Takings/Private Property Rights

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Takings/Private Property Rights

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A FRAMEWORK FOR ENVIRONMENTAL PRIORITIES
Midwestern Perspectives

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Midwestern Perspectives

Why do some environmental bills capture the attention of legislators far more quickly than others? Why are some questions economically or environmentally far more important than others? Why are some research results used widely, while others become peripheral? The motivation to better understand these type of questions propelled us to embark on a three-year (1992-95) project funded by the Joyce Foundation of Chicago, Illinois. In the Fall of 1992, a small but highly effective group of individuals, including elected representatives of midwestern legislatures, decision makers of major federal and private environmental organizations agreed to serve on a Steering Committee for this project. The Committee met once each year, during the summer of 1993 and 1994, for two days on the campus of the University of Iowa in Iowa City, Iowa.

During the first year, we investigated the factors contributing to the setting of agendas and priorities within the context of environmental bills in the Midwest. The Steering Committee, selected invited guests, and the project staff reviewed and evaluated a myriad of mechanisms that influence the agenda setting process in the enactment of environmental bills in Midwestern legislatures. In 1993, the project team actively evaluated the utility of the four competing paradigms of comparative risk assessment (CRA), environmental justice, pollution prevention, and innovation in the priority-setting process.

In 1993, we observed major national coalitions forming around the issues of unfunded mandates, regulatory reform through risk assessment and cost-benefit analysis; and expanding private property rights through a re-definition of “takings.” Since the dramatic events of the 1994 elections, and the Republican “Contract with America,” several Federal bills on unfunded mandates, takings (private property rights), and regulatory reform are currently making (or have already made) their way through the U. S. Congress. In the last few months alone, regulatory reform as well as the topics of unfunded mandates and takings/property rights have been hotly contested in the nation’s capitol. In the context of this dynamic sea of political change, what is needed is the dissemination of timely, useful, and unbiased information to state-level elected officials and policy makers.

In the first two years we held conferences to explore the mechanisms by which environmental legislation gets formed, passed, or defeated in state legislatures in the Midwest. We explored the utility of the CRA paradigm and the competing or alternative paradigms of environmental justice, pollution prevention, and innovation in legislative settings. We also considered in detail the implications of the “Unfunded Mandates,” and the “Takings/Property Rights” issues on the Midwestern legislatures.

Armed with much useful information on the above topics, we held three workshops, one each in Michigan, Kansas, and Minnesota during the Spring/Summer of 1995. These workshops investigated how the issues of unfunded mandate relief, property rights/takings and risk regulations at the federal level will influence the agendas of state legislative committees on the environment. Over eighty individuals, including about thirty five Midwestern legislators, legislative staff, interest group leaders, and lobbyists from five states attended one of these workshops.

Based on the experiences over the last three years, including the 1995 workshops, we found that critical environmental problems have broad generality, are conflict-ridden, and require analysis in multi-dimensional information domains (such as social, political, legal, economic, public opinion, and scientific spheres). Typical examples of such problems include the well known case of siting noxious facilities (the "hot in my backyard syndrome," or NIMBY), the regulatory provisions of the various federal acts (Clean Air, Clean Water, Safe Drinking Water, RCRA, and CERCLA) which have led to the current impasse of "no more unfunded mandates," and debates over the various agenda or priority setting paradigms of CRA, environmental justice, pollution prevention, and innovation.

We concluded that timely dissemination of brief Research Note such as this would be of much value to state-level elected officials and others with strong interest in environmental protection and public policy.

About the Authors

R. Rajagopal, professor in the Departments of Geography and Civil and Environmental Engineering, The University of Iowa, has directed a number of integrated environmental assessments. He is the founding editor of The Environmental Professional, and in 1988 was recognized by the Environmental Protection Agency for his outstanding contributions to innovative problem solving and creative thinking.

David Osterberg, former state representative and past chair of the Energy and Environmental Protection Committee of the Iowa General Assembly, has been instrumental in initiating and developing key legislation in ground water protection, sustainable agriculture, and energy conservation in the state of Iowa. He holds an adjunct faculty appointment in the Department of Geography at The University of Iowa.

