

105TH CONGRESS
1ST SESSION

H. R. 1534

IN THE SENATE OF THE UNITED STATES

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AN ACT

To simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by 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; to prevent Federal courts from abstaining from exercising Federal jurisdiction in actions where no State law claim

is alleged; to permit certification of unsettled State law questions that are essential to resolving Federal claims arising under the Constitution; and to clarify when government action is sufficiently final to ripen certain Federal claims arising under the Constitution.

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 Implementation Act of 1997”.

6 **SEC. 2. JURISDICTION IN CIVIL RIGHTS CASES.**

7 Section 1343 of title 28, United States Code, is
8 amended by adding at the end the following:

9 “(c) Whenever a district court exercises jurisdiction
10 under subsection (a) in an action in which the operative
11 facts concern the uses of real property, it shall not abstain
12 from exercising or relinquish its jurisdiction to a State
13 court in an action where no claim of a violation of a State
14 law, right, or privilege is alleged, and where a parallel pro-
15 ceeding in State court arising out of the same operative
16 facts as the district court proceeding is not pending.

17 “(d) Where the district court has jurisdiction over an
18 action under subsection (a) in which the operative facts
19 concern the uses of real property and which cannot be de-
20 cided without resolution of an unsettled question of State
21 law, the district court may certify the question of State

1 law to the highest appellate court of that State. After the
2 State appellate court resolves the question certified to it,
3 the district court shall proceed with resolving the merits.
4 The district court shall not certify a question of State law
5 under this subsection unless the question of State law—

6 “(1) will significantly affect the merits of the
7 injured party’s Federal claim; and

8 “(2) is patently unclear.

9 “(e)(1) Any claim or action brought under section
10 1979 of the Revised Statutes of the United States (42
11 U.S.C. 1983) to redress the deprivation of a property right
12 or privilege secured by the Constitution shall be ripe for
13 adjudication by the district courts upon a final decision
14 rendered by any person acting under color of any statute,
15 ordinance, regulation, custom, or usage, of any State or
16 territory of the United States, that causes actual and con-
17 crete injury to the party seeking redress.

18 “(2)(A) For purposes of this subsection, a final deci-
19 sion exists if—

20 “(i) any person acting under color of any stat-
21 ute, ordinance, regulation, custom, or usage, of any
22 State or territory of the United States, makes a de-
23 finitive decision regarding the extent of permissible
24 uses on the property that has been allegedly in-
25 fringed or taken;

1 “(ii)(I) one meaningful application, as defined
2 by the locality concerned within that State or terri-
3 tory, to use the property has been submitted but has
4 not been approved, and the party seeking redress
5 has applied for one appeal or waiver which has not
6 been approved, where the applicable statute, ordi-
7 nance, custom, or usage provides a mechanism for
8 appeal to or waiver by an administrative agency; or

9 “(II) one meaningful application, as defined by
10 the locality concerned within that State or territory,
11 to use the property has been submitted but has not
12 been approved, and the disapproval explains in writ-
13 ing the use, density, or intensity of development of
14 the property that would be approved, with any con-
15 ditions therefor, and the party seeking redress has
16 resubmitted another meaningful application taking
17 into account the terms of the disapproval, except
18 that—

19 “(aa) if no such reapplication is submitted,
20 then a final decision shall not have been
21 reached for purposes of this subsection, except
22 as provided in subparagraph (B); and

23 “(bb) if the reapplication is not approved,
24 or if the reapplication is not required under
25 subparagraph (B), then a final decision exists

1 for purposes of this subsection if the party
2 seeking redress has applied for one appeal or
3 waiver with respect to the disapproval, which
4 has not been approved, where the applicable
5 statute, ordinance, custom, or usage provides a
6 mechanism of appeal or waiver by an adminis-
7 trative agency; and

8 “(iii) in a case involving the uses of real prop-
9 erty, where the applicable statute or ordinance pro-
10 vides for review of the case by elected officials, the
11 party seeking redress has applied for but is denied
12 such review.

13 “(B) The party seeking redress shall not be required
14 to apply for an appeal or waiver described in paragraph
15 (1)(B) if no such appeal or waiver is available, if it cannot
16 provide the relief requested, or if the application or re-
17 application would be futile.

18 “(3) For purposes of this subsection, a final decision
19 shall not require the party seeking redress to exhaust judi-
20 cial remedies provided by any State or territory of the
21 United States.

22 “(f) Nothing in subsection (c), (d), or (e) alters the
23 substantive law of takings of property, including the bur-
24 den of proof borne by the plaintiff.”.

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

2 Section 1346 of title 28, United States Code, is
3 amended 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, that 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 and

16 “(B) one meaningful application to use the
17 property has been submitted but has not been ap-
18 proved, and the party seeking redress has applied
19 for one appeal or waiver which has not been ap-
20 proved, where the applicable law of the United
21 States provides a mechanism for appeal to or waiver
22 by an administrative agency.

23 The party seeking redress shall not be required to apply
24 for an appeal or waiver described in subparagraph (B) if
25 no such appeal or waiver is available, if it cannot provide

1 the relief requested, or if application or reapplication to
2 use the property would be futile.

3 “(3) Nothing in this subsection alters the substantive
4 law of takings of property, including the burden of proof
5 borne by the plaintiff.”.

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

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

9 “(3) Any claim brought under this subsection found-
10 ed upon a property right or privilege secured by the Con-
11 stitution, but allegedly infringed or taken by the United
12 States, shall be ripe for adjudication upon a final decision
13 rendered by the United States, that causes actual and con-
14 crete injury to the party seeking redress. For purposes of
15 this paragraph, a final decision exists if—

16 “(A) the United States makes a definitive deci-
17 sion regarding the extent of permissible uses on the
18 property that has been allegedly infringed or taken;
19 and

20 “(B) one meaningful application to use the
21 property has been submitted but has not been ap-
22 proved, and the party seeking redress has applied
23 for one appeal or waiver which has not been ap-
24 proved, where the applicable law of the United
25 States provides a mechanism for appeal or waiver.

1 The party seeking redress shall not be required to apply
2 for an appeal or waiver described in subparagraph (B) if
3 no such appeal or waiver is available, if it cannot provide
4 the relief requested, or if application or reapplication to
5 use the property would be futile. Nothing in this para-
6 graph alters the substantive law of takings of property,
7 including the burden of proof borne by the plaintiff.”.

8 **SEC. 5. DUTY OF NOTICE TO OWNERS.**

9 Whenever a Federal agency takes an agency action
10 limiting the use of private property that may be affected
11 by the amendments made by this Act, the agency shall
12 give notice to the owners of that property explaining their
13 rights under such amendments and the procedures for ob-
14 taining any compensation that may be due to them under
15 such amendments.

16 **SEC. 6. EFFECTIVE DATE.**

17 The amendments made by this Act shall apply to ac-
18 tions commenced on or after the date of the enactment
19 of this Act.

Passed the House of Representatives October 22,
1997.

Attest:

ROBIN H. CARLE,

Clerk.