LETTER OF TRANSMITTAL

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, DC, 1997.

Hon. ALBERT A. GORE, Jr.,
President, U.S. Senate,
Washington, DC.

DEAR MR. PRESIDENT: Under authority of Senate Resolution 73, agreed to February 13, 1995, I am submitting to you the annual report of the U.S. Senate Special Committee on Aging, Developments in Aging: 1996, volume 1.

Senate Resolution 4, the Committee Systems Reorganization Amendments of 1977, authorizes the Special Committee on Aging ''to conduct a continuing study of any and all matters pertaining to problems and opportunities of older people, including but not limited to, problems and opportunities of maintaining health, of assuring adequate income, of finding employment, of engaging in productive and rewarding activity, of securing proper housing and, when necessary, of obtaining care and assistance.'' Senate Resolution 4 also requires that the results of these studies and recommendations be reported to the Senate annually.

This report describes actions taken during 1996 by the Congress, the administration, and the U.S. Senate Special Committee on Aging, which are significant to our Nation's older citizens. It also summarizes and analyzes the Federal policies and programs that are of the most continuing importance for older persons and their families.

On behalf of the members of the committee and its staff, I am pleased to transmit this report to you.

Sincerely,

CHARLES E. GRASSLEY, *Chairman.*

By Mr. GRASSLEY, from the Special Committee on Aging: Special Report entitled ''Developments In Aging: 1996, Volume 1'' (Rept. No. 105–36).

EXECUTIVE REPORTS OF COMMITTEES

The following executive report of committee was submitted:

By Mr. HATCH, from the Committee on the Judiciary:

Eric H. Holder, Jr., of the District of Columbia, to be Deputy Attorney General.

(The above nomination was reported with the recommendation that he be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. TORRICELLI (for himself and Mr. SARBANES):

S. 951. A bill to reestablish the Office of Noise Abatement and Control in the Environmental Protection Agency; to the Committee on Environment and Public Works.

By Mr. MCCONNELL (for himself, Mr. HATCH, Mr. KYL, and Mr. SESSIONS):

S. 952. A bill to establish a Federal cause of action for discrimination and preferential treatment in Federal actions on the basis of race, color, national origin, or sex, and for other purposes; to the Committee on the Judiciary.

By Mr. SHELBY (for himself, Mr. NICKLES, and Mrs. HUTCHISON):

S. 953. A bill to require certain Federal agencies to protect the right of private property owners, and for other purposes; to the Committee on Governmental Affairs.

By Mr. KERREY:

S. 954. A bill to assure competition in telecommunications markets; to the Committee on the Judiciary.

By Mr. MCCONNELL:

S. 955. An original bill making appropriations for foreign operations, export financing, related programs for the fiscal year ending September 30, 1998, and for other purposes; from the Committee on Appropriations; placed on the calendar.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. TORRICELLI (for himself and Mr. SARBANES):

S. 951. A bill to reestablish the Office of Noise Abatement and Control in the Environmental Protection Agency; to the Committee on Environment and Public Works.

THE QUIET COMMUNITIES ACT OF 1997

Mr. TORRICELLI. Mr. President, I rise today to introduce, along with Senator SARBANES, the Quiet Communities Act of 1997. It is estimated that noise levels in communities across the country have increased more than 10 percent over the last decade. Studies indicate that noise affects one's ability to concentrate and can cause sleep deprivation, resulting in deleterious effects on health. Air noise is polluting our communities, and we must face and address this reality that affects the quality of life of our constituents.

The Federal Aviation Administration predicts there will be 36 percent more flights in 2007 than there are today and that 60 of the 100 largest airports in this country are proposing to build new runways. A recent study by the Natural Resources' Defense Council found that the FAA's noise policy threshold is far too high for residential communities. Additionally, the study found there are over 250,000 people residing near Newark, JFK, and LaGuardia suffering from more noise than even the FAA deems fit for residences.

In the 1970 Clean Air Act, Congress authorized $30 million for the establishment of the Office of Noise Abatement and Control [ONAC] within the Environmental Protection Agency [EPA] to study noise and its effect on public health and welfare, and to consult with other Federal agencies on noise related issues. In 1982, ONAC's funding was terminated and the Office has been virtually dormant since.

