

# Union Calendar No. 588

106TH CONGRESS  
2D SESSION

# H. R. 1142

[Report No. 106–1011]

To ensure that landowners receive treatment equal to that provided to the  
Federal Government when property must be used.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 1999

Mr. YOUNG of Alaska (for himself, Mr. TAUZIN, Mr. POMBO, Mr. PETERSON of Pennsylvania, Mr. DOOLITTLE, Mrs. CHENOWETH-HAGE, Mr. RADANOVICH, Mr. CANNON, Mr. SHADEGG, Mr. SCHAFFER, Mr. WALDEN of Oregon, Mr. HASTINGS of Washington, Mr. SIMPSON, Mr. HANSEN, Mr. McKEON, Mr. HERGER, Mr. HILL of Montana, Mr. GALLEGLY, Mr. DELAY, Mr. THOMAS, Mr. BAKER, Mr. SKEEN, Mr. THORNBERRY, Mrs. CUBIN, Mr. CALVERT, and Mr. BONILLA) introduced the following bill; which was referred to the Committee on Resources

OCTOBER 26, 2000

Additional sponsors: Mr. GIBBONS, Mr. HAYWORTH, Mr. STUMP, Mr. SHOWS, Ms. DANNER, Mr. EHRLICH, Mr. ENGLISH, Mrs. MYRICK, Mr. DICKEY, Mrs. BONO, Mr. BARRETT of Nebraska, Mr. METCALF, Mr. NETHERCUTT, Mr. SESSIONS, Mr. DUNCAN, Mr. PICKETT, Mrs. EMERSON, Mr. TAYLOR of North Carolina, Mr. DEMINT, Mr. CUNNINGHAM, Mr. TANCREDO, Mr. BALLENGER, Mr. LUCAS of Oklahoma, Mr. GARY MILLER of California, Mr. HUNTER, Mr. HAYES, Mr. McINNIS, Mr. SOUDER, Mr. PACKARD, Mr. SWEENEY, Mr. CHAMBLISS, Mr. KNOLLENBERG, Mr. PICKERING, Mr. CALLAHAN, Mr. GOODLING, Mr. WATKINS, Mr. BRADY of Texas, and Mr. BUYER

OCTOBER 26, 2000

Committed to the Committee of the Whole House on the State of the Union  
and ordered to be printed

# A BILL

To ensure that landowners receive treatment equal to that provided to the Federal Government when property must be used.

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 “Landowners Equal  
5       Treatment Act of 1999”.

6       **SEC. 2. FINDINGS AND PURPOSE.**

7       (a) FINDINGS.—The Congress finds and declares the  
8       following:

9               (1) The Secretary of the Interior, through the  
10       United States Fish and Wildlife Service, recently de-  
11       manded and received compensation for the loss of  
12       use of federally owned property resulting from con-  
13       structive use of the property for other public pur-  
14       poses, in an amount of approximately \$26,000,000.

15              (2) The Secretary of Transportation has pro-  
16       mulgated a regulation allowing for compensation of  
17       Federal agencies for the lost use of agency property  
18       for public purposes, through a definition of the term  
19       “constructive use” that includes off-site impacts of  
20       Federal agency actions on federally owned property.

1           (3) The Federal Government enjoys no right  
2           under the Constitution to compensation for use of  
3           Federal agency property for other public purposes,  
4           while the rights of private persons to be com-  
5           pensated for the taking of their property by the Gov-  
6           ernment for a public purpose is a fundamental right  
7           protected by the Fifth and Fourteenth Amendments  
8           to the Constitution.

9           (4) Private property owners should be com-  
10          pensated in a manner that is at least as equitable  
11          as the compensation afforded to Federal agencies  
12          when their property is used or constructively used  
13          for other public purposes.

14          (5) Fair and equitable treatment of private  
15          property owners will increase the willingness of pri-  
16          vate property owners to provide habitat for wildlife  
17          and plants protected under the Endangered Species  
18          Act of 1973 (16 U.S.C. 1531 et seq.).

19          (b) PURPOSE.—The purpose of this Act is to increase  
20          the efforts of private property owners to protect and re-  
21          store habitat for wildlife, by ensuring that their constitu-  
22          tional and legal property rights will be honored, respected,  
23          and protected in the implementation of the Endangered  
24          Species Act of 1973.

