private property rights.

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### IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 2011

Mr. SENSENBRENNER (for himself, Ms. WATERS, Mr. JONES, Mrs. BONO MACK, Mr. DUNCAN of Tennessee, Mr. GRIMM, Mr. WESTMORELAND, Mr. SIMPSON, Mr. SMITH of Texas, Mr. BROUN of Georgia, Mr. THOMPSON of Pennsylvania, Mr. ROSS of Florida, Mr. GOWDY, Mr. GRIFFIN of Arkansas, Mr. FRANKS of Arizona, Mr. COBLE, Mr. GOODLATTE, and Mr. LONG) introduced the following bill; which was referred to the Committee on the Judiciary

FEBRUARY 17, 2012

Additional sponsors: Mr. FORBES, Mrs. MYRICK, Mr. ROE of Tennessee, Mr. POSEY, Mr. COHEN, Mr. PENCE, Mr. GENE GREEN of Texas, Mr. POE of Texas, Mr. KING of Iowa, Mr. AMODEI, and Mr. MCCLINTOCK

FEBRUARY 17, 2012

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 April 7, 2011]

# **A BILL**

To protect private property rights.



1 *division shall be returned or reimbursed by such State or*  
2 *political subdivision to the appropriate Federal agency or*  
3 *authority of the Federal Government, or component thereof.*

4 *(c) OPPORTUNITY TO CURE VIOLATION.—A State or*  
5 *political subdivision shall not be ineligible for any Federal*  
6 *economic development funds under subsection (b) if such*  
7 *State or political subdivision returns all real property the*  
8 *taking of which was found by a court of competent jurisdic-*  
9 *tion to have constituted a violation of subsection (a) and*  
10 *replaces any other property destroyed and repairs any other*  
11 *property damaged as a result of such violation. In addition,*  
12 *the State must pay applicable penalties and interest to re-*  
13 *attain eligibility.*

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

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

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

20 *(a) CAUSE OF ACTION.—Any (1) owner of private*  
21 *property whose property is subject to eminent domain who*  
22 *suffers injury as a result of a violation of any provision*  
23 *of this Act with respect to that property, or (2) any tenant*  
24 *of property that is subject to eminent domain who suffers*  
25 *injury as a result of a violation of any provision of this*

1 *Act with respect to that property, may bring an action to*  
2 *enforce any provision of this Act in the appropriate Federal*  
3 *or State court. A State shall not be immune under the 11th*  
4 *Amendment to the Constitution of the United States from*  
5 *any such action in a Federal or State court of competent*  
6 *jurisdiction. In such action, the defendant has the burden*  
7 *to show by clear and convincing evidence that the taking*  
8 *is not for economic development. Any such property owner*  
9 *or tenant may also seek an appropriate relief through a*  
10 *preliminary injunction or a temporary restraining order.*

11 *(b) LIMITATION ON BRINGING ACTION.—An action*  
12 *brought by a property owner or tenant under this Act may*  
13 *be brought if the property is used for economic development*  
14 *following the conclusion of any condemnation proceedings*  
15 *condemning the property of such property owner or tenant,*  
16 *but shall not be brought later than seven years following*  
17 *the conclusion of any such proceedings.*

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

1 **SEC. 5. REPORTING OF VIOLATIONS TO ATTORNEY GEN-**  
2 **ERAL.**

3 (a) *SUBMISSION OF REPORT TO ATTORNEY GEN-*  
4 *ERAL.—Any (1) owner of private property whose property*  
5 *is subject to eminent domain who suffers injury as a result*  
6 *of a violation of any provision of this Act with respect to*  
7 *that property, or (2) any tenant of property that is subject*  
8 *to eminent domain who suffers injury as a result of a viola-*  
9 *tion of any provision of this Act with respect to that prop-*  
10 *erty, may report a violation by the Federal Government,*  
11 *any authority of the Federal Government, State, or political*  
12 *subdivision of a State to the Attorney General.*

13 (b) *INVESTIGATION BY ATTORNEY GENERAL.—Upon*  
14 *receiving a report of an alleged violation, the Attorney Gen-*  
15 *eral shall conduct an investigation to determine whether a*  
16 *violation exists.*

