

Union Calendar No. 391

109TH CONGRESS
2^D SESSION

H. R. 4772

[Report No. 109-658]

To simplify and expedite access to the Federal courts for injured parties whose rights and privileges under the United States Constitution have been deprived by final actions of Federal agencies or other government officials or entities acting under color of State law, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2006

Mr. CHABOT (for himself, Mr. GORDON, Mr. GALLEGLY, Mr. FLAKE, Mr. SENSENBRENNER, Mr. BOYD, Mr. FEENEY, and Mr. POMBO) introduced the following bill; which was referred to the Committee on the Judiciary

SEPTEMBER 14, 2006

Additional sponsors: Mr. NEUGEBAUER, Mr. KELLER, Mr. HERGER, Mr. SMITH of Texas, Mr. CALVERT, Mr. BROWN of South Carolina, Mr. BISHOP of Georgia, Ms. FOXX, Mr. MCHENRY, Mrs. MYRICK, Mr. POE, Mr. CONAWAY, Mr. WILSON of South Carolina, Mr. GUTKNECHT, Mr. GOODE, Mr. ISSA, Mr. ROHRABACHER, Mr. BARTLETT of Maryland, Mr. AKIN, Mr. CARTER, Mr. MARCHANT, Mr. COLE of Oklahoma, Mr. BACHUS, Mr. KLINE, Mr. ETHERIDGE, Mrs. CAPITO, Mr. CANNON, Mr. HOLDEN, and Mr. DAVIS of Kentucky

SEPTEMBER 14, 2006

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 16, 2006]

A BILL

To simplify and expedite access to the Federal courts for injured parties whose rights and privileges under the United States Constitution have been deprived by final actions of Federal agencies or other government officials or entities acting under color of State law, and for other purposes.

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 Rights*
5 *Implementation Act of 2006”.*

6 **SEC. 2. JURISDICTION IN CIVIL RIGHTS CASES CON-**
7 **CERNING REAL PROPERTY.**

8 *Section 1343 of title 28, United States Code, is amend-*
9 *ed by adding at the end the following:*

10 *“(c) Whenever a district court exercises jurisdiction*
11 *under subsection (a) in an action in which the operative*
12 *facts concern the uses of real property, it shall not abstain*
13 *from exercising or relinquish its jurisdiction to a State*
14 *court if the party seeking redress does not allege a violation*
15 *of a State law, right, or privilege, and no parallel pro-*
16 *ceeding is pending in State court, at the time the action*

1 *is filed in the district court, that arises out of the same*
2 *operative facts as the district court proceeding.*

3 “(d) *In an action in which the operative facts concern*
4 *the uses of real property, the district court shall exercise*
5 *jurisdiction under subsection (a) even if the party seeking*
6 *redress does not pursue judicial remedies provided by a*
7 *State or territory of the United States.*

8 “(e) *If the district court has jurisdiction over an action*
9 *under subsection (a) in which the operative facts concern*
10 *the uses of real property and which cannot be decided with-*
11 *out resolution of an unsettled question of State law, the dis-*
12 *trict court may certify the question of State law to the high-*
13 *est appellate court of that State. After the State appellate*
14 *court resolves the question so certified, the district court*
15 *shall proceed with resolving the merits. The district court*
16 *shall not certify a question of State law under this sub-*
17 *section unless the question of State law—*

18 “(1) *is necessary to resolve the merits of the Fed-*
19 *eral claim of the injured party; and*

20 “(2) *is patently unclear.*

21 “(f)(1) *Any claim or action brought under section 1979*
22 *of the Revised Statutes of the United States (42 U.S.C.*
23 *1983) to redress the deprivation of a property right or*
24 *privilege secured by the Constitution shall be ripe for adju-*
25 *dication by the district courts upon a final decision ren-*

1 *dered by any person acting under color of any statute, ordi-*
2 *nance, regulation, custom, or usage, of any State or terri-*
3 *tory of the United States, which causes actual and concrete*
4 *injury to the party seeking redress.*

5 “(2) *For purposes of this subsection, a final decision*
6 *exists if—*

7 “(A) *any person acting under color of any stat-*
8 *ute, ordinance, regulation, custom, or usage, of any*
9 *State or territory of the United States, makes a defini-*
10 *itive decision regarding the extent of permissible uses*
11 *on the property that has been allegedly infringed or*
12 *taken, without regard to any uses that may be per-*
13 *mitted elsewhere; and*

14 “(B) *one meaningful application to use the prop-*
15 *erty has been submitted but denied, and the party*
16 *seeking redress has applied for but is denied one*
17 *waiver and one appeal, if the applicable statute, ordi-*
18 *nance, regulation, custom, or usage provides a mecha-*
19 *nism for waiver by or appeal to an administrative*
20 *agency.*

