H.R. 1689
[Report No. 115–]

To protect private property rights.

IN THE HOUSE OF REPRESENTATIVES

MARCH 22, 2017

Mr. SENSENBERNER (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.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Private Property
Rights Protection Act of 2017”.

SEC. 2. PROHIBITION ON EMINENT DOMAIN ABUSE BY

STATES.

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

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

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

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

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

SEC. 4. PRIVATE RIGHT OF ACTION.

(a) CAUSE OF ACTION.—Any—(1) owner of private
property whose property is subject to eminent domain who
suffers injury as a result of a violation of any provision
of this Act with respect to that property; or (2) any tenant
of property that is subject to eminent domain who suffers
injury as a result of a violation of any provision of this Act with respect to that property, may bring an action to enforce any provision of this Act in the appropriate Federal or State court. A State shall not be immune under the 11th Amendment to the Constitution of the United States from any such action in a Federal or State court of competent jurisdiction. In such action, the defendant has the burden to show by clear and convincing evidence that the taking is not for economic development. Any such property owner or tenant may also seek an appropriate relief through a preliminary injunction or a temporary restraining order.

(b) LIMITATION ON BRINGING ACTION.—An action brought by a property owner or tenant under this Act may be brought if the property is used for economic development following the conclusion of any condemnation proceedings condemning the property of such property owner or tenant, but shall not be brought later than seven years following the conclusion of any such proceedings.

(c) ATTORNEYS’ FEE AND OTHER COSTS.—In any action or proceeding under this Act, the court shall allow a prevailing plaintiff a reasonable attorneys’ fee as part of the costs, and include expert fees as part of the attorneys’ fee.
SEC. 5. REPORTING OF VIOLATIONS TO ATTORNEY GENERAL.

(a) Submission of Report to Attorney General.—Any—(1) owner of private property whose property is subject to eminent domain who suffers injury as a result of a violation of any provision of this Act with respect to that property; or (2) any tenant of property that is subject to eminent domain who suffers injury as a result of a violation of any provision of this Act with respect to that property, may report a violation by the Federal Government, any authority of the Federal Government, State, or political subdivision of a State to the Attorney General.

(b) Investigation by Attorney General.—Upon receiving a report of an alleged violation, the Attorney General shall conduct an investigation to determine whether a violation exists.

(c) Notification of Violation.—If the Attorney General concludes that a violation does exist, then the Attorney General shall notify the Federal Government, authority of the Federal Government, State, or political subdivision of a State that the Attorney General has determined that it is in violation of the Act. The notification shall further provide that the Federal Government, State, or political subdivision of a State has 90 days from the date of the notification to demonstrate to the Attorney General either that: (1) it is not in violation of the Act;
or (2) that it has cured its violation by returning all real
property the taking of which the Attorney General finds
to have constituted a violation of the Act and replacing
any other property destroyed and repairing any other
property damaged as a result of such violation.

(d) ATTORNEY GENERAL’S BRINGING OF ACTION TO
ENFORCE ACT.—If, at the end of the 90-day period de-
scribed in subsection (c), the Attorney General determines
that the Federal Government, authority of the Federal
Government, State, or political subdivision of a State is
still violating the Act or has not cured its violation as de-
scribed in subsection (c), then the Attorney General will
bring an action to enforce the Act unless the property
owner or tenant who reported the violation has already
brought an action to enforce the Act. In such a case, the
Attorney General shall intervene if it determines that
intervention is necessary in order to enforce the Act. The
Attorney General may file its lawsuit to enforce the Act
in the appropriate Federal or State court. A State shall
not be immune under the 11th Amendment to the Con-
stitution of the United States from any such action in a
Federal or State court of competent jurisdiction. In such
action, the defendant has the burden to show by clear and
convincing evidence that the taking is not for economic
development. The Attorney General may seek any appro-
appropriate relief through a preliminary injunction or a temporary restraining order.

(e) LIMITATION ON BRINGING ACTION.—An action brought by the Attorney General under this Act may be brought if the property is used for economic development following the conclusion of any condemnation proceedings condemning the property of an owner or tenant who reports a violation of the Act to the Attorney General, but shall not be brought later than seven years following the conclusion of any such proceedings.

