

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

# H. R. 925

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## AN ACT

To compensate owners of private property for the effect  
of certain regulatory restrictions.

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 Pro-  
5       tection Act of 1995”.

1 **SEC. 2. FEDERAL POLICY AND DIRECTION.**

2 (a) GENERAL POLICY.—It is the policy of the Federal  
3 Government that no law or agency action should limit the  
4 use of privately owned property so as to diminish its value.

5 (b) APPLICATION TO FEDERAL AGENCY ACTION.—  
6 Each Federal agency, officer, and employee should exer-  
7 cise Federal authority to ensure that agency action will  
8 not limit the use of privately owned property so as to di-  
9 minish its value.

10 **SEC. 3. RIGHT TO COMPENSATION.**

11 (a) IN GENERAL.—The Federal Government shall  
12 compensate an owner of property whose use of any portion  
13 of that property has been limited by an agency action,  
14 under a specified regulatory law, that diminishes the fair  
15 market value of that portion by 20 percent or more. The  
16 amount of the compensation shall equal the diminution in  
17 value that resulted from the agency action. If the diminu-  
18 tion in value of a portion of that property is greater than  
19 50 percent, at the option of the owner, the Federal Gov-  
20 ernment shall buy that portion of the property for its fair  
21 market value.

22 (b) DURATION OF LIMITATION ON USE.—Property  
23 with respect to which compensation has been paid under  
24 this Act shall not thereafter be used contrary to the limita-  
25 tion imposed by the agency action, even if that action is  
26 later rescinded or otherwise vitiated. However, if that ac-

1 tion is later rescinded or otherwise vitiated, and the owner  
2 elects to refund the amount of the compensation, adjusted  
3 for inflation, to the Treasury of the United States, the  
4 property may be so used.

5 **SEC. 4. EFFECT OF STATE LAW.**

6 If a use is a nuisance as defined by the law of a State  
7 or is already prohibited under a local zoning ordinance,  
8 no compensation shall be made under this Act with respect  
9 to a limitation on that use.

10 **SEC. 5. EXCEPTIONS.**

11 (a) PREVENTION OF HAZARD TO HEALTH OR SAFE-  
12 TY OR DAMAGE TO SPECIFIC PROPERTY.—No compensa-  
13 tion shall be made under this Act with respect to an agen-  
14 cy action the primary purpose of which is to prevent an  
15 identifiable—

16 (1) hazard to public health or safety; or

17 (2) damage to specific property other than the  
18 property whose use is limited.

19 (b) NAVIGATION SERVITUDE.—No compensation  
20 shall be made under this Act with respect to an agency  
21 action pursuant to the Federal navigation servitude, as de-  
22 fined by the courts of the United States, except to the  
23 extent such servitude is interpreted to apply to wetlands.

1 **SEC. 6. PROCEDURE.**

2 (a) REQUEST OF OWNER.—An owner seeking com-  
3 pensation under this Act shall make a written request for  
4 compensation to the agency whose agency action resulted  
5 in the limitation. No such request may be made later than  
6 180 days after the owner receives actual notice of that  
7 agency action.

8 (b) NEGOTIATIONS.—The agency may bargain with  
9 that owner to establish the amount of the compensation.  
10 If the agency and the owner agree to such an amount,  
11 the agency shall promptly pay the owner the amount  
12 agreed upon.

13 (c) CHOICE OF REMEDIES.—If, not later than 180  
14 days after the written request is made, the parties do not  
15 come to an agreement as to the right to and amount of  
16 compensation, the owner may choose to take the matter  
17 to binding arbitration or seek compensation in a civil ac-  
18 tion.

19 (d) ARBITRATION.—The procedures that govern the  
20 arbitration shall, as nearly as practicable, be those estab-  
21 lished under title 9, United States Code, for arbitration  
22 proceedings to which that title applies. An award made  
23 in such arbitration shall include a reasonable attorney's  
24 fee and other arbitration costs (including appraisal fees).  
25 The agency shall promptly pay any award made to the  
26 owner.

1 (e) CIVIL ACTION.—An owner who does not choose  
2 arbitration, or who does not receive prompt payment when  
3 required by this section, may obtain appropriate relief in  
4 a civil action against the agency. An owner who prevails  
5 in a civil action under this section shall be entitled to, and  
6 the agency shall be liable for, a reasonable attorney’s fee  
7 and other litigation costs (including appraisal fees). The  
8 court shall award interest on the amount of any compensa-  
9 tion from the time of the limitation.

