

chair; and after some time spent therein,

37.4 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment submitted by Mr. MINETA to the amendment in the nature of a substitute, as amended, submitted by Mr. CANADY:

Amendment submitted by Mr. MINETA:

In section 3(a), strike "any portion" and all that follows through "10 percent" and insert "that property has been limited by an agency action, under a specified regulatory law, that diminishes the fair market value of that property by 20 percent".

Amendment in the nature of a substitute, as amended, submitted by Mr. CANADY:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Private Property Protection Act of 1995".

SEC. 2. FEDERAL POLICY AND DIRECTION.

(a) GENERAL POLICY.—It is the policy of the Federal Government that no law or agency action should limit the use of privately owned property so as to diminish its value.

(b) APPLICATION TO FEDERAL AGENCY ACTION.—Each Federal agency, officer, and employee should exercise Federal authority to ensure that agency action will not limit the use of privately owned property so as to diminish its value.

SEC. 3. RIGHT TO COMPENSATION.

(a) IN GENERAL.—The Federal Government shall compensate an owner of property whose use of any portion of that property has been limited by an agency action under a specified regulatory law that diminishes the fair market value of that portion by 10 percent or more. The amount of the compensation shall equal the diminution in value that resulted from the agency action. If the diminution in value of a portion of that property is greater than 50 percent, at the option of the owner, the Federal Government shall buy that portion of the property for its fair market value.

(b) DURATION OF LIMITATION ON USE.—Property with respect to which compensation has been paid under this Act shall not thereafter be used contrary to the limitation imposed by the agency action, even if that action is later rescinded or otherwise vitiated. However, if that action is later rescinded or otherwise vitiated, and the owner elects to refund the amount of the compensation, adjusted for inflation, to the Treasury of the United States, the property may be so used.

SEC. 4. EFFECT OF STATE LAW.

If a use is a nuisance as defined by the law of a State or is already prohibited under a local zoning ordinance, no compensation shall be made under this Act with respect to a limitation on that use.

SEC. 5. EXCEPTIONS.

(a) PREVENTION OF HAZARD TO HEALTH OR SAFETY OR DAMAGE TO SPECIFIC PROPERTY.—No compensation shall be made under this Act with respect to an agency action the primary purpose of which is to prevent an identifiable—

- (1) hazard to public health or safety; or
(2) damage to specific property other than the property whose use is limited.

(b) NAVIGATION SERVITUDE.—No compensation shall be made under this Act with respect to an agency action pursuant to the Federal navigation servitude, as defined by the courts of the United States, except to

the extent such servitude is interpreted to apply to wetlands.

SEC. 6. PROCEDURE.

(a) REQUEST OF OWNER.—An owner seeking compensation under this Act shall make a written request for compensation to the agency whose agency action resulted in the limitation. No such request may be made later than 180 days after the owner receives actual notice of that agency action.

(b) NEGOTIATIONS.—The agency may bargain with that owner to establish the amount of the compensation. If the agency and the owner agree to such an amount, the agency shall promptly pay the owner the amount agreed upon.

(c) CHOICE OF REMEDIES.—If, not later than 180 days after the written request is made, the parties do not come to an agreement as to the right to and amount of compensation, the owner may choose to take the matter to binding arbitration or seek compensation in a civil action.

(d) ARBITRATION.—The procedures that govern the arbitration shall, as nearly as practicable, be those established under title 9, United States Code, for arbitration proceedings to which that title applies. An award made in such arbitration shall include a reasonable attorney's fee and other arbitration costs (including appraisal fees). The agency shall promptly pay any award made to the owner.

(e) CIVIL ACTION.—An owner who does not choose arbitration, or who does not receive prompt payment when required by this section, may obtain appropriate relief in a civil action against the agency. An owner who prevails in a civil action under this section shall be entitled to, and the agency shall be liable for, a reasonable attorney's fee and other litigation costs (including appraisal fees). The court shall award interest on the amount of any compensation from the time of the limitation.

(f) SOURCE OF PAYMENTS.—Any payment made under this section to an owner, and any judgment obtained by an owner in a civil action under this section shall, notwithstanding any other provision of law, be made from the annual appropriation of the agency whose action occasioned the payment or judgment. If the agency action resulted from a requirement imposed by another agency, then the agency making the payment or satisfying the judgment may seek partial or complete reimbursement from the appropriated funds of the other agency. For this purpose the head of the agency concerned may transfer or reprogram any appropriated funds available to the agency. If insufficient funds exist for the payment or to satisfy the judgment, it shall be the duty of the head of the agency to seek the appropriation of such funds for the next fiscal year.

