

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 170

S.P. 82

In Senate, January 20, 1995

**An Act to Require the State and Political Subdivisions to Pay Property Owners when Regulations Lower the Value of Property by More Than 50%.**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS  
Secretary of the Senate

Presented by Senator HANLEY of Oxford.  
Cosponsored by Senators: BENOIT of Franklin, HATHAWAY of York, PENDEXTER of Cumberland, Representatives: BARTH of Bethel, BIRNEY of Paris, PERKINS of Penobscot, WATERHOUSE of Bridgton, WINSOR of Norway.

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

4 **Sec. 1. 1 MRSA c. 22 is enacted to read:**

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

28 2. **Preregulatory fair market value.** "Preregulatory fair  
market value" means the fair market value of a piece of property  
30 on the day before a regulation caused the property value to fall  
by more than 50%.

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

36 **§843. Regulatory takings**

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

44 2. **Purchase or compensation required.** The owner of  
property deemed to be taken under subsection 1 may file a  
46 petition in Superior Court in the district in which the property  
is located to require the governmental unit that imposed the  
48 regulation to purchase the property at the preregulatory fair  
market value or to pay compensation for the reduction in value

2 caused by the regulation. The property owner may elect to have  
3 the issue of compensation decided by a jury.

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

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

20 **§844. Statute of limitations**

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

34 2. Application. This Act applies to regulations that are  
35 applied or that become effective after the effective date of this  
36 Act and to the application of regulations in effect on the  
37 effective date of this Act.

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

40 A governmental unit may not make waiver of the provisions of  
41 this Act a condition for approval of the use of real property or  
42 the issuance of any permit. A person may accept an approval of  
43 use or a permit granted by a governmental unit without  
44 compromising rights under this Act if:

46 1. Rights in writing. The person reserves the rights in  
47 writing at the time of acceptance of an authorization or permit;  
48 or