17 (c) *NOTIFICATION OF VIOLATION.—If the Attorney*  
18 *General concludes that a violation does exist, then the Attor-*  
19 *ney General shall notify the Federal Government, authority*  
20 *of the Federal Government, State, or political subdivision*  
21 *of a State that the Attorney General has determined that*  
22 *it is in violation of the Act. The notification shall further*  
23 *provide that the Federal Government, State, or political*  
24 *subdivision of a State has 90 days from the date of the noti-*  
25 *fication to demonstrate to the Attorney General either that*  
26 *(1) it is not in violation of the Act or (2) that it has cured*

1 *its violation by returning all real property the taking of*  
2 *which the Attorney General finds to have constituted a vio-*  
3 *lation of the Act and replacing any other property destroyed*  
4 *and repairing any other property damaged as a result of*  
5 *such violation.*

6       *(d) ATTORNEY GENERAL'S BRINGING OF ACTION TO*  
7 *ENFORCE ACT.—If, at the end of the 90-day period de-*  
8 *scribed in subsection (c), the Attorney General determines*  
9 *that the Federal Government, authority of the Federal Gov-*  
10 *ernment, State, or political subdivision of a State is still*  
11 *violating the Act or has not cured its violation as described*  
12 *in subsection (c), then the Attorney General will bring an*  
13 *action to enforce the Act unless the property owner or ten-*  
14 *ant who reported the violation has already brought an ac-*  
15 *tion to enforce the Act. In such a case, the Attorney General*  
16 *shall intervene if it determines that intervention is nec-*  
17 *essary in order to enforce the Act. The Attorney General*  
18 *may file its lawsuit to enforce the Act in the appropriate*  
19 *Federal or State court. A State shall not be immune under*  
20 *the 11th Amendment to the Constitution of the United*  
21 *States from any such action in a Federal or State court*  
22 *of competent jurisdiction. In such action, the defendant has*  
23 *the burden to show by clear and convincing evidence that*  
24 *the taking is not for economic development. The Attorney*

1 *General may seek any appropriate relief through a prelimi-*  
2 *nary injunction or a temporary restraining order.*

3 (e) *LIMITATION ON BRINGING ACTION.*—*An action*  
4 *brought by the Attorney General under this Act may be*  
5 *brought if the property is used for economic development*  
6 *following the conclusion of any condemnation proceedings*  
7 *condemning the property of an owner or tenant who reports*  
8 *a violation of the Act to the Attorney General, but shall*  
9 *not be brought later than seven years following the conclu-*  
10 *sion of any such proceedings.*

11 (f) *ATTORNEYS' FEE AND OTHER COSTS.*—*In any ac-*  
12 *tion or proceeding under this Act brought by the Attorney*  
13 *General, the court shall, if the Attorney General is a pre-*  
14 *vailing plaintiff, award the Attorney General a reasonable*  
15 *attorneys' fee as part of the costs, and include expert fees*  
16 *as part of the attorneys' fee.*

17 **SEC. 6. NOTIFICATION BY ATTORNEY GENERAL.**

18 (a) *NOTIFICATION TO STATES AND POLITICAL SUB-*  
19 *DIVISIONS.*—

20 (1) *Not later than 30 days after the enactment*  
21 *of this Act, the Attorney General shall provide to the*  
22 *chief executive officer of each State the text of this Act*  
23 *and a description of the rights of property owners*  
24 *and tenants under this Act.*

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

15           **(b) NOTIFICATION TO PROPERTY OWNERS AND TEN-**  
16 **ANTS.**—*Not later than 30 days after the enactment of this*  
17 *Act, the Attorney General shall publish in the Federal Reg-*  
18 *ister and make available on the Internet website main-*  
19 *tained by the United States Department of Justice a notice*  
20 *containing the text of this Act and a description of the*  
21 *rights of property owners and tenants under this Act.*

22 **SEC. 7. REPORTS.**

23           **(a) BY ATTORNEY GENERAL.**—*Not later than 1 year*  
24 *after the date of enactment of this Act, and every subsequent*  
25 *year thereafter, the Attorney General shall transmit a re-*