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A FRAMEWORK FOR ENVIRONMENTAL PRIORITIES:
A Midwestern Perspective
Research Note #6: Takings/Private Property Rights
R. Rajagopal and David Osterberg

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THE IOWA EXPERIENCE

We come from places wide and far
To find out what the factors are
That make a law succeed or fail,
The stones that lie along the trail
As we seek to break the long stagnation
With good environmental legislation
That has support of many factions
To guarantee successful actions
In a fight to save our whole landscape
From history's abuse and rape;
To clean our water, land, and air
So our offspring know we really care;
To leave a legacy that's prime,
And to know we acted just in time.
To share ideas we were bidden
To explore approaches value-ridden

And start upon a broad alliance
With a new context to air our science
Let's carry on this weekend's labors
And infect our legislative neighbors
'Til they, without a single pause,
Unite with us in common cause,
So that efforts here to make a start
Won't falter, fail, and fail apart
So that facts and feelings both come through
Yielding better laws for me and you
That yes, for ours and other nations,
Will last for seven generations,
And we'll know we've played a special role
When we know, at last, our earth is whole.

Llewellyn R. Williams, Sage of the Sagebrush

Note: Dr. Llew Williams, one of our Steering Committee members from the U.S. EPA graciously contributed the above poem at the end of the first annual meeting in 1993; and also the poem on the back cover of this note at the end of the second annual meeting in 1994.
Introduction

At the time of writing of the United States constitution, the framers recognized that private property ownership could not include the right of absolute use. The drafters of the Bill of Rights realized that if society was going to be able to build roads, dams, and other public works facilities, the rights of the greater numbers would have to be balanced against the rights of private property owners. If the greater good was found to be in the acquisition of the property, the government could take the property as long as it provided just compensation to the property owner.

An interesting question is whether this constitutionally espoused balance is also reflected in public opinion polls. A 1992 Gallup poll showed that 52-59% of the public believed that government should compensate property owners for reduction in land value resulting from regulations that protect wetlands and endangered species. The same poll also showed that about 76% believed that the government either had not gone far enough or struck a right balance in protecting wetlands and endangered species. From these poll results, Seasholes concludes that Americans want both strong environmental protection and the protection of property rights.

On stewardship: "In 1979, the Iowa Supreme Court ruled it was not a taking for the state to require landowners to spend money to implement soil conservation because soil was a vital resource the state had the power to protect. The court upheld Iowa's innovative soil loss limits that make it the duty of every landowner to protect the soil. Consider how the state's agricultural future could be threatened if the court had ruled the state had no power to require soil conservation without compensation."

History of takings

A taking implies a transfer of possession, dominion, or control of private property to the government. Modern takings law includes both physical taking, the annexing of property for public purposes with just compensation; and regulatory taking, the setting of limits on the uses of property, such as zoning or environmental regulations.

Early takings law was developed primarily to permit government to access private property for public use; that is, the formulation of the law of eminent domain. The concept of takings has been expanded in the intervening years since the Bill of Rights to include the right of the government to intercede when unbridled use of a property proves injurious to neighbors or the general public. Historically, rights of the individual to own property brought with it the duty to refrain from any use of the property which would cause such harm. By the 1920s, judicial decisions within the US Supreme Court expanded the Fifth Amendment property clause to address the imposition of regulations. In recent years, the courts have struggled to find an equitable balance between property rights and the very real concerns of health and environmental quality of communities.

Historically, only a small portion of takings lawsuits against the United States or its federal statutes result in property-owner victories. As shown in the table below, about 15 percent of the cases result in finding of a "taking." Similar pattern is also observed at the state and local levels.

Anglo-Saxon civilization has taught the individual to protect his own rights; American civilization will teach him to respect the rights of others.

William Jennings Bryan

Glossary of Terms

**Eminent Domain:** The right of a government to appropriate private property for public use, usually with compensation to the owner.