21 *The party seeking redress shall not be required to apply*
22 *for a waiver or appeal described in subparagraph (B) if*
23 *such waiver or appeal is unavailable or can not provide*
24 *the relief requested, or if pursuit of such a mechanism would*
25 *otherwise be futile.”.*

1 **SEC. 3. UNITED STATES AS DEFENDANT.**

2 *Section 1346 of title 28, United States Code, is amend-*
3 *ed by adding at the end the following:*

4 *“(h)(1) Any claim brought under subsection (a) that*
5 *is founded upon a property right or privilege secured by*
6 *the Constitution, but was allegedly infringed or taken by*
7 *the United States, shall be ripe for adjudication upon a*
8 *final decision rendered by the United States, which causes*
9 *actual and concrete injury to the party seeking redress.*

10 *“(2) For purposes of this subsection, a final decision*
11 *exists if—*

12 *“(A) the United States makes a definitive deci-*
13 *sion regarding the extent of permissible uses on the*
14 *property that has been allegedly infringed or taken,*
15 *without regard to any uses that may be permitted*
16 *elsewhere; and*

17 *“(B) one meaningful application to use the prop-*
18 *erty has been submitted but denied, and the party*
19 *seeking redress has applied for but is denied one*
20 *waiver and one appeal, if the applicable law of the*
21 *United States provides a mechanism for waiver by or*
22 *appeal to an administrative agency.*

23 *The party seeking redress shall not be required to apply*
24 *for a waiver or appeal described in subparagraph (B) if*
25 *such waiver or appeal is unavailable or can not provide*

1 *the relief requested, or if pursuit of such a mechanism would*
2 *otherwise be futile.”.*

3 **SEC. 4. JURISDICTION OF COURT OF FEDERAL CLAIMS.**

4 *Section 1491(a) of title 28, United States Code, is*
5 *amended by adding at the end the following:*

6 *“(3) Any claim brought under this subsection founded*
7 *upon a property right or privilege secured by the Constitu-*
8 *tion, but allegedly infringed or taken by the United States,*
9 *shall be ripe for adjudication upon a final decision rendered*
10 *by the United States, that causes actual and concrete injury*
11 *to the party seeking redress. For purposes of this paragraph,*
12 *a final decision exists if—*

13 *“(A) the United States makes a definitive*
14 *decision regarding the extent of permissible uses*
15 *on the property that has been allegedly infringed*
16 *or taken, without regard to any uses that may*
17 *be permitted elsewhere; and*

18 *“(B) one meaningful application to use the*
19 *property has been submitted but denied, and the*
20 *party seeking redress has applied for but is de-*
21 *denied one waiver and one appeal, if the applica-*
22 *ble statute, ordinance, regulation, custom, or*
23 *usage provides a mechanism for waiver by or ap-*
24 *peal to an administrative agency.*

1 *The party seeking redress shall not be required to*
2 *apply for a waiver or appeal described in subpara-*
3 *graph (B) if such waiver or appeal is unavailable or*
4 *can not provide the relief requested, or if pursuit of*
5 *such a mechanism would otherwise be futile.”.*

6 **SEC. 5. CLARIFICATION FOR CERTAIN CONSTITUTIONAL**
7 **PROPERTY RIGHTS CLAIMS.**

8 *Section 1979 of the Revised Statutes of the United*
9 *States (42 U.S.C. 1983) is amended by adding at the end*
10 *the following: “If the party injured seeks to redress the dep-*
11 *rievation of a property right or privilege under this section*
12 *that is secured by the Constitution by asserting a claim that*
13 *concerns—*

14 *“(1) an approval to develop real property that is*
15 *subject to conditions or exactions, then the person act-*
16 *ing under color of State law is liable if any such con-*
17 *dition or exaction, whether legislative or adjudicatory*
18 *in nature, including but not limited to the payment*
19 *of a monetary fee or a dedication of real property*
20 *from the injured party, is unconstitutional;*

21 *“(2) a subdivision of real property pursuant to*
22 *any statute, ordinance, regulation, custom, or usage*
23 *of any State or territory, or the District of Columbia,*
24 *then such a claim shall be decided with reference to*
25 *each subdivided lot, regardless of ownership, if such a*

1 *lot is taxed, or is otherwise treated and recognized, as*
2 *an individual property unit by the State, territory,*
3 *or the District of Columbia; or*

4 *“(3) alleged deprivation of substantive due proc-*
5 *ess, then the action of the person acting under color*
6 *of State law shall be judged as to whether it is arbi-*
7 *trary, capricious, an abuse of discretion, or otherwise*
8 *not in accordance with law.*

