

## Union Calendar No.

115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 1689

[Report No. 115-]

To protect private property rights.

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### IN THE HOUSE OF REPRESENTATIVES

MARCH 22, 2017

Mr. SENSENBRENNER (for himself, Ms. MAXINE WATERS of California, and Mr. FITZPATRICK) introduced the following bill; which was referred to the Committee on the Judiciary

MAY --, 2018

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

# **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 2017”.

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  
10 allow the exercise of such power by any person or entity  
11 to which such power has been delegated, over property to  
12 be used for economic development or over property that  
13 is used for economic development within 7 years after that  
14 exercise, if that State or political subdivision receives Fed-  
15 eral economic development funds during any fiscal year  
16 in which the property is so used or intended to be used.

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

1 or political subdivision shall be returned or reimbursed by  
2 such State or political subdivision to the appropriate Fed-  
3 eral agency or authority of the Federal Government, or  
4 component thereof.

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

15 **SEC. 3. PROHIBITION ON EMINENT DOMAIN ABUSE BY THE**  
16 **FEDERAL GOVERNMENT.**

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

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

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

1 injury as a result of a violation of any provision of this  
2 Act with respect to that property, may bring an action  
3 to enforce any provision of this Act in the appropriate  
4 Federal or State court. A State shall not be immune under  
5 the 11th Amendment to the Constitution of the United  
6 States from any such action in a Federal or State court  
7 of competent jurisdiction. In such action, the defendant  
8 has the burden to show by clear and convincing evidence  
9 that the taking is not for economic development. Any such  
10 property owner or tenant may also seek an appropriate  
11 relief through a preliminary injunction or a temporary re-  
12 straining order.

13 (b) LIMITATION ON BRINGING ACTION.—An action  
14 brought by a property owner or tenant under this Act may  
15 be brought if the property is used for economic develop-  
16 ment following the conclusion of any condemnation pro-  
17 ceedings condemning the property of such property owner  
18 or tenant, but shall not be brought later than seven years  
19 following the conclusion of any such proceedings.

20 (c) ATTORNEYS' FEE AND OTHER COSTS.—In any  
21 action or proceeding under this Act, the court shall allow  
22 a prevailing plaintiff a reasonable attorneys' fee as part  
23 of the costs, and include expert fees as part of the attor-  
24 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 prop-  
5 erty is subject to eminent domain who suffers injury as  
6 a result of a violation of any provision of this Act with  
7 respect to that property; or (2) any tenant of property that  
8 is subject to eminent domain who suffers injury as a result  
9 of a violation of any provision of this Act with respect to  
10 that property, may report a violation by the Federal Gov-  
11 ernment, any authority of the Federal Government, State,  
12 or 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(e) 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. SENSE OF CONGRESS.**

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

17 **SEC. 10. RELIGIOUS AND NONPROFIT ORGANIZATIONS.**

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

1 political subdivision receives Federal economic develop-  
2 ment funds during any fiscal year in which it does so.

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

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

1 **SEC. 11. 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. 12. 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. 13. DISPROPORTIONATE IMPACT.**

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 former own-  
22 ers and tenants and inform them of the violation and any  
23 remedies they may have.

24 **SEC. 14. 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 utility providing electric, natural gas, tele-  
10 communication, water, wastewater, or other  
11 utility services either directly to the public or  
12 indirectly through provision of such services at  
13 the wholesale level for resale to the public; and

14 (G) redeveloping of a brownfield site as de-  
15 fined in the Small Business Liability Relief and  
16 Brownfields Revitalization Act (42 U.S.C.  
17 9601(39)).

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

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

5 **SEC. 15. LIMITATION ON STATUTORY CONSTRUCTION.**

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

10 **SEC. 16. 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. 17. SEVERABILITY AND EFFECTIVE DATE.**

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

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