**Fifth Amendment of the United States Constitution:** "No person shall...be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

**Just Compensation:** Established under the Fifth Amendment of the United States Constitution, if a person's property is harmed or taken by government action, the property owner must receive just compensation for the loss. "Just compensation is measured generally by the fair and reasonable market value of the property or interest taken, as of the date of taking..."

**Liability:** An obligation to pay or make good for every hazard or harm a party was directly or indirectly responsible.

**Limited Use of Property:** 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.

**Physical takings:** The actions of a government whereby private property is annexed for public use, with just compensation.

**Property:** Land and includes the right to use or receive water, as defined in the Constitution.

**Regulatory takings:** The actions of a government whereby the particular uses of a property are regulated, i.e., zoning or environmental regulations.

**Section 404 of the Clean Water Act (11 U.S.C. 1344):** The most hotly debated law in current takings cases, requires anyone wanting to dredge or place fill in waters of the United States, including wetlands, to obtain a permit from the United States Corps of Engineers.

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<tr>
<th>Year</th>
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Two Recent Court Decisions

1. **Lucas vs. South Carolina Coastal Council (1992)**: Lucas bought two vacant lots in the Wild Dunes subdivision of a barrier island near Charleston, South Carolina. The lots suffered a history of impacts from natural hazards such as hurricanes and floods, and were under water between 1957-63. In response to the Federal Coastal Management Act of 1980, South Carolina enacted its own Beachfront Management Act in 1988. To protect beachfront property, the South Carolina Legislature, utilizing Federal and State statutes, prohibited construction by establishing a “baseline” back from the sand dunes. Lucas’s lots fell in this “prohibited for construction” area. He sued, claiming that this regulation is a compensable taking under the Fifth Amendment to the U.S. Constitution. The trial court awarded him $1.2 million. On appeal, the South Carolina Supreme Court ruled against the compensation stating that construction would be hazardous to the public and the environment. On Lucas’s appeal, the U.S. Supreme Court (vote of 6-3) reversed the lower Court’s decision and held that regulations that deny a property owner of all economic value of the property—regardless of protecting the public interest—violate the owner’s right to just compensation. The State Supreme Court then directed the trial court to make specific findings of damage for a temporary taking (covering the period of 1988 when the Beachfront Management Act was passed and the date of the trial court’s order). The case was settled out of court, due to mounting attorneys’ fees and the uncertainty over the temporary takings law. The state bought the lots for $1.575 million.

2. **Dolan vs. City of Tigard (1994)**: Dolan, in the city of Tigard (a suburb or Portland, Oregon) wanted to expand his hardware store and the adjacent parking lot. To get the city’s permission, the store owners were required to dedicate 10% of their 1.67-acre property to put in a bicycle path and a storm-water drain to an adjacent creek. Part of the parking lot lies in the creek’s flood plain. The store owners sued claiming that individuals should not be singled out to bear public burdens and that the terms set for [permit] approval amounted to an unconstitutional taking of private property without compensation. The city wanted the land to meet its long-term plans for increasing pedestrian pathways and parks in the downtown area. The lawyer for the plaintiffs proposed “first: the government should be required to demonstrate that a land-owner’s proposed use of his property would have a specific, adverse impact on the public welfare; and, second: the government should have to show that its response—in this case, appropriating 10 percent of the property—was directly proportionate to the public need.” The Oregon Supreme Court upheld the city’s conditions for the permit as “reasonably related” to the city’s need for traffic and flood control and open space. The case was then heard in the U.S. Supreme Court, where the city’s permit conditions were struck down and the court said that the rough proportionality of 10 percent was not closely tied to the impact of the proposed development. The Clinton Administration argued in support of the city of Tigard.

While there is no disagreement on the need to pay compensation for a physical taking, significant differences exist over when a regulatory action might require compensation to an owner whose property might be worth more if the regulation did not exist. In recent years, the courts have struggled to find an equitable balance between property rights and the very real concerns of health and environmental quality of communities and neighborhoods. Hamilton eloquently captures some of the historical underpinnings of the takings issue.