Each year, new studies show potential links between high noise levels and health and quality of life issues. Few issues are as volatile or as controversial as air noise. The EPA has consistently differed with the FAA—and advocated stricter measures—on the selection of noise measurement methodologies, on the threshold of noise at which health impacts are felt, and on the implementation of noise abatement programs at airports around the Nation.

It is time to properly address the aircraft noise that affects millions of people every day in manners that are both short and long term. The Quiet Communities Act of 1997 will reestablish within the EPA an Office of Noise Abatement and Control which will be responsible for coordinating Federal noise abatement activities, updating or developing noise standards, providing technical assistance to local communities, and promoting research and education on the impacts of noise pollution. The Office will emphasize noise abatement approaches that rely on State and local activity, market incentives, and coordination with other public and private agencies. The act will also provide for the EPA to submit recommendations to Congress and the FAA regarding recommendations on new measures that could be implemented to mitigate the impact of aircraft noise on surrounding communities. I ask unanimous consent that this be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 951

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Quiet Communities Act of 1997''.

SEC. 2. FINDINGS.

Congress finds that—

(1)(A) for too many citizens of the United States, noise from aircraft, vehicular traffic, and a variety of other sources is a constant source of torment; and

(B) nearly 20,000,000 citizens of the United States are exposed to noise levels that can lead to psychological and physiological damage, and another 40,000,000 people are exposed to noise levels that cause sleep or work disruption;

(2)(A) chronic exposure to noise has been linked to increased risk of cardiovascular problems, strokes, and nervous disorders; and

(B) excessive noise causes sleep deprivation and task interruptions, which pose untold costs on society in diminished worker productivity;

(3)(A) to carry out the Clean Air Act of 1970 (42 U.S.C. 7401 et seq.), the Noise Control Act of 1972 (42 U.S.C. 4901 et seq.), and the Quiet Communities Act of 1978 (Public Law 95–609; 92 Stat. 3079), the Administrator of the Environmental Protection Agency established an Office of Noise Abatement and Control;

(B) the responsibilities of the Office of Noise Abatement and Control included promulgating noise emission standards, requiring product labeling, facilitating the development of low emission products, coordinating Federal noise reduction programs, assisting State and local abatement efforts, and promoting noise education and research; and

(C) funding for the Office of Noise Abatement and Control was terminated in 1982 and no funds have been provided since;

(4) because the Administrator of the Environmental Protection Agency remains responsible for enforcing regulations issued under the Noise Control Act of 1972 (42 U.S.C. 4901 et seq.) even though funding for the Office of Noise Abatement and Control has been terminated, and because that Act prohibits State and local governments from regulating noise sources in many situations, noise abatement programs across the United States lie dormant;

(5) as the population grows and air and vehicle traffic continues to increase, noise pollution is likely to become an even greater problem in the future; and

(6) the health and welfare of the citizens of the United States demands that the Environmental Protection Agency once again assume a role in combating noise pollution.

SEC. 3. REESTABLISHMENT OF OFFICE OF NOISE ABATEMENT AND CONTROL.

(a) REESTABLISHMENT.—

(1) IN GENERAL.—The Administrator of the Environmental Protection Agency shall reestablish an Office of Noise Abatement and Control (referred to in this Act as the ''Office'').

(2) RESPONSIBILITIES.—The Office shall be responsible for—

(A) coordinating Federal noise abatement activities;

(B) updating or developing noise standards;

(C) providing technical assistance to local communities; and

(D) promoting research and education on the impacts of noise pollution.

(3) EMPHASIZED APPROACHES.—The Office shall emphasize noise abatement approaches that rely on State and local activity, market incentives, and coordination with other public and private agencies.

(b) STUDY.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall submit a study on airport noise to Congress and the Federal Aviation Administration.

(2) AREAS OF STUDY.—The study shall—

(A) examine the Federal Aviation Administration's selection of noise measurement methodologies;

(B) the threshold of noise at which health impacts are felt; and

(C) the effectiveness of noise abatement programs at airports around the United States.

(3) RECOMMENDATIONS.—The study shall include specific recommendations to the Federal Aviation Administration on new measures that should be implemented to mitigate the impact of aircraft noise on surrounding communities.

SEC. 4. AUTHORIZING OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act—

(1) $5,000,000 for each of fiscal years 1998, 1999, and 2000; and

(2) $8,000,000 for each of fiscal years 2001 and 2002.

