

105TH CONGRESS  
1ST SESSION

# S. 781

To establish a uniform and more efficient Federal process for protecting property owners' rights guaranteed by the fifth amendment.

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IN THE SENATE OF THE UNITED STATES

MAY 22, 1997

Mr. HATCH (for himself, Mr. CRAIG, Mr. GRAMM, Mr. ENZI, Mr. COCHRAN, Mr. HELMS, and Mr. KEMPTHORNE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To establish a uniform and more efficient Federal process for protecting property owners' rights guaranteed by the fifth amendment.

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 “Omnibus Property  
5 Rights Act of 1997”.

6 **TITLE I—FINDINGS AND**  
7 **PURPOSES**

8 **SEC. 101. FINDINGS.**

9 The Congress finds that—

1           (1) the private ownership of property is essen-  
2           tial to a free society and is an integral part of the  
3           American tradition of liberty and limited govern-  
4           ment;

5           (2) the framers of the United States Constitu-  
6           tion, in order to protect private property and liberty,  
7           devised a framework of Government designed to dif-  
8           fuse power and limit Government;

9           (3) to further ensure the protection of private  
10          property, the fifth amendment to the United States  
11          Constitution was ratified to prevent the taking of  
12          private property by the Federal Government, except  
13          for public use and with just compensation;

14          (4) the purpose of the takings clause of the  
15          fifth amendment of the United States Constitution,  
16          as the Supreme Court stated in *Armstrong v. United*  
17          *States*, 364 U.S. 40, 49 (1960), is “to bar Govern-  
18          ment from forcing some people alone to bear public  
19          burdens, which in all fairness and justice, should be  
20          borne by the public as a whole”;

21          (5) the Federal Government has singled out  
22          property holders to shoulder the cost that should be  
23          borne by the public, in violation of the just com-  
24          pensation requirement of the takings clause of the  
25          fifth amendment of the United States Constitution;

1           (6) there is a need both to restrain the Federal  
2           Government in its overzealous regulation of the pri-  
3           vate sector and to protect private property, which is  
4           a fundamental right of the American people; and

5           (7) the incremental, fact-specific approach that  
6           courts now are required to employ in the absence of  
7           adequate statutory language to vindicate property  
8           rights under the fifth amendment of the United  
9           States Constitution has been ineffective and costly  
10          and there is a need for Congress to clarify the law  
11          and provide an effective remedy.

12 **SEC. 102. PURPOSE.**

13          The purpose of this Act is to encourage, support, and  
14          promote the private ownership of property by ensuring the  
15          constitutional and legal protection of private property by  
16          the United States Government by—

17               (1) the establishment of a new Federal judicial  
18               claim through which to vindicate and protect prop-  
19               erty rights;

20               (2) the simplification and clarification of court  
21               jurisdiction over property right claims;

22               (3) the establishment of an administrative pro-  
23               cedure that requires the Federal Government to as-  
24               sess the impact of government action on holders of  
25               private property; and

1 (4) the minimization, to the greatest extent pos-  
2 sible, of the taking of private property by the Fed-  
3 eral Government and to ensure that just compensa-  
4 tion is paid by the Government for any taking.

5 **TITLE II—PROPERTY RIGHTS**  
6 **LITIGATION RELIEF**

7 **SEC. 201. FINDINGS.**

8 The Congress finds that—

9 (1) property rights have been abrogated by the  
10 application of laws, regulations, and other actions by  
11 the Federal Government that adversely affect the  
12 value of private property;

13 (2) certain provisions of sections 1346 and  
14 1402 and chapter 91 of title 28, United States Code  
15 (commonly known as the Tucker Act), that delineate  
16 the jurisdiction of courts hearing property rights  
17 claims, complicates the ability of a property owner to  
18 vindicate a property owner's right to just compensa-  
19 tion for a governmental action that has caused a  
20 physical or regulatory taking;

21 (3) current law—

22 (A) forces a property owner to elect be-  
23 tween equitable relief in the district court and  
24 monetary relief (the value of the property

1 taken) in the United States Court of Federal  
2 Claims;

