

118TH CONGRESS  
1ST SESSION

# H. R. 6758

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

---

## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 13, 2023

Mr. LANGWORTHY (for himself, Ms. HAGEMAN, Mr. BIGGS, Mr. BACON, Mr. BAIRD, Mr. FINSTAD, Mr. GOSAR, Mr. NEWHOUSE, Ms. TENNEY, Mr. VALADAO, Mr. THOMPSON of Pennsylvania, Mr. WEBER of Texas, and Mr. ZINKE) introduced the following bill; which was referred to the Committee on the Judiciary

---

## 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 “Defense of Property  
5 Rights Act”.

6 **SEC. 2. FINDINGS.**

7 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 agencies, in their efforts to ameliorate  
22          public harms and environmental abuse, have singled  
23          out property holders to shoulder the cost that should  
24          be borne by the public, in violation of the just com-

1       pensation requirement of the takings clause of the  
2       fifth amendment of the United States Constitution;

3           (6) there is a need to both restrain the agencies  
4       in their overzealous regulation of the private sector  
5       and to protect private property, which is a funda-  
6       mental right of the American people;

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

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

22          (9) current law—

23              (A) forces a property owner to elect be-  
24              tween equitable relief in the district court and  
25              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 the plain-  
9 tiff should seek equitable relief in district court;

10 (10) property owners cannot fully vindicate  
11 property rights in one court;

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

15 (12) certain provisions of sections 1346 and  
16 1402 and chapter 91 of title 28, United States Code  
17 (commonly known as the Tucker Act) should be  
18 amended, giving both the district courts of the  
19 United States and the Court of Federal Claims ju-  
20 risdiction to hear all claims relating to property  
21 rights; and

22 (13) section 1500 of title 28, United States  
23 Code, which denies the Court of Federal Claims ju-  
24 risdiction to entertain a suit which is pending in an-

1 other court and made by the same plaintiff, should  
2 be repealed.

3 **SEC. 3. PURPOSE.**

4 The purpose of this Act is to—

5 (1) encourage, support, and promote the private  
6 ownership of property by ensuring the constitutional  
7 and legal protection of private property by the  
8 United States Government;

9 (2) establish a clear, uniform, and efficient ju-  
10 dicial process whereby aggrieved property owners  
11 can obtain vindication of property rights guaranteed  
12 by the fifth amendment to the United States Con-  
13 stitution and this Act;

14 (3) amend certain provisions of the Tucker Act,  
15 including the repeal of section 1500 of title 28,  
16 United States Code;

17 (4) rectify the constitutional imbalance between  
18 the Federal Government and the States; and

19 (5) require the Federal Government and States  
20 to compensate compensation to property owners for  
21 the deprivation of property rights.

22 **SEC. 4. DEFINITIONS.**

23 For purposes of this Act the term—

24 (1) “agency” means a department, agency,  
25 independent agency, or instrumentality of the United

1 States or an individual State, including any military  
2 department, Government corporation, Government-  
3 controlled corporation, or other establishment in the  
4 executive branch of the United States Government  
5 or an individual State;

6 (2) “agency action” means any action or deci-  
7 sion taken, permanently or temporarily, by an agen-  
8 cy that—

9 (A) takes a property right; or

10 (B) unreasonably impedes the use of prop-  
11 erty or the exercise of property interests or sig-  
12 nificantly interferes with investment-backed ex-  
13 pectations;

14 (3) “just compensation”—

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

22 (B) shall include compounded interest cal-  
23 culated from the date of the taking until the  
24 date the agency tenders payment;

1           (4) “owner” means the owner or possessor of  
2 property or rights in property at the time the taking  
3 occurs, including when—

4           (A) the statute, regulation, rule, order,  
5 guideline, policy, or action is passed or promul-  
6 gated; or

7           (B) the permit, license, authorization, or  
8 governmental permission is denied or sus-  
9 pended;

10          (5) “private property” or “property” means all  
11 property protected under the fifth amendment to the  
12 Constitution of the United States, any applicable  
13 Federal or State law, or this Act, and includes—

14          (A) real property, whether vested or  
15 unvested, including—

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

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

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

22           (iv) easements;

23           (v) leaseholds;

24           (vi) recorded liens; and

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

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

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

9 (D) property rights provided by, or memo-  
10 rialized in, a contract, except that such rights  
11 shall not be construed under this title to pre-  
12 vent the United States from prohibiting the for-  
13 mation of contracts deemed to harm the public  
14 welfare or to prevent the execution of contracts  
15 for—

16 (i) national security reasons; or

17 (ii) exigencies that present immediate  
18 or reasonably foreseeable threats or inju-  
19 ries to life or property;

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

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



1 (6) “taking of private property”—

2 (A) means any action whereby private  
3 property is directly taken in part or in whole as  
4 to require compensation under the fifth amend-  
5 ment to the United States Constitution or  
6 under this Act, including by physical invasion,  
7 regulation, exaction, condition, or other means;  
8 and

9 (B) shall not include—

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

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

14 **SEC. 5. COMPENSATION FOR TAKEN PROPERTY.**

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

19 (1) as a consequence of a decision of any agen-  
20 cy private property (in part or in whole) has been  
21 physically invaded or taken without the consent of  
22 the owner; and