By Mr. SHELBY (for himself, Mr. NICKLES, and Mrs. HUTCHISON):

S. 953. A bill to require certain Federal agencies to protect the right of private property owners, and for other purposes; to the Committee on Governmental Affairs.

THE PRIVATE PROPERTY OWNERS' BILL OF RIGHTS

Mr SHELBY. Mr. President, today I rise to introduce legislation that reaffirms one of the basic principles that formed our Nation—protection of private property rights. The Private Property Owners' Bill of Rights is intended to reaffirm this constitutional right.

The right to private property is an essential freedom. While the fifth amendment to the Constitution recognizes that the Federal Government may take property for public use; it explicitly mandates that Government must compensate the private property owner. In recent years, this fundamental right has been blatantly ignored in the name of habitat and species preservation.

Since the inception of our Nation, ownership of private property has been a cornerstone of economic liberty and prosperity. The current Federal regulatory polices are an ominous cloud hanging over every landowner from the established developer to the hard-working generational farmer.

Myriad new environmental regulations stemming from the Endangered Species Act and the wetlands statues of section 404 of the Clean Water Act have rendered countless acres of private land useless. Thus leaving property owners deprived of the ability to farm, develop, or even repair existing structures on their own land. This bill does not challenge the integrity of the Endangered Species Act or the wetlands statutes; it simply attempts to shift the burden of enforcing these laws from the individual back to the Government. For too long, the policies of the Fish and Wildlife Service, the Army Corps of Engineers, or the Environmental Protection Agency, with respect to these statutes, have gone unchecked.

Property owners should not be singled out to bear the costs of public policies. If our Government determines that a certain parcel of land should be conserved or a species protected, it should purchase the land at a fair and just price. Current regulations punish individuals that happen to own land that the Government wants to manage without purchasing. Enforcement of land use statutes can range from exorbitant fines to the inability to use one's own land or even to time in prison. Currently, expensive and lengthy mitigation is the only recourse available to contest the Government's actions. Simply put, this is an intolerable situation.

Continuing the punitive approach to conservation will only serve to alienate those that are in the best position to assist with the efforts. It is estimated that three-fourths of these lands that meet the Federal Government's definition of a wetland through section 404 of the Clean Water Act, are privately owned. It is time to change the bureaucratic viewpoint that protecting a private property owners' constitutionally guaranteed rights comes at the cost of protecting the environment. Contrary to the Government's actions, both are intrinsically linked.

Throughout my tenure, I have heard countless stories of landowners being denied the right to use their own land—the very property that they purchased or inherited, cared for, developed and pay taxes on—because the Government determines there is a need to preserve the property for a wetland or species. These citizens find themselves in a regulatory nightmare—unable to live off the land yet unable to sell it to the Government, or anyone for that matter, for full market value. Only on paper is the land truly theirs.

For example, a farmer in Missouri was accused of destroying wetlands simply for moving dirt while repairing a broken levee on his family's property. In another disturbing instance, Texan Marge Rector spent $830,000 to purchase 15 acres of land for her retirement. Soon after, it was determined that her land was a potential habitat for the black-capped vireo and the golden-cheeked warbler. Within 5 years, her land was determined to be worth approximately $30,000. Her retirement dream turned into a nightmare.

Unfortunately these are not isolated cases, there are hundreds of individuals in similar predicaments across our country. This issue is not limited by geographical boundaries, socio-economic status or occupation. Any individual that owns land is subject to unexpected, unpredictable environmental regulation that—at the very least—will rob a person of the economic value of their land or, worse, force a landowner into prison for rightfully using their land.

Mr. President, the time has arrived to realistically address the matter at hand by creating a clearly defined policy for Federal agencies to follow. Abusing the rights of private property owners in the name of the environment must end. Congress needs to act before the economic future of more citizens is put at risk.

Therefore, I am pleased to reintroduce the Private Property Owners' Bill of Rights with my colleagues, Senators NICKLES and HUTCHISON. This bill would reaffirm the Federal Government's constitutional responsibility to protect private property by requiring the Federal Government and its agents, to include private property owners in any process or action to take private land.

The Private Property Owners' Bill of Rights requires a Federal agency and its representative to give notice and gain consent from property owners prior to entering a property owner's land for the purpose of gathering information to enforce the Endangered Species Act or any wetlands statute. Private property owners also would be guaranteed the right to complete access to that information and the right to debate its accuracy prior to the Government's use of it.