9 *For purposes of the preceding sentence, ‘State law’ includes*
10 *any law of the District of Columbia or of any territory of*
11 *the United States.”.*

12 **SEC. 6. CLARIFICATION FOR CERTAIN CONSTITUTIONAL**
13 **PROPERTY RIGHTS CLAIMS AGAINST THE**
14 **UNITED STATES.**

15 *(a) DISTRICT COURT JURISDICTION.—Section 1346 of*
16 *title 28, United States Code, is amended by adding at the*
17 *end the following:*

18 *“(i) If a claim brought under subsection (a) is founded*
19 *upon a property right or privilege secured by the Constitu-*
20 *tion that concerns—*

21 *“(1) an approval from an executive agency to*
22 *permit or authorize uses of real property that is sub-*
23 *ject to conditions or exactions, then the United States*
24 *is liable if any such condition or exaction, whether*
25 *legislative or adjudicatory in nature, including but*

1 *not limited to the payment of a monetary fee or a*
2 *dedication of real property from the injured party, is*
3 *unconstitutional;*

4 “(2) *a subdivision of real property pursuant to*
5 *any statute, ordinance, regulation, custom, or usage*
6 *of any State or territory, or the District of Columbia,*
7 *then such a claim against an executive agency shall*
8 *be decided with reference to each subdivided lot, re-*
9 *gardless of ownership, if such a lot is taxed, or is oth-*
10 *erwise treated and recognized, as an individual prop-*
11 *erty unit by the State or territory, or the District of*
12 *Columbia, as the case may be; or*

13 “(3) *an alleged deprivation of substantive due*
14 *process, then the United States shall be judged as to*
15 *whether its action is arbitrary, capricious, an abuse*
16 *of discretion, or otherwise not in accordance with law.*

17 *In this subsection, the term ‘executive agency’ has the mean-*
18 *ing given that term in section 105 of title 5.”.*

19 **(b) COURT OF FEDERAL CLAIMS JURISDICTION.**—*Sec-*
20 *tion 1491 of title 28, United States Code, is amended by*
21 *adding at the end the following:*

22 “(4) *If a claim brought under subsection (a) is founded*
23 *upon a property right or privilege secured by the Constitu-*
24 *tion that concerns—*

1 “(A) an approval from an executive agency to
2 permit or authorize uses of real property that is sub-
3 ject to conditions or exactions, then the United States
4 is liable if any such condition or exaction, whether
5 legislative or adjudicatory in nature, including but
6 not limited to the payment of a monetary fee or a
7 dedication of real property from the injured party, is
8 unconstitutional;

9 “(B) a subdivision of real property pursuant to
10 any statute, ordinance, regulation, custom, or usage
11 of any State or territory, or the District of Columbia,
12 then such a claim against an executive agency shall
13 be decided with reference to each subdivided lot, re-
14 gardless of ownership, if such a lot is taxed, or is oth-
15 erwise treated and recognized, as an individual prop-
16 erty unit by the State, or territory, or the District of
17 Columbia, as the case may be; or

18 “(C) an alleged deprivation of substantive due
19 process, then the United States shall be judged as to
20 whether its action is arbitrary, capricious, an abuse
21 of discretion, or otherwise not in accordance with law.

22 In this paragraph, the term ‘executive agency’ has the
23 meaning given that term in section 105 of title 5.”.

1 **SEC. 7. DUTY OF NOTICE TO OWNERS.**

2 (a) *IN GENERAL.*—Whenever a Federal agency takes
3 an agency action limiting the use of private property that
4 may be affected by the amendments by this Act, the agency
5 shall, not later than 30 days after the agency takes that
6 action, give notice to the owners of that property explaining
7 their rights under such amendments and the procedures for
8 obtaining any compensation that may be due them under
9 such amendments.

10 (b) *DEFINITIONS.*—For purposes of subsection (a)—

11 (1) the term “Federal agency” means “agency”,
12 as that term is defined in section 552(f) of title 5,
13 United States Code; and

14 (2) the term “agency action” has the meaning
15 given that term in section 551 of title 5, United
16 States Code.

17 **SEC. 8. SEVERABILITY AND EFFECTIVE DATE.**

18 (a) *SEVERABILITY.*—If any provision of this Act or the
19 amendments made by this Act or the application thereof
20 to any person or circumstance is held invalid, the remain-
21 der of this Act, the amendments made by this Act, or the
22 application thereof to other persons not similarly situated
23 or to other circumstances shall not be affected by such in-
24 validation.

1 **(b) EFFECTIVE DATE.**—*The amendments made by this*
2 *Act shall apply to actions commenced on or after the date*
3 *of the enactment of this Act.*

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