

Calendar No. 596

109TH CONGRESS
2D SESSION**S. 3873**To protect private property rights.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 7 (legislative day, SEPTEMBER 6), 2006

Mr. INHOFE introduced the following bill; which was read the first time

SEPTEMBER 8, 2006

Read the second time and placed on the calendar

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 2006”.

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

1 allow the exercise of such power by any person or entity
2 to which such power has been delegated, over property to
3 be used for economic development or over property that
4 is subsequently used for economic development, if that
5 State or political subdivision receives Federal economic de-
6 velopment funds during any fiscal year in which it does
7 so.

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

21 (c) OPPORTUNITY TO CURE VIOLATION.—A State or
22 political subdivision shall not be ineligible for any Federal
23 economic development funds under subsection (b) if such
24 State or political subdivision returns all real property the
25 taking of which was found by a court of competent juris-

1 diction to have constituted a violation of subsection (a)
2 and replaces any other property destroyed and repairs any
3 other property damaged as a result of such violation.

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

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

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

10 (a) CAUSE OF ACTION.—Any owner of private prop-
11 erty who suffers injury as a result of a violation of any
12 provision of this Act may bring an action to enforce any
13 provision of this Act in the appropriate Federal or State
14 court, and a State shall not be immune under the eleventh
15 amendment to the Constitution of the United States from
16 any such action in a Federal or State court of competent
17 jurisdiction. In such action, the defendant has the burden
18 to show by clear and convincing evidence that the taking
19 is not for economic development. Any such property owner
20 may also seek any appropriate relief through a preliminary
21 injunction or a temporary restraining order.

22 (b) LIMITATION ON BRINGING ACTION.—An action
23 brought under this Act may be brought if the property
24 is used for economic development following the conclusion
25 of any condemnation proceedings condemning the private

1 property of such property owner, but shall not be brought
2 later than seven years following the conclusion of any such
3 proceedings and the subsequent use of such condemned
4 property for economic development.

5 (c) ATTORNEYS' FEE AND OTHER COSTS.—In any
6 action or proceeding under this Act, the court shall allow
7 a prevailing plaintiff a reasonable attorneys' fee as part
8 of the costs, and include expert fees as part of the attor-
9 neys' fee.

10 **SEC. 5. NOTIFICATION BY ATTORNEY GENERAL.**

11 (a) NOTIFICATION TO STATES AND POLITICAL SUB-
12 DIVISIONS.—

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

18 (2) Not later than 120 days after the enact-
19 ment of this Act, the Attorney General shall compile
20 a list of the Federal laws under which Federal eco-
21 nomic development funds are distributed. The Attor-
22 ney General shall compile annual revisions of such
23 list as necessary. Such list and any successive revi-
24 sions of such list shall be communicated by the At-
25 torney General to the chief executive officer of each

1 State and also made available on the Internet
2 website maintained by the United States Depart-
3 ment of Justice for use by the public and by the au-
4 thorities in each State and political subdivisions of
5 each State empowered to take private property and
6 convert it to public use subject to just compensation
7 for the taking.

8 (b) NOTIFICATION TO PROPERTY OWNERS.—Not
9 later than 30 days after the enactment of this Act, the
10 Attorney General shall publish in the Federal Register and
11 make available on the Internet website maintained by the
12 United States Department of Justice a notice containing
13 the text of this Act and a description of the rights of prop-
14 erty owners under this Act.

15 **SEC. 6. REPORT.**

16 Not later than 1 year after the date of enactment
17 of this Act, and every subsequent year thereafter, the At-
18 torney General shall transmit a report identifying States
19 or political subdivisions that have used eminent domain
20 in violation of this Act to the Chairman and Ranking
21 Member of the Committee on the Judiciary of the House
22 of Representatives and to the Chairman and Ranking
23 Member of the Committee on the Judiciary of the Senate.
24 The report shall—

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

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

11 (3) discuss all instances in which a State or po-
12 litical subdivision has cured a violation as described
13 in section 2(c) of this Act.

14 **SEC. 7. SENSE OF CONGRESS REGARDING RURAL AMERICA.**

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

16 (1) The founders realized the fundamental im-
17 portance of property rights when they codified the
18 Takings Clause of the Fifth Amendment to the Con-
19 stitution, which requires that private property shall
20 not be taken “for public use, without just compensa-
21 tion”.

