

PROVIDING FOR CONSIDERATION OF H.R. 4128, PRIVATE
PROPERTY RIGHTS PROTECTION ACT OF 2005

NOVEMBER 2, 2005.—Referred to the House Calendar and ordered to be printed

Mr. GINGREY, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 527]

The Committee on Rules, having had under consideration House Resolution 527, by a non-record vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 4128, the Private Property Rights Protection Act of 2005, under a structured rule. The rule provides 90 minutes of general debate with 60 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and 30 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture.

The rule waives all points of order against consideration of the bill. The rule provides that the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read.

The rule makes in order only those amendments printed in this report. The rule provides that the amendments printed in the report may be considered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The rule waives all points of order against the amendments printed in this report.

Finally, the rule provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

The Committee is not aware of any points of order against consideration of the bill. The waiver of all points of order against consideration of the bill is prophylactic in nature.

SUMMARY OF AMENDMENTS MADE IN ORDER

(Summaries derived from information provided by sponsors.)

1. Sensenbrenner: Manager's Amendment. Makes clear that private roads that are open to the public, free or by toll, and flood control facilities are covered under the exceptions to the bill. Also includes a savings clause making clear that nothing in the legislation shall be construed to affect the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (which requires the Federal government to pay the displacement costs of those adversely affected by the Federal government's exercise of eminent domain). Also incorporates into the bill's Sense of Congress section some language provided by the Resources Committee regarding the effect of the abuse of eminent domain on irrigation and reclamation projects, and on public lands. (10 minutes)

2. Nadler: Allows a property owner to go to court before the property is taken in order to obtain declaratory or injunctive relief if the taking violates the Act. The bill currently only allows a property owner to obtain a preliminary injunction or temporary restraining order, and does not allow the property owner to bring an action until after the conclusion of the condemnation proceedings. The amendment would also strike the penalties portion of the bill. (10 minutes)

3. Granger: Strikes language in section 2, lines 12 and 13, which would prevent excess land from a completed public project from being put back on the tax rolls. (10 minutes)

4. Sodrel: Clarifies that in any proceeding to prevent or remedy a taking, that the burden is on the state or agency to show that it is not for economic development as defined in the Act. Also requires a heightened standard of proof—clear and convincing—that the use fits one of the exceptions to economic development as defined in the Act. (10 minutes)

5. Moran (VA): Clarifies the property conveyance for the definition of "economic development," specifies that increasing tax revenue must be the "primary purpose" of the taking authority, and sets a hard date of seven years that property holders can bring action against the taking authority. Also makes a number of technical corrections. (10 minutes)

6. Turner: Enumerates several harmful uses of land which constitute a threat to public health and safety (i.e. dilapidation, obsolescence, overcrowding, lack of ventilation, light, and sanitary facilities, excessive land coverage, deleterious land use, obsolete subdivision or constitutes a brownfield). (10 minutes)

7. Miller, Gary (CA)/Johnson, Eddie Bernice (TX): Adds language to specify that the term economic development in the bill does not include the redevelopment of brownfield sites. Uses the definition of brownfield site included in the Small Business Liability Relief and Brownfield Revitalization Act. (10 minutes)

8. Gingrey: Ads a new section to prohibit a State or political subdivision of a State from the exercise of eminent domain over the property of a religious or other nonprofit organization by reason of the nonprofit or tax-exempt status of such organization if that State or political subdivision received Federal economic development funds during any fiscal year in which it does so. This amendment also places the same prohibition on the Federal government. A violation of this provision will render the State or political subdivision ineligible to receive Federal economic development funds for a period of 2 fiscal years. (10 minutes)

9. Cuellar: Ensures that all Federal agencies review their regulations and procedures for compliance with this Act. Requires a report to the Attorney General. (10 minutes)

10. Jackson-Lee: Sense of Congress that expresses the legislative intent to protect from the taking by the Federal government for economic development or for private use of the property owned, either by assignment, intestate succession, or by record, by survivors of Hurricane Katrina. (10 minutes)

11. Watt: Deletes all sections of the bill and retains only the sense of Congress recognizing the importance of property rights and that in the aftermath of the *Kelo* decision that abuses of eminent domain power may occur. (10 minutes)

TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SENSENBRENNER OF WISCONSIN, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 9, strike lines 1 through 7, and insert the following:

(A) conveying private property—

(i) to public ownership, such as for a road, hospital, airport, or military base;

(ii) to an entity, such as a common carrier, that makes the property available to the general public as of right, such as a railroad or public facility;

(iii) for use as a road or other right of way or means, open to the public for transportation, whether free or by toll;

(iv) for use as an aqueduct, flood control facility, pipeline, or similar use;

Page 8, line 7, after “States.” insert the following: “The taking of farmland and rural property will have a direct impact on existing irrigation and reclamation projects. Furthermore, the use of eminent domain to take rural private property for private commercial uses will force increasing numbers of activities from private property onto this Nation’s public lands, including its National forests, National parks and wildlife refuges. This increase can overburden the infrastructure of these lands, reducing the enjoyment of such lands for all citizens.”.

Add at the end the following new section:

SEC. ____ . LIMITATION ON STATUTORY CONSTRUCTION.