> "The right to use private property has never been absolute in our country. Property rights have always been subject to the power of courts to limit uses to protect the interests of other landowners; that is the basis of nuisance law. Property rights are also subject to the power of government to enact reasonable restrictions to protect public health, safety, and welfare, known as the police power."³

> "Laws that function by making extensive restrictions on land, for example habitat protection under the endangered species act, are more prone to taking challenges than environmental laws, such as the Clean Water Act, which have a history in public nuisance law."³

**Beyond the limits of his confining skin, no man can own any thing. “Property” refers not to things owned but to the rights granted by society; they must periodically be re-examined in the light of social justice.**

**Garrett Hardin**

Two recent U.S. Supreme Court cases, **Lucas vs. South Carolina Coastal Council (1992)** and **Dolan vs. City of Tigard (1994)** [see box above] redefined and perhaps slightly expanded the rights of landowners to compensation when governments attempt to pass environmental regulations.

Before the 1980s, what constituted a taking was commonly decided by judicially created law. During the Reagan era and since, there has been a push toward codifying what constitutes a taking. A full blown property rights movement has been able to push legislation to change the definition of a taking in several state legislative bodies and in Congress.

**Legislative action in the states**

Most property rights legislation are of two broad types: assessment or compensation.⁷ Assessment bills are front-end approaches, wherein a detailed takings impact evaluation of agency actions is performed. Compensation bills are back-end approaches which attempt to set a...
threshold for payment independent of constitutional provisions.

I don’t view the discussion as being whether you are for private property or for more powerful government. We all enjoy the freedom and economic potential offered by private property, just as we all benefit by a strong government.

Neil Hamilton

Pros & cons of assessment bills

Proponents assert that the preparation of takings impact assessment (similar to the preparation of Environmental Impact Statement under the NEPA process) would minimize agency encroachments on private property use. They concede that there are constitutional remedies, but point out the limited scope and the practical difficulties in obtaining such remedies.

Opponents argue that impacts on private property are overstated and the assessment process is simply another layer of bureaucratic red tape to keep agencies from accomplishing important environmental protection and safety goals. The process would also provide a litigation roadmap for landowners, increase lawsuits, and further delay agency actions.

Pros & cons of compensation bills

Proponents argue that the existing constitutional remedy is too time-consuming, too expensive, too unpredictable, and requires a major (100 percent loss) impact for a successful claim. Having a stated or specific percent threshold trigger for compensation, they say, would bring clarity and certainty. A threshold much lower than the constitutional trigger would create necessary care and respect for the protection of private property. Proponents contend that by requiring compensation to come out of agency appropriations (as opposed to the GAO-administered Judgment Fund), the agencies will be forced to become more attentive to private property encroachments.

According to opponents, environmental laws protect collective property values, discourage harmful use of land, and minimize downwind, downslope, and downstream impacts; whereas, property rights legislation undercuts these objectives. About 75% of the private land in the United States is owned by 5% of the land-owning public and compensation bills will benefit this small but wealthy interests. Finally, opponents alert us to the notion of “givings.”

Over the years, the Federal government has heavily subsidized agriculture, water, and transportation infrastructure, which in turn has enhanced the land value of private property owners. Since the enhanced value of such properties are not shared with the Federal government, why should the government be expected to compensate for reduction in property values resulting from regulations?

In a recent article in State Legislatures Magazine, Morandi classifies state takings bills into four groups [see map, next page]. Those bills that:
1. require the state attorney general to review proposed agency regulations and ensure no takings claims result;
2. require the agencies themselves, with the help of the attorney general’s office, to review the proposed regulations to avoid compensable taking;
3. that define a regulatory taking by a specific percent of reduction in property value; and
4. require a combination of assessment and compensation [1 and 3 or 2 and 3].

The equal right of all men to the use of land is as clear as their equal right to breathe the air — it is a right proclaimed by the fact of their existence.

Henry George

President Reagan’s Executive Order 12630 is an example of an assessment type of an effort (Morandi’s second category). Although its implementation was blocked by Congress, E. O. 12630 required federal agencies to consider the consequences of their various actions on the rights of property owners. At the state level, several takings bills of both types, assessment and compensation, have become law.