3 (B) is used to urge dismissal in the district  
4 court on the ground that the plaintiff should  
5 seek just compensation in the Court of Federal  
6 Claims; and

7 (C) is used to urge dismissal in the Court  
8 of Federal Claims on the ground that plaintiff  
9 should seek equitable relief in district court;

10 (4) property owners cannot fully vindicate prop-  
11 erty rights in one court;

12 (5) property owners should be able to fully re-  
13 cover for a taking of their private property in one  
14 court;

15 (6) certain provisions of section 1346 and 1402  
16 and chapter 91 of title 28, United States Code (com-  
17 monly known as the Tucker Act) should be amend-  
18 ed, giving both the district courts of the United  
19 States and the Court of Federal Claims jurisdiction  
20 to hear all claims relating to property rights; and

21 (7) section 1500 of title 28, United States  
22 Code, which denies the Court of Federal Claims ju-  
23 risdiction to entertain a suit which is pending in an-  
24 other court and made by the same plaintiff, should  
25 be repealed.

1 **SEC. 202. PURPOSES.**

2 The purposes of this title are to—

3 (1) establish a clear, uniform, and efficient ju-  
4 dicial process whereby aggrieved property owners  
5 can obtain vindication of property rights guaranteed  
6 by the fifth amendment to the United States Con-  
7 stitution and this Act;

8 (2) amend the Tucker Act, including the repeal  
9 of section 1500 of title 28, United States Code;

10 (3) rectify the constitutional imbalance between  
11 the Federal Government and the States; and

12 (4) require the Federal Government to com-  
13 pensate property owners for the deprivation of prop-  
14 erty rights that result from State agencies' enforce-  
15 ment of federally mandated programs.

16 **SEC. 203. DEFINITIONS.**

17 For purposes of this title the term—

18 (1) “agency” means a department, agency,  
19 independent agency, or instrumentality of the United  
20 States, including any military department, Govern-  
21 ment corporation, Government-controlled corpora-  
22 tion, or other establishment in the executive branch  
23 of the United States Government;

24 (2) “agency action” means any action, inaction,  
25 or decision taken by an agency or State agency that

1 at the time of such action, inaction, or decision ad-  
2 versely affects private property rights;

3 (3) “just compensation”—

4 (A) means compensation equal to the full  
5 extent of a property owner’s loss, including the  
6 fair market value of the private property taken,  
7 whether the taking is by physical occupation or  
8 through regulation, exaction, or other means;  
9 and

10 (B) shall include compounded interest cal-  
11 culated from the date of the taking until the  
12 date the United States tenders payment;

13 (4) “owner” means the owner or possessor of  
14 property or rights in property at the time the taking  
15 occurs, including when—

16 (A) the statute, regulation, rule, order,  
17 guideline, policy, or action is passed or promul-  
18 gated; or

19 (B) the permit, license, authorization, or  
20 governmental permission is denied or sus-  
21 pended;

22 (5) “private property” or “property” means all  
23 interests constituting real property, as defined by  
24 Federal or State law, protected under the fifth  
25 amendment to the United States Constitution, any

1 applicable Federal or State law, or this Act, and  
2 more specifically constituting—

3 (A) real property, whether vested or  
4 unvested, including—

5 (i) estates in fee, life estates, estates  
6 for years, or otherwise;

7 (ii) inchoate interests in real property  
8 such as remainders and future interests;

9 (iii) personalty that is affixed to or  
10 appurtenant to real property;

11 (iv) easements;

12 (v) leaseholds;

13 (vi) recorded liens; and

14 (vii) contracts or other security inter-  
15 ests in, or related to, real property;

16 (B) the right to use water or the right to  
17 receive water, including any recorded liens on  
18 such water right; or

19 (C) rents, issues, and profits of land, in-  
20 cluding minerals, timber, fodder, crops, oil and  
21 gas, coal, or geothermal energy;

22 (6) “State agency” means any State depart-  
23 ment, agency, political subdivision, or instrumental-  
24 ity that—

1 (A) carries out or enforces a regulatory  
2 program required under Federal law;

