



Legislative Bulletin.....September 29, 2006

Contents:

H.R. 4772 — Private Property Rights Implementation Act of 2006

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: 0

Effect on Revenue: \$0

Total Change in Mandatory Spending: 0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 1

**H.R. 4772 — Private Property Rights Implementation Act of 2006
— as reported (Chabot, R-OH)**

Order of Business: The bill is scheduled for consideration on Friday, September 29, 2006, subject to a closed rule ([H.Res. 1047](#)).

Note: On September 25, 2006, the House considered H.R. 4772 under a motion to suspend the rules and pass the bill. The bill received a majority of votes, but lacked the 2/3 required to pass on the suspension calendar ([234-172](#)).

Summary: H.R. 4772 would simplify and expedite access to the federal courts for constitutional property takings cases.

The specific provisions of H.R. 4772 are as follows:

- Provides that if a federal district court exercises jurisdiction in a civil rights case in which the operative facts concern the uses of real property, it is prohibited from not exercising that jurisdiction, or relinquishing it to a state court if the party seeking redress does not allege a violation of a state law, right, or privilege, and no parallel proceeding is pending in state court.
- Provides that if the district court has jurisdiction in a civil rights case in which the operative facts concern the uses of real property, and it cannot be decided without resolution of an unsettled question of state law, the district court may certify the question of state law to the highest appellate court of that state. After the state appellate court resolves the question, the district court is directed to proceed with resolving the merits. The district court cannot certify a question of state law unless the question 1) is necessary to resolve the merits of the Federal claim of the injured party; and 2) is patently unclear.
- Current law provides that a constitutional takings claim is ripe for federal adjudication (ready for a federal court to settle) when a “final decision” has been rendered. This legislation clarifies what constitutes a final decision, as follows:
 - any person acting under color of any statute, ordinance, regulation, custom, or usage, of any state or territory of the United States, makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken, without regard to any uses that may be permitted elsewhere; and
 - one meaningful application to use the property has been submitted but denied, and the party seeking redress has applied for but is denied one waiver and one appeal, if the applicable statute, ordinance, regulation, custom, or usage provides a mechanism for waiver by or appeal to an administrative agency.
- Clarifies the term “final decision” in regards to takings claims against the U.S. involving \$10,000 or less (tried in federal district court), and claims involving more than \$10,000 (tried in Court of Federal Claims) , as follows:
 - the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken, without regard to any uses that may be permitted elsewhere; and
 - one meaningful application to use the property has been submitted but denied, and the party seeking redress has applied for but is denied one

waiver and one appeal, if the applicable law of the United States provides a mechanism for waiver by or appeal to an administrative agency.

- Requires a federal agency to, when taking an action limiting the use of private property, give notice to the owners of that property explaining their rights and the procedures for obtaining any compensation that may be due the owners.
- Provides that changes made to current law by this legislation apply to actions that begin on or after the date of enactment.

Additional Information: Recent Supreme Court cases have prevented property owners from litigating their claims in federal court. Private property owners must exhaust state court remedies and then are barred from federal court. Other constitutional claims are not treated in this manner. According to Committee Report [109-658](#), “H.R. 4772 will allow greater and fairer access to Federal courts by those who assert Federal property rights claims under the Fifth Amendment’s Takings Clause.” The Committee also notes that H.R. 4772 is very similar to H.R. 2372, which passed the House on March 16, 2000, by a vote of [226-182](#).

According to CBO, “The Fifth Amendment prohibits the taking of private property for public use without just compensation. This restriction on government action is extended to the states through the due process clause of the 14th Amendment. Under current law, parties who believe that a government agency’s actions or decisions have taken their property may sue the federal, state, or local government. Plaintiffs alleging takings by state and local governments are often denied access to federal district courts, however, until they have exhausted their opportunities to obtain compensation through the state courts.”

Committee Action: H.R. 4772 was passed in the House by voice vote on November 16, 2005. The Senate considered it, and passed the bill, with an amendment, by unanimous consent on July 19, 2006.

Cost to Taxpayers: According to CBO, “enacting the changes under H.R. 4772 would impose additional costs on the U.S. court system to the extent that additional takings claims are filed and heard in federal courts. Based on information obtained from various legal experts, however, CBO estimates that only a small percentage of all civil cases filed in state courts involve takings claims and that only a small proportion would be tried in federal court as the result of enacting H.R. 4772. ... On the other hand, most cases that would reach trial in a federal court as a result of this bill are likely to involve relatively large claims and could be time-consuming and costly to adjudicate. ... However, CBO has no basis for estimating the number of cases that would be affected or the amount of court costs that would result. Administrative costs for handling additional cases would be paid from appropriated funds, while any additional judgment payments would increase direct spending.”

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Judiciary Committee, in Committee Report 109-658 cites constitutional authority in Article I, Section 8, but fails to cite a specific clause. House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution” (*emphasis added*).

Outside Groups: H.R. 4772 is supported by the National Association of Homebuilders, the National Association of Realtors, the U.S. Chamber of Commerce, the National Federation of Independent Businesses, the U.S Farm Bureau, and the Property Rights Alliance.

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