Only during the 1995 legislative sessions did states venture into the compensation type of taking statutes. Three states passed laws in 1995 that required the state to pay a property owner for the lost value resulting from a regulation, when that reduction exceeded a given percentage of the property value. Congress is also considering such an action.

Recent legislation in the midwest

Based on current information (November 1995), Morandi classified North Dakota’s Senate Bill 2388 as an agency-driven assessment bill. It requires state agencies to prepare an assessment of the taking implications of a proposed rule. It exempts regulatory actions that substantially advance legitimate state interests, as well as those that comply with applicable state or federal laws.

The second midwest takings law to pass in 1995 was in Kansas, again an agency-driven assessment bill. In the 1994 session, Senate Bill 293 passed both chambers of the legislature, but was vetoed by the governor. The bill required the Attorney General to adopt guidelines for agency actions with potential taking implications.

For actions with potential takings implications, the agencies would be required to prepare takings impact assessment documents. These documents should include a description of safety and public health impacts resulting from unrestricted use of private property.

The 1995 law, House Bill 2015, was less far-reaching. It required the attorney general to adopt guidelines
State Takings Law
(as of November, 10, 1995)

Larry Morandi, NCSL, Personal Communication.
to assist state agencies in evaluating regulations which might constitute a taking. For some regulations a state agency will be required to prepare a written report justifying the regulatory action and assessing its taking implications. The report will be submitted to the governor and the attorney general.8

Senate Bill 558 passed the 1994 Missouri legislature and was signed into law. This law requires that a “takings analysis” be performed by each agency when it transmits a proposed rule or regulation to the Secretary of State. The analysis must evaluate whether the proposed rule or regulation constitutes a taking of real property.8

Indiana passed one of the first attorney general-driven takings law in 1992. Provisions of the law require the attorney general to review certain rules for their taking implications. Indiana law already required that the Attorney General review rules for compliance with law and to ensure that persons affected by the new rule should have understood that their interests would be affected. Thus, the addition of a new area for review was not a big change in procedure.8

RESEARCH NOTE #6: TAKINGS/PRIVATE PROPERTY RIGHTS

Hypothetical: Landowner A vs. State DNR: Landowner A’s farm borders a stream and she wants to build a levee for flood protection. The DNR grants her a permit with a proviso that the levee be situated sufficiently far from the banks so that the damage to her neighbor’s property would be minimized. “A” then files a “takings” claim due to reduction in income from flooding of the land between the levee and the stream. Should “A” be reimbursed by the State for not causing property damage to her neighbor?12

Several other states have considered and rejected a takings law. In some cases, as with Iowa in 1995, a bill has passed one house of the legislature only to be stalled in the other. The Iowa bill is a compensation requiring bill.8

South Dakota tabled House Bill 1263 in committee in 1994. In the last two sessions a Nebraska takings bill has failed to pass the Nebraska unicameral.

Congressional action
Besides producing the first compensation requiring “takings” law, the year 1995 led to significant changes in the actions of Congress. The major features of a bill that passed the House (H.R. 925) and the other being marked up in a Senate committee (S. 605) are described below.

The House: In 1995, there were over 100 House bills that contained the phrases “takings” or “property rights” in their text, and five had such phrases in the title. One of those five, H. R. 925 Private Property Protection Act of 1995, introduced by Rep. Canady (R-FL) was marked-up in the Judiciary Committee, debated and discussed in the House, and in less than four weeks after introduction, with very little debate, passed the House on March 3, 1995 with a 277-148 majority. It was then sent to the Senate, where it was referred to the Committee on Environment and Public Works.

The purpose of H.R. 925 is to compensate owners of private property for the effect of certain regulatory restrictions. In particular, H.R. 925 covers the reduction in property value resulting from the implementation of the following four regulatory provisions: (a) section 404 (wetlands protection) of the Federal Water Pollution Control Act, (b) the Endangered Species Act of 1979, (c) Title XII of the Food Security Act of 1985, or (d) with respect to an owner’s right to use or receive water under a section of one of several other acts such as The Reclamation Act, The Federal Land Policy Management Act, or The Forest and Rangeland Renewable Resources Planning Act.

