

111TH CONGRESS
1ST SESSION

H. R. 1885

To protect private property rights.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2009

Ms. WATERS (for herself, Mr. SENSENBRENNER, Mrs. BACHMANN, Mr. CLAY, Mr. COBLE, Mr. COHEN, Mr. CUELLAR, Mr. CUMMINGS, Mrs. EMERSON, Mr. FRANKS of Arizona, Mr. GOODLATTE, Mr. GORDON of Tennessee, Mr. HELLER, Mr. HERGER, Mr. HOLT, Mr. ISSA, Mrs. KIRKPATRICK of Arizona, Mr. LOBIONDO, Mr. ROGERS of Kentucky, Mr. ROHRABACHER, Mr. ROYCE, Mr. SESSIONS, Mr. SIMPSON, Mr. SMITH of Nebraska, Mr. SMITH of Texas, and Mr. WAMP) 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 2009”.

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

1 allow the exercise of such power by any person or entity
2 to which such power has been delegated, over property to
3 be used for economic development or over property that
4 is used for economic development within 7 years after that
5 exercise, if that State or political subdivision receives Fed-
6 eral economic development funds during any fiscal year
7 in which the property is so used or intended to be used.

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

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

1 diction to have constituted a violation of subsection (a)
2 and replaces any other property destroyed and repairs any
3 other property damaged as a result of such violation.

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

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

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

10 (a) CAUSE OF ACTION.—Any (1) owner of private
11 property whose property is subject to eminent domain who
12 suffers injury as a result of a violation of any provision
13 of this Act with respect to that property, or (2) any tenant
14 of property that is subject to eminent domain who suffers
15 injury as a result of a violation of any provision of this
16 Act with respect to that property, may bring an action
17 to enforce any provision of this Act in the appropriate
18 Federal or State court. A State shall not be immune under
19 the eleventh amendment to the Constitution of the United
20 States from any such action in a Federal or State court
21 of competent jurisdiction. In such action, the defendant
22 has the burden to show by clear and convincing evidence
23 that the taking is not for economic development. Any such
24 property owner or tenant may also seek an appropriate

1 relief through a preliminary injunction or a temporary re-
2 straining order.

3 (b) LIMITATION ON BRINGING ACTION.—An action
4 brought by a property owner or tenant under this Act may
5 be brought if the property is used for economic develop-
6 ment following the conclusion of any condemnation pro-
7 ceedings condemning the property of such property owner
8 or tenant, but shall not be brought later than seven years
9 following the conclusion of any such proceedings.

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

15 **SEC. 5. REPORTING OF VIOLATIONS TO ATTORNEY GEN-**
16 **ERAL.**

17 (a) SUBMISSION OF REPORT TO ATTORNEY GEN-
18 ERAL.—Any (1) owner of private property whose property
19 is subject to eminent domain who suffers injury as a result
20 of a violation of any provision of this Act with respect to
21 that property, or (2) any tenant of property that is subject
22 to eminent domain who suffers injury as a result of a vio-
23 lation of any provision of this Act with respect to that
24 property, may report a violation by the Federal Govern-

1 ment, any authority of the Federal Government, State, or
2 political subdivision of a State to the Attorney General.

3 (b) INVESTIGATION BY ATTORNEY GENERAL.—Upon
4 receiving a report of an alleged violation, the Attorney
5 General shall conduct an investigation to determine wheth-
6 er a violation exists.

7 (c) NOTIFICATION OF VIOLATION.—If the Attorney
8 General concludes that a violation does exist, then the At-
9 torney General shall notify the Federal Government, au-
10 thority of the Federal Government, State, or political sub-
11 division of a State that the Attorney General has deter-
12 mined that it is in violation of the Act. The notification
13 shall further provide that the Federal Government, State,
14 or political subdivision of a State has 90 days from the
15 date of the notification to demonstrate to the Attorney
16 General either that (1) it is not in violation of the Act
17 or (2) that it has cured its violation by returning all real
18 property the taking of which the Attorney General finds
19 to have constituted a violation of the Act and replacing
20 any other property destroyed and repairing any other
21 property damaged as a result of such violation.