3 (B) is delegated administrative or sub-  
4 stantive responsibility under a Federal regu-  
5 latory program; or

6 (C) receives Federal funds in connection  
7 with a regulatory program established by a  
8 State,

9 if the State enforcement of the regulatory program,  
10 or the receipt of Federal funds in connection with a  
11 regulatory program established by a State, is di-  
12 rectly related to the taking of private property seek-  
13 ing to be vindicated under this Act; and

14 (7) “taking of private property”, “taking”, or  
15 “take”—

16 (A) means any action whereby restricting  
17 the ownership, alienability, or use of private  
18 property is an object of that action and is taken  
19 so as to require compensation under the fifth  
20 amendment to the United States Constitution  
21 or under this Act, including by physical inva-  
22 sion, regulation, exaction, condition, or other  
23 means; and

24 (B) shall not include—

- 1 (i) a condemnation action filed by the  
2 United States in an applicable court; or  
3 (ii) any action of the United States or  
4 any action filed by the United States relat-  
5 ing to criminal or civil forfeiture, unless  
6 such an action is unconstitutional.

7 **SEC. 204. COMPENSATION FOR TAKEN PROPERTY.**

8 (a) IN GENERAL.—No agency or State agency, shall  
9 take private property except for public use and with just  
10 compensation to the property owner. A property owner  
11 shall receive just compensation if—

12 (1) as a consequence of an action of any agen-  
13 cy, or State agency, private property (whether all or  
14 in part) has been physically invaded or otherwise  
15 taken without the consent of the owner; and

16 (2)(A) such action does not substantially ad-  
17 vance the stated governmental interest to be  
18 achieved by the legislation or regulation on which  
19 the action is based;

20 (B) such action exacts or affects the owner's  
21 constitutional or otherwise lawful right to use the  
22 property or a portion of such property as a condition  
23 for the granting of a permit, license, variance, or  
24 any other agency action without a rough proportion-  
25 ality between the stated need for the required dedi-

1 cation and the impact of the proposed use of the  
2 property;

3 (C) such action results in the property owner  
4 being deprived, either temporarily or permanently, of  
5 all or substantially all economically beneficial or pro-  
6 ductive use of the property or that part of the prop-  
7 erty affected by the action without a showing that  
8 such deprivation inheres in the title itself;

9 (D) such action results in the property owner  
10 being deprived, either temporarily or permanently of  
11 33 percent or more of the value of the property or  
12 the value of that part of the property affected by the  
13 action without a showing that such deprivation in-  
14 heres in the title itself; or

15 (E) under any other circumstance where a tak-  
16 ing has occurred within the meaning of the fifth  
17 amendment of the United States Constitution.

18 (b) NO CLAIM AGAINST STATE OR STATE INSTRU-  
19 MENTALITY.—No action may be filed under this section  
20 against a State agency for carrying out the functions de-  
21 scribed under section 203(6). Claims arising from the ac-  
22 tion, inaction, or decision of a State agency are properly  
23 filed against the Federal agency which administers the rel-  
24 evant Federal program.

1 (c) BURDEN OF PROOF.—(1) The Government shall  
2 bear the burden of proof in any action described under—

3 (A) subsection (a)(2)(A), with regard to show-  
4 ing the nexus between the stated governmental pur-  
5 pose of the governmental interest and the impact on  
6 the proposed use of private property;

7 (B) subsection (a)(2)(B), with regard to show-  
8 ing the proportionality between the exaction or af-  
9 fect and the impact of the proposed use of the prop-  
10 erty; and

11 (C) subsection (a)(2)(C), with regard to show-  
12 ing that such deprivation of value inheres in the title  
13 to the property.

14 (2) The property owner shall have the burden of  
15 proof in any action described under subsection (a)(2)(D),  
16 with regard to establishing the diminution of value of  
17 property.

