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(Original Signature of Member)

114TH CONGRESS

1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. REED introduced the following bill; which was referred to the Committee
on _____

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Defense of Property Rights Act`.

SEC. 2. FINDINGS.

The Congress finds that--

- (1) the private ownership of property is essential to a free society and is an integral part of the American tradition of liberty and limited government;

- (2) the framers of the United States Constitution, in order to protect private property and liberty, devised a framework of Government designed to diffuse power and limit Government;
- (3) to further ensure the protection of private property, the fifth amendment to the United States Constitution was ratified to prevent the taking of private property by the Federal Government, except for public use and with just compensation;
- (4) the purpose of the takings clause of the fifth amendment of the United States Constitution, as the Supreme Court stated in *Armstrong v. United States*, 364 U.S. 40, 49 (1960), is 'to bar Government from forcing some people alone to bear public burdens, which in all fairness and justice, should be borne by the public as a whole';
- (5) the agencies, in their efforts to ameliorate public harms and environmental abuse, have singled out property holders to shoulder the cost that should be borne by the public, in violation of the just compensation requirement of the takings clause of the fifth amendment of the United States Constitution;
- (6) there is a need to both restrain the agencies in their overzealous regulation of the private sector and to protect private property, which is a fundamental right of the American people;
- (7) the incremental, fact-specific approach that courts now are required to employ in the absence of adequate statutory language to vindicate property rights under the fifth amendment of the United States Constitution has been ineffective and costly and there is a need for Congress to clarify the law and provide an effective remedy;
- (8) certain provisions of sections 1346 and 1402 and chapter 91 of title 28, United States Code (commonly known as the Tucker Act), that delineates the jurisdiction of courts hearing property rights claims, complicates the ability of a property owner to vindicate a property owner's right to just compensation for a governmental action that has caused a physical or regulatory taking;
- (9) current law--
 - (A) forces a property owner to elect between equitable relief in the district court and monetary relief (the value of the property taken) in the United States Court of Federal Claims;
 - (B) is used to urge dismissal in the district court on the ground that the plaintiff should seek just compensation in the Court of Federal Claims; and
 - (C) is used to urge dismissal in the Court of Federal Claims on the ground that plaintiff should seek equitable relief in district court;
- (10) property owners cannot fully vindicate property rights in one court;

- (11) property owners should be able to fully recover for a taking of their private property in one court;
- (12) certain provisions of section 1346 and 1402 and chapter 91 of title 28, United States Code (commonly known as the Tucker Act) should be amended, giving both the district courts of the United States and the Court of Federal Claims jurisdiction to hear all claims relating to property rights; and
- (13) section 1500 of title 28, United States Code, which denies the Court of Federal Claims jurisdiction to entertain a suit which is pending in another court and made by the same plaintiff, should be repealed.

SEC. 3. PURPOSE.

The purpose of this Act is to--

- (1) encourage, support, and promote the private ownership of property by ensuring the constitutional and legal protection of private property by the United States Government;
- (2) establish a clear, uniform, and efficient judicial process whereby aggrieved property owners can obtain vindication of property rights guaranteed by the fifth amendment to the United States Constitution and this Act;
- (3) amend certain provisions of the Tucker Act, including the repeal of section 1500 of title 28, United States Code;
- (4) rectify the constitutional imbalance between the Federal Government and the States; and
- (5) require the Federal Government and States to compensate property owners for the deprivation of property rights.

SEC. 4. DEFINITIONS.

For purposes of this Act the term--

- (1) `agency' means a department, agency, independent agency, or instrumentality of the United States or an individual State, including any military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the United States Government or an individual State;
- (2) `agency action' means any action or decision taken, permanently or temporarily, by an agency that--
 - (A) takes a property right; or
 - (B) unreasonably impedes the use of property or the exercise of property interests or significantly interferes with investment-backed expectations;

(3) `just compensation'--

(A) means compensation equal to the full extent of a property owner's loss, including the fair market value of the private property taken and business losses arising from a taking, whether the taking is by physical occupation or through regulation, exaction, or other means; and

(B) shall include compounded interest calculated from the date of the taking until the date the agency tenders payment;

(4) `owner' means the owner or possessor of property or rights in property at the time the taking occurs, including when--

(A) the statute, regulation, rule, order, guideline, policy, or action is passed or promulgated; or

(B) the permit, license, authorization, or governmental permission is denied or suspended;

(5) `private property' or `property' means all property protected under the fifth amendment to the Constitution of the United States, any applicable Federal or State law, or this Act, and includes--

(A) real property, whether vested or unvested, including--

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

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

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

(iv) easements;

(v) leaseholds;

(vi) recorded liens; and

(vii) contracts or other security interests in, or related to, real property;

(B) the right to use water or the right to receive water, including any recorded lines on such water right;

(C) rents, issues, and profits of land, including minerals, timber, fodder, crops, oil and gas, coal, or geothermal energy;

(D) property rights provided by, or memorialized in, a contract, except that such rights shall not be construed under this title to prevent the United States from prohibiting the formation of contracts deemed to harm the public welfare or to prevent the execution of contracts for--

(i) national security reasons; or

(ii) exigencies that present immediate or reasonably foreseeable threats or injuries to life or property;

(E) any interest defined as property under State law; or

(F) any interest understood to be property based on custom, usage, common law, or mutually reinforcing understandings sufficiently well-grounded in law to back a claim of interest; and

(6) 'taking of private property'--

(A) means any action whereby private property is directly taken in part or in whole as to require compensation under the fifth amendment to the United States Constitution or under this Act, including by physical invasion, regulation, exaction, condition, or other means; and

(B) shall not include--

(i) a condemnation action filed by the United States in an applicable court; or

(ii) an action filed by the United States relating to criminal forfeiture.