Under H.R. 925, the Federal Government shall compensate when the use of any portion of a property has been reduced in fair market value by 20 percent or more. The amount of compensation shall equal the reduction in value. If the reduction in value of the portion is greater than 50 percent, at the option of the owner, the Federal Government shall buy that portion for its fair market value. It also establishes a procedural mechanism for claiming and receiving compensation from the relevant Federal agency.

The government of the United States is a device for maintaining in perpetuity the rights of the people, with the ultimate extinction of all privileged classes.

Calvin Coolidge

Some of the salient amendments that were rejected or agreed to before final passage are as follows:
• the legislation applies to all laws that impact property, not just the environmental laws; agreed to by a Voice Vote in the Committee, but later rejected and hence not included in the final bill.
• the amount of compensation due a property owner should be offset by the value it had increased due to government action; rejected by 10-12 in the Committee.
• the amount of compensation due a farm owner should be offset by considering the rise in land value that farmers experience when they receive crop subsidies; rejected by Voice Vote in Committee.
• compensation should be denied to anyone who knew when they bought the land that existing regulations restricted its use; rejected by Voice Vote in Committee.

The Senate: The U.S. Senate is moving more slowly on private property rights legislation. In 1995, there were over 70 Senate bills that contained the phrases “takings” or “property rights” in their text, and six had such phrases in the title. Two of those six, S. 22 Private Property Rights Act and S. 605 Omnibus Property Rights Act, were introduced by
Dole (R-KS) and are currently in committees.

S. 22 introduced on January 4, 1995 will require federal agencies to prepare private property taking impact analyses, almost similar to the requirement of an environmental impact statement under the National Environmental Policy Act (NEPA) of 1969. The content of such an analysis should be a written statement that includes the specific purpose of the policy, regulation, proposal, recommendation, or related agency action; an assessment of the likelihood that a taking of private property will occur under such action; an evaluation of whether such action is likely to require compensation to private property owners; alternatives to the action that would achieve the intended purposes and lessen the likelihood of “taking”; and an estimate of the potential Federal liability due to compensations.

S. 605 was introduced on March 23, 1995 and incorporates S. 22 within it. The purpose of this Act is to ensure the constitutional and legal protection of private property by the establishment of effective judicial, administrative, and compensation procedures for protecting property owners’ rights. This bill slightly increases the amount of reduction, to 33 percent from the 20 percent used in the House bill, in property value before a “ takings” action would be declared. On the other hand, this bill would apply to far more agency actions than those included in the House bill. It will also protect private property through several other stipulations such as property owner consent for entry (section 504), sharing of data collected at no cost, right to review and dispute data collected from private property (section 505), right to an administrative appeal of wetlands decisions (section 506) by amending section 404 of the Federal Water Pollution Control Act, right to administrative appeal by amending section 11 of the Endangered Species Act (section 507), and promoting private property owner participation in cooperative agreements by amending section 6 of the Endangered Species Act (section 509).

It appeared for a time that takings legislation had stalled in the Senate. However, recently, Senator Hatch (R-UT), one of the sponsors of S. 605, announced that it would be marked up on November 16 and be considered in the Judiciary Committee before Thanksgiving. President Clinton has announced that he will veto either the House bill or the present version of the Senate takings measure.

Commenting that “ takings” legislation is a two-edged sword, Senator Patrick Leahy (D-VT) provided the following hypothetical lawsuits:

**Oil Company A vs. the U.S. EPA:** The company A sues the U. S. EPA for enacting a pro-ethanol rule. The company claims this to be a taking of property (by reducing its value) and demands compensation. The argument is that the pro-ethanol policy of the government has reduced the value of the company’s petroleum products, a derivative of natural gas.

**Grain Trading Company B vs. the U.S. Department of Agriculture:** The company B sues the USDA for extending the Conservation Reserve Program. The company claims this to be a taking of property (by reducing the volume of business) and demands compensation. The argument is that the CRP program of the government has reduced the amount of grain that the company can export.