18 (d) COMPENSATION AND NUISANCE EXCEPTION TO  
19 PAYMENT OF JUST COMPENSATION.—(1) No compensa-  
20 tion shall be required by this Act if the owner's use or  
21 proposed use of the property is a nuisance as commonly  
22 understood and defined by background principles of nui-  
23 sance and property law, as understood within the State  
24 in which the property is situated. To bar an award of dam-  
25 ages under this Act, the United States shall have the bur-

1 den of proof to establish that the use or proposed use of  
2 the property is a nuisance.

3 (2)(A) Subject to paragraph (1), if an agency action  
4 directly takes property or a portion of property under sub-  
5 section (a), compensation to the owner of the property  
6 that is affected by the action shall be either the greater  
7 of an amount equal to the difference between—

8 (i) the fair market value of the property or the  
9 affected portion of the property before such property  
10 or the affected portion of such property became the  
11 object of the agency action; and

12 (ii) the fair market value of the property or the  
13 affected portion of the property when such property  
14 or the affected portion of such property becomes  
15 subject to the agency action.

16 (B) Where appropriate, the calculation of fair market  
17 value shall include business losses.

18 (e) TRANSFER OF PROPERTY INTEREST.—The Unit-  
19 ed States shall take title to the property interest for which  
20 the United States pays a claim under this Act.

21 (f) SOURCE OF COMPENSATION.—Awards of com-  
22 pensation referred to in this section, whether by judgment,  
23 settlement, or administrative action, shall be promptly  
24 paid by the agency out of currently available appropria-  
25 tions supporting the activities giving rise to the claims for

1 compensation. If the agency action resulted from a re-  
2 quirement imposed by another agency, the agency making  
3 the payment or satisfying the judgment may seek partial  
4 or complete reimbursement from the appropriated funds  
5 of the other agency. If insufficient funds are available to  
6 the agency in the fiscal year in which the award becomes  
7 final, the agency shall either pay the award from appro-  
8 priations available in the next fiscal year or promptly seek  
9 additional appropriations for such purpose.

10 **SEC. 205. JURISDICTION AND JUDICIAL REVIEW.**

11 (a) IN GENERAL.—A property owner may file a civil  
12 action under this Act to challenge the validity of any agen-  
13 cy action that adversely affects the owner’s interest in pri-  
14 vate property in either the United States District Court  
15 or the United States Court of Federal Claims. This section  
16 constitutes express waiver of the sovereign immunity of  
17 the United States. Notwithstanding any other provision of  
18 law and notwithstanding the issues involved, the relief  
19 sought, or the amount in controversy, each court shall  
20 have concurrent jurisdiction over both claims for monetary  
21 relief and claims seeking invalidation of any Act of Con-  
22 gress or any regulation of an agency as defined under this  
23 Act affecting private property rights. The plaintiff shall  
24 have the election of the court in which to file a claim for  
25 relief.

1 (b) APPEALS.—In any appeal resulting from a claim  
2 under this section, the United States Court of Appeals for  
3 the Federal Circuit shall have exclusive jurisdiction of—

4 (1) an appeal from a final decision of a district  
5 court of the United States, the United States Dis-  
6 trict Court of Guam, the United States District  
7 Court of the Virgin Islands, or the District Court for  
8 the Northern Mariana Islands, if the jurisdiction of  
9 that court was based, in whole or in part, on sub-  
10 section (a); and

11 (2) an appeal from a final decision of the Unit-  
12 ed States Court of Federal Claims if that jurisdic-  
13 tion was based, in whole or in part, on subsection  
14 (a).

15 (c) STANDING.—Persons adversely affected by an  
16 agency action taken under this Act shall have standing  
17 to challenge and seek judicial review of that action without  
18 first exhausting administrative remedies.