Additionally, this legislation requires Federal Government agencies to create an administrative appeals process for owners of property adversely affected by environmental regulations. The Endangered Species Act will be amended to require that private property owners are notified and included in any management agreement that would affect their land. These provisions will assure that the landowner's voice is heard.

Most importantly, the private property owners' bill of rights guarantees compensation for landowners whose property is devalued by $10,000 or 20 percent of its fair market value by Federal action. Uniform guidelines would be created that all Federal agencies and landowners would follow when developing a compensation agreement. If disagreements arise between the parties, they may request arbitration. In

no manner does this option limit the availability of alternative legal measures. These are reasonable protections to ensure that landowners' rights, guaranteed under the Constitution, are not violated and that Government affirmatively meets its constitutional obligation to protect private property.

Our Nation is built on the principles of individual freedoms and rights. It is time that the Federal Government abide by the laws of our land and stop the practice of regulating private property without the benefit of compensation. These abuses must end. I urge my colleagues to join me in support of this effort.

I ask unanimous consent that the Private Property Owners' Bill of Rights Act of 1997 be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 953

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Private Property Owners' Bill of Rights''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Our democracy was founded on principles of ownership, use, and control of private property. These principles are embodied in the fifth amendment to the Constitution, which prohibits the taking of private property without the payment of just compensation.

(2) A number of Federal environmental programs, specifically the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344), have been implemented by employees, agents, and representatives of the Federal Government in a manner that deprives private property owners of the use and control of their property.

(3) As new Federal programs are proposed that would limit and restrict the use of private property to provide habitat for plant and animal species, the rights of private property owners must be recognized and respected.

(4) Private property owners are being forced by Federal policy to resort to extensive, lengthy, and expensive litigation to protect certain basic civil rights guaranteed by the Constitution.

(5) Since many private property owners do not have the financial resources or the extensive commitment of time to proceed in litigation against the Federal Government, a clear Federal policy is needed to guide and direct Federal agencies with respect to the implementation by the agencies of environmental laws that directly impact private property.

(6) While all private property owners should and must abide by nuisance laws and should not use their property in a manner that harms their neighbors, these laws have traditionally been enacted, implemented, and enforced at the State and local levels where the laws are best able to protect the rights of all private property owners and local citizens.

(7) While traditional pollution control laws are intended to protect the health and physical welfare of the general public, habitat protection programs in effect on the date of enactment of this Act are intended to protect the welfare of plant and animal species, while allowing recreational and aesthetic opportunities for the public.

(b) PURPOSE.—The purpose of this Act is to provide a consistent Federal policy to—

(1) encourage, support, and promote the private ownership of property; and

(2) ensure that the constitutional and legal rights of private property owners are protected by the Federal Government and employees, agents, and representatives of the Federal Government.

SEC. 3. DEFINITIONS.

In this Act:

(1) AGENCY HEAD.—The term ''agency head'' means the Secretary or Administrator with jurisdiction or authority to take a final agency action under 1 or more of the applicable provisions of law.

(2) APPLICABLE PROVISIONS OF LAW.—The term ''applicable provisions of law'' means the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344).

(3) NON-FEDERAL PERSON.—The term ''non-Federal person'' means a person other than an officer, employee, agent, department, or instrumentality of—

(A) the Federal Government; or

(B) a foreign government.

(4) PRIVATE PROPERTY OWNER.—The term ''private property owner'' means a non-Federal person (other than an officer, employee, agent, department, or instrumentality of a State, municipality, or political subdivision of a State, or a State, municipality, or political subdivision of a State) that—

(A) owns property referred to in subparagraph (A) or (B) of paragraph (5); or

(B) holds property referred to in paragraph (5)(C).

(5) PROPERTY.—The term ''property'' means—

(A) land;

(B) any interest in land; and

(C) any proprietary water right.

(6) QUALIFIED AGENCY ACTION.—The term ''qualified agency action'' means an agency action (as defined in section 551(13) of title 5, United States Code) that is taken under 1 or more of the applicable provisions of law.

SEC. 4. PROTECTION OF PRIVATE PROPERTY RIGHTS.

(a) IN GENERAL.—In implementing and enforcing the applicable provisions of law, each agency head shall—

(1) comply with applicable State and tribal government laws, including laws relating to private property rights and privacy; and

(2) implement and enforce the applicable provisions of law in a manner that has the least impact on the constitutional and other legal rights of private property owners.

