

Good Friday Agreement and mandated by the people of Ireland. As the first anniversary of the agreement approaches, all sides have the opportunity, if not the obligation, to make real progress toward its implementation. The paramilitary factions must be demobilized and disbanded immediately if there is to be a genuine and lasting peace. All parties to the process must now rely on the increased dialogue and the new, conciliatory tone of the talks to transform any future disagreements from violent altercations into intelligent debate and then, hopefully, lasting harmony. A harmony that will one day remove the ubiquitous and pernicious words "The Troubles" from the vernacular of a generation of Irish, both in their homeland and in America.

LANDOWNERS EQUAL TREATMENT  
ACT OF 1999

**HON. DON YOUNG**

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, March 17, 1999*

Mr. YOUNG of Alaska. Mr. Speaker, today Congressman TAUZIN, Congressman POMBO and I, joined by more than 20 cosponsors, are introducing the Landowners Equal Treatment Act of 1999. The purpose of this bill is to insure that private property owners are compensated when their land must be used by the federal government as habitat for endangered or threatened species. The United States Constitution in the 5th Amendment states "nor shall private property be taken for public use, without just compensation." The Supreme Court has said that the right to be compensated for the taking of private property for a public use is a fundamental constitutional right on the same level as the right to free speech and free exercise of religion.

There are some in our country who no longer revere or respect the rights of private property owners. Their view is that using land for wildlife habitat is more important than protecting the right to own and control the use of private property. However, the purpose of our bill of rights is prevent the current whims of the majority from infringing on the rights of each individual in our country to certain liberties and freedoms guaranteed in our constitution. One of the most important of these is the full rights of ownership of private property, which includes the right to use and enjoy the fruits of ownership of property.

Over the last several years, bills have been introduced to insure that property owners are protected by requiring compensation when property is taken, to insure that property owners have the right to bring suit to protect their own property rights, and to make property rights lawsuits less cumbersome. Certainly, landowners can file suit for compensation under the Constitution, but as you know these lawsuits are so expensive, time consuming and difficult, that ordinary citizens lose their land or their right to compensation because they cannot afford these lawsuits. Yet, the Clinton administration, has consistently opposed any and all efforts to protect private property rights.

However, the Clinton administration has vigorously sought compensation for impacts on government lands when other public agencies must make use of them. This bill guarantees

that private landowners, who enjoy the protections of the Bill of Rights, receive equal treatment with government agencies, which do not have the protections of the Bill of Rights.

On February 4, 1999 I chaired a hearing on the Minnesota Valley National Wildlife Refuge. During the course of that hearing, we learned of a Federal Aviation Administration statute and regulation, that allowed the Fish and Wildlife Service to receive "compensation" for the lost "use" of refuge lands due to off-site impacts from aircraft overflights. The law requires the Secretary of Transportation to avoid or minimize impacts on public lands when approving construction of federal transportation projects. The Clinton administration is interpreting this law and rule to require that the Transportation Department first avoid impacts, then minimize impacts and if that can't be done to compensate for the impacts. This resulted in the Fish and Wildlife Service receiving an agreement for compensation of more than \$26 million to be paid from revenues of the local airport through charges on airport users.

The way that the Fish and Wildlife Service and the FAA interpret whether they are "using" public lands that requires the payment of compensation is through a definition of "constructive use". According to the FAA "A 'constructive use' can occur when proximity effects, such as noise, adversely affect the normal activity or aesthetic value of an eligible Section 4(f) property—even though there may be no direct physical effect involving construction of transportation facilities.

A "constructive use" can occur where there is no physical presence or invasion of the property, but where the landowner's use is so limited by the imposition of the use by the public for habitat, that for all practical purposes the landowner can no longer use his own lands. Examples of this have occurred on an all too frequent basis. Our committee has heard testimony that the federal government has prevented homebuilders from constructing on their property because it is habitat for marsh rabbits, mice and rats. Farmers have been prevented from farming because of the presence of rats and fairy shrimp. Ranchers are being told to halt cattle grazing because of the presence of rare plants or birds. Schools have been halted due to the use of local lands because it is habitat for pygmy owls. And private timber owners are being told to put timber lands off limits to further uses because of the presence of owls, marbled murrelets, and salmon.

The Clinton administration would argue that it is not a taking of property if only a small part of the property is put aside for habitat because the landowner still has other property they can use. However, in the Minnesota Valley National Wildlife Refuge, the airport noise only affected a small part of the property and yet the full compensation was paid for the impact on the portion of the property that was affected. Landowners ought to receive the same treatment and the same right to be compensated for the use of their property whether it affects the entire parcel or only a portion of the parcel.

The bill that we introduce today will insure that private property owners are compensated on the same basis as the Fish and Wildlife Service. It only deals with the requirement of the Endangered Species Act that habitat of species be protected, even when that habitat

is someone's private property. It would require the same sequencing as is currently applied to public lands—first avoid using private property for public use, if that is not possible, then minimize the impacts and if that is not possible mitigate through compensation. The bill defines what a public use is in the same manner that the FAA has defined it to include a "constructive use". It then lists the types of actions under the ESA that would be within the definition of use or constructive use. These are actions that result in the land being used as habitat by the government to the detriment of the property owner. The landowner would be compensated for any portion of land taken.

The fact is that this bill will help not only private property owners but also our nation's endangered plants and animals. The right way to protect endangered species is through cooperative and voluntary efforts of private property owners. Most private property owners are delighted to provide a home to the nation's wildlife when the rights of the private property owner are respected. However, when the federal government forces landowners through coercion or threats of prosecution to set aside valuable land for nonuse because it is habitat, landowners will have no incentive to protect habitat for wildlife. Protecting private property rights is the right thing to do for people and wildlife.

HISTORIC HOMEOWNERSHIP  
ASSISTANCE ACT

**HON. E. CLAY SHAW, JR.**

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, March 17, 1999*

Mr. SHAW. Mr. Speaker, all across America, in the small towns and great cities of this country, our heritage as a nation—the physical evidence of our past—is at risk. In virtually every corner of this land, homes in which grandparents and parents grew up, communities and neighborhoods that nurtured vibrant families, schools that were good places to learn and churches and synagogues that were filled on days of prayer, have suffered the ravages of abandonment and decay.

In the decade from 1980 to 1990, Chicago lost 41,000 housing units through abandonment, Philadelphia 10,000, and St. Louis 7,000. The story in our older small communities has been the same, and the trend continues. It is important to understand that it is not just the buildings we are losing. It is the sense of our past, the vitality of our communities and the shared values of those precious places.

We need not stand hopelessly by as passive witnesses to the loss of these irreplaceable historic resources. We can act, and to that end I am introducing today with a bipartisan group of my colleagues the Historic Homeownership Assistance Act.

This legislation is almost identical to legislation introduced in the 105th Congress as H.R. 1134. It is patterned after the existing Historic Rehabilitation Investment Tax Credit. That legislation has been enormously successful in stimulating private investment in the rehabilitation of buildings of historic importance all across the country. Through its use we have been able to save and re-use a rich and diverse array of historic buildings: landmarks