

112TH CONGRESS
2^D SESSION

H. R. 1433

IN THE SENATE OF THE UNITED STATES

FEBRUARY 29, 2012

Received; read twice and referred to the Committee on the Judiciary

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Private Property
3 Rights Protection Act of 2012”.

4 **SEC. 2. PROHIBITION ON EMINENT DOMAIN ABUSE BY**
5 **STATES.**

6 (a) IN GENERAL.—No State or political subdivision
7 of a State shall exercise its power of eminent domain, or
8 allow the exercise of such power by any person or entity
9 to which such power has been delegated, over property to
10 be used for economic development or over property that
11 is used for economic development within 7 years after that
12 exercise, if that State or political subdivision receives Fed-
13 eral economic development funds during any fiscal year
14 in which the property is so used or intended to be used.

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

1 eral agency or authority of the Federal Government, or
2 component thereof.

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

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

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

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

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

1 to enforce any provision of this Act in the appropriate
2 Federal or State court. A State shall not be immune under
3 the 11th Amendment to the Constitution of the United
4 States from any such action in a Federal or State court
5 of competent jurisdiction. In such action, the defendant
6 has the burden to show by clear and convincing evidence
7 that the taking is not for economic development. Any such
8 property owner or tenant may also seek an appropriate
9 relief through a preliminary injunction or a temporary re-
10 straining 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 develop-
14 ment following the conclusion of any condemnation pro-
15 ceedings condemning the property of such property owner
16 or tenant, but shall not be brought later than seven years
17 following the conclusion of any such proceedings.

18 (c) ATTORNEYS' FEE AND OTHER COSTS.—In any
19 action or proceeding under this Act, the court shall allow
20 a prevailing plaintiff a reasonable attorneys' fee as part
21 of the costs, and include expert fees as part of the attor-
22 neys' 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 vio-
9 lation of any provision of this Act with respect to that
10 property, may report a violation by the Federal Govern-
11 ment, any authority of the Federal Government, State, or
12 political 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
15 General shall conduct an investigation to determine wheth-
16 er a violation exists.

17 (c) NOTIFICATION OF VIOLATION.—If the Attorney
18 General concludes that a violation does exist, then the At-
19 torney General shall notify the Federal Government, au-
20 thority of the Federal Government, State, or political sub-
21 division of a State that the Attorney General has deter-
22 mined that it is in violation of the Act. The notification
23 shall further provide that the Federal Government, State,
24 or political subdivision of a State has 90 days from the
25 date of the notification to demonstrate to the Attorney
26 General either that (1) it is not in violation of the Act

1 or (2) that it has cured its violation by returning all real
2 property the taking of which the Attorney General finds
3 to have constituted a violation of the Act and replacing
4 any other property destroyed and repairing any other
5 property damaged as a result of 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
10 Government, State, or political subdivision of a State is
11 still violating the Act or has not cured its violation as de-
12 scribed in subsection (c), then the Attorney General will
13 bring an action to enforce the Act unless the property
14 owner or tenant who reported the violation has already
15 brought an action to enforce the Act. In such a case, the
16 Attorney General shall intervene if it determines that
17 intervention is necessary in order to enforce the Act. The
18 Attorney General may file its lawsuit to enforce the Act
19 in the appropriate Federal or State court. A State shall
20 not be immune under the 11th Amendment to the Con-
21 stitution of the United States from any such action in a
22 Federal or State court of competent jurisdiction. In such
23 action, the defendant has the burden to show by clear and
24 convincing evidence that the taking is not for economic
25 development. The Attorney General may seek any appro-

1 piate relief through a preliminary injunction or a tem-
2 porary 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 re-
8 ports a violation of the Act to the Attorney General, but
9 shall not be brought later than seven years following the
10 conclusion of any such proceedings.

11 (f) ATTORNEYS' FEE AND OTHER COSTS.—In any
12 action or proceeding under this Act brought by the Attor-
13 ney General, the court shall, if the Attorney General is
14 a prevailing plaintiff, award the Attorney General a rea-
15 sonable attorneys' fee as part of the costs, and include
16 expert fees 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
23 Act and a description of the rights of property own-
24 ers and tenants under this Act.

1 (2) Not later than 120 days after the enact-
2 ment of this Act, the Attorney General shall compile
3 a list of the Federal laws under which Federal eco-
4 nomic development funds are distributed. The Attor-
5 ney General shall compile annual revisions of such
6 list as necessary. Such list and any successive revi-
7 sions of such list shall be communicated by the At-
8 torney General to the chief executive officer of each
9 State and also made available on the Internet
10 website maintained by the United States Depart-
11 ment of Justice for use by the public and by the au-
12 thorities in each State and political subdivisions of
13 each State empowered to take private property and
14 convert it to public use subject to just compensation
15 for the taking.