(b) REGULATIONS.—Each agency head shall develop and implement regulations for ensuring that the constitutional and other legal rights of private property owners are protected in any case in which the agency head makes, or participates with other agencies in the making of, any final decision that restricts the use of private property.

SEC. 5. PROPERTY OWNER CONSENT FOR ENTRY.

(a) IN GENERAL.—Subject to subsection (b), an agency head may not enter privately owned property to collect information regarding the property, unless the private property owner has—

(1) consented in writing to the entry;

(2) after providing the consent, been provided notice of the entry; and

(3) been notified that any raw data collected from the property must be made available to the private property owner at no cost, if requested by the private property owner.

(b) ENTRY FOR CONSENT OR NOTICE.—Subsection (a) shall not prohibit entry onto property for the purpose of obtaining consent or providing notice required under subsection (a).

SEC. 6. RIGHT TO REVIEW AND DISPUTE DATA COLLECTED FROM PRIVATE PROPERTY.

An agency head may not use data that is collected from privately owned property to implement or enforce any of the applicable provisions of law, unless the agency head has—

(1) provided to the private property owner—

(A) access to the information;

(B) a detailed description of the manner in which the information was collected; and

(C) an opportunity to dispute the accuracy of the information; and

(2) determined that the information is accurate, if the private property owner disputes the accuracy of the information pursuant to paragraph (1)(C).

SEC. 7. RIGHT TO AN ADMINISTRATIVE APPEAL OF WETLANDS DECISIONS.

Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) is amended by adding at the end the following:

''(u) ADMINISTRATIVE APPEALS.—

''(1) IN GENERAL.—The Secretary or the Administrator, after notice and opportunity for public comment, shall issue rules to establish procedures to provide private property owners, or authorized representatives of the owners, an opportunity for an administrative appeal of the following actions under this section:

''(A) A determination of regulatory jurisdiction over a particular parcel of property.

''(B) The denial of a permit.

''(C) The terms and conditions of a permit.

''(D) The imposition of an administrative penalty.

''(E) The imposition of an order requiring the private property owner to restore or otherwise alter the property.

''(2) DECISION.—The rules issued under paragraph (1) shall provide that any administrative appeal of an action described in paragraph (1) shall be heard and decided by an official other than the official who took the action, and shall be conducted at a location that is in the vicinity of the property involved in the action.

''(3) DEFINITIONS.—In this subsection:

''(A) NON-FEDERAL PERSON.—The term 'non-Federal person' means a person other than an officer, employee, agent, department, or instrumentality of—

''(i) the Federal Government; or

''(ii) a foreign government.

''(B) PRIVATE PROPERTY OWNER.—The term 'private property owner' means a non-Federal person (other than an officer, employee, agent, department, or instrumentality of a State, municipality, or political subdivision of a State, or a State, municipality, or political subdivision of a State) that—

''(i) owns property referred to in clause (i) or (ii) of subparagraph (C); or

''(ii) holds property referred to in subparagraph (C)(iii).

''(C) PROPERTY.—The term 'property' means—

''(i) land;

''(ii) any interest in land; and

''(iii) any proprietary water right.''.

SEC. 8. RIGHT TO ADMINISTRATIVE APPEAL UNDER THE ENDANGERED SPECIES ACT OF 1973.

Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended by adding at the end the following:

''(i) ADMINISTRATIVE APPEALS.—

''(1) IN GENERAL.—The Secretary, after notice and opportunity for public comment, shall issue rules to establish procedures to

provide private property owners, or authorized representatives of the owners, an opportunity for an administrative appeal of the following actions under this Act:

''(A) A determination that a particular parcel of property is critical habitat of a species listed under section 4.

''(B) The denial of a permit for an incidental take.

''(C) The terms and conditions of a permit for an incidental take.

''(D) The imposition of an administrative penalty.

''(E) The imposition of an order prohibiting or substantially limiting the use of the property.

''(2) DECISION.—The rules issued under paragraph (1) shall provide that any administrative appeal of an action described in paragraph (1) shall be heard and decided by an official other than the official who took the action, and shall be conducted at a location that is in the vicinity of the parcel of property involved in the action.

''(3) DEFINITIONS.—In this subsection:

''(A) NON-FEDERAL PERSON.—The term 'non-Federal person' means a person other than an officer, employee, agent, department, or instrumentality of—

''(i) the Federal Government; or

''(ii) a foreign government.

