

Calendar No. 316

105TH CONGRESS
2^D SESSION
H. R. 1534

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.

FEBRUARY 26, 1998

Reported with an amendment

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 5, 1997

Received

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FEBRUARY 26, 1998

Reported by Mr. HATCH, with an amendment

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

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 “(e) 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
22 law to the highest appellate court of that State. After the
23 State appellate court resolves the question certified to it,
24 the district court shall proceed with resolving the merits.

1 The district court shall not certify a question of State law
2 under this subsection unless the question of State law—

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

5 “(2) is patently unclear.

6 “(e)(1) Any claim or action brought under section
7 1979 of the Revised Statutes of the United States (42
8 U.S.C. 1983) to redress the deprivation of a property right
9 or privilege secured by the Constitution shall be ripe for
10 adjudication by the district courts upon a final decision
11 rendered by any person acting under color of any statute,
12 ordinance, regulation, custom, or usage, of any State or
13 territory of the United States, that causes actual and con-
14 crete injury to the party seeking redress.

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

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

23 “(ii)(I) one meaningful application, as defined
24 by the locality concerned within that State or terri-
25 tory, to use the property has been submitted but has

1 not been approved, and the party seeking redress
2 has applied for one appeal or waiver which has not
3 been approved, where the applicable statute, ordi-
4 nance, custom, or usage provides a mechanism for
5 appeal to or waiver by an administrative agency; or

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

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

20 “(bb) if the reapplication is not approved,
21 or if the reapplication is not required under
22 subparagraph (B), then a final decision exists
23 for purposes of this subsection if the party
24 seeking redress has applied for one appeal or
25 waiver with respect to the disapproval, which

1 has not been approved, where the applicable
2 statute, ordinance, custom, or usage provides a
3 mechanism of appeal or waiver by an adminis-
4 trative agency; and

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

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

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

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

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

23 Section 1346 of title 28, United States Code, is
24 amended 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 regarding the extent of permissible uses on the
11 property that has been allegedly infringed or taken;
12 and

13 “(B) one meaningful application to use the
14 property has been submitted but has not been ap-
15 proved, and the party seeking redress has applied
16 for one appeal or waiver which has not been ap-
17 proved, where the applicable law of the United
18 States provides a mechanism for appeal to or waiver
19 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
24 use the property would be futile.

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

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

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

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

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

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

24 The party seeking redress shall not be required to apply
25 for an appeal or waiver described in subparagraph (B) if

1 no such appeal or waiver is available, if it cannot provide
2 the relief requested, or if application or reapplication to
3 use the property would be futile. Nothing in this para-
4 graph alters the substantive law of takings of property,
5 including the burden of proof borne by the plaintiff.”.

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

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

14 **SEC. 6. EFFECTIVE DATE.**

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

18 **SECTION 1. SHORT TITLE.**

19 *This Act may be cited as the “Citizens Access to Jus-*
20 *tice Act of 1998”.*

21 **SEC. 2. FINDINGS.**

22 *Congress finds that—*

23 *(1) property rights have been abrogated by the*
24 *application of laws, regulations, and other actions by*
25 *all levels of government that adversely affect the value*

1 *and the ability to make reasonable use of private*
2 *property;*

3 *(2) certain provisions of sections 1346 and 1402*
4 *and chapter 91 of title 28, United States Code (com-*
5 *monly known as the Tucker Act), that delineate the*
6 *jurisdiction of courts hearing property rights claims,*
7 *frustrate the ability of a property owner to obtain full*
8 *relief for violation founded upon the fifth and four-*
9 *teenth amendments of the United States Constitution;*

10 *(3) current law—*

11 *(A) has no sound basis for splitting juris-*
12 *isdiction between two courts in cases where con-*
13 *stitutionally protected property rights are at*
14 *stake;*

15 *(B) adds to the complexity and cost of*
16 *takings and litigation, adversely affecting tax-*
17 *payers and property owners;*

18 *(C) forces a property owner, who seeks just*
19 *compensation from the Federal Government, to*
20 *elect between equitable relief in the district court*
21 *and monetary relief (the value of the property*
22 *taken) in the United States Court of Federal*
23 *Claims;*