1 port identifying States or political subdivisions that have  
2 used eminent domain in violation of this Act to the Chair-  
3 man and Ranking Member of the Committee on the Judici-  
4 ary of the House of Representatives and to the Chairman  
5 and Ranking Member of the Committee on the Judiciary  
6 of the Senate. The report shall—

7 (1) identify all private rights of action brought  
8 as a result of a State's or political subdivision's viola-  
9 tion of this Act;

10 (2) identify all violations reported by property  
11 owners and tenants under section 5(c) of this Act;

12 (3) identify the percentage of minority residents  
13 compared to the surrounding nonminority residents  
14 and the median incomes of those impacted by a viola-  
15 tion of this Act;

16 (4) identify all lawsuits brought by the Attorney  
17 General under section 5(d) of this Act;

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

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

4           **(b) DUTY OF STATES.**—*Each State and local authority*  
5           *that is subject to a private right of action under this Act*  
6           *shall have the duty to report to the Attorney General such*  
7           *information with respect to such State and local authorities*  
8           *as the Attorney General needs to make the report required*  
9           *under subsection (a).*

10 **SEC. 8. SENSE OF CONGRESS REGARDING RURAL AMERICA.**

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

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

18                   (2) *Rural lands are unique in that they are not*  
19                   *traditionally considered high tax revenue-generating*  
20                   *properties for State and local governments. In addi-*  
21                   *tion, farmland and forest land owners need to have*  
22                   *long-term certainty regarding their property rights in*  
23                   *order to make the investment decisions to commit*  
24                   *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 decision*  
6           *in Kelo v. City of New London, abuse of eminent do-*  
7           *main is a threat to the property rights of all private*  
8           *property owners, including rural land owners.*

9           (b) *SENSE OF CONGRESS.—It is the sense of Congress*  
10          *that the use of eminent domain for the purpose of economic*  
11          *development is a threat to agricultural and other property*  
12          *in rural America and that the Congress should protect the*  
13          *property rights of Americans, including those who reside*  
14          *in rural areas. Property rights are central to liberty in this*  
15          *country and to our economy. The use of eminent domain*  
16          *to take farmland and other rural property for economic de-*  
17          *velopment threatens liberty, rural economies, and the econ-*  
18          *omy of the United States. The taking of farmland and rural*  
19          *property will have a direct impact on existing irrigation*  
20          *and reclamation projects. Furthermore, the use of eminent*  
21          *domain to take rural private property for private commer-*  
22          *cial uses will force increasing numbers of activities from*  
23          *private property onto this Nation's public lands, including*  
24          *its National forests, National parks and wildlife refuges.*  
25          *This increase can overburden the infrastructure of these*

1 *lands, reducing the enjoyment of such lands for all citizens.*  
2 *Americans should not have to fear the government’s taking*  
3 *their homes, farms, or businesses to give to other persons.*  
4 *Governments should not abuse the power of eminent domain*  
5 *to force rural property owners from their land in order to*  
6 *develop rural land into industrial and commercial prop-*  
7 *erty. Congress has a duty to protect the property rights of*  
8 *rural Americans in the face of eminent domain abuse.*

9 **SEC. 9. DEFINITIONS.**

10 *In this Act the following definitions apply:*

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

19 *(A) conveying private property—*

20 *(i) to public ownership, such as for a*  
21 *road, hospital, airport, or military base;*

22 *(ii) to an entity, such as a common*  
23 *carrier, that makes the property available to*  
24 *the general public as of right, such as a*  
25 *railroad or public facility;*

1                   (iii) for use as a road or other right of  
2                   way or means, open to the public for trans-  
3                   portation, whether free or by toll; and

4                   (iv) for use as an aqueduct, flood con-  
5                   trol facility, pipeline, or similar use;

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

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

14                  (D) acquiring abandoned property;

15                  (E) clearing defective chains of title;

16                  (F) taking private property for use by a  
17                  public utility; and

18                  (G) redeveloping of a brownfield site as de-  
19                  fined in the *Small Business Liability Relief and*  
20                  *Brownfields Revitalization Act* (42 U.S.C.  
21                  9601(39)).