19 (d) AMENDMENTS TO TITLE 28, UNITED STATES  
20 CODE.—(1) Section 1491(a) of title 28, United States  
21 Code, is amended—

22 (A) in paragraph (1) by amending the first sen-  
23 tence to read as follows: “The United States Court  
24 of Federal Claims shall have jurisdiction to render  
25 judgment upon any claim against the United States

1 for monetary relief founded either upon the Con-  
2 stitution or any Act of Congress or any regulation  
3 of an executive department, or upon any express or  
4 implied contract with the United States, in cases not  
5 sounding in tort, or for invalidation of any Act of  
6 Congress or any regulation of an executive depart-  
7 ment that adversely affects private property rights  
8 in violation of the fifth amendment of the United  
9 States Constitution”;

10 (B) in paragraph (2) by inserting before the  
11 first sentence the following: “In any case within its  
12 jurisdiction, the Court of Federal Claims shall have  
13 the power to grant injunctive and declaratory relief  
14 when appropriate.”; and

15 (C) by adding at the end thereof the following  
16 new paragraphs:

17 “(4) In cases otherwise within its jurisdiction, the  
18 Court of Federal Claims shall also have supplemental ju-  
19 risdiction, concurrent with the courts designated in section  
20 1346(b) of this title, to render judgment upon any related  
21 tort claim authorized under section 2674 of this title.

22 “(5) In proceedings within the jurisdiction of the  
23 Court of Federal Claims which constitute judicial review  
24 of agency action (rather than de novo proceedings), the  
25 provisions of section 706 of title 5 shall apply.”.

1       (2)(A) Section 1500 of title 28, United States Code,  
2 is repealed.

3       (B) The table of sections for chapter 91 of title 28,  
4 United States Code, is amended by striking out the item  
5 relating to section 1500.

6 **SEC. 206. STATUTE OF LIMITATIONS.**

7       The statute of limitations for actions brought under  
8 this title shall be 6 years from the date of the taking of  
9 private property.

10 **SEC. 207. ATTORNEYS' FEES AND COSTS.**

11       The court, in issuing any final order in any action  
12 brought under this title, shall award costs of litigation (in-  
13 cluding reasonable attorney and expert witness fees) to  
14 any prevailing plaintiff.

15 **SEC. 208. RULES OF CONSTRUCTION.**

16       Nothing in this title shall be construed to interfere  
17 with the authority of any State to create additional prop-  
18 erty rights.

19 **SEC. 209. EFFECTIVE DATE.**

20       The provisions of this title and amendments made by  
21 this title shall take effect on the date of the enactment  
22 of this Act and shall apply to any agency action that oc-  
23 curs after such date.

1           **TITLE III—ALTERNATIVE**  
2           **DISPUTE RESOLUTION**

3 **SEC. 301. ALTERNATIVE DISPUTE RESOLUTION.**

4           (a) IN GENERAL.—Either party to a dispute over a  
5 taking of private property as defined under title II of this  
6 Act or litigation commenced under such title may elect to  
7 resolve the dispute through settlement or arbitration. In  
8 the administration of this section—

9                   (1) such alternative dispute resolution may only  
10           be effectuated by the consent of all parties;

11                   (2) arbitration procedures shall be in accord-  
12           ance with the alternative dispute resolution proce-  
13           dures established by the American Arbitration Asso-  
14           ciation; and

15                   (3) in no event shall arbitration be a condition  
16           precedent or an administrative procedure to be ex-  
17           hausted before the filing of a civil action under this  
18           Act.

19           (b) COMPENSATION AS A RESULT OF ARBITRA-  
20           TION.—The amount of arbitration awards shall be paid  
21           from the responsible agency's currently available appro-  
22           priations supporting the agency's activities giving rise to  
23           the claim for compensation. If insufficient funds are avail-  
24           able to the agency in the fiscal year in which the award  
25           becomes final, the agency shall either pay the award from

1 appropriations available in the next fiscal year or promptly  
 2 seek additional appropriations for such purpose.

3 (c) REVIEW OF ARBITRATION.—(1) Appeal from ar-  
 4 bitration decisions shall be to the United States District  
 5 Court or the United States Court of Federal Claims in  
 6 the manner prescribed by law for the claim under this Act.

7 (2) The provisions of title 9, United States Code (re-  
 8 lating to arbitration), shall apply to enforcement of awards  
 9 rendered under this section.