1 **SEC. 3. MINIMIZING IMPACTS ON PRIVATE PROPERTY.**

2 The Endangered Species Act of 1973 (16 U.S.C.  
3 1531 et seq.) is amended by adding at the end the fol-  
4 lowing new section:

5 “MINIMIZING IMPACTS ON PRIVATE PROPERTY

6 “SEC. 19. (a) IN GENERAL.—In implementing this  
7 Act, the head of an agency shall make every possible effort  
8 to avoid, minimize, or mitigate impacts on non-Federal  
9 property that result in Federal use of the property as a  
10 direct result of the action of the agency head under this  
11 Act or in furtherance of the purposes of this Act. An agen-  
12 cy shall not take action that results in a Federal use of  
13 non-Federal property under this Act unless the agency—

14 “(1) obtains the written permission of its  
15 owner;

16 “(2) negotiates a voluntary agreement author-  
17 izing that use; or

18 “(3) pays compensation in accordance with this  
19 section.

20 “(b) COMPENSATION FOR FEDERAL USE OF NON-  
21 FEDERAL PROPERTY.—An agency that takes action under  
22 this Act or in furtherance of the purposes of this Act that  
23 results in a Federal use of non-Federal property or any  
24 portion of non-Federal property without the written con-  
25 sent of the owner of the property shall compensate the  
26 owner for the fair market value of the Federal use of the

1 property or portion. Compensation paid shall reflect the  
2 duration of the Federal use as necessary to achieve the  
3 purposes of this Act.

4 “(c) REQUEST OF OWNER.—An owner of non-Fed-  
5 eral property seeking compensation under this section  
6 shall make a written request for compensation to the agen-  
7 cy implementing the agency action resulting in the Federal  
8 use of property. The request shall, at a minimum, identify  
9 the affected portion of the property, the nature of the Fed-  
10 eral use of non-Federal property for which the compensa-  
11 tion is sought, and the amount of compensation sought.

12 “(d) NEGOTIATIONS.—The agency may negotiate  
13 with the owner to reach agreement on the amount of the  
14 compensation under this section, the terms of any agree-  
15 ment for payment, and the terms of any Federal use of  
16 non-Federal property for which compensation is paid. If  
17 such an agreement is reached, the agency shall within 6  
18 months pay the owner the amount agreed upon. An agree-  
19 ment under this section may include a transfer of title or  
20 an agreement to limit the period of time of the Federal  
21 use of non-Federal property.

22 “(e) CHOICE OF REMEDIES.—If, not later than 180  
23 days after the written request is made, the parties have  
24 not reached an agreement on compensation, the owner of

1 the property may elect binding arbitration or seek com-  
2 pensation due under this section in a civil action.

3 “(f) ARBITRATION.—The procedures that govern the  
4 arbitration shall, as nearly as practicable, be those estab-  
5 lished under title 9, United States Code, for arbitration  
6 proceedings to which that title applies. An award made  
7 in such arbitration shall include a reasonable attorney’s  
8 fee and other arbitration costs, including appraisal fees.  
9 The agency shall promptly pay any award made to the  
10 owner.

11 “(g) CIVIL ACTIONS.—A civil action to enforce this  
12 section may be filed under section 11(g). An owner who  
13 prevails in a civil action against the agency pursuant to  
14 this section shall be entitled to, and the agency shall be  
15 liable for, the amount of compensation awarded plus rea-  
16 sonable attorney’s fees and other litigation costs, including  
17 appraisal fees. The court shall award interest on the  
18 amount of any compensation from the time of the Federal  
19 use of non-Federal property.

20 “(h) SOURCE OF PAYMENTS.—Any payment made  
21 under this section to an owner of property and any judg-  
22 ment obtained by an owner of property in a civil action  
23 under this section shall, notwithstanding any other provi-  
24 sion of law, be made from the annual appropriation of the  
25 agency that took the agency action giving rise to the pay-

1 ment or civil action. If the agency action resulted from  
2 a requirement imposed by another agency, then the agency  
3 making the payment or satisfying the judgment may seek  
4 partial or complete reimbursement from the appropriated  
5 funds of the other agency. For this purpose, the head of  
6 the agency concerned may transfer or reprogram any ap-  
7 propriated funds available to the agency. If insufficient  
8 funds exist for the payment or to satisfy the judgment,  
9 it shall be the duty of the head of the agency to seek the  
10 appropriation of such funds for the next fiscal year.

11 “(i) AVAILABILITY OF APPROPRIATIONS.—Notwith-  
12 standing any other provision of law, any obligation of the  
13 United States to make any payment under this section  
14 shall be subject to the availability of appropriations.