23 (2)(A) such action does not substantially ad-  
24 vance the stated governmental interest to be

1 achieved by the legislation or regulation on which  
2 the action is based;

3 (B) such action exacts the owner's constitu-  
4 tional or otherwise lawful right to use the property  
5 or a portion of such property as a condition for the  
6 granting of a permit, license, variance, or any other  
7 agency action without a rough proportionality be-  
8 tween the stated need for the required dedication  
9 and the impact of the proposed use of the property;

10 (C) such action results in the property owner  
11 being deprived, either temporarily or permanently, of  
12 all or substantially all economically beneficial or pro-  
13 ductive use of the property or that part of the prop-  
14 erty affected by the action without a showing that  
15 such deprivation inheres in the title itself;

16 (D) such action diminishes the fair market  
17 value of the property which is the subject of the ac-  
18 tion by the lesser of—

19 (i) 20 percent or more with respect to the  
20 value immediately prior to the governmental ac-  
21 tion; or

22 (ii) \$20,000, or more with respect to the  
23 value immediately prior to the governmental ac-  
24 tion; or

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

4 (b) BURDEN OF PROOF.—(1) The agency shall bear  
5 the burden of proof in any action described under—

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

10 (B) subsection (a)(2)(B), with regard to show-  
11 ing the proportionality between the exaction and the  
12 impact of the proposed use of the property; and

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

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

20 **SEC. 6. JURISDICTION AND JUDICIAL REVIEW.**

21 (a) IN GENERAL.—A property owner may file a civil  
22 action under this Act to challenge the validity of any agen-  
23 cy action that adversely affects the owner's interest in pri-  
24 vate property in either the United States District Court  
25 or the United States Court of Federal Claims. This section

1 constitutes express waiver of the sovereign immunity of  
2 the United States. Notwithstanding any other provision of  
3 law and notwithstanding the issues involved, the relief  
4 sought, or the amount in controversy, each court shall  
5 have concurrent jurisdiction over both claims for monetary  
6 relief and claims seeking invalidation of any Act of Con-  
7 gress or any agency action defined under this Act affecting  
8 private property rights. The plaintiff shall have the elec-  
9 tion of the court in which to file a claim for relief.

10 (b) STANDING.—Persons adversely affected by an  
11 agency action taken under this Act shall have standing  
12 to challenge and seek judicial review of that action.

13 (c) AMENDMENTS TO TITLE 28, UNITED STATES  
14 CODE.—(1) Section 1491(a) of title 28, United States  
15 Code, is amended—

16 (A) in paragraph (1) by amending the first sen-  
17 tence to read as follows: “The United States Court  
18 of Federal Claims shall have jurisdiction to render  
19 judgment upon any claim against an agency for  
20 monetary relief founded either upon the Constitution  
21 or any Act of Congress or any regulation of an exec-  
22 utive department, or upon any express or implied  
23 contract with an agency, in cases not sounding in  
24 tort, or for invalidation of any Act of Congress or  
25 any regulation of an executive department that ad-

1       versely affects private property rights in violation of  
2       the fifth amendment of the United States Constitu-  
3       tion”;

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

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

11           “(3) In cases otherwise within its jurisdiction,  
12       the Court of Federal Claims shall also have ancillary  
13       jurisdiction, concurrent with the courts designated in  
14       section 1346(b) of this title, to render judgment  
15       upon any related tort claim authorized under section  
16       2674 of this title.

17           “(4) In proceedings within the jurisdiction of the  
18       Court of Federal Claims which constitute judicial review  
19       of agency action (rather than de novo proceedings), the  
20       provisions of section 706 of title 5 shall apply.”.

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

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

1 **SEC. 7. STATUTE OF LIMITATIONS.**

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

5 **SEC. 8. ATTORNEYS' FEES AND COSTS.**

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

10 **SEC. 9. ALTERNATIVE DISPUTE RESOLUTION.**

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

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

18 (2) arbitration procedures shall be in accord-  
19 ance with the alternative dispute resolution proce-  
20 dures established by the American Arbitration Asso-  
21 ciation; and

22 (3) in no event shall arbitration be a condition  
23 precedent or an administrative procedure to be ex-  
24 hausted before the filing of a civil action under this  
25 Act.

1 (b) REVIEW OF ARBITRATION.—Appeal from arbitra-  
2 tion decisions shall be to the United States District Court  
3 or the United States Court of Federal Claims in the man-  
4 ner prescribed by law for the claim under this Act.

5 **SEC. 10. RULES OF CONSTRUCTION.**

6 Nothing in this Act shall be construed to interfere  
7 with the authority of any State to create additional prop-  
8 erty rights.

9 **SEC. 11. SEVERABILITY.**

10 If any provision of this Act, an amendment made by  
11 this Act, or the application of such provision or amend-  
12 ment to any person or circumstance is held to be unconsti-  
13 tutional, the remainder of this Act, the amendments made  
14 by this Act, and the application of the provisions of such  
15 to any person or circumstance shall not be affected there-  
16 by.

17 **SEC. 12. EFFECTIVE DATE.**

18 The provisions of this Act shall apply to actions com-  
19 menced on or after the date of the enactment of this Act.

○