24 *(D) is used to urge dismissal in the district*
25 *court in complaints against the Federal Govern-*

1 *ment, on the ground that the plaintiff should*
2 *seek just compensation in the Court of Federal*
3 *Claims;*

4 *(E) is used to urge dismissal in the Court*
5 *of Federal Claims in complaints against the*
6 *Federal Government, on the ground that the*
7 *plaintiff should seek equitable relief in district*
8 *court; and*

9 *(F) forces a property owner to first pay to*
10 *litigate an action in a State court, before a Fed-*
11 *eral judge can decide whether local government*
12 *has denied property rights safeguarded by the*
13 *United States Constitution;*

14 *(4) property owners cannot fully vindicate prop-*
15 *erty rights in one lawsuit and their claims may be*
16 *time barred in a subsequent action;*

17 *(5) property owners should be able to fully re-*
18 *cover for a taking of their private property in one*
19 *court;*

20 *(6) certain provisions of section 1346 and 1402*
21 *and chapter 91 of title 28, United States Code (com-*
22 *monly known as the Tucker Act) should be amended,*
23 *giving both the district courts of the United States*
24 *and the Court of Federal Claims jurisdiction to hear*

1 *all claims relating to property rights in complaints*
2 *against the Federal Government;*

3 *(7) section 1500 of title 28, United States Code,*
4 *which denies the Court of Federal Claims jurisdiction*
5 *to entertain a suit which is pending in another court*
6 *and made by the same plaintiff, should be repealed;*

7 *(8) Federal and local authorities, through com-*
8 *plex, costly, repetitive and unconstitutional permit-*
9 *ting, variance, and licensing procedures, have denied*
10 *property owners their fifth and fourteenth amendment*
11 *rights under the United States Constitution to the*
12 *use, enjoyment, and disposition of, and exclusion of*
13 *others from, their property, and to safeguard those*
14 *rights, there is a need to determine what constitutes*
15 *a final decision of an agency in order to allow claim-*
16 *ants the ability to protect their property rights in a*
17 *court of law;*

18 *(9) a Federal judge should decide the merits of*
19 *cases where a property owner seeks redress solely for*
20 *infringements of rights safeguarded by the United*
21 *States Constitution, and where no claim of a viola-*
22 *tion of State law is alleged; and*

23 *(10) certain provisions of sections 1343, 1346,*
24 *and 1491 of title 28, United States Code, should be*
25 *amended to clarify when a claim for redress of con-*

1 *stitutionally protected property rights is sufficiently*
2 *ripe so a Federal judge may decide the merits of the*
3 *allegations.*

4 **SEC. 3. PURPOSES.**

5 *The purposes of this Act are to—*

6 *(1) establish a clear, uniform, and efficient judi-*
7 *cial process whereby aggrieved property owners can*
8 *obtain vindication of property rights guaranteed by*
9 *the fifth and fourteenth amendments to the United*
10 *States Constitution and this Act;*

11 *(2) amend the Tucker Act, including the repeal*
12 *of section 1500 of title 28, United States Code;*

13 *(3) rectify the unduly onerous and expensive re-*
14 *quirement that a property owner, seeking redress*
15 *under section 1979 of the Revised Statutes of the*
16 *United States (42 U.S.C. 1983) for the infringement*
17 *of property rights protected by the fifth and four-*
18 *teenth amendments of the United States Constitution,*
19 *is required to first litigate Federal constitutional*
20 *issues in a State court before obtaining access to the*
21 *Federal courts; and*

22 *(4) provide for uniformity in the application of*
23 *the ripeness doctrine in cases where constitutionally*
24 *protected property rights are allegedly infringed, by*

1 *providing that a final agency decision may be adju-*
2 *dicated by a Federal court on the merits after—*

3 *(A) the pertinent government body denies a*
4 *meaningful application to develop the land in*
5 *question; and*

6 *(B)(i) the property owner seeks a waiver by*
7 *or brings an appeal to an administrative agency*
8 *from such denial; and*