''(B) PRIVATE PROPERTY OWNER.—The term 'private property owner' means a non-Federal person (other than an officer, employee, agent, department, or instrumentality of a State, municipality, or political subdivision of a State, or a State, municipality, or political subdivision of a State) that—

''(i) owns property referred to in clause (i) or (ii) of subparagraph (C); or

''(ii) holds property referred to in subparagraph (C)(iii).

''(C) PROPERTY.—The term 'property' means—

''(i) land;

''(ii) any interest in land; and

''(iii) any proprietary water right.''.

SEC. 9. COMPENSATION FOR TAKING OF PRIVATE PROPERTY.

(a) ELIGIBILITY.—A private property owner that, as a consequence of a final qualified agency action of an agency head, is deprived of $10,000, or 20 percent or more, of the fair market value of the affected portion of the property of the owner, as determined by a qualified appraisal expert, shall be entitled to receive compensation in accordance with this section.

(b) DEADLINE.—Not later than 90 days after receipt of a final decision of an agency head that deprives a private property owner of the fair market value or viable use of property for which compensation is required under subsection (a), the private property owner may submit in writing a request to the agency head for compensation in accordance with subsection (c).

(c) AGENCY HEAD'S OFFER.—Not later than 180 days after the receipt of a request for compensation under subsection (b), the agency head shall stay the decision and provide to the private property owner—

(1) an offer to purchase the affected property of the private property owner at the fair market value that would apply if there were no use restrictions under the applicable provisions of law; and

(2) an offer to compensate the private property owner for the difference between the fair market value of the property without the restrictions and the fair market value of the property with the restrictions.

(d) PRIVATE PROPERTY OWNER'S RESPONSE.—

(1) IN GENERAL.—A private property owner shall have 60 days after the date of receipt of the offers of the agency head under subsection (c) to accept 1 of the offers or to reject both offers.

(2) SUBMISSION TO ARBITRATION.—If the private property owner rejects both offers, the private property owner may submit the matter for arbitration to an arbitrator appointed by the agency head from a list of arbitrators submitted to the agency head by the American Arbitration Association. The arbitration shall be conducted in accordance with the real estate valuation arbitration rules of the association. For the purposes of this section, an arbitration shall be binding on the agency head and a private property owner as to the amount, if any, of compensation owed to the private property owner and whether for the purposes of this section the private property owner has been deprived of the fair market value or viable use of property for which compensation is required under subsection (a).

(e) JUDGMENT.—A qualified agency action of an agency head that deprives a private property owner of property as described in subsection (a), shall be deemed, at the option of the private property owner, to be a taking under the Constitution and a judgment against the United States if the private property owner—

(1) accepts an offer of the agency head under subsection (c); or

(2) submits to arbitration under subsection (d).

(f) PAYMENT.—An agency head shall pay a private property owner any compensation required under the terms of an offer of the agency head that is accepted by the private property owner in accordance with subsection (d), or under a decision of an arbitrator under that subsection, by not later than 60 days after the date of the acceptance or the date of the issuance of the decision, respectively.

(g) FORM OF PAYMENT.—Payment under this section shall be in a form agreed to by the agency head and the private property owner and may be in the form of—

(1) payment of an amount that is equal to the fair market value of the property on the day before the date of the final qualified agency action with respect to which the property or interest is acquired;

(2) payment of an amount that is equal to the reduction in value of the property; or

(3) conveyance of real property or an interest in real property that has a fair market value equal to the amount referred to in paragraph (1) or (2).

(h) OTHER RIGHTS PRESERVED.—This section shall not preempt, alter, or limit the availability of any remedy for the taking of property or an interest in property that is available under the Constitution or any other law.

(i) FINAL JUDGMENTS.—If a private property owner unsuccessfully seeks compensation under this section and thereafter files a claim for compensation under the fifth amendment to the Constitution and is successful in obtaining a final judgment ordering compensation from the United States Court of Federal Claims for the claim, the agency head who made the final agency decision that results in the taking shall reimburse, from funds appropriated to the agency for the 2 fiscal years following payment of the compensation, the Treasury of the United States for amounts appropriated under section 1304 of title 31, United States Code, to pay the judgment against the United States.

SEC. 10. PRIVATE PROPERTY OWNER PARTICIPATION IN COOPERATIVE AGREEMENTS.