10 (d) PAYMENT OF CERTAIN COMPENSATION.—In any  
 11 appeal under subsection (c), the amount of the award of  
 12 compensation shall be promptly paid by the agency from  
 13 appropriations supporting the activities giving rise to the  
 14 claim for compensation currently available at the time of  
 15 final action on the appeal. If insufficient funds are avail-  
 16 able to the agency in the fiscal year in which the award  
 17 becomes final, the agency shall either pay the award from  
 18 appropriations available in the next fiscal year or promptly  
 19 seek additional appropriations for such purpose.

## 20 **TITLE IV—PRIVATE PROPERTY** 21 **TAKING IMPACT ANALYSIS**

### 22 **SEC. 401. PURPOSES.**

23 The purposes of this title are—

24 (1) to protect the health, safety, welfare, and  
 25 rights of the public; and

1           (2) to the extent practicable, avoid takings of  
2 private property by assessing the effect of govern-  
3 ment action on private property rights.

4 **SEC. 402. DEFINITIONS.**

5 For purposes of this title the term—

6           (1) “agency” means an agency as defined under  
7 section 203 of this Act, but shall not include the  
8 General Accounting Office;

9           (2) “rule” has the same meaning as such term  
10 is defined under section 551(4) of title 5, United  
11 States Code;

12           (3) “property or private property” refers to all  
13 property protected by the takings clause of the fifth  
14 amendment of the United States Constitution; and

15           (4) “taking of private property” has the same  
16 meaning as such term is defined under section 203  
17 of this Act.

18 **SEC. 403. PRIVATE PROPERTY TAKING IMPACT ANALYSIS.**

19           (a) IN GENERAL.—(1) The Congress authorizes and  
20 directs that, to the fullest extent possible—

21           (A) the policies, regulations, and public laws of  
22 the United States shall be interpreted and adminis-  
23 tered in accordance with the policies under this title;  
24 and

1           (B) subject to paragraph (2), all agencies of the  
2           Federal Government shall complete a private prop-  
3           erty taking impact analysis before issuing or promul-  
4           gating any policy, regulation, proposed legislation, or  
5           related agency action which is likely to result in a  
6           taking of private property.

7           (2) The provisions of paragraph (1)(B) shall not  
8           apply to—

9           (A) an action in which the power of eminent do-  
10          main is formally exercised;

11          (B) an action taken—

12               (i) with respect to property held in trust by  
13               the United States; or

14               (ii) in preparation for, or in connection  
15               with, treaty negotiations with foreign nations;

16          (C) a law enforcement action, including seizure,  
17          for a violation of law, of property for forfeiture, or  
18          as evidence in a criminal proceeding;

19          (D) a study or similar effort or planning activ-  
20          ity;

21          (E) a communication between an agency and a  
22          State or local land-use planning agency concerning  
23          a planned or proposed State or local activity that  
24          regulates private property, regardless of whether the  
25          communication is initiated by an agency or is under-

1 taken in response to an invitation by the State or  
2 local authority;

3 (F) the placement of a military facility or a  
4 military activity involving the use of solely Federal  
5 property;

6 (G) any military or foreign affairs function (in-  
7 cluding a procurement function under a military or  
8 foreign affairs function), but not including the civil  
9 works program of the Army Corps of Engineers; and

10 (H) any case in which there is an immediate  
11 threat to health or safety that constitutes an emer-  
12 gency requiring immediate response or the issuance  
13 of a regulation under section 553(b)(B) of title 5,  
14 United States Code, if the taking impact analysis is  
15 completed after the emergency action is carried out  
16 or the regulation is published.

17 (3) A private property taking impact analysis shall  
18 be a written statement that includes—

19 (A) the specific purpose of the policy, regula-  
20 tion, proposal, recommendation, or related agency  
21 action;

22 (B) an assessment of the likelihood that a tak-  
23 ing of private property will occur under such policy,  
24 regulation, proposal, recommendation, or related  
25 agency action;

1           (C) an evaluation of whether such policy, regu-  
2           lation, proposal, recommendation, or related agency  
3           action is likely to require compensation to private  
4           property owners;

5           (D) alternatives to the policy, regulation, pro-  
6           posal, recommendation, or related agency action that  
7           would achieve the intended purposes of the agency  
8           action and lessen the likelihood that a taking of pri-  
9           vate property will occur; and

10          (E) an estimate of the potential liability of the  
11          Federal Government if the Government is required  
12          to compensate a private property owner.