22 (d) ATTORNEY GENERAL’S BRINGING OF ACTION TO
23 ENFORCE ACT.—If, at the end of the 90-day period de-
24 scribed in subsection (c), the Attorney General determines
25 that the Federal Government, authority of the Federal

1 Government, State, or political subdivision of a State is
2 still violating the Act or has not cured its violation as de-
3 scribed in subsection (c), then the Attorney General will
4 bring an action to enforce the Act unless the property
5 owner or tenant who reported the violation has already
6 brought an action to enforce the Act. In such a case, the
7 Attorney General shall intervene if it determines that
8 intervention is necessary in order to enforce the Act. The
9 Attorney General may file its lawsuit to enforce the Act
10 in the appropriate Federal or State court. A State shall
11 not be immune under the eleventh amendment to the Con-
12 stitution of the United States from any such action in a
13 Federal or State court of competent jurisdiction. In such
14 action, the defendant has the burden to show by clear and
15 convincing evidence that the taking is not for economic
16 development. The Attorney General may seek any appro-
17 priate relief through a preliminary injunction or a tem-
18 porary restraining order.

19 (e) LIMITATION ON BRINGING ACTION.—An action
20 brought by the Attorney General under this Act may be
21 brought if the property is used for economic development
22 following the conclusion of any condemnation proceedings
23 condemning the property of an owner or tenant who re-
24 ports a violation of the Act to the Attorney General, but

1 shall not be brought later than seven years following the
2 conclusion of any such proceedings.

3 (f) ATTORNEYS' FEE AND OTHER COSTS.—In any
4 action or proceeding under this Act brought by the Attor-
5 ney General, the court shall, if the Attorney General is
6 a prevailing plaintiff, award the Attorney General a rea-
7 sonable attorneys' fee as part of the costs, and include
8 expert fees as part of the attorneys' fee.

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

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

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

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

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

7 (b) NOTIFICATION TO PROPERTY OWNERS AND TEN-
8 ANTS.—Not later than 30 days after the enactment of this
9 Act, the Attorney General shall publish in the Federal
10 Register and make available on the Internet website main-
11 tained by the United States Department of Justice a no-
12 tice containing the text of this Act and a description of
13 the rights of property owners and tenants under this Act.

14 **SEC. 7. REPORTS.**

15 (a) BY ATTORNEY GENERAL.—Not later than 1 year
16 after the date of enactment of this Act, and every subse-
17 quent year thereafter, the Attorney General shall transmit
18 a report identifying States or political subdivisions that
19 have used eminent domain in violation of this Act to the
20 Chairman and Ranking Member of the Committee on the
21 Judiciary of the House of Representatives and to the
22 Chairman and Ranking Member of the Committee on the
23 Judiciary of the Senate. The report shall—

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

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

6 (3) identify all lawsuits brought by the Attorney
7 General under section 5(d) of this Act;

8 (4) identify all States or political subdivisions
9 that have lost Federal economic development funds
10 as a result of a violation of this Act, as well as de-
11 scribe the type and amount of Federal economic de-
12 velopment funds lost in each State or political sub-
13 division and the Agency that is responsible for with-
14 holding such funds; and

15 (5) discuss all instances in which a State or po-
16 litical subdivision has cured a violation as described
17 in section 2(c) of this Act.

18 (b) DUTY OF STATES.—Each State and local author-
19 ity that is subject to a private right of action under this
20 Act shall have the duty to report to the Attorney General
21 such information with respect to such State and local au-
22 thorities as the Attorney General needs to make the report
23 required under subsection (a).

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

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

1 (1) The founders realized the fundamental im-
2 portance of property rights when they codified the
3 Takings Clause of the Fifth Amendment to the Con-
4 stitution, which requires that private property shall
5 not be taken “for public use, without just compensa-
6 tion”.

7 (2) Rural lands are unique in that they are not
8 traditionally considered high tax revenue-generating
9 properties for State and local governments. In addi-
10 tion, farmland and forest land owners need to have
11 long-term certainty regarding their property rights
12 in order to make the investment decisions to commit
13 land to these uses.

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

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

23 (b) SENSE OF CONGRESS.—It is the sense of Con-
24 gress that the use of eminent domain for the purpose of
25 economic development is a threat to agricultural and other

1 property in rural America and that the Congress should
2 protect the property rights of Americans, including those
3 who reside in rural areas. Property rights are central to
4 liberty in this country and to our economy. The use of
5 eminent domain to take farmland and other rural property
6 for economic development threatens liberty, rural econo-
7 mies, and the economy of the United States. The taking
8 of farmland and rural property will have a direct impact
9 on existing irrigation and reclamation projects. Further-
10 more, the use of eminent domain to take rural private
11 property for private commercial uses will force increasing
12 numbers of activities from private property onto this Na-
13 tion's public lands, including its National forests, National
14 parks and wildlife refuges. This increase can overburden
15 the infrastructure of these lands, reducing the enjoyment
16 of such lands for all citizens. Americans should not have
17 to fear the government's taking their homes, farms, or
18 businesses to give to other persons. Governments should
19 not abuse the power of eminent domain to force rural
20 property owners from their land in order to develop rural
21 land into industrial and commercial property. Congress
22 has a duty to protect the property rights of rural Ameri-
23 cans in the face of eminent domain abuse.

