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Property Rights: Comparison of H.R. 2372 as Passed and S. 1028 as Introduced

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On March 16, 2000, the House of Representatives passed 226-182 the "Private Property Rights Implementation Act" – H.R. 2372.[1] The bill would lower or eliminate certain threshold barriers (abstention and ripeness) often encountered by land owners asserting takings claims against local governments in federal court. In the Senate, similar provisions appear in S. 1028, the "Citizens Access to Justice Act" pending before the Senate Judiciary Committee. The provisions of H.R. 2372 first appeared in the 105th Congress as H.R. 1534, passed by 248-178, and as a portion of S. 2271, which failed to move forward on the Senate floor after a 52-42 cloture vote (60 votes required).[2]

S. 1028 contains another approach to modifying the process by which property rights claims are asserted – one that applies solely to actions against the United States. This second tack would expand the jurisdiction of federal district courts and the U.S. Court of Federal Claims (CFC) so that plaintiffs complaining of property rights infringement could assert *in the same court* their claims for compensation and their claims seeking to have the federal action invalidated. Generally, plaintiffs cannot do this under current jurisdictional statutes. The jurisdiction-expansion approach appeared in the 105th Congress as H.R. 992, passing the House 230-180, and as a portion of S. 2271 (originally H.R. 1534), which, as noted above, was not passed.[3]

This report compares H.R. 2372 as it passed the House with S. 1028 as introduced.

Findings and purposes. Only S. 1028 contains statements of congressional findings and purposes. For example, the bill asserts that property rights have been abrogated by government actions, that the limited jurisdiction of the district courts and CFC prevent

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[1] 146 Cong. Rec. H1113-H1114 (daily ed. March 16, 2000). *See generally* (name redacted), *Property Rights: House Judiciary Committee Reports H.R. 2372,* CRS Report RS20493 (Mar. 10, 2000).

[2] *See generally* (name redacted), *"Property Rights" Bills Take a Process Approach: H.R. 992 and H.R. 1534*, CRS Report 97-877 (June 24, 1998).

[3] *See* note 2.

property owners from obtaining full relief, and that there is a need to define what constitutes a final decision by local land-use authorities.

Lowering/eliminating threshold barriers in federal court. As noted, both H.R. 2372 and S. 1028 address the abstention and ripeness barriers to litigating claims involving real property in federal court. Both apply to such claims – principally brought under the "Takings Clause" of the Constitution – when asserted against local governments under 42 U.S.C. section 1983, or when asserted against the federal government. Finally, both bills disavow any intent to change substantive takings law.

As for abstention, the bills state different conditions for when a federal district court can abstain from exercising jurisdiction in a real-property-related section 1983 action against a local government. Also, H.R. 2372 states that district courts shall not certify state-law questions for state court resolution unless certain factors are present. S. 1028 says merely that these factors may be considered.

As for ripeness, each bill defines in very similar terms a procedural point at which a local land-use-regulating body would be deemed to have made a "final decision" and thus to have satisfied the "final decision" requirement in the Supreme Court's standard for a ripe taking claim. For example, H.R. 2372 states that a final decision by the local body exists once a "meaningful application" has been disapproved, and, if available, "one appeal and one waiver" also. If the initial disapproval explains in writing the development on the property that would be approved, the landowner, to achieve ripeness, must submit another meaningful application "taking into account" that explanation, and have that resubmission be disapproved, followed by one "appeal and one waiver." Finally, if review is required by the locality's elected officials, the landowner must either be denied review or have the application disapproved. Appeals and waivers need not be applied for if doing so would be "futile."

Each bill would eliminate the current ripeness rule that before coming to federal court, a takings plaintiff must exhaust his/her state avenues for obtaining compensation.

S. 1028 makes a plaintiff liable for the local government's attorneys fees if the taking claim is not "substantially justified."

For takings claims against the United States, only the initial steps above need be followed to ripen a claim (no written explanation, no appeal to elected officials).

Expansion of district court and CFC jurisdiction. As noted, only S. 1028 addresses this issue. The bill would eliminate the current $10,000 cap on property rights claims against the United States brought in district court. At the same time, the bill would empower the CFC to hear claims seeking invalidation of acts of Congress or federal regulations, where they affect property rights. In sum, the bill would create for property rights claims a concurrent jurisdiction between these two courts. All appeals of actions brought under the bill would be to the U.S. Court of Appeals for the Federal Circuit. Attorneys fees may be awarded by the court to a prevailing plaintiff.

Notice to owners. Each bill provides that whenever a federal agency limits the use of private property in a way that may be affected by the bill, the agency must notify the property owner of the procedures for obtaining just compensation under the bill.