

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 4128

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 4, 2005

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

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## 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 2005”.

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 subsequently used for economic development, if that  
12 State or political subdivision receives Federal economic de-  
13 velopment funds during any fiscal year in which it does  
14 so.

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.

11 **SEC. 3. PROHIBITION ON EMINENT DOMAIN ABUSE BY THE**  
12 **FEDERAL GOVERNMENT.**

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

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

17 (a) CAUSE OF ACTION.—Any owner of private prop-  
18 erty who suffers injury as a result of a violation of any  
19 provision of this Act may bring an action to enforce any  
20 provision of this Act in the appropriate Federal or State  
21 court, and a State shall not be immune under the eleventh  
22 amendment to the Constitution of the United States from  
23 any such action in a Federal or State court of competent  
24 jurisdiction. In such action, the defendant has the burden  
25 to show by clear and convincing evidence that the taking

1 is not for economic development. Any such property owner  
2 may also seek any appropriate relief through a preliminary  
3 injunction or a temporary restraining order.

4 (b) **LIMITATION ON BRINGING ACTION.**—An action  
5 brought under this Act may be brought if the property  
6 is used for economic development following the conclusion  
7 of any condemnation proceedings condemning the private  
8 property of such property owner, but shall not be brought  
9 later than seven years following the conclusion of any such  
10 proceedings and the subsequent use of such condemned  
11 property for economic development.

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

17 **SEC. 5. 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 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.—Not  
17          later than 30 days after the enactment of this Act, the  
18          Attorney General shall publish in the Federal Register and  
19          make available on the Internet website maintained by the  
20          United States Department of Justice a notice containing  
21          the text of this Act and a description of the rights of prop-  
22          erty owners under this Act.

23          **SEC. 6. REPORT.**

24          Not later than 1 year after the date of enactment  
25          of this Act, and every subsequent year thereafter, the At-

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

7 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 States or political subdivisions  
12          that have lost Federal economic development funds  
13          as a result of a violation of this Act, as well as de-  
14          scribe the type and amount of Federal economic de-  
15          velopment funds lost in each State or political sub-  
16          division and the Agency that is responsible for with-  
17          holding such funds;

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

21 **SEC. 7. SENSE OF CONGRESS REGARDING RURAL AMERICA.**

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

23               (1) The founders realized the fundamental im-  
24               portance of property rights when they codified the  
25               Takings Clause of the Fifth Amendment to the Con-

1       stitution, which requires that private property shall  
2       not be taken “for public use, without just compensa-  
3       tion”.

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

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

15          (4) In the wake of the Supreme Court’s deci-  
16      sion in *Kelo v. City of New London*, abuse of eminent  
17      domain is a threat to the property rights of all pri-  
18      vate property owners, including rural land owners.

19      (b) SENSE OF CONGRESS.—It is the sense of Con-  
20      gress that the use of eminent domain for the purpose of  
21      economic development is a threat to agricultural and other  
22      property in rural America and that the Congress should  
23      protect the property rights of Americans, including those  
24      who reside in rural areas. Property rights are central to  
25      liberty in this country and to our economy. The use of

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

20 **SEC. 8. DEFINITIONS.**

21 In this Act the following definitions apply:

22 (1) **ECONOMIC DEVELOPMENT.**—The term  
23 “economic development” means taking private prop-  
24 erty, without the consent of the owner, and con-  
25 veying or leasing such property from one private



1 person or entity to another private person or entity  
2 for commercial enterprise carried on for profit, or to  
3 increase tax revenue, tax base, employment, or gen-  
4 eral economic health, except that such term shall not  
5 include—

6 (A) conveying private property—

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

9 (ii) to an entity, such as a common  
10 carrier, that makes the property available  
11 to the general public as of right, such as  
12 a railroad or public facility;

13 (iii) for use as a road or other right  
14 of way or means, open to the public for  
15 transportation, whether free or by toll;

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

18 (B) removing harmful uses of land pro-  
19 vided such uses constitute an immediate threat  
20 to public health and safety;

21 (C) leasing property to a private person or  
22 entity that occupies an incidental part of public  
23 property or a public facility, such as a retail es-  
24 tablishment on the ground floor of a public  
25 building;

- 1 (D) acquiring abandoned property;
- 2 (E) clearing defective chains of title;
- 3 (F) taking private property for use by a  
4 public utility; and
- 5 (G) redeveloping of a brownfield site as de-  
6 fined in the Small Business Liability Relief and  
7 Brownfields Revitalization Act (42 U.S.C.  
8 9601(39)).

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

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

20 **SEC. 9. SEVERABILITY AND EFFECTIVE DATE.**

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

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

6 **SEC. 10. SENSE OF CONGRESS.**

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

12 **SEC. 11. BROAD CONSTRUCTION.**

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

16 **SEC. 12. LIMITATION ON STATUTORY CONSTRUCTION.**

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

21 **SEC. 13. RELIGIOUS AND NONPROFIT ORGANIZATIONS.**

22 (a) PROHIBITION ON STATES.—No State or political  
23 subdivision of a State shall exercise its power of eminent  
24 domain, or allow the exercise of such power by any person  
25 or entity to which such power has been delegated, over

1 property of a religious or other nonprofit organization by  
2 reason of the nonprofit or tax-exempt status of such orga-  
3 nization, or any quality related thereto if that State or  
4 political subdivision receives Federal economic develop-  
5 ment funds during any fiscal year in which it does so.

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

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

1 **SEC. 14. 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. 15. 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.

Passed the House of Representatives November 3,  
2005.

Attest:

JEFF TRANDAHL,

*Clerk.*

By GERASIMOS C. VANS,

*Deputy Clerk.*