

# Union Calendar No. 288

106<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 2372

[Report No. 106-518]

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.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 1999

Mr. CANADY of Florida (for himself, Mr. FROST, Mr. DOOLEY of California, Mr. GOODE, Mr. BISHOP, Mr. DIAZ-BALART, Mr. WALSH, Mr. BARCIA, and Mr. BURTON of Indiana) introduced the following bill; which was referred to the Committee on the Judiciary

MARCH 13, 2000

Additional sponsors: Mr. SCARBOROUGH, Mr. PETRI, Mr. BARTLETT of Maryland, Mr. BARTON of Texas, Mr. MCHUGH, Ms. PRYCE of Ohio, Mr. WATKINS, Mr. SHIMKUS, Mr. BOYD, Mr. DEAL of Georgia, Mr. THORNBERRY, Mr. TURNER, Mr. FOLEY, Mr. HUTCHINSON, Mr. HOEKSTRA, Mr. STEARNS, Mr. HILLEARY, Mrs. EMERSON, Mr. HOLDEN, Mr. HOBSON, Mr. HOYER, Mr. POMBO, Mr. ENGLISH, Mr. SENSENBRENNER, Mr. CALLAHAN, Mr. KASICH, Mr. PICKETT, Mr. WELDON of Florida, Ms. ROS-LEHTINEN, Mr. HILL of Montana, Mr. GRAHAM, Mr. CAMP, Mr. MCINTOSH, Mr. SPENCE, Mr. DOOLITTLE, Mr. SIMPSON, Mr. PACKARD, Mr. NORWOOD, Mr. GORDON, Mr. SCHAFFER, Mr. CANNON, Mr. HILLIARD, Mr. SANDLIN, Mr. MASCARA, Mr. KNOLLENBERG, Mr. MANZULLO, Mr. CHABOT, Mr. ARMEY, Mr. HERGER, Mrs. BONO, Mr. STUMP, Mr. GARY MILLER of California, Mr. ROGERS, Mr. CHAMBLISS, Mr. WELLER, Mr. WAMP, Mr. NUSSLE, Mr. DOYLE, Mr. ADERHOLT, Mr. EHRLICH,

Mr. LATHAM, Mr. BILIRAKIS, Mr. LINDER, Mr. KINGSTON, Mrs. NORTHUP, Mr. BRADY of Texas, Mr. PETERSON of Pennsylvania, Mr. CALVERT, Mr. FRANKS of New Jersey, Mr. LOBIONDO, Mr. BOEHNER, Mr. HAYES, Mr. BONILLA, Mr. ORTIZ, Mr. McKEON, Mr. McINNIS, Mr. ROTHMAN, Mrs. FOWLER, Mr. WALDEN of Oregon, Mr. REYNOLDS, Mr. YOUNG of Alaska, Mr. BURR of North Carolina, Mr. DEMINT, Mr. BARR of Georgia, Mr. ISAKSON, Mr. COMBEST, Ms. DUNN, Mr. GOODLATTE, Mr. COLLINS, Mr. RYUN of Kansas, Mr. CRAMER, Mr. JOHN, Mr. TAYLOR of North Carolina, Mr. SWEENEY, Mrs. MYRICK, Mr. FORD, Mr. DUNCAN, Mr. JENKINS, Mrs. CUBIN, Mr. COBLE, Mr. NEY, Mr. BUYER, Mr. TANNER, Mr. SHOWS, and Mr. RADANOVICH

Deleted sponsor: Mr. BARCIA (added June 29, 1999; deleted February 16, 2000)

MARCH 13, 2000

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 June 29, 1999]

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## A BILL

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,*

1 **SECTION 1. SHORT TITLE.**

2       *This Act may be cited as the “Private Property Rights*  
3 *Implementation Act of 2000”.*

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

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

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

15       “(d) *If the district court has jurisdiction over an ac-*  
16 *tion under subsection (a) in which the operative facts con-*  
17 *cern the uses of real property and which cannot be decided*  
18 *without resolution of an unsettled question of State law, the*  
19 *district court may certify the question of State law to the*  
20 *highest appellate court of that State. After the State appel-*  
21 *late court resolves the question certified to it, the district*  
22 *court shall proceed with resolving the merits. The district*  
23 *court shall not certify a question of State law under this*  
24 *subsection unless the question of State law—*

25               “(1) *will significantly affect the merits of the in-*  
26 *jured party’s Federal claim; and*

1           “(2) is patently unclear.

2           “(e)(1) Any claim or action brought under section  
3 1979 of the Revised Statutes of the United States (42 U.S.C.  
4 1983) to redress the deprivation of a property right or  
5 privilege secured by the Constitution shall be ripe for adju-  
6 dication by the district courts upon a final decision ren-  
7 dered by any person acting under color of any statute, ordi-  
8 nance, regulation, custom, or usage, of any State or terri-  
9 tory of the United States, that causes actual and concrete  
10 injury to the party seeking redress.

