

PROVIDING FOR THE CONSIDERATION OF H.R. 925, THE
PRIVATE PROPERTY PROTECTION ACT OF 1995

FEBRUARY 28, 1995.—Referred to the House Calendar and ordered to be printed

Mrs. WALDHOLTZ, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 101]

The Committee on Rules, having had under consideration House Resolution 101, by a voice vote, report the same to the House with the recommendation that the resolution be adopted.

BRIEF SUMMARY OF PROVISIONS OF RESOLUTION

The resolution provides for the consideration of H.R. 925, the "Private Property Protection Act" under a modified open rule. The rule provides one hour of general debate divided equally between the chairman and ranking minority member of the Committee on the Judiciary.

Because both the bill as introduced, and the committee amendment in the nature of a substitute establish a new entitlement program, it is necessary to waive several provisions of the Budget Act simply to provide for their consideration. Specifically, the following Budget Act waivers are necessary for this reason: section 302(f) which prohibits the consideration of legislation providing budget authority or outlays in excess of a committee's allocation; section 311(a) which prohibits the consideration of legislation or an amendment that would cause the total level of new budget authority or outlays in the most recent budget resolution to be exceeded, or would cause revenues to be less; and section 401(b) which prohibits the consideration of legislation providing new entitlement authority which becomes effective in the fiscal year which ends in the calendar year the bill is reported against consideration of the bill.

In addition, it is necessary to waive section 308(a) of the Budget Act which requires a CBO cost estimate in the committee report on legislation containing new budget authority, new spending author-

ity, new credit authority, or a change in revenues against consideration of the bill. This is because only an incomplete CBO estimate had been received at the time the report was filed.

The rule provides a 12 hour time limit on the amending process. The rule makes in order the Judiciary Committee amendment in the nature of a substitute as an original bill for the purpose of amendment which shall be considered as read. In addition to the Budget Act waivers mentioned above, the rule waives clause 7, rule XVI, the germaneness rule, and clause 5(a), rule XXI, prohibiting appropriations in a legislative bill, against the committee substitute. The germaneness waiver may be necessary since the committee substitute goes beyond the statutes specified in the introduced bill.

No amendment to the committee substitute will be in order unless it is preprinted in the Congressional Record before the beginning of consideration of the bill for amendment. Preprinted amendments shall be considered as read.

The rule waives clause 5(a), rule XXI, prohibiting appropriations in a legislative bill, against the amendment printed in this report to be offered by Representative Canady of Florida or a designee. It is not necessary to waive any Budget Act points of order against the Canady substitute since it makes the payments subject to appropriations and thereby resolves the Budget Act violations contained in the introduced bill and committee-reported substitute.

It will first be in order to consider as an amendment to the Canady amendment the amendment to be offered by Representative Tauzin or his designee printed in this report. Finally, the rule provides one motion to recommit with or without instructions.

Section 2 of the rule provides that after passage of H.R. 925, it will be in order to consider in the House H.R. 9, and all points of order against the bill and its consideration are waived. It will then be in order to move to strike out all after section 1 of the bill, and insert a text composed of four regulatory reform bills as passed by the House, (1) H.R. 830, (2) H.R. 925, (3) H.R. 926 and (4) H.R. 1022. All points of order against the motion are waived. Finally, the rule provides one motion to recommit with or without instructions.

COMMITTEE VOTES

Pursuant to clause 2(l)(2)(B) of House rule XI the results of each rollcall vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

RULES COMMITTEE ROLLCALL NO. 52

Date: February 28, 1995.

Measure: H.R. 925, Private Property Protection Act of 1995.

Motion By: Mr. Moakley.

Summary of Motion: Strike 10-hour time cap on amendment process.

Results: Rejected, 2 to 9.

Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay;

Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Not voting; Hall—Not voting; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 53

Date: February 28, 1995.

Measure: H.R. 925, Private Property Protection Act of 1995.

Motion By: Mr. Beilenson.