22 (2) Rural lands are unique in that they are not
23 traditionally considered high tax revenue-generating
24 properties for State and local governments. In addi-
25 tion, farmland and forest land owners need to have

1 long-term certainty regarding their property rights
2 in order to make the investment decisions to commit
3 land to these uses.

4 (3) Ownership rights in rural land are funda-
5 mental building blocks for our Nation's agriculture
6 industry, which continues to be one of the most im-
7 portant economic sectors of our economy.

8 (4) In the wake of the Supreme Court's deci-
9 sion in *Kelo v. City of New London*, abuse of emi-
10 nent domain is a threat to the property rights of all
11 private property owners, including rural land own-
12 ers.

13 (b) SENSE OF CONGRESS.—It is the sense of Con-
14 gress that the use of eminent domain for the purpose of
15 economic development is a threat to agricultural and other
16 property in rural America and that the Congress should
17 protect the property rights of Americans, including those
18 who reside in rural areas. Property rights are central to
19 liberty in this country and to our economy. The use of
20 eminent domain to take farmland and other rural property
21 for economic development threatens liberty, rural econo-
22 mies, and the economy of the United States. The taking
23 of farmland and rural property will have a direct impact
24 on existing irrigation and reclamation projects. Further-
25 more, the use of eminent domain to take rural private

1 property for private commercial uses will force increasing
2 numbers of activities from private property onto this Na-
3 tion’s public lands, including its National forests, National
4 parks and wildlife refuges. This increase can overburden
5 the infrastructure of these lands, reducing the enjoyment
6 of such lands for all citizens. Americans should not have
7 to fear the government’s taking their homes, farms, or
8 businesses to give to other persons. Governments should
9 not abuse the power of eminent domain to force rural
10 property owners from their land in order to develop rural
11 land into industrial and commercial property. Congress
12 has a duty to protect the property rights of rural Ameri-
13 cans in the face of eminent domain abuse.

14 **SEC. 8. DEFINITIONS.**

15 In this Act the following definitions apply:

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

25 (A) conveying private property—

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

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

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

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

12 (B) removing harmful uses of land pro-
13 vided such uses constitute an immediate threat
14 to public health and safety;

15 (C) leasing property to a private person or
16 entity that occupies an incidental part of public
17 property or a public facility, such as a retail es-
18 tablishment on the ground floor of a public
19 building;

20 (D) acquiring abandoned property;

21 (E) clearing defective chains of title;

22 (F) taking private property for use by a
23 public utility; and

24 (G) redeveloping of a brownfield site as de-
25 fined in the Small Business Liability Relief and

1 Brownfields Revitalization Act (42 U.S.C.
2 9601(39)).

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

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

14 **SEC. 9. 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.

1 **SEC. 10. 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. 11. BROAD CONSTRUCTION.**

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

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

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

16 **SEC. 13. RELIGIOUS AND NONPROFIT ORGANIZATIONS.**

17 (a) PROHIBITION ON STATES.—No State or political
18 subdivision of a State shall exercise its power of eminent
19 domain, or allow the exercise of such power by any person
20 or entity to which such power has been delegated, over
21 property of a religious or other nonprofit organization by
22 reason of the nonprofit or tax-exempt status of such orga-
23 nization, or any quality related thereto if that State or
24 political subdivision receives Federal economic develop-
25 ment funds during any fiscal year in which it does so.

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

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

20 **SEC. 14. REPORT BY FEDERAL AGENCIES ON REGULATIONS**
21 **AND PROCEDURES RELATING TO EMINENT**
22 **DOMAIN.**

23 Not later than 180 days after the date of the enact-
24 ment of this Act, the head of each Executive department
25 and agency shall review all rules, regulations, and proce-

1 dures and report to the Attorney General on the activities
2 of that department or agency to bring its rules, regula-
3 tions and procedures into compliance with this Act.

4 **SEC. 15. SENSE OF CONGRESS.**

5 It is the sense of Congress that any and all pre-
6 cautions shall be taken by the government to avoid the
7 unfair or unreasonable taking of property away from sur-
8 vivors of Hurricane Katrina who own, were bequeathed,
9 or assigned such property, for economic development pur-
10 poses or for the private use of others.

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