10 (f) SOURCE OF PAYMENTS.—Any payment made  
11 under this section to an owner, and any judgment obtained  
12 by an owner in a civil action under this section shall, not-  
13 withstanding any other provision of law, be made from the  
14 annual appropriation of the agency whose action occa-  
15 sioned the payment or judgment. If the agency action re-  
16 sulted from a requirement imposed by another agency,  
17 then the agency making the payment or satisfying the  
18 judgment may seek partial or complete reimbursement  
19 from the appropriated funds of the other agency. For this  
20 purpose the head of the agency concerned may transfer  
21 or reprogram any appropriated funds available to the  
22 agency. If insufficient funds exist for the payment or to  
23 satisfy the judgment, it shall be the duty of the head of  
24 the agency to seek the appropriation of such funds for the  
25 next fiscal year.

1 **SEC. 7. LIMITATION.**

2 Notwithstanding any other provision of law, any obli-  
3 gation of the United States to make any payment under  
4 this Act shall be subject to the availability of appropria-  
5 tions.

6 **SEC. 8. DUTY OF NOTICE TO OWNERS.**

7 Whenever an agency takes an agency action limiting  
8 the use of private property, the agency shall give appro-  
9 priate notice to the owners of that property explaining  
10 their rights under this Act and the procedures directly af-  
11 fected for obtaining any compensation that may be due  
12 to them under this Act.

13 **SEC. 9. RULES OF CONSTRUCTION.**

14 (a) EFFECT ON CONSTITUTIONAL RIGHT TO COM-  
15 PENSATION.—Nothing in this Act shall be construed to  
16 limit any right to compensation that exists under the Con-  
17 stitution or under other laws of the United States.

18 (b) EFFECT OF PAYMENT.—Payment of compensa-  
19 tion under this Act (other than when the property is  
20 bought by the Federal Government at the option of the  
21 owner) shall not confer any rights on the Federal Govern-  
22 ment other than the limitation on use resulting from the  
23 agency action.

24 **SEC. 9. DEFINITIONS.**

25 For the purposes of this Act—

1           (1) the term “property” means land and in-  
2           cludes the right to use or receive water;

3           (2) a use of property is limited by an agency  
4           action if a particular legal right to use that property  
5           no longer exists because of the action;

6           (3) the term “agency action” has the meaning  
7           given that term in section 551 of title 5, United  
8           States Code, but also includes the making of a grant  
9           to a public authority conditioned upon an action by  
10          the recipient that would constitute a limitation if  
11          done directly by the agency;

12          (4) the term “agency” has the meaning given  
13          that term in section 551 of title 5, United States  
14          Code;

15          (5) the term “specified regulatory law”  
16          means—

17                 (A) section 404 of the Federal Water Pol-  
18                 lution Control Act (33 U.S.C. 1344);

19                 (B) the Endangered Species Act of 1979  
20                 (16 U.S.C. 1531 et seq.);

21                 (C) title XII of the Food Security Act of  
22                 1985 (16 U.S.C. 3821 et seq.); or

23                 (D) with respect to an owner’s right to use  
24                 or receive water only—

1 (i) the Act of June 17, 1902, and all  
2 Acts amendatory thereof or supplementary  
3 thereto, popularly called the “Reclamation  
4 Acts” (43 U.S.C. 371 et seq.);

5 (ii) the Federal Land Policy Manage-  
6 ment Act (43 U.S.C. 1701 et seq.); or

7 (iii) section 6 of the Forest and  
8 Rangeland Renewable Resources Planning  
9 Act of 1974 (16 U.S.C. 1604);

10 (6) the term “fair market value” means the  
11 most probable price at which property would change  
12 hands, in a competitive and open market under all  
13 conditions requisite to a fair sale, between a willing  
14 buyer and a willing seller, neither being under any  
15 compulsion to buy or sell and both having reasonable  
16 knowledge of relevant facts, at the time the agency  
17 action occurs;

18 (7) the term “State” includes the District of  
19 Columbia, Puerto Rico, and any other territory or  
20 possession of the United States; and

1           (8) the term “law of the State” includes the  
2           law of a political subdivision of a State.

          Passed the House of Representatives March 3,  
1995.

Attest:

*Clerk.*

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