9 *(ii) such waiver or appeal is not approved.*

10 **SEC. 4. DEFINITIONS.**

11 *In this Act, the term—*

12 *(1) “agency action” means any action, inaction,*
13 *or decision taken by a Federal agency or other gov-*
14 *ernment agency that at the time of such action, inac-*
15 *tion, or decision adversely affects private property*
16 *rights;*

17 *(2) “district court”—*

18 *(A) means a district court of the United*
19 *States with appropriate jurisdiction; and*

20 *(B) includes the United States District*
21 *Court of Guam, the United States District Court*
22 *of the Virgin Islands, or the District Court for*
23 *the Northern Mariana Islands;*

24 *(3) “Federal agency” means a department, agen-*
25 *cy, independent agency, or instrumentality of the*

1 *United States, including any military department,*
2 *Government corporation, Government-controlled cor-*
3 *poration, or other establishment in the executive*
4 *branch of the United States Government;*

5 (4) “owner” means the owner or possessor of
6 property or rights in property at the time the taking
7 occurs, including when—

8 (A) the statute, regulation, rule, order,
9 guideline, policy, or action is passed or promul-
10 gated; or

11 (B) the permit, license, authorization, or
12 governmental permission is denied or suspended;

13 (5) “private property” or “property” means all
14 interests constituting property, as defined by Federal
15 or State law, protected under the fifth and fourteenth
16 amendments to the United States Constitution; and

17 (6) “taking of private property”, “taking”, or
18 “take” means any action whereby restricting the own-
19 ership, alienability, possession, or use of private prop-
20 erty is an object of that action and is taken so as to
21 require compensation under the fifth amendment to
22 the United States Constitution, including by physical
23 invasion, regulation, exaction, condition, or other
24 means.

1 **SEC. 5. PRIVATE PROPERTY ACTIONS.**

2 (a) *IN GENERAL.*—An owner may file a civil action
3 under this section to challenge the validity of any Federal
4 agency action as a violation of the fifth amendment to the
5 United States Constitution in a district court or the United
6 States Court of Federal Claims.

7 (b) *CONCURRENT JURISDICTION.*—Notwithstanding
8 any other provision of law and notwithstanding the issues
9 involved, the relief sought, or the amount in controversy,
10 the district court and the United States Court of Federal
11 Claims shall each have concurrent jurisdiction over both
12 claims for monetary relief and claims seeking invalidation
13 of any Act of Congress or any regulation of a Federal agen-
14 cy affecting private property rights.

15 (c) *ELECTION.*—The plaintiff may elect to file an ac-
16 tion under this section in a district court or the United
17 States Court of Federal Claims.

18 (d) *WAIVER OF SOVEREIGN IMMUNITY.*—This section
19 constitutes express waiver of the sovereign immunity of the
20 United States with respect to an action filed under this sec-
21 tion.

22 (e) *APPEALS.*—The United States Court of Appeals for
23 the Federal Circuit shall have exclusive jurisdiction of any
24 action filed under this section, regardless of whether the ju-
25 risdiction of such action is based in whole or part under
26 this section.

1 (f) *STATUTE OF LIMITATIONS.*—*The statute of limita-*
2 *tions for any action filed under this section shall be 6 years*
3 *after the date of the taking of private property.*

4 (g) *ATTORNEYS’ FEES AND COSTS.*—*The court, in*
5 *issuing any final order in any action filed under this sec-*
6 *tion, shall award costs of litigation (including reasonable*
7 *attorneys’ fees) to any prevailing plaintiff.*

8 **SEC. 6. JURISDICTION OF UNITED STATES COURT OF FED-**
9 **ERAL CLAIMS AND UNITED STATES DISTRICT**
10 **COURTS.**

11 (a) *UNITED STATES COURT OF FEDERAL CLAIMS.*—

12 (1) *JURISDICTION.*—*Section 1491(a) of title 28,*
13 *United States Code, is amended—*

14 (A) *in paragraph (1) by amending the first*
15 *sentence to read as follows: “The United States*
16 *Court of Federal Claims shall have jurisdiction*
17 *to render judgment upon any claim against the*
18 *United States for monetary relief founded either*
19 *upon the Constitution or any Act of Congress or*
20 *any regulation of an executive department or*
21 *upon any express or implied contract with the*
22 *United States, in cases not sounding in tort, or*
23 *for invalidation of any Act of Congress or any*
24 *regulation of an executive department under sec-*