**Pasta Manufacturers Association C vs. the U.S. Trade Representative:** The Association C sues the U.S. Trade Representative for implementing restrictions on Canadian durum wheat to the United States. The Association claims this to be a taking of property (by increasing wheat costs) and demands compensation. The argument is that the trade restrictions on Canadian wheat has increased the cost of wheat used by the association members.

**Pros and cons of takings legislation**

People who favor takings legislation tend to belong to groups that have major financial interest in real property and natural resources. Such groups include land and real estate developers, farmers, ranchers, and the resource extracting industries such as timber, mining, oil and natural gas. However, many others who own little property but distrust governmental interference in their lives also support takings legislation.

A wide array of groups are in opposition to proposed takings laws. While environmental groups such as the Sierra Club are key players, there are many others. Groups representing consumer interests, labor, the handicapped, hunters and fishermen, architects and planners, civil rights, preservationists, senior citizens, and scientists are also opposed to takings legislation. Rather than upholding the current environmental laws, and creating efficacious new ones, these groups believe that Congress and state governments want to bury these laws with red tape.

The primary advantage of takings legislation, according to the proponents, is the establishment of a formal process for reviewing economic impacts on property owners of proposed regulations. They claim that it is similar to the environmental impact assessment process under the National Environmental Policy Act. They believe that such a process would protect the constitutional rights of property owners from regulatory encroachments. Opponents argue that the Constitution already provides sufficient protection to property owners and no additional bureaucratic mechanism or red tape is warranted.

The disadvantages to takings legislation, according to opponents, are that the cost of pollution avoidance is borne by the taxpayers; that the policy undermines existing health, safety, labor, civil rights, consumer, and environmental laws in place; and that it narrows the scope of land use op-
Takings issue and setting environmental priorities

Over a third of the states have passed some form of a takings bill and at the federal level, the House has passed H. R. 925 and the Senate bill S. 605 is being marked up in committee. Proponents argue that small landowners and developers are being subjected to undue delay and restrictions in the economic use of their property by regulators, and opponents counter that such instances are rare. Given this background, takings bills will definitely impact the cost of implementing environmental regulations and thus setting of environmental priorities. Time alone can tell the size and scope of this impact.

Sources for further information

American Planning Association,
1776 Massachusetts Avenue, N.W.,
Washington, DC. 20036. Tel: (202) 872-0611.

American Resources Information Network.
P.O. Box 33048, Washington, DC. 20033. Tel: 1-800-846-2746.

Competitive Enterprise Institute,
1001 Connecticut Avenue NW, Suite 1250, Washington, DC. 20036. Tel: (202) 331-1010.

The Council of State Governments.
D. M. Sprague, Executive Director. 3560, Iron Works Pike, P.O. Box 11910, Lexington, KY. 40578-1910. Tel: (606) 231-1866.

Environment and Energy Bulletin.
Congressional Green Sheets.
Linda Cartwright, Director; Jim Owen, Editor. 406, E Street, S.E., Washington, D.C. 20003. Tel: (202) 546-2220.

Iowa Environmental Council.
7031 Douglas Avenue, Des Moines, IA 50322. Tel: (515) 237-5321.

Land and Water Fund of the Rockies.
2260 Baseline Road, Suite 200, Boulder, CO 80302. (303) 444-1188.

National Council of State Legislatures:
Larry Morandi and Cheryl Runyon. Energy, Science, and Natural Resources. 1560 Broadway, Suite 700, Denver, CO 80202. Tel: (303) 830-2200.

National Council of State Legislatures:
Jon Felde, General Counsel. 444 North Capitol Street, N.W., Suite 515, Washington, D.C. 20001. Tel: (202) 624-5400.

South Carolina Coastal Council:
Cotton Harness, Ashley Corporate Center, 4130 Faber Place, Suite 300, Charleston, SC 29405. Tel: (803) 744-838.