Section 6(b) of the Endangered Species Act of 1973 (16 U.S.C. 1535(b)) is amended—

(1) by striking ''The Secretary'' and inserting the following:

''(1) IN GENERAL.—The Secretary''; and

(2) by adding at the end the following:

''(2) PARTICIPATION BY PRIVATE PROPERTY OWNERS.—

''(A) IN GENERAL.—Notwithstanding any other provision of this section, in any case in which the Secretary enters into a management agreement under paragraph (1) that establishes restrictions on the use of property, the Secretary shall notify all private property owners or lessees of the property that is subject to the management agreement and shall provide an opportunity for each private property owner or lessee to participate in the management agreement.

''(B) DEFINITIONS.—In this paragraph:

''(i) NON-FEDERAL PERSON.—The term 'non-Federal person' means a person other than an officer, employee, agent, department, or instrumentality of—

''(I) the Federal Government; or

''(II) a foreign government.

''(ii) PRIVATE PROPERTY OWNER.—The term 'private property owner' means a non-Federal person (other than an officer, employee, agent, department, or instrumentality of a State, municipality, or political subdivision of a State, or a State, municipality, or political subdivision of a State) that—

''(I) owns property referred to in subclause (I) or (II) of clause (iii); or

''(II) holds property referred to in clause (iii)(III).

''(iii) PROPERTY.—The term 'property' means—

''(I) land;

''(II) any interest in land; and

''(III) any proprietary water right.''.

Mr. NICKLES. Mr. President, of all the freedoms we enjoy in this country, the ability to own, care for, and develop private property is perhaps the most crucial to our free enterprise economy. In fact, our economy would cease to function without the incentives provided by private property. So sacred and important are these rights, that our forefathers chose to specifically protect them in the fifth amendment to the U.S. Constitution, which says in part, ''nor shall private property be taken for public use, without just compensation.''

Unfortunately, some Federal environmental, safety, and health laws are encouraging Government violation of private property rights, and it is a problem which is increasing in severity and frequency. We would all like to believe the Constitution will protect our property rights if they are threatened, but today that is simply not true. The only way for a person to protect their private property rights is in the courts, and far too few people have the time or money to take such action. Thus many citizens lose their fifth amendment rights simply because no procedures have been established to prevent Government takings.

Many people in the Federal bureaucracy believe that public protection of health, safety, and the environment is not compatible with protection of private property rights. I disagree. In fact, the terrible environmental conditions exposed in Eastern Europe when the cold war ended lead me to believe that property ownership enhances environmental protection. As the residents of East Berlin and Prague know all too well, private owners are more effective

caretakers of the environment than communist governments.

Yet the question remains, how do we prevent overzealous bureaucrats from using their authority in ways which threaten property rights?

Today I rise to join my colleague Senator RICHARD SHELBY of Alabama in introducing legislation which will strengthen every citizen's fifth amendment rights. Our bill, the Private Property Owners Bill of Rights, targets two of the worst property rights offenders, the Endangered Species Act and the Wetlands Permitting Program established by Section 404 of the Clean Water Act.

Our bill requires Federal agents who enter private property to gather information under either the Endangered Species Act or the Wetlands Permitting Program to first obtain the written consent of the landowner. While it is difficult to believe that such a basic right should need to be spelled out in law, overzealous bureaucrats and environmental radicals too often mistake private resources as their own. Property owners are also guaranteed the right of access to that information, the right to dispute its accuracy, and the right of an administrative appeal from decisions made under those laws.

Most importantly, the Private Property Owners Bill of Rights guarantees compensation for a landowner whose property is devalued by $10,000, or 20 percent or more, of the fair market value resulting from a Federal action under the Endangered Species Act or Wetlands Permitting Program. An administrative process is established to give property owners a simple and inexpensive way to seek resolution of their takings claims. If we are to truly live up to the requirements of our Constitution, we must make this commitment. I believe this provision will work both to protect landowners from uncompensated takings and to discourage Government actions which would cause such takings.

The time has come for farmers, ranchers, and other landowners to take a stand against violations of their private property rights by the Federal bureaucracy. The Private Property Owners Bill of Rights will help landowners take that stand.