1 *tion 5 of the Citizens Access to Justice Act of*
2 *1998.”;*

3 *(B) in paragraph (2) by inserting before the*
4 *first sentence the following: “In any case within*
5 *its jurisdiction, the Court of Federal Claims*
6 *shall have the power to grant injunctive and de-*
7 *claratory relief when appropriate.”; and*

8 *(C) by adding at the end the following new*
9 *paragraphs:*

10 *“(3) In cases otherwise within its jurisdiction,*
11 *the Court of Federal Claims shall also have supple-*
12 *mental jurisdiction, concurrent with the courts des-*
13 *ignated under section 1346(b), to render judgment*
14 *upon any related tort claim authorized under section*
15 *2674.*

16 *“(4) In proceedings within the jurisdiction of the*
17 *Court of Federal Claims which constitute judicial re-*
18 *view of agency action (rather than de novo proceed-*
19 *ings), the provisions of section 706 of title 5 shall*
20 *apply.*

21 *“(5) Any claim brought under this subsection*
22 *founded upon a property right or privilege secured by*
23 *the Constitution, but allegedly infringed or taken by*
24 *the United States, shall be ripe for adjudication upon*
25 *a final decision rendered by the United States, that*

1 *causes actual and concrete injury to the party seeking*
2 *redress. For purposes of this paragraph, a final deci-*
3 *sion exists if—*

4 *“(A) the United States makes a definitive*
5 *decision regarding the extent of permissible uses*
6 *on the property that has been allegedly infringed*
7 *or taken; and*

8 *“(B) one meaningful application to use the*
9 *property has been submitted but has not been ap-*
10 *proved, and the party seeking redress has ap-*
11 *plied for one appeal or waiver which has not*
12 *been approved, where the applicable law of the*
13 *United States provides a mechanism for appeal*
14 *or waiver.*

15 *The party seeking redress shall not be required to*
16 *apply for an appeal or waiver described in subpara-*
17 *graph (B) if no such appeal or waiver is available,*
18 *if it cannot provide the relief requested, or if applica-*
19 *tion or reapplication to use the property would be fu-*
20 *tile. Nothing in this paragraph alters the substantive*
21 *law of takings of property, including the burden of*
22 *proof borne by the plaintiff.”.*

23 *(2) PENDENCY OF CLAIMS IN OTHER COURTS.—*

24 *(A) IN GENERAL.—Section 1500 of title 28,*
25 *United States Code is repealed.*

1 (B) *TECHNICAL AND CONFORMING AMEND-*
2 *MENT.*—*The table of sections for chapter 91 of*
3 *title 28, United States Code, is amended by*
4 *striking out the item relating to section 1500.*

5 (b) *DISTRICT COURT JURISDICTION.*—

6 (1) *CITIZEN ACCESS TO JUSTICE ACTION.*—*Sec-*
7 *tion 1346(a) of title 28, United States Code, is*
8 *amended by adding after paragraph (2) the following:*

9 “*(3) Any civil action filed under section 5 of the*
10 *Citizens Access to Justice Act of 1998.*”.

11 (2) *UNITED STATES AS DEFENDANT.*—*Section*
12 *1346 of title 28, United States Code, is amended by*
13 *adding at the end the following:*

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

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

22 “*(A) the United States makes a definitive deci-*
23 *sion regarding the extent of permissible uses on the*
24 *property that has been allegedly infringed or taken;*
25 *and*

1 “(B) one meaningful application to use the prop-
2 erty has been submitted but has not been approved,
3 and the party seeking redress has applied for one ap-
4 peal or waiver which has not been approved, where
5 the applicable law of the United States provides a
6 mechanism for appeal to or waiver by an administra-
7 tive agency.

8 The party seeking redress shall not be required to apply
9 for an appeal or waiver described in subparagraph (B) if
10 no such appeal or waiver is available, if it cannot provide
11 the relief requested, or if application or reapplication to use
12 the property would be futile.