Nothing in this Act may be construed to supersede, limit, or otherwise affect any provision of the Uniform Relocation Assistance

and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE NADLER OF NEW YORK, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 2, line 8, strike “(a) IN GENERAL.—”.

Page 2, strike line 16 and all that follows through line 17 on page 3.

Page 4, beginning in line 1, strike “to enforce any provision of this Act” and insert “to obtain appropriate injunctive or declaratory relief.”.

Page 4, beginning in line 6, strike “Any” and all that follows through line 16.

Page 4, line 17, strike “(c)” and insert “(b)”.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GRANGER OF TEXAS, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 2, beginning in line 12, strike “or over property” and all that follows through “development” in line 13.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SODREL OF INDIANA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 4, line 6, after “jurisdiction.” insert “In such action, the defendant has the burden to show by clear and convincing evidence that the taking is not for economic development.”

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MORAN OF VIRGINIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 8, strike line 17 and all that follows through line 19 on page 9 and insert the following:

(1) ECONOMIC DEVELOPMENT.—The term “economic development” means taking private property, without the consent of the owner, and conveying or leasing such property from the taking authority to a private person or entity, or from such private person or entity to another private person or entity, where the grantee or lessee person or entity is to use the property for commercial enterprise carried on for profit, or where the conveying or leasing is for the primary purpose of increasing tax revenue, tax base, employment, or general economic health, except that such term shall not include—

(A) conveying private property for a public use, such as—

- (i) for a road, hospital, or military base;
- (ii) for use by the general public as of right, such as a railroad or public facility; or
- (iii) for use as a right of way, aqueduct, pipeline, utility or similar use;

(B) removing harmful uses of land provided such uses constitute an immediate threat to public health and safety;

(C) leasing property to a private person or entity that occupies an incidental part of public property or a public facility, such as a retail establishment on the ground floor of a public building;

(D) acquiring abandoned property; and

(E) clearing defective chains of title.

Page 4, beginning in line 15, strike “and the subsequent use of such condemned property for economic development”.

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE TURNER OF OHIO, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 9, beginning in line 8, strike “provided” and all that follows through line 10 and insert “, including a property or preponderance of properties which constitute a threat to public health and safety by reason of dilapidation, obsolescence, overcrowding, lack of ventilation, light, and sanitary facilities, excessive land coverage, deleterious land use, obsolete subdivisions, or because it constitutes a brownfield, as that term is defined in the Small Business Liability Relief and Brownfields Revitalization Act (42 U.S.C. 9601(39))”.

7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GARY MILLER OF CALIFORNIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 9, line 17, strike “and”.

Page 9, line 19, strike the period and insert “; and”.

Page 9, after line 19, insert the following:

(G) redeveloping of a brownfield site as defined in the Small Business Liability Relief and Brownfields Revitalization Act (42 U.S.C. 9601(39)).

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GINGREY OF GEORGIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Add at the end the following new section:

SEC. 12. RELIGIOUS AND NONPROFIT ORGANIZATIONS.

(a) PROHIBITION ON STATES.—No State or political subdivision of a State shall exercise its power of eminent domain, or allow the exercise of such power by any person or entity to which such power has been delegated, over property of a religious or other nonprofit organization by reason of the nonprofit or tax-exempt status of such organization, or any quality related thereto if that State or political subdivision receives Federal economic development funds during any fiscal year in which it does so.

(b) INELIGIBILITY FOR FEDERAL FUNDS.—A violation of subsection (a) by a State or political subdivision shall render such State or political subdivision ineligible for any Federal economic development funds for a period of 2 fiscal years following a final judgment on the merits by a court of competent jurisdiction that such subsection has been violated, and any Federal agency charged with distributing those funds shall withhold them for such 2-year period, and any such funds distributed to such State or political subdivision shall be returned or reimbursed by such State or political subdivi-

sion to the appropriate Federal agency or authority of the Federal Government, or component thereof.

(c) PROHIBITION ON FEDERAL GOVERNMENT.—The Federal Government or any authority of the Federal Government shall not exercise its power of eminent domain over property of a religious or other nonprofit organization by reason of the nonprofit or tax-exempt status of such organization, or any quality related thereto.

9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CUELLAR OF TEXAS, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Add at the end the following:

SEC. 13. REPORT BY FEDERAL AGENCIES ON REGULATIONS AND PROCEDURES RELATING TO EMINENT DOMAIN.

Not later than 180 days after the date of the enactment of this Act, the head of each Executive department and agency shall review all rules, regulations, and procedures and report to the Attorney General on the activities of that department or agency to bring its rules, regulations and procedures into compliance with this Act.

10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON-LEE OF TEXAS, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Add at the end the following:

SEC. ____ . SENSE OF CONGRESS.

It is the sense of Congress that any and all precautions shall be taken by the government to avoid the unfair or unreasonable taking of property away from survivors of Hurricane Katrina who own, were bequeathed, or assigned such property, for economic development purposes or for the private use of others.

11. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WATT OF NORTH CAROLINA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 2, strike line 3 and all that follows through line 25 on page 6.

Page 8, strike line 15 and all that follows through line 4 on page 11.

Page 7, strike line 1 and insert the following:

SECTION 1. SENSE OF CONGRESS.