

106TH CONGRESS  
2D SESSION

# H. R. 2372

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IN THE SENATE OF THE UNITED STATES

MARCH 20, 2000

Received; read twice and referred to the Committee on the Judiciary

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## 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 2000”.

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        “(c) 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 in which no claim of a violation of a  
 14        State law, right, or privilege is alleged, if 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) If the district court has jurisdiction over an ac-  
 18        tion under subsection (a) in which the operative facts con-  
 19        cern the uses of real property and which cannot be decided  
 20        without resolution of an unsettled question of State law,  
 21        the district court may certify the question of State law

1 to the highest appellate court of that State. After the  
2 State appellate court resolves the question certified to it,  
3 the district court shall proceed with resolving the merits.  
4 The district court shall not certify a question of State law  
5 under this subsection unless the question of State law—

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

8 “(2) is patently unclear.

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

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

20 “(i) any person acting under color of any stat-  
21 ute, ordinance, regulation, custom, or usage, of any  
22 State or territory of the United States, makes a de-  
23 finitive decision, as described in clauses (ii) and (iii),  
24 regarding the extent of permissible uses on the prop-  
25 erty that has been allegedly infringed or taken;

1           “(ii)(I) one meaningful application, as defined  
2           by applicable law, to use the property has been sub-  
3           mitted but has been disapproved without a written  
4           explanation as described in subclause (II), and the  
5           party seeking redress has applied for one appeal and  
6           one waiver which has been disapproved, in a case in  
7           which the applicable statute, ordinance, custom, or  
8           usage provides a mechanism for appeal to or waiver  
9           by an administrative agency; or

10           “(II) one meaningful application, as defined by  
11           applicable law, to use the property has been sub-  
12           mitted but has been disapproved, and the dis-  
13           approval explains in writing the use, density, or in-  
14           tensity of development of the property that would be  
15           approved, with any conditions therefor, and the  
16           party seeking redress has resubmitted another  
17           meaningful application taking into account the terms  
18           of the disapproval, except that—

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

23           “(bb) if the reapplication is disapproved, or  
24           if the reapplication is not required under sub-  
25           paragraph (B), then a final decision exists for

1           purposes of this subsection if the party seeking  
2           redress has applied for one appeal and one  
3           waiver with respect to the disapproval, which  
4           has been disapproved, in a case in which the  
5           applicable statute, ordinance, custom, or usage  
6           provides a mechanism of appeal to or waiver by  
7           an administrative agency; and

8           “(iii) if the applicable statute or ordinance pro-  
9           vides for review of the case by elected officials, the  
10          party seeking redress has applied for but is denied  
11          such review, or is allowed such review and the mean-  
12          ingful application is disapproved.

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

18          “(3) For purposes of clauses (ii) and (iii) of para-  
19          graph (2), the failure to act within a reasonable time on  
20          any application, reapplication, appeal, waiver, or review of  
21          the case shall constitute a disapproval.

22          “(4) For purposes of this subsection, a case is ripe  
23          for adjudication even if the party seeking redress does not  
24          exhaust judicial remedies provided by any State or terri-  
25          tory of the United States.

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

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

5 Section 1346 of title 28, United States Code, is  
6 amended by adding at the end the following:

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

13 “(2) For purposes of this subsection, a final decision  
14 exists if—

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

19 “(B) one meaningful application, as defined by  
20 applicable law, to use the property has been sub-  
21 mitted but has been disapproved, and the party  
22 seeking redress has applied for one appeal or waiver  
23 which has been disapproved, in a case in which the  
24 applicable law of the United States provides a mech-

1       anism for appeal to or waiver by an administrative  
2       agency.

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  
7       use the property would be futile.

8       “(3) For purposes of paragraph (2), the United  
9       States’ failure to act within a reasonable time on any ap-  
10      plication, appeal, or waiver shall constitute a disapproval.

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

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

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

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

24              “(A) the United States makes a definitive deci-  
25      sion, as described in subparagraph (B), regarding

1 the extent of permissible uses on the property that  
2 has been allegedly infringed or taken; and

3 “(B) one meaningful application, as defined by  
4 applicable law, to use the property has been sub-  
5 mitted but has been disapproved, and the party  
6 seeking redress has applied for one appeal or waiver  
7 which has been disapproved, in a case in which the  
8 applicable law of the United States provides a mech-  
9 anism for appeal or waiver.

10 The party seeking redress shall not be required to apply  
11 for an appeal or waiver described in subparagraph (B) if  
12 no such appeal or waiver is available, if it cannot provide  
13 the relief requested, or if application or reapplication to  
14 use the property would be futile. For purposes of subpara-  
15 graph (B), the United States’ failure to act within a rea-  
16 sonable time on any application, appeal, or waiver shall  
17 constitute a disapproval. Nothing in this paragraph alters  
18 the substantive law of takings of property, including the  
19 burden of proof borne by the plaintiff.”.

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

21 Whenever a Federal agency takes an agency action  
22 limiting the use of private property that may be affected  
23 by the amendments made by this Act, the agency shall,  
24 not later than 30 days after the agency takes that action,  
25 give notice to the owners of that property explaining their



1 rights under such amendments and the procedures for ob-  
2 taining any compensation that may be due to them under  
3 such amendments.

4 **SEC. 6. EFFECTIVE DATE.**

5 The amendments made by this Act shall apply to ac-  
6 tions commenced on or after the date of the enactment  
7 of this Act.

Passed the House of Representatives March 16,  
2000.

Attest:

JEFF TRANDAHL,

*Clerk.*

By MARTHA C. MORRISON,

*Deputy Clerk.*