

105TH CONGRESS
1ST SESSION

H. R. 992

To end the Tucker Act shuffle.

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 1997

Mr. SMITH of Texas introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To end the Tucker Act shuffle.

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 “Tucker Act Shuffle
5 Relief Act of 1997”.

6 **SEC. 2. JURISDICTION AND JUDICIAL REVIEW.**

7 (a) IN GENERAL.—A property owner may file a civil
8 action under this Act to challenge the validity of any agen-
9 cy action that adversely affects the owner’s interest in pri-
10 vate property in either the United States District Court
11 or the United States Court of Federal Claims. This section
12 constitutes express waiver of the sovereign immunity of

1 the United States. Notwithstanding any other provision of
2 law and notwithstanding the issues involved, the relief
3 sought, or the amount in controversy, each court shall
4 have concurrent jurisdiction over both claims for monetary
5 relief and claims seeking invalidation of any Act of Con-
6 gress or any regulation of an agency as defined under this
7 Act affecting private property rights. The plaintiff shall
8 have the election of the court in which to file a claim for
9 relief.

10 (b) STANDING.—Persons adversely affected by an
11 agency action taken under this Act shall have standing
12 to challenge and seek judicial review of that action.

13 (c) AMENDMENTS TO TITLE 28, UNITED STATES
14 CODE.—(1) Section 1491(a) of title 28, United States
15 Code, is amended—

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

1 Congress or any regulation of an executive depart-
2 ment that adversely affects private property rights
3 in violation of the fifth amendment of the United
4 States Constitution”;

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

10 (C) by adding at the end thereof the following
11 new paragraphs:

12 “(4) In cases otherwise within its jurisdiction,
13 the Court of Federal Claims shall also have ancillary
14 jurisdiction, concurrent with the courts designated in
15 section 1346(b) of this title, to render judgment
16 upon any related tort claim authorized under section
17 2674 of this title.

18 “(5) In proceedings within the jurisdiction of
19 the Court of Federal Claims which constitute judi-
20 cial review of agency action (rather than de novo
21 proceedings), the provisions of section 706 of title 5
22 shall apply.”.

23 (2)(A) Section 1500 of title 28, United States Code,
24 is repealed.

1 (B) The table of sections for chapter 91 of title 28,
2 United States Code, is amended by striking out the item
3 relating to section 1500.

4 **SEC. 3. DEFINITIONS.**

5 For purposes of this Act, the term—

6 (1) “agency” means a department, agency,
7 independent agency, or instrumentality of the United
8 States, including any military department, Govern-
9 ment corporation, Government-controlled corpora-
10 tion, or other establishment in the executive branch
11 of the United States Government;

12 (2) “agency action” means any action or deci-
13 sion taken by an agency that—

14 (A) takes a property right; or

15 (B) unreasonably impedes the use of prop-
16 erty or the exercise of property interests or sig-
17 nificantly interferes with investment-backed ex-
18 pectations;

19 (3) “owner” means the owner or possessor of
20 property or rights in property at the time the taking
21 occurs, including when—

22 (A) the statute, regulation, rule, order,
23 guideline, policy, or action is passed or promul-
24 gated; or

1 (B) the permit, license, authorization, or
2 governmental permission is denied or sus-
3 pended;

4 (4) “private property” or “property” means all
5 property protected under the fifth amendment to the
6 Constitution of the United States, any applicable
7 Federal or State law, or this Act, and includes—

8 (A) real property, whether vested or
9 unvested, including—

10 (i) estates in fee, life estates, estates
11 for years, or otherwise;

12 (ii) inchoate interests in real property
13 such as remainders and future interests;

14 (iii) personalty that is affixed to or
15 appurtenant to real property;

16 (iv) easements;

17 (v) leaseholds;

18 (vi) recorded liens; and

19 (vii) contracts or other security inter-
20 ests in, or related to, real property;

21 (B) the right to use water or the right to
22 receive water, including any recorded lines on
23 such water right;

1 (C) rents, issues, and profits of land, in-
2 cluding minerals, timber, fodder, crops, oil and
3 gas, coal, or geothermal energy;

4 (D) property rights provided by, or memo-
5 rialized in, a contract, except that such rights
6 shall not be construed under this title to pre-
7 vent the United States from prohibiting the for-
8 mation of contracts deemed to harm the public
9 welfare or to prevent the execution of contracts
10 for—

11 (i) national security reasons; or

12 (ii) exigencies that present immediate
13 or reasonably foreseeable threats or inju-
14 ries to life or property;

15 (E) any interest defined as property under
16 State law; or

17 (F) any interest understood to be property
18 based on custom, usage, common law, or mutu-
19 ally reinforcing understandings sufficiently well-
20 grounded in law to back a claim of interest; and

21 (5) “State agency” means any State depart-
22 ment, agency, political subdivision, or instrumentality that—
23

24 (A) carries out or enforces a regulatory
25 program required under Federal law;

1 (B) is delegated administrative or sub-
2 stantive responsibility under a Federal regu-
3 latory program; or

4 (C) receives Federal funds in connection
5 with a regulatory program established by a
6 State pursuant to a Federal requirement,
7 if the State enforcement of the regulatory program,
8 or the receipt of Federal funds in connection with a
9 regulatory program established by a State, is di-
10 rectly related to the taking of private property seek-
11 ing to be vindicated under this Act.

12 **SEC. 4. EFFECTIVE DATE.**

13 The provisions of this Act and amendments made by
14 this Act shall take effect upon enactment.

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