

104TH CONGRESS
1ST SESSION

H. R. 971

To ensure that homeowners receive adequate notice of and opportunity to comment on activities likely to adversely affect the value of their homes; and to create procedures for homeowners to receive financial compensation for development which produces pollution and other impacts adversely affecting the value of their homes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 1995

Mr. WYDEN (for himself and Mr. GILCREST) introduced the following bill; which was referred to the Committee on Government Reform and Oversight

A BILL

To ensure that homeowners receive adequate notice of and opportunity to comment on activities likely to adversely affect the value of their homes; and to create procedures for homeowners to receive financial compensation for development which produces pollution and other impacts adversely affecting the value of their homes.

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 “Homeowners
5 Empowerment and Protection Act of 1995”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds and declares that—

3 (1) there are 65,000,000 homeowners in the
4 United States, representing approximately two-thirds
5 of all households, who have a strong and justified in-
6 terest in preserving and enhancing the value of their
7 property;

8 (2) the value of a homeowner's home is based
9 in large part on the location of the property relative
10 to other features of the built and natural environ-
11 ment, and the increase or decrease in the value of
12 a home over time is inextricably linked to changes
13 in the quality of the neighborhood and environment
14 in which the home is located, including but not lim-
15 ited to the quality of the water for drinking, fishing,
16 and swimming, the clarity and healthfulness of the
17 air, the risk of flooding, the scenic beauty of the
18 community, the presence or absence of offensive
19 odors and excessive noise, the health and abundance
20 of wildlife resources, and other factors;

21 (3) the value of homes in the United States is
22 frequently reduced, and sometimes destroyed, by cer-
23 tain types of land development, industrial activity,
24 and other actions that occur on neighboring prop-
25 erties or at other locations, including sites upwind,
26 upstream, or upslope from private homes;

1 (4) protecting private homeowners from the ad-
2 verse affects of irresponsible actions of certain enti-
3 ties and individuals which cause injury to home-
4 owners' property values is important not only to
5 homeowners but also to their communities and soci-
6 ety as a whole; and

7 (5) current public information and participation
8 procedures are often insufficient to provide individ-
9 ual homeowners with notice of activities and the op-
10 portunity to effectively participate in decisionmaking
11 procedures that have the potential to significantly
12 affect the value of their homes.

13 **SEC. 3. HOMEOWNER RIGHT OF ACCESS TO INFORMATION**
14 **ABOUT ACTIVITIES THAT COULD REDUCE**
15 **THE VALUE OF THEIR HOMES.**

16 (a) NOTICE.—

17 (1) GENERAL REQUIREMENT.—Within 90 days
18 after the enactment of this Act, the Director of the
19 Office of Management and Budget shall establish
20 uniform Federal procedures applicable to all agen-
21 cies under this section. In accordance with such pro-
22 cedures, each agency shall require any person re-
23 quired to file any application to conduct property
24 impacting activity with the agency to provide the no-
25 tice described in this section. The Director shall des-

1 ignite a lead agency in the case of any application
2 under this section that involves more than one
3 agency.

4 (2) APPLICATION TO CONDUCT PROPERTY IM-
5 PACTING ACTIVITY.—For purposes of this section,
6 the term an “application to conduct property im-
7 pacting activity” means an application for a permit,
8 license, or other approval form, or contract, lease, or
9 other arrangement, with an agency, that would au-
10 thorize the applicant, pursuant to Federal law, to
11 conduct an activity that generates pollutants or pro-
12 duces other adverse impacts with the potential to re-
13 duce the value of any private home.

14 (3) HOMEOWNERS REQUIRED TO RECEIVE NO-
15 TICE.—The notice under this section shall be pro-
16 vided by delivery, by certified mail, of individual
17 written notice to each homeowner whose property
18 lies within $\frac{1}{4}$ mile of the perimeter of the site at
19 which the activity that is the subject of the applica-
20 tion will be carried out. The applicant shall also pub-
21 lish notice under this subsection at least 3 times in
22 the newspapers of general circulation in the affected
23 community. The agency may also provide notice
24 under this subsection by mail to the owner of any
25 home identified by the agency as reasonably likely to

1 suffer a reduction in value as a result of the pro-
2 posed activity.

3 (4) NOTICE CONTENTS.—The notice referred to
4 in paragraph (2) shall describe the nature of the ap-
5 plication to conduct property impacting activity, the
6 potential impacts of the proposed activity on the
7 value of private homes, potential impacts on home-
8 owners and other members of the public, the name
9 and telephone number of the applicant and an agen-
10 cy representative assigned to provide further infor-
11 mation about the application, and any opportunities
12 available for homeowner or other affected members
13 of the public to comment on the proposed activity.

14 (b) PUBLIC RESPONSE; IDENTIFICATION OF ALTER-
15 NATIVES TO REDUCE PROPERTY IMPACTS.—In addition
16 to and not in lieu of any other procedures established by
17 law, each agency shall establish a toll-free telephone num-
18 ber which homeowners may call to register concerns about
19 the potential effects on property values of an application
20 for a proposed activity or to request additional information
21 concerning applications to conduct property impacting ac-
22 tivities filed with the agency and opportunities to submit
23 public comment. If requested by an applicant or any home-
24 owner whose property is reasonably likely to suffer a re-
25 duction in value as a result of the activity to be authorized

1 by such application, the agency shall thoroughly inves-
2 tigate the potential impact of the proposed activity on the
3 value of private homes, and seek to identify alternatives
4 to the proposed action which reduce the adverse effects
5 on the value of private homes.