Summary of Motion: Strike pre-printing requirement for amendments.

Results: Rejected, 2 to 9.

Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Not voting; Hall—Not voting; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 54

Date: February 28, 1995.

Measure: H.R. 925, Private Property Protection Act of 1995.

Motion By: Mr. Moakley.

Summary of Motion: Make Canady substitute original text for amendment purposes, strike pre-printing requirement for first degree amendments, and strike Budget Act waivers for base text substitute.

Results: Rejected, 2 to 9.

Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Not voting; Hall—Not voting; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 55

Date: February 28, 1995.

Measure: H.R. 925, Private Property Protection Act of 1995.

Motion By: Mr. Beilenson.

Summary of Motion: Make in order an amendment by Reps. Wyden and Gilchrest and waive the germaneness rule against it.

Results: Rejected, 2 to 9.

Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Not voting; Hall—Not voting; Solomon—Nay.

TEXT OF AMENDMENTS REFERRED TO IN THE RULE

The amendments printed below are the amendments referred to in the resolution.

1. THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO BE OFFERED BY REPRESENTATIVE CANADY OF FLORIDA OR A DESIGNEE

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Private Property Protection Act of 1995".

SEC. 2. FEDERAL POLICY AND DIRECTION.

(a) **GENERAL POLICY.**—It is the policy of the Federal Government that no law or agency action should limit the use of privately owned property so as to diminish its value.

(b) **APPLICATION TO FEDERAL AGENCY ACTION.**—Each Federal agency, officer, and employee should exercise Federal authority to ensure that agency action will not limit the use of privately owned property so as to diminish its value.

SEC. 3. RIGHT TO COMPENSATION.

(a) **IN GENERAL.**—The Federal Government shall compensate an owner of property whose use of any portion of that property has been limited by an agency action that diminishes the fair market value of that portion by 10 percent or more. The amount of the compensation shall equal the diminution in value that resulted from the agency action.

(b) **DURATION OF LIMITATION ON USE.**—Property with respect to which compensation has been paid under this Act shall not thereafter be used contrary to the limitation imposed by the agency action, even if that action is later rescinded or otherwise vitiated. However, if that action is later rescinded or otherwise vitiated, and the owner elects to refund the amount of the compensation, adjusted for inflation, to the Treasury of the United States, the property may be so used.

SEC. 4. EFFECT OF STATE LAW.

No compensation shall be made under this Act if the use limited by Federal agency action is proscribed under the law of the State in which the property is located (other than a proscription required by a Federal law, either directly or as a condition for assistance). If a use is a nuisance as defined by the law of a State or is prohibited under a local zoning ordinance, that use is proscribed for the purposes of this subsection.

SEC. 5. EXCEPTIONS.

(a) **PREVENTION OF HAZARD TO HEALTH OR SAFETY OR DAMAGE TO SPECIFIC PROPERTY.**—No compensation shall be made under this Act with respect to an agency action the primary purpose of which is to prevent an identifiable—

- (1) hazard to public health or safety; or
- (2) damage to specific property other than the property whose use is limited.

(b) **NAVIGATION SERVITUDE.**—No compensation shall be made under this Act with respect to an agency action pursuant to the Federal navigation servitude, as defined by the courts of the United States, except to the extent such servitude is interpreted to apply to wetlands.

SEC. 6. PROCEDURE.

(a) **REQUEST OF OWNER.**—An owner seeking compensation under this Act shall make a written request for compensation to the agency whose agency action resulted in the limitation. No such request may be made later than 180 days after the owner receives actual notice of that agency action.

(b) **NEGOTIATIONS.**—The agency may bargain with that owner to establish the amount of the compensation. If the agency and the

owner agree to such an amount, the agency shall promptly pay the owner the amount agreed upon.

(c) CHOICE OF REMEDIES.—If, not later than 180 days after the written request is made, the parties do not come to an agreement as to the right to and amount of compensation, the owner may choose to take the matter to binding arbitration or seek compensation in a civil action.