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

16 (c) *DISTRICT COURT CIVIL RIGHTS JURISDICTION;*
17 *ABSTENTION.*—Section 1343 of title 28, United States Code,
18 is amending by adding at the end the following:

19 “(c) Whenever a district court exercises jurisdiction
20 under subsection (a) in an action in which the operative
21 facts concern the uses of real property, it shall not abstain
22 from exercising or relinquish its jurisdiction to a State
23 court in an action where no claim of a violation of a State
24 law, right, or privilege is alleged, and where a parallel pro-

1 *ceeding in State court arising out of the same operative*
2 *facts as the district court proceeding is not pending.*

3 “(d) *Where the district court has jurisdiction over an*
4 *action under subsection (a) in which the operative facts con-*
5 *cern the uses of real property and which cannot be decided*
6 *without resolution of an unsettled question of State law, the*
7 *district court may certify the question of State law to the*
8 *highest appellate court of that State. After the State appel-*
9 *late court resolves the question certified to it, the district*
10 *court shall proceed with resolving the merits. The district*
11 *court shall not certify a question of State law under this*
12 *subsection unless the question of State law—*

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

15 “(2) *is patently unclear.*

16 “(e)(1) *Any claim or action brought under section*
17 *1979 of the Revised Statutes of the United States (42 U.S.C.*
18 *1983) to redress the deprivation of a property right or*
19 *privilege secured by the Constitution shall be ripe for adju-*
20 *dication by the district courts upon a final decision ren-*
21 *dered by any person acting under color of any statute, ordi-*
22 *nance, regulation, custom, or usage, of any State or terri-*
23 *tory of the United States, that causes actual and concrete*
24 *injury to the party seeking redress.*

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

3 “(i) any person acting under color of any stat-
4 ute, ordinance, regulation, custom, or usage, of any
5 State or territory of the United States, makes a defin-
6 itive decision regarding the extent of permissible uses
7 on the property that has been allegedly infringed or
8 taken;

9 “(ii)(I) one meaningful application, as defined
10 by the locality concerned within that State or terri-
11 tory, to use the property has been submitted but has
12 not been approved, and the party seeking redress has
13 applied for one appeal or waiver which has not been
14 approved, where the applicable statute, ordinance,
15 custom, or usage provides a mechanism for appeal to
16 or waiver by an administrative agency; or

17 “(II) one meaningful application, as defined by
18 the locality concerned within that State or territory,
19 to use the property has been submitted but has not
20 been approved, and the disapproval explains in writ-
21 ing the use, density, or intensity of development of the
22 property that would be approved, with any conditions
23 therefor, and the party seeking redress has resubmit-
24 ted another meaningful application taking into ac-
25 count the terms of the disapproval, except that—

1 “(aa) if no such reapplication is submitted,
2 then a final decision shall not have been reached
3 for purposes of this subsection, except as pro-
4 vided in subparagraph (B); and

5 “(bb) if the reapplication is not approved,
6 or if the reapplication is not required under sub-
7 paragraph (B), then a final decision exists for
8 purposes of this subsection if the party seeking
9 redress has applied for one appeal or waiver
10 with respect to the disapproval, which has not
11 been approved, where the applicable statute, or-
12 dinance, custom, or usage provides a mechanism
13 of appeal or waiver by an administrative agen-
14 cy; and

15 “(iii) in a case involving the uses of real prop-
16 erty, where the applicable statute or ordinance pro-
17 vides for review of the case by elected officials, the
18 party seeking redress has applied for but is denied
19 such review.

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

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

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

8 **SEC. 7. 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 this Act (including the amendments made by this Act),
12 the agency shall give notice to the owners of that property
13 explaining their rights under this Act and the procedures
14 for obtaining any compensation that may be due to them
15 under this Act.

16 **SEC. 8. RULES OF CONSTRUCTION.**

17 Nothing in this Act shall be construed to interfere with
18 the authority of any State to create additional property
19 rights.

20 **SEC. 9. EFFECTIVE DATE.**

21 This Act shall take effect on the date of enactment of
22 this Act and shall apply to any agency action that occurs
23 on or after such date.