

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

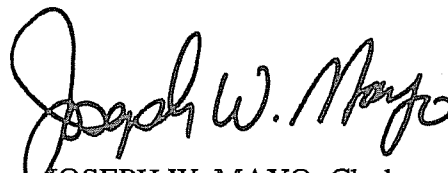
No. 672

H.P. 514

House of Representatives, February 25, 1993

An Act to Protect Private Property.

Reference to the Committee on State and Local Government suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative DEXTER of Kingfield.
Cosponsored by Representatives: CLUKEY of Houlton, STEVENS of Sabattus, TUFTS of Stockton Springs.

Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 1 MRSA c. 22 is enacted to read:

4
6 Chapter 22

8 Private Property Protection Act

10 §841. Title

12 This chapter may be known and cited as the "Private Property
14 Protection Act."

16 §842. Definitions

18 As used in this chapter, unless the context otherwise
20 indicates, the following terms have the following meanings.

22 1. Implementation of a regulation. "Implementation of a
24 regulation" means the rendering of a final administrative
26 decision on an application for decision under a regulation the
28 occurrence of the effective date of a regulation or any other
30 application of the regulation to a piece of property.

32 2. Preregulatory fair market value. "Preregulatory fair
34 market value" means the fair market value of a piece of property
36 on the day before a regulation caused property value to fall by
38 more than 50%.

40 3. Regulation. "Regulation" means any law, rule or
42 ordinance that directly or indirectly affects the value of
44 property, including a land use or zoning ordinance or law.

46 §843. Regulatory takings

48 1. Regulatory takings. For purposes of this Act, whenever
50 implementation of a regulation by the State or a political
52 subdivision of the State reduces the fair market value of real
54 property to less than 50% of its preregulatory fair market value,
56 the property is deemed to be taken for the use of the public.

58 2. Purchase or compensation required. The owner of
60 property deemed to be taken under subsection 1 may file a
62 petition in Superior Court in the district in which the property
64 is located to require the governmental unit that imposed the
66 regulation to purchase the property at the preregulatory fair
68 market value or to pay compensation for the reduction in value
70 caused by the regulation. The property owner may elect to have
72 the issue of compensation decided by a jury.

2 3. Fair market value. If the owner chooses to be
3 compensated for the reduction in value caused by the regulation,
4 compensation must be paid for the full amount of the decrease in
5 fair market value and is not limited to the amount by which the
6 decrease in fair market value exceeds 50%.

7 4. Exemption for regulation of noxious or harmful uses.
8 Purchase or compensation is not required under this Act if the
9 regulation is an exercise of the police power to prevent property
10 use that is noxious or poses demonstrable harm to the health and
11 safety of the public. A use is considered a noxious use only if
12 it amounts to a public nuisance in fact. Determination by a
13 governmental unit that a use is noxious or poses a demonstrable
14 harm to public health and safety is not binding on the court.
15 Review of that determination must be de novo.

16 **§844. Statute of limitations**

17 1. Injuries to real property. The statute of limitations
18 for actions brought pursuant to this Act is the statute of
19 limitations for civil actions for injuries to real property. The
20 statute of limitations begins to run when a final administrative
21 decision is issued affecting that property, except that, if
22 passage of the regulation alone reduces the fair market value of
23 real property to less than 50% percent of its preregulatory fair
24 market value without further governmental action and the
25 regulation contains no provision for relief from the regulation's
26 operation, the statute of limitations begins to run on the date
27 the regulation becomes effective.

28 3. Retroactive application. This Act applies to
29 regulations that are applied or that become effective after the
30 effective date of this Act and to the application of regulations
31 in effect on the effective date of this Act.

32 **§845. Waiver as condition to approval prohibited**

33 A governmental unit may not make waiver of the provisions of
34 this Act a condition for approval of the use of real property or
35 the issuance of any permit. A person may accept an approval of
36 use or a permit granted by a governmental unit without
37 compromising rights under this Act if:

38 A. The person reserves the rights in writing at the time of
39 acceptance of an authorization or permit; or

40 B. The person makes an oral statement before the
41 governmental unit granting the authorization or permit at a
42 public meeting at which the governmental unit renders its
43 decision.

846. Legal challenges

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This Act does not preclude a property owner from challenging
4 a regulation affected by this Act under any other law or
constitutional provision.

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STATEMENT OF FACT

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This bill requires the State and its political subdivisions
to pay property owners when state or local regulations lower the
owner's property value by more than 50%.

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