

116TH CONGRESS
1ST SESSION

H. R. 738

To protect private property rights.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 23, 2019

Mr. SENSENBRENNER introduced the following bill; which was referred to the
Committee on the Judiciary

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 2019”.

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

1 is used for economic development within 7 years after that
2 exercise, if that State or political subdivision receives Fed-
3 eral economic development funds during any fiscal year
4 in which the property is so used or intended to be used.

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

18 (c) OPPORTUNITY TO CURE VIOLATION.—A State or
19 political subdivision shall not be ineligible for any Federal
20 economic development funds under subsection (b) if such
21 State or political subdivision returns all real property the
22 taking of which was found by a court of competent juris-
23 diction to have constituted a violation of subsection (a)
24 and replaces any other property destroyed and repairs any
25 other property damaged as a result of such violation. In

1 addition, the State or political subdivision must pay any
2 applicable penalties and interest to reattain eligibility.

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

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

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

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

1 (b) LIMITATION ON BRINGING ACTION.—An action
 2 brought by a property owner or tenant under this Act may
 3 be brought if the property is used for economic develop-
 4 ment following the conclusion of any condemnation pro-
 5 ceedings condemning the property of such property owner
 6 or tenant, but shall not be brought later than 7 years fol-
 7 lowing the conclusion of any such proceedings.

8 (c) ATTORNEY’S FEE AND OTHER COSTS.—In any
 9 action or proceeding under this Act, the court shall allow
 10 a prevailing plaintiff a reasonable attorney’s fee as part
 11 of the costs, and include expert fees as part of the attor-
 12 ney’s fee.

13 **SEC. 5. REPORTING OF VIOLATIONS TO ATTORNEY GEN-**
 14 **ERAL.**

15 (a) SUBMISSION OF REPORT TO ATTORNEY GEN-
 16 ERAL.—Any—(1) owner of private property whose prop-
 17 erty is subject to eminent domain who suffers injury as
 18 a result of a violation of any provision of this Act with
 19 respect to that property; or (2) any tenant of property that
 20 is subject to eminent domain who suffers injury as a result
 21 of a violation of any provision of this Act with respect to
 22 that property, may report a violation by the Federal Gov-
 23 ernment, any authority of the Federal Government, State,
 24 or political subdivision of a State to the Attorney General.

1 (b) INVESTIGATION BY ATTORNEY GENERAL.—Upon
2 receiving a report of an alleged violation, the Attorney
3 General shall conduct an investigation to determine wheth-
4 er a violation exists.

5 (c) NOTIFICATION OF VIOLATION.—If the Attorney
6 General concludes that a violation does exist, then the At-
7 torney General shall notify the Federal Government, au-
8 thority of the Federal Government, State, or political sub-
9 division of a State that the Attorney General has deter-
10 mined that it is in violation of the Act. The notification
11 shall further provide that the Federal Government, State,
12 or political subdivision of a State has 90 days from the
13 date of the notification to demonstrate to the Attorney
14 General either that: (1) it is not in violation of the Act;
15 or (2) that it has cured its violation by returning all real
16 property the taking of which the Attorney General finds
17 to have constituted a violation of the Act and replacing
18 any other property destroyed and repairing any other
19 property damaged as a result of such violation.

20 (d) ATTORNEY GENERAL’S BRINGING OF ACTION TO
21 ENFORCE ACT.—If, at the end of the 90-day period de-
22 scribed in subsection (c), the Attorney General determines
23 that the Federal Government, authority of the Federal
24 Government, State, or political subdivision of a State is
25 still violating the Act or has not cured its violation as de-

1 scribed in subsection (c), then the Attorney General will
2 bring an action to enforce the Act unless the property
3 owner or tenant who reported the violation has already
4 brought an action to enforce the Act. In such a case, the
5 Attorney General shall intervene if it determines that
6 intervention is necessary in order to enforce the Act. The
7 Attorney General may file its lawsuit to enforce the Act
8 in the appropriate Federal or State court. A State shall
9 not be immune under the 11th Amendment to the Con-
10 stitution of the United States from any such action in a
11 Federal or State court of competent jurisdiction. In such
12 action, the defendant has the burden to show by clear and
13 convincing evidence that the taking is not for economic
14 development. The Attorney General may seek any appro-
15 priate relief through a preliminary injunction or a tem-
16 porary restraining order.

17 (e) LIMITATION ON BRINGING ACTION.—An action
18 brought by the Attorney General under this Act may be
19 brought if the property is used for economic development
20 following the conclusion of any condemnation proceedings
21 condemning the property of an owner or tenant who re-
22 ports a violation of the Act to the Attorney General, but
23 shall not be brought later than 7 years following the con-
24 clusion of any such proceedings.

1 (f) ATTORNEY'S FEE AND OTHER COSTS.—In any
2 action or proceeding under this Act brought by the Attor-
3 ney General, the court shall, if the Attorney General is
4 a prevailing plaintiff, award the Attorney General a rea-
5 sonable attorney's fee as part of the costs, and include
6 expert fees as part of the attorney's fee.

7 **SEC. 6. NOTIFICATION BY ATTORNEY GENERAL.**

8 (a) NOTIFICATION TO STATES AND POLITICAL SUB-
9 DIVISIONS.—

10 (1) Not later than 30 days after the enactment
11 of this Act, the Attorney General shall provide to the
12 chief executive officer of each State the text of this
13 Act and a description of the rights of property own-
14 ers and tenants under this Act.