By Mr. KERREY:

S. 954. A bill to assure competition in telecommunications markets; to the Committee on the Judiciary.

THE TELECOMMUNICATIONS COMPETITION ACT OF 1997

Mr. KERREY. Mr. President, the Telecommunications Act of 1996 was to usher in a new era of competition, choice, jobs, universal service, and infrastructure investment.

Much of the promise of the new act remains unfulfilled. Most disappointing has been progress on the competition front. Rather than and explosion of competition, in the year since the law was enacted, there has been a disturbing trend toward consolidation.

I rise to express serious concern about the Department of Justice's approach to mergers in the telecommunications industry. I feel very strongly that the Justice Department approval of the Bell Atlantic and Nynex merger is bad competition policy and bad telecommunications policy.

With this merger, two strong potential competitors with two vibrant, rich markets are now one. This loss of competition follows the equally troublesome merger between Telecomm giants Pacific Telesis and Southwestern Bell. Perhaps most troubling is that these approvals have opened the door for even larger mergers.

What was unimaginable a year ago, the reconstruction of the old Bell System monopoly is very much within the realm of possibility.

Mr. President, the urge to compete should not be replaced with the urge to merge.

A little more than a year ago, the Congress enacted landmark legislation to open telecommunications markets to competition, preserve and advance universal service, and spur private investment in telecommunication infrastructure. Over the last year, the Federal Communications Commission has worked around the clock to implement the new law. It has been a daunting task, frustrated by litigation and regulatory wrangling.

While the FCC and the States struggle with implementation of the new law, it is important to remember that a key part of that legislation did not rely on regulation, it relied on the marketplace. The idea was to unleash pent up competitive forces among and between telecommunications companies. Mega mergers between telecommunications titans quell these market forces for increased investment, lower rates, and improved service.

To unshackle the restraints of the Court supervised breakup of AT&T, the Congress gave Regional Bell Operating Companies instant access to long distance markets outside of their local service regions and access to long distance markets inside their regions when they opened their markets to local competition.

In addition to responding to the lure of long distance markets, Regional Bell Operating Companies and other local exchange carriers were expected to covet each other's markets. The attraction of serving new local markets was to be a key catalyst for breaking down barriers to competition.

With these mergers, local competition and long distance competition is lost. In addition, potential internet, video and broad band competition has disappeared.

The promise of the new law was that competition, not consolidation would bring new services at lower prices to consumers. Where competition failed to advance service and restrain prices, universal service support would assure that telephone rates and services where comparable in rural and urban areas.

When certain large telecommunications companies combine, they not only eliminate the potential of competition with each other in each other's markets, but they can create a market power which may be capable of resisting competition from others. They can also create the possibility of an unequal bargaining power when they compete with or deal with small, independent and new carriers.

The promise of the Telecommunications Act was improved service and lower rates for consumers through competition and the advancement of universal service. If properly implemented, the Telecommunications Act of 1996 can deliver, but the disappointing merger decisions of the Department of Justice will make that task much more difficult.

The legislation I introduce today would clearly institute an appropriate level scrutiny for mergers between large telecommunications companies. I believe that the antitrust laws and the Telecommunications Act would permit this type of analysis, without the adoption of a new statute, but to date, the Department of Justice has not seemed willing to pursue this approach.

Under the Telecommunications Monopoly Prevention Act, new megamergers would not be prohibited but be required to be reviewed in the context of their contribution to competition.

This legislation is by no means a moratorium on mergers. Indeed, some mergers, even among large telecommunications companies, may be very much in the consumers interests and in the interest of competition. This legislation simply requires a level of review consistent with the vision of the Telecommunications Act.

It is my view that the Justice Department is presently pursuing a standard of review for telecomm mergers which would be appropriate for competitive companies tending toward monopoly, but not for monopolies which should be moving toward competition.

Mr. President, I ask that the text of the Telecommunications Monopoly Prevention Act be printed in the RECORD as read and urge my colleagues to review and support this needed piece of legislation.

ADDITIONAL COSPONSORS

S. 9

At the request of Mr. NICKLES, the name of the Senator from Pennsylvania [Mr. SANTORUM] was added as a cosponsor of S. 9, a bill to protect individuals from having their money involuntarily collected and used for politics by a corporation or labor organization.

S. 63

At the request of Mr. FEINGOLD, the name of the Senator from New Jersey [Mr. TORRICELLI] was added as a cosponsor of S. 63, a bill to amend certain Federal civil rights statutes to prevent the involuntary application of arbitration to claims that arise from unlawful