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

13           “(i) any person acting under color of any stat-  
14 ute, ordinance, regulation, custom, or usage, of any  
15 State or territory of the United States, makes a defini-  
16 tive decision, as described in clauses (ii) and (iii),  
17 regarding the extent of permissible uses on the prop-  
18 erty that has been allegedly infringed or taken;

19           “(ii)(I) one meaningful application, as defined  
20 by applicable law, to use the property has been sub-  
21 mitted but has been disapproved without a written  
22 explanation as described in subclause (II), and the  
23 party seeking redress has applied for one appeal and  
24 one waiver which has been disapproved, in a case in  
25 which the applicable statute, ordinance, custom, or

1 *usage provides a mechanism for appeal to or waiver*  
2 *by an administrative agency; or*

3 *“(II) one meaningful application, as defined by*  
4 *applicable law, to use the property has been submitted*  
5 *but has been disapproved, and the disapproval ex-*  
6 *plains in writing the use, density, or intensity of de-*  
7 *velopment of the property that would be approved,*  
8 *with any conditions therefor, and the party seeking*  
9 *redress has resubmitted another meaningful applica-*  
10 *tion taking into account the terms of the disapproval,*  
11 *except that—*

12 *“(aa) if no such reapplication is submitted,*  
13 *then a final decision shall not have been reached*  
14 *for purposes of this subsection, except as pro-*  
15 *vided in subparagraph (B); and*

16 *“(bb) if the reapplication is disapproved, or*  
17 *if the reapplication is not required under sub-*  
18 *paragraph (B), then a final decision exists for*  
19 *purposes of this subsection if the party seeking*  
20 *redress has applied for one appeal and one waiv-*  
21 *er with respect to the disapproval, which has*  
22 *been disapproved, in a case in which the appli-*  
23 *cable statute, ordinance, custom, or usage pro-*  
24 *vides a mechanism of appeal to or waiver by an*  
25 *administrative agency; and*

1           “(iii) if the applicable statute or ordinance pro-  
2           vides for review of the case by elected officials, the  
3           party seeking redress has applied for but is denied  
4           such review, or is allowed such review and the mean-  
5           ingful application is disapproved.

6           “(B) The party seeking redress shall not be required  
7           to apply for an appeal or waiver described in subparagraph  
8           (A) if no such appeal or waiver is available, if it cannot  
9           provide the relief requested, or if the application or re-  
10          application would be futile.

11          “(3) For purposes of clauses (ii) and (iii) of paragraph  
12          (2), the failure to act within a reasonable time on any ap-  
13          plication, reapplication, appeal, waiver, or review of the  
14          case shall constitute a disapproval.

15          “(4) For purposes of this subsection, a case is ripe for  
16          adjudication even if the party seeking redress does not ex-  
17          haust judicial remedies provided by any State or territory  
18          of the United States.

19          “(f) Nothing in subsection (c), (d), or (e) alters the sub-  
20          stantive law of takings of property, including the burden  
21          of proof borne by the plaintiff.”.

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

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

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

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

9               “(A) *the United States makes a definitive deci-*  
10 *sion, as defined in subparagraph (B), regarding the*  
11 *extent of permissible uses on the property that has*  
12 *been allegedly infringed or taken; and*

13               “(B) *one meaningful application, as defined by*  
14 *applicable law, to use the property has been submitted*  
15 *but has been disapproved, and the party seeking re-*  
16 *dress has applied for one appeal or waiver which has*  
17 *been disapproved, in a case in which the applicable*  
18 *law of the United States provides a mechanism for*  
19 *appeal to or waiver by an administrative agency.*

20 *The party seeking redress shall not be required to apply*  
21 *for an appeal or waiver described in subparagraph (B) if*  
22 *no such appeal or waiver is available, if it cannot provide*  
23 *the relief requested, or if application or reapplication to use*  
24 *the property would be futile.*

1       “(3) For purposes of paragraph (2), the United States’  
2 failure to act within a reasonable time on any application,  
3 appeal, or waiver shall constitute a disapproval.

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

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

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

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

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

21               “(B) one meaningful application, as defined by  
22 applicable law, to use the property has been submitted  
23 but has been disapproved, and the party seeking re-  
24 dress has applied for one appeal or waiver which has  
25 been disapproved, in a case in which the applicable

1        *law of the United States provides a mechanism for*  
2        *appeal or waiver.*

3        *The party seeking redress shall not be required to apply*  
4        *for an appeal or waiver described in subparagraph (B) if*  
5        *no such appeal or waiver is available, if it cannot provide*  
6        *the relief requested, or if application or reapplication to use*  
7        *the property would be futile. For purposes of subparagraph*  
8        *(B), the United States' failure to act within a reasonable*  
9        *time on any application, appeal, or waiver shall constitute*  
10       *a disapproval. Nothing in this paragraph alters the sub-*  
11       *stantive law of takings of property, including the burden*  
12       *of proof borne by the plaintiff.”.*

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

14       *Whenever a Federal agency takes an agency action*  
15       *limiting the use of private property that may be affected*  
16       *by the amendments made by this Act, the agency shall give*  
17       *notice to the owners of that property explaining their rights*  
18       *under such amendments and the procedures for obtaining*  
19       *any compensation that may be due to them under such*  
20       *amendments.*

21       **SEC. 6. EFFECTIVE DATE.**

22       *The amendments made by this Act shall apply to ac-*  
23       *tions commenced on or after the date of the enactment of*  
24       *this Act.*



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