15 “(j) DUTY OF NOTICE TO OWNERS.—An agency may  
16 not take any action that is a Federal use of non-Federal  
17 property unless the agency has given 30 days notice to  
18 each owner of the property directly affected explaining  
19 their rights under this section and either obtaining their  
20 permission for the Federal use or providing the procedures  
21 for obtaining any compensation that may be available  
22 under this section.

23 “(k) RULES OF CONSTRUCTION.—The following rules  
24 of construction shall apply to this Act:

1           “(1) OTHER RIGHTS PRESERVED.—Nothing in  
 2           this Act shall be construed to limit any right to com-  
 3           pensation that exists under the Constitution or  
 4           under other laws.

5           “(2) EXTENT OF FEDERAL AUTHORITY.—Pay-  
 6           ment of compensation under this section (other than  
 7           when property is bought by the Federal Government  
 8           at the option of the owner) shall not confer any  
 9           rights on the Federal Government other than the  
 10          Federal use of non-Federal property agreed to so  
 11          that the agency action may achieve the species con-  
 12          servation purposes of this Act.

13          “(1) DEFINITIONS.—For the purposes of this section:

14                 “(1) AGENCY.—The term ‘agency’ has the  
 15                 meaning given that term in section 551 of title 5,  
 16                 United States Code.

17                 “(2) FEDERAL USE.—(A) The term ‘Federal  
 18                 use’ means—

19                         “(i) any action under this Act to—

20                                 “(I) permanently incorporate non-  
 21                                 Federal property into a Federal facility;

22                                 “(II) place non-Federal property  
 23                                 under the control of the Secretary; or

24                                 “(III) temporarily occupy non-Federal  
 25                                 property in a manner that is adverse to the



1 constitutional right of the owner of the  
2 property against taking of the property by  
3 the Federal Government; and

4 “(ii) any constructive use of non-Federal  
5 property.

6 “(B) In this paragraph the term ‘constructive  
7 use’ means any action described in subparagraph  
8 (C) taken under this Act that results in—

9 “(i) substantial diminution in the normal  
10 or reasonably expected uses of non-Federal  
11 property;

12 “(ii) a reduction in the fair market value  
13 of non-Federal property of 25 percent or more;  
14 or

15 “(iii) in the case of the right to receive  
16 water, any diminution in the quantity of water  
17 received or available for use.

18 “(C) The actions referred to in subparagraph  
19 (B) are the following:

20 “(i) The imposition or enforcement of a  
21 prohibition of use of non-Federal property the  
22 purpose of which is to provide or retain habitat  
23 for any species of wildlife or plant determined  
24 to be an endangered species or threatened spe-  
25 cies.

1           “(ii) A designation of non-Federal property  
2 as critical habitat under this Act.

3           “(iii) The denial of a permit under section  
4 10 that results in the loss of the ability to use  
5 non-Federal property in order to provide habi-  
6 tat for wildlife or plants.

7           “(iv) An agency action pursuant to a rea-  
8 sonable and prudent alternative suggested by  
9 the Secretary under section 7, that would cause  
10 an agency to restrict the use of non-Federal  
11 property.

12           “(v) The imposition by any governmental  
13 entity of a limitation or restriction on an other-  
14 wise permissible use of non-Federal property by  
15 the owner of the property, as a condition of a  
16 Federal agency providing any land, money, per-  
17 mit, or other benefit to the governmental entity,  
18 if imposition of the limitation or restriction by  
19 the agency directly would constitute a Federal  
20 use of non-Federal property under the other  
21 provisions of this paragraph, unless the govern-  
22 mental entity has some other legal basis for im-  
23 posing the limitation or restriction.

24           “(3) FAIR MARKET VALUE.—The term ‘fair  
25 market value’ means the most probable price at

1       which property or a right to use property would  
2       change hands, in a competitive and open market  
3       under all conditions requisite to fair sale, between a  
4       willing buyer and willing seller, neither being under  
5       any compulsion to buy or sell and both having rea-  
6       sonable knowledge of relevant facts, and without re-  
7       gard to the presence of any species protected under  
8       this Act. With respect to a right to use property,  
9       fair market value shall be determined on or imme-  
10      diately before the exercise of the right.

11           “(4) LAW OF THE STATE.—The term ‘law of  
12      the State’ includes the law of a political subdivision  
13      of a State.

14           “(5) NON-FEDERAL PROPERTY.—The term  
15      ‘non-Federal property’ means property which is  
16      owned by a person other than any Federal entity of  
17      government.

18           “(6) PROPERTY.—The term ‘property’ means  
19      land, an interest in land, the right to use or receive  
20      water, and any personal property, as defined under  
21      the law of the State.”.

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