(f) ATTORNEYS’ FEE AND OTHER COSTS.—In any action or proceeding under this Act brought by the Attorney General, the court shall, if the Attorney General is a prevailing plaintiff, award the Attorney General a reasonable attorneys’ fee as part of the costs, and include expert fees as part of the attorneys’ fee.

SEC. 6. NOTIFICATION BY ATTORNEY GENERAL.

(a) NOTIFICATION TO STATES AND POLITICAL SUBDIVISIONS.—

(1) Not later than 30 days after the enactment of this Act, the Attorney General shall provide to the chief executive officer of each State the text of this Act and a description of the rights of property owners and tenants under this Act.
(2) Not later than 120 days after the enactment of this Act, the Attorney General shall compile a list of the Federal laws under which Federal economic development funds are distributed. The Attorney General shall compile annual revisions of such list as necessary. Such list and any successive revisions of such list shall be communicated by the Attorney General to the chief executive officer of each State and also made available on the Internet website maintained by the United States Department of Justice for use by the public and by the authorities in each State and political subdivisions of each State empowered to take private property and convert it to public use subject to just compensation for the taking.

(b) Notification to Property Owners and Tenants.—Not later than 30 days after the enactment of this Act, the Attorney General shall publish in the Federal Register and make available on the Internet website maintained by the United States Department of Justice a notice containing the text of this Act and a description of the rights of property owners and tenants under this Act.

SEC. 7. REPORTS.

(a) By Attorney General.—Not later than 1 year after the date of enactment of this Act, and every subse-
sequent year thereafter, the Attorney General shall transmit a report identifying States or political subdivisions that have used eminent domain in violation of this Act to the Chairman and Ranking Member of the Committee on the Judiciary of the House of Representatives and to the Chairman and Ranking Member of the Committee on the Judiciary of the Senate. The report shall—

(1) identify all private rights of action brought as a result of a State’s or political subdivision’s violation of this Act;

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

(3) identify the percentage of minority residents compared to the surrounding nonminority residents and the median incomes of those impacted by a violation of this Act;

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

(5) identify all States or political subdivisions that have lost Federal economic development funds as a result of a violation of this Act, as well as describe the type and amount of Federal economic development funds lost in each State or political subdivision and the Agency that is responsible for withholding such funds; and
(6) discuss all instances in which a State or political subdivision has cured a violation as described in section 2(c) of this Act.

(b) DUTY OF STATES.—Each State and local authority that is subject to a private right of action under this Act shall have the duty to report to the Attorney General such information with respect to such State and local authorities as the Attorney General needs to make the report required under subsection (a).

SEC. 8. SENSE OF CONGRESS REGARDING RURAL AMERICA.

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

(1) The founders realized the fundamental importance of property rights when they codified the Takings Clause of the Fifth Amendment to the Constitution, which requires that private property shall not be taken “for public use, without just compensation”.

(2) Rural lands are unique in that they are not traditionally considered high tax revenue-generating properties for State and local governments. In addition, farmland and forest land owners need to have long-term certainty regarding their property rights in order to make the investment decisions to commit land to these uses.
(3) Ownership rights in rural land are fundamental building blocks for our Nation’s agriculture industry, which continues to be one of the most important economic sectors of our economy.

(4) In the wake of the Supreme Court’s decision in Kelo v. City of New London, abuse of eminent domain is a threat to the property rights of all private property owners, including rural land owners.

(b) Sense of Congress.—It is the sense of Congress that the use of eminent domain for the purpose of economic development is a threat to agricultural and other property in rural America and that the Congress should protect the property rights of Americans, including those who reside in rural areas. Property rights are central to liberty in this country and to our economy. The use of eminent domain to take farmland and other rural property for economic development threatens liberty, rural economies, and the economy of the United States. The taking of farmland and rural property will have a direct impact on existing irrigation and reclamation projects. Furthermore, the use of eminent domain to take rural private property for private commercial uses will force increasing numbers of activities from private property onto this Nation’s public lands, including its National forests, National
parks and wildlife refuges. This increase can overburden
the infrastructure of these lands, reducing the enjoyment
of such lands for all citizens. Americans should not have
to fear the government’s taking their homes, farms, or
businesses to give to other persons. Governments should
not abuse the power of eminent domain to force rural
property owners from their land in order to develop rural
land into industrial and commercial property. Congress
has a duty to protect the property rights of rural Ameri-
cans in the face of eminent domain abuse.