SEC. 5. COMPENSATION FOR TAKEN PROPERTY.

(a) IN GENERAL- No agency, shall take private property in part or in whole except for public purpose and with just compensation to the property owner. A property owner shall receive just compensation if--

(1) as a consequence of a decision of any agency private property (in part or in whole) has been physically invaded or taken without the consent of the owner; and

(2)(A) such action does not substantially advance the stated governmental interest to be achieved by the legislation or regulation on which the action is based;

(B) such action exacts the owner's constitutional or otherwise lawful right to use the property or a portion of such property as a condition for the granting of a permit, license, variance, or any other agency action without a rough proportionality between the stated need for the required dedication and the impact of the proposed use of the property;

(C) such action results in the property owner being deprived, either temporarily or permanently, of all or substantially all economically beneficial or productive use of the property or that part of the property affected by the action without a showing that such deprivation inheres in the title itself;

(D) such action diminishes the fair market value of the property which is the subject of the action by the lesser of--

(i) 20 percent or more with respect to the value immediately prior to the governmental action; or

- (ii) \$20,000, or more with respect to the value immediately prior to the governmental action; or
 - (E) under any other circumstance where a taking has occurred within the meaning of the fifth amendment of the United States Constitution.
- (b) BURDEN OF PROOF- (1) The agency shall bear the burden of proof in any action described under--
 - (A) subsection (a)(2)(A), with regard to showing the nexus between the stated governmental purpose of the governmental interest and the impact on the proposed use of private property;
 - (B) subsection (a)(2)(B), with regard to showing the proportionality between the exaction and the impact of the proposed use of the property; and
 - (C) subsection (a)(2)(C), with regard to showing that such deprivation of value inheres in the title to the property.
- (2) The property owner shall have the burden of proof in any action described under subsection (a)(2)(D), with regard to establishing the diminution of value of property.

SEC. 6. JURISDICTION AND JUDICIAL REVIEW.

- (a) IN GENERAL- A property owner may file a civil action under this Act to challenge the validity of any agency action that adversely affects the owner's interest in private property in either the United States District Court or the United States Court of Federal Claims. This section constitutes express waiver of the sovereign immunity of the United States. Notwithstanding any other provision of law and notwithstanding the issues involved, the relief sought, or the amount in controversy, each court shall have concurrent jurisdiction over both claims for monetary relief and claims seeking invalidation of any Act of Congress or any agency action defined under this Act affecting private property rights. The plaintiff shall have the election of the court in which to file a claim for relief.
- (b) STANDING- Persons adversely affected by an agency action taken under this Act shall have standing to challenge and seek judicial review of that action.
- (c) AMENDMENTS TO TITLE 28, UNITED STATES CODE- (1) Section 1491(a) of title 28, United States Code, is amended--
 - (A) in paragraph (1) by amending the first sentence to read as follows:
`The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against an agency for monetary relief founded either upon the Constitution or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with an agency, in cases not sounding in tort, or for invalidation

of any Act of Congress or any regulation of an executive department that adversely affects private property rights in violation of the fifth amendment of the United States Constitution';

(B) in paragraph (2) by inserting before the first sentence the following:

`In any case within its jurisdiction, the Court of Federal Claims shall have the power to grant injunctive and declaratory relief when appropriate.'; and

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

`(4) In cases otherwise within its jurisdiction, the Court of Federal Claims shall also have ancillary jurisdiction, concurrent with the courts designated in section 1346(b) of this title, to render judgment upon any related tort claim authorized under section 2674 of this title.

`(5) In proceedings within the jurisdiction of the Court of Federal Claims which constitute judicial review of agency action (rather than de novo proceedings), the provisions of section 706 of title 5 shall apply.'.

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

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

SEC. 7. STATUTE OF LIMITATIONS.

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

SEC. 8. ATTORNEYS' FEES AND COSTS.

The court, in issuing any final order in any action brought under this Act, shall award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing plaintiff.

SEC. 9. ALTERNATIVE DISPUTE RESOLUTION.

(a) IN GENERAL- Either party to a dispute over a taking of property as defined under this Act or litigation commenced under this Act may elect to resolve the dispute through settlement or arbitration. In the administration of this section--

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

(2) arbitration procedures shall be in accordance with the alternative dispute resolution procedures established by the American Arbitration Association; and

(3) in no event shall arbitration be a condition precedent or an administrative procedure to be exhausted before the filing of a civil action under this Act.

(b) REVIEW OF ARBITRATION- Appeal from arbitration decisions shall be to the United States District Court or the United States Court of Federal Claims in the manner prescribed by law for the claim under this Act.

SEC. 10. RULES OF CONSTRUCTION.

Nothing in this Act shall be construed to interfere with the authority of any State to create additional property rights.

SEC. 11. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 12. EFFECTIVE DATE.

The provisions of this Act shall apply to actions commenced on or after the date of the enactment of this Act.