13          (4) Each agency shall provide an analysis required  
14          under this section as part of any submission otherwise re-  
15          quired to be made to the Office of Management and Budg-  
16          et in conjunction with a proposed regulation.

17          (b) GUIDANCE AND REPORTING REQUIREMENTS.—

18          (1) The Attorney General of the United States shall pro-  
19          vide legal guidance in a timely manner, in response to a  
20          request by an agency, to assist the agency in complying  
21          with this section.

22          (2) No later than 1 year after the date of enactment  
23          of this Act and at the end of each 1-year period thereafter,  
24          each agency shall submit a report to the Director of the  
25          Office of Management and Budget and the Attorney Gen-

1 eral of the United States identifying each agency action  
2 that has resulted in the preparation of a taking impact  
3 analysis, the filing of a taking claim, or an award of com-  
4 pensation under the just compensation clause of the fifth  
5 amendment of the United States Constitution. The Direc-  
6 tor of the Office of Management and Budget and the At-  
7 torney General of the United States shall publish in the  
8 Federal Register, on an annual basis, a compilation of the  
9 reports of all agencies submitted under this paragraph.

10 (c) PUBLIC AVAILABILITY OF ANALYSIS.—An agency  
11 shall—

12 (1) make each private property taking impact  
13 analysis available to the public; and

14 (2) to the greatest extent practicable, transmit  
15 a copy of such analysis to the owner or any other  
16 person with a property right or interest in the af-  
17 fected property.

18 (d) PRESUMPTIONS IN PROCEEDINGS.—For the pur-  
19 pose of any agency action or administrative or judicial pro-  
20 ceeding, there shall be a rebuttable presumption that the  
21 costs, values, and estimates in any private property  
22 takings impact analysis shall be outdated and inaccurate,  
23 if—

1           (1) such analysis was completed 5 years or  
2           more before the date of such action or proceeding;  
3           and

4           (2) such costs, values, or estimates have not  
5           been modified within the 5-year period preceding the  
6           date of such action or proceeding.

7 **SEC. 404. RULES OF CONSTRUCTION.**

8           Nothing in this title shall be construed to—

9           (1) limit any right or remedy, constitute a con-  
10          dition precedent or a requirement to exhaust admin-  
11          istrative remedies, or bar any claim of any person  
12          relating to such person’s property under any other  
13          law, including claims made under this Act, section  
14          1346 or 1402 of title 28, United States Code, or  
15          chapter 91 of title 28, United States Code; or

16          (2) constitute a conclusive determination of—

17                 (A) the value of any property for purposes  
18                 of an appraisal for the acquisition of property,  
19                 or for the determination of damages; or

20                 (B) any other material issue.

21 **SEC. 405. STATUTE OF LIMITATIONS.**

22          No action may be filed in a court of the United States  
23          to enforce the provisions of this title on or after the date  
24          occurring 6 years after the date of the submission of the

1 applicable private property taking impact analysis to the  
2 Office of Management and Budget.

3 **TITLE V—MISCELLANEOUS**

4 **SEC. 501. SEVERABILITY.**

5 If any provision of this Act, an amendment made by  
6 this Act, or the application of such provision or amend-  
7 ment to any person or circumstance is held to be unconsti-  
8 tutional, the remainder of this Act, the amendments made  
9 by this Act, and the application of the provisions of such  
10 to any person or circumstance shall not be affected there-  
11 by.

12 **SEC. 502. RULE OF CONSTRUCTION RELATING TO CIVIL**  
13 **RIGHTS LAWS.**

14 This Act shall not be construed to apply to any Fed-  
15 eral law that prohibits discrimination on the basis of race,  
16 color, religion, sex, national origin, age, or disability.

17 **SEC. 503. EFFECTIVE DATE.**

18 Except as otherwise provided in this Act, the provi-  
19 sions of this Act shall take effect on the date of enactment  
20 and shall apply to any agency action of the United States  
21 Government after such date.

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