SEC. 7. LIMITATION.

Notwithstanding any other provision of law, any obligation of the United States to make any payment under this Act shall be subject to the availability of appropriations.

SEC. 8. RULES OF CONSTRUCTION.

(a) EFFECT ON CONSTITUTIONAL RIGHT TO COMPENSATION.—Nothing in this Act shall be construed to limit any right to compensation that exists under the Constitution or under other laws of the United States.

(b) EFFECT OF PAYMENT.—Payment of compensation under this Act (other than when the property is bought by the Federal Government at the option of the owner) shall not confer any rights on the Federal Government other than the limitation on use resulting from the agency action.

SEC. 9. DEFINITIONS.

For the purposes of this Act—
(1) the term "property" means land and includes the right to use or receive water;
(2) a use of property is limited by an agency action if a particular legal right to use

that property no longer exists because of the action;

(3) the term "agency action" has the meaning given that term in section 551 of title 5, United States Code, but also includes the making of a grant to a public authority conditioned upon an action by the recipient that would constitute a limitation if done directly by the agency;

(4) the term "agency" has the meaning given that term in section 551 of title 5, United States Code;

(5) the term "specified regulatory law" means—

(A) section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(B) the Endangered Species Act of 1979 (16 U.S.C. 1531 et seq.);

(C) title XIII of the Food Security Act of 1985 (16 U.S.C. 3821 et seq.); or

(D) with respect to an owner's right to use or receive water only—

(i) the Act of June 17, 1902, and all Acts amendatory thereof or supplementary thereto, popularly called the "Reclamation Acts" (43 U.S.C. 371 et seq.);

(ii) the Federal Land Policy Management Act (43 U.S.C. 1701 et seq.); or

(iii) section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604);

(6) the term "State" includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States; and

(7) the term "law of the State" includes the law of a political subdivision of a State.

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37.5 [Roll No. 194]
AYES—173

Table with 3 columns: Name, Name, Name. Lists names of members such as Abercrombie, Ackerman, Andrews, Baldacci, Barcia, Barrett (WI), Becerra, Beilenson, Bentsen, Berman, Bishop, Bontor, Borski, Boucher, Brown (CA), Brown (FL), Brown (OH), Cardin, Clay, Clayton, Clement, Clyburn, Coleman, Collins (IL), Collins (MI), Conyers, Costello, Coyne, Cramer, Davis, DeFazio, DeLauro, Dellums, Deutsch, Dicks, Dingell, Dixon, Doggett, Dooley, Doyle, Durbin, Ehlers, Engel, Eshoo, Evans, Farr, Fattah, Fazio, Fields (LA), Filner, Flake, Foglietta, Ford, Fox, Frank (MA), Frost, Gejdenson, Gephardt, Gibbons, Gilchrest, Greenwood, Gutierrez, Hall (OH), Hamilton, Hastings (FL), Hefner, Hilliard, Hinchey, Jackson-Lee, Jacobs, Jefferson, Johnson (CT), Johnson (SD), Johnson, E. B., Johnston, Kanjorski, Kaptur, Kelly, Kennedy (MA), Kennedy (RI), Kennelly, Kildee, Kleczka, Klink, LaFalce, Lantos, Levin, Lewis (GA), Lincoln, Lipinski, Lofgren, Lowey, Luther, Maloney, Manton, Markey, Martinez, Mascara, Matsui, McCarthy, McDermott, McHale, McKinney, Meehan, Meek, Menendez, Meyers, Mfume, Miller (CA), Mineta, Minge, Mink, Mollohan, Moran, Morella, Murtha, Nadler, Neal, Oberstar, Obey, Olver, Owens, Pallone, Pastor, Payne (NJ), Pelosi, Peterson (FL), Pomeroy, Poshard, Rahall, Reed, Richardson, Rivers, Roemer, Rose, Roybal-Allard, Rush, Sabo, Sanders, Sawyer, Schiff, Schroeder, Schumer, Scott, Serrano, Skaggs, Slaughter, Spratt, Stark, Stokes, Studds, Stupak, Thompson.