(d) ARBITRATION.—The procedures that govern the arbitration shall, as nearly as practicable, be those established under title 9, United States Code, for arbitration proceedings to which that title applies. An award made in such arbitration shall include a reasonable attorney's fee and other arbitration costs (including appraisal fees). The agency shall promptly pay any award made to the owner.

(e) CIVIL ACTION.—An owner who does not choose arbitration, or who does not receive prompt payment when required by this section, may obtain appropriate relief in a civil action against the agency. An owner who prevails in a civil action under this section shall be entitled to, and the agency shall be liable for, a reasonable attorney's fee and other litigation costs (including appraisal fees). The court shall award interest on the amount of any compensation from the time of the limitation.

(f) SOURCE OF PAYMENTS.—Any payment made under this section to an owner, and any judgment obtained by an owner in a civil action under this section shall, notwithstanding any other provision of law, be made from the annual appropriation of the agency whose action occasioned the payment or judgment. If the agency action resulted from a requirement imposed by another agency, then the agency making the payment or satisfying the judgment may seek partial or complete reimbursement from the appropriated funds of the other agency. For this purpose the head of the agency concerned may transfer or reprogram any appropriated funds available to the agency. If insufficient funds exist for the payment or to satisfy the judgment, it shall be the duty of the head of the agency to seek the appropriation of such funds for the next fiscal year.

SEC. 7. LIMITATION.

Notwithstanding any other provision of law, any obligation of the United States to make any payment under this Act shall be subject to the availability of appropriations.

SEC. 8. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to limit any right to compensation that exists under the Constitution or under other laws of the United States.

SEC. 9. DEFINITIONS.

For the purposes of this Act—

(1) the term “property” means land and includes the right to use or receive water;

(2) a use of property is limited by an agency action if a particular legal right to use that property no longer exists because of the action;

(3) the term “agency action” has the meaning given that term in section 551 of title 5, United States Code, but also includes the making of a grant to a public authority conditioned

upon an action by the recipient that would constitute a limitation if done directly by the agency;

(4) the term “agency” has the meaning given that term in section 551 of title 5, United States Code;

(5) the term “State” includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States; and

(6) the term “law of the State” includes the law of a political subdivision of a State.

2. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE TAUZIN OF LOUISIANA OR A DESIGNEE TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY REPRESENTATIVE CANADY

In section 3(a) after “agency action” the first place it appears insert “, under a specified regulatory law”.

Add at the end of section 3(a) “If the diminution in value of a portion of that property is greater than 50 percent, at the option of the owner, the Federal Government shall buy that portion of the property for its fair market value.”.

In section 4, strike the first sentence and amend the second sentence to read “If a use is a nuisance as defined by the law of a State or is already prohibited under a local zoning ordinance, no compensation shall be made under this Act with respect to a limitation on that use.”

In the heading for section 8, strike “Rule” and insert “Rules”.

At the beginning of section 8, strike “Nothing” and insert:

(a) EFFECT ON CONSTITUTIONAL RIGHT TO COMPENSATION.—Nothing

At the end of section 8, insert the following:

(b) EFFECT OF PAYMENT.—Payment of compensation under this Act (other than when the property is bought by the Federal Government at the option of the owner) shall not confer any rights on the Federal Government other than the limitation on use resulting from the agency action.

In section 9, after paragraph (4) insert the following:

(5) the term “specified regulatory law” means—

(A) section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(B) the Endangered Species Act of 1979 (16 U.S.C. 1531 et seq.);

(C) title XII of the Food Security Act of 1985 (16 U.S.C. 3821 et seq.); or

(D) with respect to an owner’s right to use or receive water only—

(i) the Act of June 17, 1902, and all Acts amendatory thereof or supplementary thereto, popularly called the “Reclamation Acts” (43 U.S.C. 371 et seq.);

(ii) the Federal Land Policy Management Act (43 U.S.C. 1701 et seq.); or

(iii) section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604);

Redesignate succeeding paragraphs accordingly.