CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

October 31, 2005

H.R. 4128
Private Property Rights Protection Act of 2005

As ordered reported by the House Committee on Judiciary on October 27, 2005

H.R. 4128 would deny federal economic development assistance to any state or local entity that uses the power of eminent domain for economic development and would prohibit federal agencies from engaging in this practice. The bill would specifically prohibit state and local governments from taking private property and conveying or leasing that property to another private entity, either for a commercial purpose or to generate additional taxes, employment, or general economic health. A state or local government found to have violated this prohibition would be ineligible for certain federal economic development funds for two years, but could become eligible by returning or replacing the property. The bill would give private property owners the right to bring legal actions seeking enforcement of these provisions and would waive states' constitutional immunity to such suits.

CBO expects that implementing the bill would have no significant impact on the federal budget because most jurisdictions would not risk the economic development assistance they receive from the federal government by using eminent domain as described in the bill. Further, a few states are considering legislation that would restrict the authority of localities to take private property for economic development projects. Because the bill would deny certain economic assistance for up to two years to localities using eminent domain in a way proscribed in the bill, the pace of spending for some discretionary grant programs could be marginally reduced. Enacting the bill would not affect direct spending or revenues.

H.R. 4128 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), but it would impose significant new conditions on the receipt of federal economic development assistance by state and local governments. (Such conditions are not considered mandates under UMRA.) Because these conditions would apply to a large pool of funds, the bill would effectively restrict the use of eminent domain, and would have a significant impact on local governments' powers to manage land use in their jurisdictions. Further, state and local governments could incur significant additional legal expense to respond to private legal actions authorized by the bill.

On October 19, 2005, CBO transmitted a cost estimate for H.R. 3405, the Strengthening the Ownership of Private Property Act of 2005, as ordered reported by the House Committee on Agriculture on October 7, 2005. H.R. 3405 contains similar provisions that would deny federal economic development assistance to any jurisdiction that uses the power of eminent domain for economic development. CBO also estimates that neither piece of legislation would have a significant impact on the federal budget.

The CBO staff contacts for this estimate are Gregory Waring (for federal costs), and Marjorie Miller (for the state and local impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.