U. S. General Accounting Office.
P. O. Box 6015, Gaithersburg, MD 20884-6015. Tel: (202) 512-6000.

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Acknowledgments

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During 1992–94, several invited guests, experts, scholars, and specialists willingly came to Iowa City and shared much valuable information with the Steering Committee at our annual meetings. We thank the following individuals for either sharing their insights or being gracious hosts: Professor Lynton Caldwell, University of Indiana; Mr. Kevin Doyle, Director, National Programs, Environmental Careers Organization, Boston; Associate Dean John Fix, University of Iowa; Mr. John Konefes, Director, Iowa Waste Reduction Center, University of Northern Iowa; Ms. Kate Kramer, Director, Western Center for Comparative Risk, Boulder, Colorado; Mr. Larry Moreland, Senior Fellow, National Conference of State Legislatures, Mr. Tim Mulholland, Scientist, Comparative Risk Assessment Project, Wisconsin DNR; Former Provost Peter Nathan, University of Iowa; Dr. Mary O'Brien, University of Montana; Mr. Adam Rombel, Editor, ECOS Magazine, Council of State Governments; Ms. Judith Stockdale, Former Executive Director, Great Lakes Protection Fund, Chicago; and Mr. Craig Struve, Owner/Manager, C-S Agrow Services, Iowa.

With the assistance and insights of the Steering Committee and the invited guests we learned a lot about the process of priority setting in the first two years (1992–94). During the last year, especially in the last six months, we took the show on the road and conducted three workshops, one each in Michigan, Kansas, and Minnesota. Once again, we owe much to the four Steering Committee members Rep. Bill Bobier (MI), Rep. Laura McClure (KS), Sen. Chris Beutler (NE), and Sen. Steven Morse (MN) who were instrumental in hosting these workshops and turning them into a highly productive learning experience for the participants and us. In all over eighty individuals, about thirty-five of whom were elected officials, attended and actively participated in the workshops. We very much appreciated their attendance and active participation.

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On perspectives – thought you would like to know

- On the average, an American spent about $4,000 per year (in 1992) on health care. Ninety percent of that money was spent in the last months of life.
- Less than one percent of the health care dollars went to preventive care, or less than $34 per person per year.
- Congress, in late July 1995, has been debating the EPA appropriations bill which will fix the U. S. EPA’s FY 96 budget at $4.89 billion, or less than $20 per person per year.
Change, Change on the Range

Iowa City, you sure look pretty with the sun of late Spring in your skies.

From dawn 'til dark, we're constructing an ark, as the waters of conflict arise.
So much to be done, such wars to be won, when the health of our world is at stake
It takes more than compliance and credible science if the logjam of problems we'll break.

The meeting gets brisk as comparative risk is put down with a sense of derision;
As the scientist says, there are so many ways to arrive at a better decision.
With so many actors and so many factors and so little money to burn,
We're going berserk; will alternatives work as we figure out just where to turn?

Will the world out there trust us to advocate justice for the groups with so little standing,
Where the easy solution's been to put the pollution in their yard without understanding
That someone must fight for their inalienable right to breathe free, to eat safe, to drink pure.
If they can't turn to you, then what else can they do, and who will their safety ensure?

Will the laws in the making protect from the taking the properties we've worked to own,
Or on the contrary, can some law arbitrary strip our holdings down to the bare bone?
As part of the scene, we'll go "Beyond the Green" to direct the environment movement
Restoring the brownfields or all the surrounding fields to A- or B-level improvement.

It's never a breeze to collect impact fees when employers decide to just move,
And leaving the rest to just plain decongest does not always the environment improve.
To minimize harm, you just buy out a farm where expansion's at minimal cost;
Beware of the ruse, you may have a "lose-lose" when at both ends you see what's been lost.

Can we keep our production while we get waste reduction with newer approaches we use;
If we balance our wealth with ecological health, we'll find we don't have to abuse.
When we dug out the mud of the 100-year's flood and assessed all the disaster's reasons,
Just who's to account as restoring costs mount, when we knew well the risks of the seasons?

With all that we've shared, let's be better prepared to move forward with good legislation
That right from its birth clearly better the Earth with efficient and just regulation.

Llewellyn R. Williams, "The Sage of Sagebrush"

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