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

23 **SEC. 7. REPORTS.**

24 (a) BY ATTORNEY GENERAL.—Not later than 1 year
25 after the date of enactment of this Act, and every subse-

1 quent year thereafter, the Attorney General shall transmit
2 a report identifying States or political subdivisions that
3 have used eminent domain in violation of this Act to the
4 Chairman and Ranking Member of the Committee on the
5 Judiciary of the House of Representatives and to the
6 Chairman and Ranking Member of the Committee on the
7 Judiciary of the Senate. The report shall—

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

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

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

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

19 (5) identify all States or political subdivisions
20 that have lost Federal economic development funds
21 as a result of a violation of this Act, as well as de-
22 scribe the type and amount of Federal economic de-
23 velopment funds lost in each State or political sub-
24 division and the Agency that is responsible for with-
25 holding such 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 author-
5 ity that is subject to a private right of action under this
6 Act shall have the duty to report to the Attorney General
7 such information with respect to such State and local au-
8 thorities as the Attorney General needs to make the report
9 required 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
23 in 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 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. The taking
20 of farmland and rural property will have a direct impact
21 on existing irrigation and reclamation projects. Further-
22 more, the use of eminent domain to take rural private
23 property for private commercial uses will force increasing
24 numbers of activities from private property onto this Na-
25 tion’s public lands, including its National forests, National

1 parks and wildlife refuges. This increase can overburden
2 the infrastructure of these lands, reducing the enjoyment
3 of such lands for all citizens. Americans should not have
4 to fear the government’s taking their homes, farms, or
5 businesses to give to other persons. Governments should
6 not abuse the power of eminent domain to force rural
7 property owners from their land in order to develop rural
8 land into industrial and commercial property. Congress
9 has a duty to protect the property rights of rural Ameri-
10 cans in the face of eminent domain abuse.

11 **SEC. 9. DEFINITIONS.**

12 In this Act the following definitions apply:

13 (1) **ECONOMIC DEVELOPMENT.**—The term
14 “economic development” means taking private prop-
15 erty, without the consent of the owner, and con-
16 veying or leasing such property from one private
17 person or entity to another private person or entity
18 for commercial enterprise carried on for profit, or to
19 increase tax revenue, tax base, employment, or gen-
20 eral economic health, except that such term shall not
21 include—

22 (A) conveying private property—

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

1 (ii) to an entity, such as a common
2 carrier, that makes the property available
3 to the general public as of right, such as
4 a railroad or public facility;

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

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

10 (B) removing harmful uses of land pro-
11 vided such uses constitute an immediate threat
12 to public health and safety;

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

18 (D) acquiring abandoned property;

19 (E) clearing defective chains of title;

20 (F) taking private property for use by a
21 public utility, including a utility providing elec-
22 tric, natural gas, telecommunications, water,
23 and wastewater services, either directly to the
24 public or indirectly through provision of such

1 services at the wholesale level for resale to the
2 public; and

3 (G) redeveloping of a brownfield site as de-
4 fined in the Small Business Liability Relief and
5 Brownfields Revitalization Act (42 U.S.C.
6 9601(39)).

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

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

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

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

24 (b) EFFECTIVE DATE.—This Act shall take effect
25 upon the first day of the first fiscal year that begins after

1 the date of the enactment of this Act, but shall not apply
2 to any project for which condemnation proceedings have
3 been initiated prior to the date of enactment.

4 **SEC. 11. SENSE OF CONGRESS.**

5 It is the policy of the United States to encourage,
6 support, and promote the private ownership of property
7 and to ensure that the constitutional and other legal rights
8 of private property owners are protected by the Federal
9 Government.

10 **SEC. 12. BROAD CONSTRUCTION.**

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

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

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

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

20 (a) PROHIBITION ON STATES.—No State or political
21 subdivision of a State shall exercise its power of eminent
22 domain, or allow the exercise of such power by any person
23 or entity to which such power has been delegated, over
24 property of a religious or other nonprofit organization by
25 reason of the nonprofit or tax-exempt status of such orga-

1 nization, or any quality related thereto if that State or
2 political subdivision receives Federal economic develop-
3 ment funds during any fiscal year in which it does so.

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

17 (c) PROHIBITION ON FEDERAL GOVERNMENT.—The
18 Federal Government or any authority of the Federal Gov-
19 ernment shall not exercise its power of eminent domain
20 over property of a religious or other nonprofit organization
21 by reason of the nonprofit or tax-exempt status of such
22 organization, or any quality related thereto.

1 **SEC. 15. REPORT BY FEDERAL AGENCIES ON REGULATIONS**
2 **AND PROCEDURES RELATING TO EMINENT**
3 **DOMAIN.**

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

10 **SEC. 16. SENSE OF CONGRESS.**

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

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

18 If the court determines that a violation of this Act
19 has occurred, and that the violation has a disproportion-
20 ately high impact on the poor or minorities, the Attorney
21 General shall use reasonable efforts to locate and inform

1 former owners and tenants of the violation and any rem-
2 edies they may have.

Passed the House of Representatives February 28,
2012.

Attest:

KAREN L. HAAS,

Clerk.