15 (2) Not later than 120 days after the enact-
16 ment of this Act, the Attorney General shall compile
17 a list of the Federal laws under which Federal eco-
18 nomic development funds are distributed. The Attor-
19 ney General shall compile annual revisions of such
20 list as necessary. Such list and any successive revi-
21 sions of such list shall be communicated by the At-
22 torney General to the chief executive officer of each
23 State and also made available on the internet
24 website maintained by the United States Depart-
25 ment of Justice for use by the public and by the au-

1 thorities in each State and political subdivisions of
2 each State empowered to take private property and
3 convert it to public use subject to just compensation
4 for the taking.

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

12 **SEC. 7. REPORTS.**

13 (a) BY ATTORNEY GENERAL.—Not later than 1 year
14 after the date of enactment of this Act, and every subse-
15 quent year thereafter, the Attorney General shall transmit
16 a report identifying States or political subdivisions that
17 have used eminent domain in violation of this Act to the
18 Chairman and Ranking Member of the Committee on the
19 Judiciary of the House of Representatives and to the
20 Chairman and Ranking Member of the Committee on the
21 Judiciary of the Senate. The report shall—

22 (1) identify all private rights of action brought
23 as a result of a State’s or political subdivision’s vio-
24 lation of this Act;

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

3 (3) identify the percentage of minority residents
4 compared to the surrounding nonminority residents
5 and the median incomes of those impacted by a vio-
6 lation of this Act;

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

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

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

19 (b) DUTY OF STATES.—Each State and local author-
20 ity that is subject to a private right of action under this
21 Act shall have the duty to report to the Attorney General
22 such information with respect to such State and local au-
23 thorities as the Attorney General needs to make the report
24 required under subsection (a).

1 **SEC. 8. SENSE OF CONGRESS REGARDING RURAL AMERICA.**

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

3 (1) The founders realized the fundamental im-
4 portance of property rights when they codified the
5 Takings Clause of the Fifth Amendment to the Con-
6 stitution, which requires that private property shall
7 not be taken “for public use, without just compensa-
8 tion”.

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

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

20 (4) In the wake of the Supreme Court’s deci-
21 sion in *Kelo v. City of New London*, abuse of emi-
22 nent domain is a threat to the property rights of all
23 private property owners, including rural land own-
24 ers.

25 (b) SENSE OF CONGRESS.—It is the sense of Con-
26 gress that the use of eminent domain for the purpose of

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

1 **SEC. 9. SENSE OF CONGRESS.**

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

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

8 (a) PROHIBITION ON STATES.—No State or political
9 subdivision of a State shall exercise its power of eminent
10 domain, or allow the exercise of such power by any person
11 or entity to which such power has been delegated, over
12 property of a religious or other nonprofit organization by
13 reason of the nonprofit or tax-exempt status of such orga-
14 nization, or any quality related thereto if that State or
15 political subdivision receives Federal economic develop-
16 ment funds during any fiscal year in which it does so.

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
26 or political subdivision shall be returned or reimbursed by

1 such State or political subdivision to the appropriate Fed-
2 eral agency or authority of the Federal Government, or
3 component thereof.

4 (c) PROHIBITION ON FEDERAL GOVERNMENT.—The
5 Federal Government or any authority of the Federal Gov-
6 ernment shall not exercise its power of eminent domain
7 over property of a religious or other nonprofit organization
8 by reason of the nonprofit or tax-exempt status of such
9 organization, or any quality related thereto.

10 **SEC. 11. REPORT BY FEDERAL AGENCIES ON REGULATIONS**
11 **AND PROCEDURES RELATING TO EMINENT**
12 **DOMAIN.**

13 Not later than 180 days after the date of the enact-
14 ment of this Act, the head of each Executive department
15 and agency shall review all rules, regulations, and proce-
16 dures and report to the Attorney General on the activities
17 of that department or agency to bring its rules, regula-
18 tions and procedures into compliance with this Act.

19 **SEC. 12. SENSE OF CONGRESS.**

20 It is the sense of Congress that any and all pre-
21 cautions shall be taken by the government to avoid the
22 unfair or unreasonable taking of property away from sur-
23 vivors of Hurricane Katrina who own, were bequeathed,
24 or assigned such property, for economic development pur-
25 poses or for the private use of others.

1 **SEC. 13. DISPROPORTIONATE IMPACT.**

2 If the court determines that a violation of this Act
3 has occurred, and that the violation has a disproportion-
4 ately high impact on the poor or minorities, the Attorney
5 General shall use reasonable efforts to locate former own-
6 ers and tenants and inform them of the violation and any
7 remedies they may have.

8 **SEC. 14. DEFINITIONS.**

9 In this Act the following definitions apply:

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

19 (A) conveying private property—

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

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

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

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

6 (B) removing harmful uses of land pro-
7 vided such uses constitute an immediate threat
8 to public health and safety;

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

14 (D) acquiring abandoned property;

15 (E) clearing defective chains of title;

16 (F) taking private property for use by a
17 utility providing electric, natural gas, tele-
18 communication, water, wastewater, or other
19 utility services either directly to the public or
20 indirectly through provision of such services at
21 the wholesale level for resale to the public; and

22 (G) redeveloping of a brownfield site as de-
23 fined in the Small Business Liability Relief and
24 Brownfields Revitalization Act (42 U.S.C.
25 9601(39)).

1 (2) FEDERAL ECONOMIC DEVELOPMENT
2 FUNDS.—The term “Federal economic development
3 funds” means any Federal funds distributed to or
4 through States or political subdivisions of States
5 under Federal laws designed to improve or increase
6 the size of the economies of States or political sub-
7 divisions of States.

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

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

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

17 **SEC. 16. BROAD CONSTRUCTION.**

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

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

22 (a) SEVERABILITY.—The provisions of this Act are
23 severable. If any provision of this Act, or any application
24 thereof, is found unconstitutional, that finding shall not

1 affect any provision or application of the Act not so adju-
2 dicated.

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

○