22                  (2) *FEDERAL ECONOMIC DEVELOPMENT*  
23                  *FUNDS.*—The term “Federal economic development  
24                  funds” means any Federal funds distributed to or  
25                  through States or political subdivisions of States

1        *under Federal laws designed to improve or increase*  
2        *the size of the economies of States or political subdivi-*  
3        *sions of States.*

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

8        **SEC. 10. SEVERABILITY AND EFFECTIVE DATE.**

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

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

19        **SEC. 11. SENSE OF CONGRESS.**

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

1 **SEC. 12. 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.*

5 **SEC. 13. LIMITATION ON STATUTORY CONSTRUCTION.**

6 *Nothing in this Act may be construed to supersede,*  
7 *limit, or otherwise affect any provision of the Uniform Relo-*  
8 *cation Assistance and Real Property Acquisition Policies*  
9 *Act of 1970 (42 U.S.C. 4601 et seq.).*

10 **SEC. 14. RELIGIOUS AND NONPROFIT ORGANIZATIONS.**

11 *(a) PROHIBITION ON STATES.—No State or political*  
12 *subdivision of a State shall exercise its power of eminent*  
13 *domain, or allow the exercise of such power by any person*  
14 *or entity to which such power has been delegated, over prop-*  
15 *erty of a religious or other nonprofit organization by reason*  
16 *of the nonprofit or tax-exempt status of such organization,*  
17 *or any quality related thereto if that State or political sub-*  
18 *division receives Federal economic development funds dur-*  
19 *ing any fiscal year in which it does so.*

20 *(b) INELIGIBILITY FOR FEDERAL FUNDS.—A violation*  
21 *of subsection (a) by a State or political subdivision shall*  
22 *render such State or political subdivision ineligible for any*  
23 *Federal economic development funds for a period of 2 fiscal*  
24 *years following a final judgment on the merits by a court*  
25 *of competent jurisdiction that such subsection has been vio-*  
26 *lated, and any Federal agency charged with distributing*

1 *those funds shall withhold them for such 2-year period, and*  
2 *any such funds distributed to such State or political sub-*  
3 *division shall be returned or reimbursed by such State or*  
4 *political subdivision to the appropriate Federal agency or*  
5 *authority of the Federal Government, or component thereof.*

6 (c) *PROHIBITION ON FEDERAL GOVERNMENT.—The*  
7 *Federal Government or any authority of the Federal Gov-*  
8 *ernment shall not exercise its power of eminent domain over*  
9 *property of a religious or other nonprofit organization by*  
10 *reason of the nonprofit or tax-exempt status of such organi-*  
11 *zation, or any quality related thereto.*

12 **SEC. 15. REPORT BY FEDERAL AGENCIES ON REGULATIONS**  
13 **AND PROCEDURES RELATING TO EMINENT**  
14 **DOMAIN.**

15 *Not later than 180 days after the date of the enactment*  
16 *of this Act, the head of each Executive department and*  
17 *agency shall review all rules, regulations, and procedures*  
18 *and report to the Attorney General on the activities of that*  
19 *department or agency to bring its rules, regulations and*  
20 *procedures into compliance with this Act.*

21 **SEC. 16. SENSE OF CONGRESS.**

22 *It is the sense of Congress that any and all precautions*  
23 *shall be taken by the government to avoid the unfair or un-*  
24 *reasonable taking of property away from survivors of Hur-*  
25 *ricane Katrina who own, were bequeathed, or assigned such*

1 *property, for economic development purposes or for the pri-*  
2 *vate use of others.*

3 **SEC. 17. DISPROPORTIONATE IMPACT ON MINORITIES.**

4 *If the court determines that a violation of this Act has*  
5 *occurred, and that the violation has a disproportionately*  
6 *high impact on the poor or minorities, the Attorney General*  
7 *shall use reasonable efforts to locate and inform former own-*  
8 *ers and tenants of the violation and any remedies they may*  
9 *have.*



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