SEC. 9. SENSE OF CONGRESS.

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

SEC. 10. RELIGIOUS AND NONPROFIT ORGANIZATIONS.

(a) Prohibition on States.—No State or political
subdivision of a State shall exercise its power of eminent
domain, or allow the exercise of such power by any person
or entity to which such power has been delegated, over
property of a religious or other nonprofit organization by
reason of the nonprofit or tax-exempt status of such orga-
nization, or any quality related thereto if that State or
(b) Ineligibility for Federal Funds.—A violation of subsection (a) by a State or political subdivision shall render such State or political subdivision ineligible for any Federal economic development funds for a period of 2 fiscal years following a final judgment on the merits by a court of competent jurisdiction that such subsection has been violated, and any Federal agency charged with distributing those funds shall withhold them for such 2-year period, and any such funds distributed to such State or political subdivision shall be returned or reimbursed by such State or political subdivision to the appropriate Federal agency or authority of the Federal Government, or component thereof.

(e) Prohibition on Federal Government.—The Federal Government or any authority of the Federal Government shall not exercise its power of eminent domain over property of a religious or other nonprofit organization by reason of the nonprofit or tax-exempt status of such organization, or any quality related thereto.
SEC. 11. REPORT BY FEDERAL AGENCIES ON REGULATIONS AND PROCEDURES RELATING TO EMINENT DOMAIN.

Not later than 180 days after the date of the enactment of this Act, the head of each Executive department and agency shall review all rules, regulations, and procedures and report to the Attorney General on the activities of that department or agency to bring its rules, regulations and procedures into compliance with this Act.

SEC. 12. SENSE OF CONGRESS.

It is the sense of Congress that any and all precautions shall be taken by the government to avoid the unfair or unreasonable taking of property away from survivors of Hurricane Katrina who own, were bequeathed, or assigned such property, for economic development purposes or for the private use of others.

SEC. 13. DISPROPORTIONATE IMPACT.

If the court determines that a violation of this Act has occurred, and that the violation has a disproportionately high impact on the poor or minorities, the Attorney General shall use reasonable efforts to locate former owners and tenants and inform them of the violation and any remedies they may have.

SEC. 14. DEFINITIONS.

In this Act the following definitions apply:
(1) Economic development.—The term “economic development” means taking private property, without the consent of the owner, and conveying or leasing such property from one private person or entity to another private person or entity for commercial enterprise carried on for profit, or to increase tax revenue, tax base, employment, or general economic health, except that such term shall not include—

(A) conveying private property—

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

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

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

(iv) for use as an aqueduct, flood control facility, pipeline, or similar use;

(B) removing harmful uses of land provided such uses constitute an immediate threat to public health and safety;
(C) leasing property to a private person or entity that occupies an incidental part of public property or a public facility, such as a retail establishment on the ground floor of a public building;

(D) acquiring abandoned property;

(E) clearing defective chains of title;

(F) taking private property for use by a utility providing electric, natural gas, telecommunication, water, wastewater, or other utility services either directly to the public or indirectly through provision of such services at the wholesale level for resale to the public; and

(G) redeveloping of a brownfield site as defined in the Small Business Liability Relief and Brownfields Revitalization Act (42 U.S.C. 9601(39)).

(2) Federal economic development funds.—The term “Federal economic development funds” means any Federal funds distributed to or through States or political subdivisions of States under Federal laws designed to improve or increase the size of the economies of States or political subdivisions of States.
(3) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

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

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

**SEC. 16. BROAD CONSTRUCTION.**

This Act shall be construed in favor of a broad protection of private property rights, to the maximum extent permitted by the terms of this Act and the Constitution.

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

(a) **SEVERABILITY.**—The provisions of this Act are severable. If any provision of this Act, or any application thereof, is found unconstitutional, that finding shall not affect any provision or application of the Act not so adjudicated.

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