



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

August 31, 2006

H.R. 4772

Private Property Rights Implementation Act of 2005

As ordered reported by the House Committee on the Judiciary on July 12, 2006

H.R. 4772 would provide greater access to the federal courts to parties whose property rights have been affected by the decisions of federal, state, and local governments. As a result, the bill is likely to impose additional costs on the federal government by increasing both the number of cases heard by federal courts and the number of claims brought against the United States. CBO has no basis, however, for estimating new discretionary expenses (incurred by the court system to try new cases) or increases in direct spending (for future awards that may be paid from the permanent indefinite judgment appropriation).

CBO has not reviewed this bill for intergovernmental or private-sector mandates. Section 4 of the Unfunded Mandates Reform Act of 1995 excludes from application of that act legislative provisions that enforce constitutional rights of individuals. CBO has determined that H.R. 4772 would fall within that exclusion because changes to federal jurisdiction over property rights cases would involve the enforcement of certain individual constitutional rights.

The Fifth Amendment prohibits the taking of private property for public use without just compensation. This restriction on government action is extended to the states through the due process clause of the 14th Amendment. Under current law, parties who believe that a government agency's actions or decisions have taken their property may sue the federal, state, or local government. Plaintiffs alleging takings by state and local governments are often denied access to federal district courts, however, until they have exhausted their opportunities to obtain compensation through the state courts.

H.R. 4772 would give greater access to federal courts to plaintiffs making claims based on property owners' rights secured by the Constitution. First, this bill would prohibit a federal district court from refusing to hear claims of takings by states and localities until a final decision has been rendered by a state court. The bill also would make other changes to existing law applicable to takings claims, such as defining "final decision" for the claims, thereby relaxing the standards by which such claims are found ripe for adjudication in federal district courts or in the U.S. Court of Federal Claims.

Section 6 of the bill would change the standards for evaluating takings claims where the United States is acting as a defendant. Under current law, courts analyze contiguous lots as a single parcel to determine whether a taking has occurred. H.R. 4772 would narrow the courts' analysis to the impact on each lot, effectively allowing some claims that would have been denied under a "parcel as a whole" analysis. In addition, under H.R. 4772, a taking would be deemed a violation of substantive due process if decisionmaking by a federal agency was found to be "arbitrary and capricious."

CBO expects that enacting the changes under H.R. 4772 would impose additional costs on the U.S. court system to the extent that additional takings claims are filed and heard in federal courts. Based on information obtained from various legal experts, however, CBO estimates that only a small percentage of all civil cases filed in state courts involve takings claims and that only a small proportion would be tried in federal court as the result of enacting H.R. 4772 (in part because state and local regulators may have an incentive to settle with plaintiffs to avoid a trial in federal court). On the other hand, most cases that would reach trial in a federal court as a result of this bill are likely to involve relatively large claims and could be time-consuming and costly to adjudicate. In addition, based on information from the Department of Justice, CBO estimates that the number of cases brought to court would increase under the new standards. Lower legal standards may also increase the number and size of payments from the permanent, indefinite judicial settlement fund. However, CBO has no basis for estimating the number of cases that would be affected or the amount of court costs that would result. Administrative costs for handling additional cases would be paid from appropriated funds, while any additional judgment payments would increase direct spending.

The CBO staff contact for this estimate is Daniel Hoople. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.