



Legislative Bulletin.....February 27, 2012

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**H.R. 1433— Private Property Rights Protection Act of 2012
(Sensenbrenner, R-WI)**

Order of Business: The bill is scheduled to be considered on Monday, February 27, 2012, under a motion to suspend the rules requiring two-thirds majority vote for passage.

Summary: H.R. 1433 prevents states or localities that condemn private property or tax-exempt entities under their eminent domain authority for economic development purposes—rather than traditional “public use” purposes—from receiving federal funding for two fiscal years. It also prohibits federal agencies from engaging in the same practices.

The bill serves to reinforce private property protections afforded under the Constitution’s Fifth Amendment Takings Clause the Supreme Court significantly altered in its 2005 Kelo v. City of New London¹ decision. In this 5-4 decision, the court held that the Fifth Amendment’s clause that “private property [shall not] be taken for public use, without just compensation” permits governments to take an individual’s private property and give it to another private entity for economic development purposes. This landmark decision represented a departure from the long-standing precedent that the public use doctrine prevents governments from taking private property for anything other than a public use (railroads, highways, removing public safety hazards, public utility purposes, etc.). Justices O’Connor’s and Thomas’ dissenting opinion in the case explained that now “nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory.”²

H.R. 1433 is the third official act taken by the House of Representatives in response to the Kelo decision since the Supreme Court decided the case. In 2005, the House passed both a resolution of disapproval of the decision (H.Res. 340) and H.R. 4128, a bill similar to H.R. 1433.

¹ *Kelo v. City of New London*, 545 U.S. 469 (2005)

² *Id.* at 503.

Additional Background: The bill also includes the following provisions:

- Requires a state or political subdivision to reimburse federal funds to the appropriate federal agency upon a final judgment on the merits by a court of competent jurisdiction that H.R. 1433 has been violated;
- Allows a state or political subdivision to be reinstated for eligibility for receipt of federal funds upon return of all real property the taking of which had been in violation of H.R. 1433;
- Permits any private property owner or tenant who has been impacted by any provision of this bill to sue a state or political subdivision seeking any appropriate preliminary injunctive relief within seven years from the conclusion of condemnation proceedings. A successful owner or tenant will be reimbursed reasonable attorneys' fees;
- Requires the Attorney General (AG) to intervene in any lawsuits brought by a property owner or tenant if the AG determines it is necessary to enforce the provisions of the bill;
- Requires the AG to compile a list of the federal laws under which federal economic development funds are distributed, notify the chief executives of each state of this compilation, and make it available on the United States Department of Justice's (DOJ) website;
- Defines the following terms:
 - "Economic development—taking private property, without the consent of the owner, and conveying or leasing such property from one private person or entity to another private person or entity for commercial enterprise carried on for profit, or to increase tax revenue, tax base, employment, or general economic health. The term economic development does not include:
 - conveying private property to public ownership, such as for a road, hospital, or military base, or to an entity, such as a common carrier, that makes the property available for use by the general public as of right, such as a railroad, or public facility, or for use as a right of way, aqueduct, pipeline, or similar use;
 - removing harmful uses of land provided such uses constitute an immediate threat to public health and safety;
 - 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;
 - acquiring abandoned property;
 - clearing defective chains of title; and
 - taking private property for use by a public utility (the term public utility is intended to include all utilities providing electric, natural gas, telecommunications, water and wastewater services and other essential services, either directly to the public or indirectly through

provision of such services at the wholesale level for resale to the public.”

- Federal economic development funds—any federal funds distributed to or through states or political subdivisions of states under federal laws designed to improve or increase the size of the economies of States or political subdivisions of states.”
- Includes Senses of Congresses addressing the importance of the federal government protecting private property rights in general and specifically for survivors of Hurricane Katrina.
- Requires the AG to use “reasonable efforts” to locate and inform former poor and minority owners and tenants of violations and any remedies afforded under this bill.

Committee Action: Rep. Jim Sensenbrenner (R-WI) introduced H.R. 1433 on April 7, 2011. The Judiciary Subcommittee on the Constitution held a hearing on the bill on April 12, 2011, and the full committee reported the bill favorably by a [23-5](#) vote on January 24, 2012.

Administration Position: As of press time, no Statement of Administration Policy (SAP) has been released.

Cost to Taxpayers: The Congressional Budget Office (CBO) released a cost estimate for the bill on February 14, 2012. The estimate explained that implementing this legislation would have no significant impact on discretionary spending in the next five years. Also, CBO expects that “...few state and local governments would receive reduced Federal assistance... [because] most jurisdictions would not risk this assistance by exercising the use of eminent domain in situations described by the bill.”

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No. However, CBO explains that the new conditions on the receipt of federal economic development funding would “...restrict the use of eminent domain by State and local governments and limit the ability of local governments to manage land use in their jurisdictions.” CBO further explained that private legal actions authorized in the bill could significantly increase the legal expenses of states and localities.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The House Report accompanying the bill (House Report [112-401](#)) states that the bill does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9 (f), or 9(g) of clause 9 of House Rule XXI.

Constitutional Authority: The Constitutional Authority Statement accompanying the bill upon introduction states: “Congress has the power to enact this legislation pursuant to

the following: The authority to enact this bill is derived from, but may not be limited to, Article I, Section 8, Clause 1 of the United States Constitution

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Senate Amendment to H.R. 347 – Federal Restricted Buildings and Grounds Improvement Act of 2012 (Rooney, R-FL)

Order of Business: The bill is scheduled to be considered on Monday, February 27, 2012 under a motion to suspend the rules requiring two-thirds majority vote for passage.

Summary: The Senate Amendment to [H.R. 347](#) makes two changes to H.R. 347, a bill that passed the House on February 28, 2011 by a recorded vote of [399-3](#). The original bill amends section 1752 of Title 18 of the U.S. Code to prohibit unlawful trespassing of the White House, the Vice President’s residence, and their respective grounds. Since there are no explicit, federal law prohibitions against unlawful entries on such grounds, the U.S. Secret Service relies upon the District of Columbia criminal code to prosecute for misdemeanor infractions against someone who attempts to or successfully trespasses upon the White House or Vice Presidents grounds.

Current federal law only prohibits unlawful entries upon any restricted building or ground where the President, Vice President, or other protectee (First family, former presidents, visiting heads of states, etc) are *temporarily* visiting. The Senate Amendment makes a technical change to the House-passed bill. Also, it permits those persons that a Presidential Memorandum describes as eligible for U.S. Secret Service protection to be included in the statute’s definition of the protected class of persons under the bill.

H.R. 347 is similar to legislation ([H.R. 2780](#)) that passed the House in the 111th Congress by voice vote on July 27, 2010.

Committee Action: Rep. Thomas Rooney (R-FL) introduced H.R. 347 on January 19, 2011. On January 26, 2011, the Judiciary Committee [reported](#) the bill out favorably by voice vote on February 11, 2011, and the full House passed the bill by a vote of [399-3](#) on February 28, 2011.

Administration Position: No Statement of Administration Policy (SAP) has been released by the Obama Administration.

Cost to Taxpayers: The Congressional Budget Office (CBO) issued a cost estimate for H.R. 347 on February 2, 2011. The estimate stated implementing H.R. 347 would have no significant cost to the Federal government.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. It creates a new Federal crime under Section 1752, Title 18, United States Code.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: H.R. 347 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 347 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Constitutional Authority: The Constitutional Authority Statement published in the Congressional Record upon introduction of the bill states: “The Committee finds the authority for this legislation in article I, section 8, clause 1 of the Constitution.”

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