24 **SEC. 9. DEFINITIONS.**

25 In this Act the following definitions apply:

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

10 (A) conveying private property—

11 (i) to public ownership, such as for a
12 road, hospital, airport, or military base;

13 (ii) to an entity, such as a common
14 carrier, that makes the property available
15 to the general public as of right, such as
16 a railroad or public facility;

17 (iii) for use as a road or other right
18 of way or means, open to the public for
19 transportation, whether free or by toll; and

20 (iv) for use as an aqueduct, flood con-
21 trol facility, pipeline, or 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;

7 (E) clearing defective chains of title;

8 (F) taking private property for use by a
9 public utility; and

10 (G) redeveloping of a brownfield site as de-
11 fined in the Small Business Liability Relief and
12 Brownfields Revitalization Act (42 U.S.C.
13 9601(39)).

14 (2) FEDERAL ECONOMIC DEVELOPMENT
15 FUNDS.—The term “Federal economic development
16 funds” means any Federal funds distributed to or
17 through States or political subdivisions of States
18 under Federal laws designed to improve or increase
19 the size of the economies of States or political sub-
20 divisions of States.

21 (3) STATE.—The term “State” means each of
22 the several States, the District of Columbia, the
23 Commonwealth of Puerto Rico, or any other terri-
24 tory or possession of the United States.

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

2 (a) SEVERABILITY.—The provisions of this Act are
3 severable. If any provision of this Act, or any application
4 thereof, is found unconstitutional, that finding shall not
5 affect any provision or application of the Act not so adju-
6 dicated.

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

12 **SEC. 11. SENSE OF CONGRESS.**

13 It is the policy of the United States to encourage,
14 support, and promote the private ownership of property
15 and to ensure that the constitutional and other legal rights
16 of private property owners are protected by the Federal
17 Government.

18 **SEC. 12. BROAD CONSTRUCTION.**

19 This Act shall be construed in favor of a broad pro-
20 tection of private property rights, to the maximum extent
21 permitted by the terms of this Act and the Constitution.

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

23 Nothing in this Act may be construed to supersede,
24 limit, or otherwise affect any provision of the Uniform Re-
25 location Assistance and Real Property Acquisition Policies
26 Act of 1970 (42 U.S.C. 4601 et seq.).

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

2 (a) PROHIBITION ON STATES.—No State or political
3 subdivision of a State shall exercise its power of eminent
4 domain, or allow the exercise of such power by any person
5 or entity to which such power has been delegated, over
6 property of a religious or other nonprofit organization by
7 reason of the nonprofit or tax-exempt status of such orga-
8 nization, or any quality related thereto if that State or
9 political subdivision receives Federal economic develop-
10 ment funds during any fiscal year in which it does so.

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

24 (c) PROHIBITION ON FEDERAL GOVERNMENT.—The
25 Federal Government or any authority of the Federal Gov-
26 ernment shall not exercise its power of eminent domain

1 over property of a religious or other nonprofit organization
2 by reason of the nonprofit or tax-exempt status of such
3 organization, or any quality related thereto.

4 **SEC. 15. REPORT BY FEDERAL AGENCIES ON REGULATIONS**
5 **AND PROCEDURES RELATING TO EMINENT**
6 **DOMAIN.**

7 Not later than 180 days after the date of the enact-
8 ment of this Act, the head of each Executive department
9 and agency shall review all rules, regulations, and proce-
10 dures and report to the Attorney General on the activities
11 of that department or agency to bring its rules, regula-
12 tions and procedures into compliance with this Act.

13 **SEC. 16. SENSE OF CONGRESS.**

14 It is the sense of Congress that any and all pre-
15 cautions shall be taken by the government to avoid the
16 unfair or unreasonable taking of property away from sur-
17 vivors of Hurricane Katrina who own, were bequeathed,
18 or assigned such property, for economic development pur-
19 poses or for the private use of others.

○