6 **SEC. 4. HOMEOWNER RIGHT OF ACTION.**

7 (a) RIGHT OF ACTION.—Whenever any person has
8 carried out any activity that—

9 (1) is authorized (or required to be authorized)
10 by a permit, license, or other approval issued by an
11 agency or pursuant to Federal law to such person,
12 or by a contract, lease, or other arrangement be-
13 tween such person and an agency, and

14 (2) generates pollutants or produces other ad-
15 verse impacts that cause or significantly contribute
16 to a total reduction in the value of one or more pri-
17 vate homes of \$10,000 or more,

18 any owner of a private home, the value of which is reduced
19 by such activity, may commence an action against such
20 person under this section.

21 (b) NOTICE OF INTENT TO SUE AND VOLUNTARY
22 CLAIM RESOLUTION PROCEDURES.—At least 30 days
23 prior to filing an action under this section, a homeowner
24 shall deliver a notice of intent to sue to the defendant and
25 to the head of the agency to which the application to con-

1 duct property impacting activity is submitted or required
2 to be submitted or which has authority to enter into the
3 contract, lease, or other arrangement. If either the home-
4 owner or the defendant requests that the agency resolve
5 the claim, the agency head shall convene a meeting of the
6 parties and use his or her best efforts to arrive at a just
7 resolution of the claim in order to avoid unnecessary litiga-
8 tion costs. Such efforts shall not affect the right of the
9 homeowner to bring an action under this section at any
10 time after the expiration of the 30-day period referred to
11 in this subsection.

12 (c) BURDEN OF PROOF.—In any action under this
13 section, the homeowner shall have the burden of dem-
14 onstrating that the activity conducted by the defendant
15 caused or contributed to a reduction in the value of the
16 homeowner's home.

17 (d) CLASS ACTIONS.—Similarly affected homeowners
18 are authorized to file suit under this section in accordance
19 with rule 23 of the Federal Rules of Civil Procedure in
20 Federal district court in the district where his or her home
21 is located.

22 (e) REMEDY.—Any homeowner authorized to bring
23 suit under this section shall be entitled to recover an
24 amount equal to the reduction in the value of the home-
25 owner's home caused or significantly contributed to by the

1 activity referred to in subsection (a), except that such
2 compensation may not exceed the median value (as deter-
3 mined by the court) of all private homes in the immediate
4 vicinity of the homeowner's home.

5 (f) ATTORNEYS FEES.—Any homeowner who receives
6 compensation under this section shall be awarded reason-
7 able attorney's fees, including the cost of expert witnesses
8 and other reasonable costs.

9 (g) INJUNCTION.—In addition to providing com-
10 pensation under this section, whenever any activity that
11 is the subject of an action under this section constitutes
12 a violation of any Federal statute, regulation, permit, li-
13 cense, contract, lease, or other arrangement or form of
14 approval, the court may enjoin such activity.

15 (h) JURISDICTION.—The United States district court
16 shall have original jurisdiction, concurrent with State
17 courts, of any action brought under this section.

18 (i) FRIVOLOUS OR OTHERWISE IMPROPER LAW-
19 SUITS.—If the court dismisses any action under this sec-
20 tion after finding that the plaintiff's case was frivolous,
21 dilatory, abusive, or brought to harass the defendant or
22 for any other improper purpose, in addition to any other
23 sanction available to the court under the Federal Rules
24 of Civil Procedure, the court may, upon motion by the de-
25 fendant, order the plaintiff to pay the defendant's reason-

1 able attorney's fees and other expenses reasonably in-
2 curred by the defendant in participating in the litigation.

3 (j) STATUTE OF LIMITATIONS.—No action may be
4 brought under this section with respect to any private
5 home or homes after the date 5 years after the date on
6 which the total reduction in the value of such home or
7 homes has reached \$10,000.

8 (k) SAVINGS PROVISIONS.—

9 (1) PROHIBITION OF LIMITATION ON OTHER
10 CLAIMS.—No provision of this Act shall be construed
11 to limit the rights of any person to pursue any claim
12 or cause of action under the Constitution or any
13 other law (including a claim or cause of action con-
14 cerning real or personal property).

15 (2) PROHIBITION OF USE AS CONDITION
16 PRECEDENT.—Commencement of a suit under this
17 Act, or receipt of compensation under this Act, shall
18 not be a condition precedent for any claim or cause
19 of action under any other authority of law.

20 **SEC. 5. EFFECTIVE DATE.**

21 This Act shall apply to each permit, license, or other
22 form of approval issued by an agency after the date 180
23 days after the enactment of this Act and to each contract,
24 lease, or other arrangement entered into by an agency
25 after the date 180 days after the enactment of this Act.

1 **SEC. 6. DEFINITIONS.**

2 As used in this Act:

3 (1) AGENCY.—The term “agency” has the
4 meaning given that term in section 551(1) of title 5,
5 United States Code.

6 (2) POTENTIAL TO REDUCE THE VALUE.—An
7 activity that generates pollutants or produces other
8 adverse impacts shall be considered to have the po-
9 tential to reduce the value of any private home
10 whenever such activity may result in physical dam-
11 age or any other unlawful or objectively unreason-
12 able interference with the use and enjoyment of a
13 private home.

14 (3) PRIVATE HOME.—The term “private home”
15 means any owner occupied dwelling, including any
16 multi-family dwelling and any condominium.

17 (4) REDUCTION IN VALUE.—For any private
18 home affected by an activity referred to in section 4,
19 the term “reduction in value” means the difference
20 (estimated based on values at the time an action is
21 brought under this section) between the fair market
22 value of the home, and the fair market value of the
23 home in the absence of such activity.

24 (5) PERSON.—The term “person” means any
25 individual, corporation, partnership, or other organi-

1 zation or entity other than a Federal, State, or local
2 government agency.

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