

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 1217

H.P. 867

House of Representatives, April 5, 1995

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**An Act to Protect Constitutional Property Rights and to Provide Just Compensation.**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative DEXTER of Kingfield.  
Cosponsored by Senator PENDEXTER of Cumberland and  
Representatives: AHEARNE of Madawaska, AIKMAN of Poland, AULT of Wayne,  
BAILEY of Township 27, BARTH of Bethel, BIRNEY of Paris, BOUFFARD of Lewiston,  
BUCK of Yarmouth, BUNKER of Kossuth Township, CAMERON of Rumford, CAMPBELL  
of Holden, CHICK of Lebanon, CHIZMAR of Lisbon, CLARK of Millinocket, CLOUTIER  
of South Portland, CLUKEY of Houlton, CROSS of Dover-Foxcroft, DAMREN of Belgrade,  
DiPIETRO of South Portland, DONNELLY of Presque Isle, DRISCOLL of Calais, DUNN of  
Gray, FARNUM of South Berwick, FISHER of Brewer, GAMACHE of Lewiston, GERRY of  
Auburn, GIERINGER of Portland, GOOLEY of Farmington, GOULD of Greenville,  
GREENLAW of Standish, HATCH of Skowhegan, HEINO of Boothbay, HICHBORN of  
LaGrange, JACQUES of Waterville, JONES of Pittsfield, JOY of Crystal, JOYCE of  
Biddeford, JOYNER of Hollis, KEANE of Old Town, KERR of Old Orchard Beach,  
KNEELAND of Easton, LANE of Enfield, LAYTON of Cherryfield, LEMKE of Westbrook,  
LEMONT of Kittery, LOOK of Jonesboro, LOVETT of Scarborough, LUMBRA of Bangor,  
MADORE of Augusta, MARSHALL of Eliot, MARVIN of Cape Elizabeth, MAYO of Bath,  
McALEVEY of Waterboro, McELROY of Unity, MERES of Norridgewock, MORRISON of  
Bangor, MURPHY of Berwick, NADEAU of Saco, NICKERSON of Turner, O'GARA of  
Westbrook, O'NEAL of Limestone, PEAVEY of Woolwich, PENDLETON of Scarborough,

Additional cosponsors on next page

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PERKINS of Penobscot, PINKHAM of Lamoine, PLOWMAN of Hampden, POIRIER of Saco, POULIN of Oakland, POULIOT of Lewiston, REED of Falmouth, REED of Dexter, RICE of South Bristol, RICKER of Lewiston, ROBICHAUD of Caribou, ROSEBUSH of East Millinocket, ROTONDI of Madison, SAVAGE of Union, SIMONEAU of Thomaston, SIROIS of Caribou, SPEAR of Nobleboro, STEDMAN of Hartland, STONE of Bangor, TRIPP of Topsham, TRUE of Fryeburg, TUFTS of Stockton Springs, TUTTLE of Sanford, TYLER of Windham, UNDERWOOD of Oxford, VIGUE of Winslow, WATERHOUSE of Bridgton, WHEELER of Bridgewater, WHITCOMB of Waldo, WINSOR of Norway, Senators: ABROMSON of Cumberland, AMERO of Cumberland, BEGLEY of Lincoln, BENOIT of Franklin, BUTLAND of Cumberland, CAREY of Kennebec, CARPENTER of York, CASSIDY of Washington, CIANCHETTE of Somerset, FERGUSON of Oxford, HALL of Piscataquis, HANLEY of Oxford, HARRIMAN of Cumberland, HATHAWAY of York, KIEFFER of Aroostook, LORD of York, PARADIS of Aroostook, SMALL of Sagadahoc.

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

2  
3           **Sec. 1. 1 MRSA §815** is enacted to read:

4           **§815. Inverse condemnation**

6           **1. Definitions.** As used in this section, unless the  
8 context otherwise indicates, the following terms have the  
10 following meanings.

12           A. "Implementation of a regulation" means any application  
14 of a regulation to a piece of property.

16           B. "Inverse condemnation" means the process by which  
18 property owners pursue their rights to just compensation in  
20 a situation in which the government has not formally  
22 condemned the property of the owners.

24           C. "Preregulatory fair market value" means the fair market  
26 value of a piece of property without the regulation or  
28 regulations causing the property value to fall by more than  
30 50%.

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

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

48           **3. Purchase or compensation required.** The owner of  
50 property deemed to be taken under subsection 2 may file a  
52 petition in Superior Court in the district in which the property  
54 is located to require the governmental unit that imposed the  
56 regulation to purchase the property at the preregulatory fair  
58 market value. The property owner or governmental unit may elect  
60 to have the issue of compensation decided by a jury. The owner  
62 may pursue a claim for compensation by filing an action for  
64 inverse condemnation.

66           **4. Calculation of reduction.** In determining whether a  
68 reduction of 50% or more in the value of property has occurred,  
70 the following facts must be compared:

72           A. The fair market value of the property as calculated by  
74 its highest use when acquired or thereafter, notwithstanding  
76 the regulation that reduced the value of the property; and

2           B. The fair market value of the property at its value as  
3           reduced by the regulation.

4

5           When calculating the reduction in value of the property the owner  
6           claims has been taken for public use, other property in which the  
7           owner holds an interest, whether contiguous to the property the  
8           owner claims has been taken for public use, may not be included  
9           in the calculation.

10

11           5. Ripeness. An inverse condemnation claim is ripe for  
12           adjudication when the regulation allegedly causing the taking is  
13           enacted and is first potentially applicable to the property. If  
14           the regulation provides an opportunity to obtain a variance,  
15           special exception or waiver of the application of the regulation  
16           reducing the value of that property, the owner need only submit  
17           and have rejected one reasonable application before the inverse  
18           condemnation claim is deemed ripe for adjudication. An owner  
19           need not appeal the application determination, and multiple  
20           applications need not be filed, before the inverse condemnation  
21           claim is deemed ripe for adjudication. Factual findings of the  
22           regulator in the proceeding rejecting the application are not  
23           admissible or binding in the inverse condemnation proceeding.

24

25           An application is deemed rejected if the reviewing entity  
26           unreasonably delays review of the application or imposes  
27           burdensome conditions on approval of the application. The  
28           determination whether a delay has been unreasonable or a  
29           condition burdensome is ordinarily a question of fact for the  
30           trier of fact in the inverse condemnation action. In determining  
31           whether a delay has been unreasonable or a condition burdensome,  
32           the trier of fact may consider whether the reviewing entity  
33           clearly articulated to the applicant the size or scope of the  
34           uses that would be allowed; failure to so articulate may be  
35           viewed as suggesting rejection or burdensomeness.

36

37           If the property owner claims that multiple regulations are  
38           cumulatively causing the reduction in value to the property at  
39           issue, the owner need only pursue one variance, special  
40           exception, waiver or other means of avoiding application of one  
41           regulation of the state governmental unit causing the greatest  
42           degree of reduction.

43

44           6. Multiple regulators. When the reduction in value  
45           complained of is caused by regulations imposed by multiple state  
46           governmental units, the property owner shall join in the inverse  
47           condemnation action the state governmental units that the  
48           property owner claims are cumulatively causing a reduction of  
49           value equal to or greater than 50%. If the trier of fact finds  
50           that the total reduction caused by the joined state governmental

2 units is 50% or greater, the trier of fact shall determine the  
3 portion of responsibility for compensation for the taking to be  
4 paid by each regulator. In determining what portion of  
5 responsibility for compensation each joined state governmental  
6 unit should bear, there is a rebuttable presumption that the  
7 state governmental unit imposing the regulation last in time  
8 prior to the date the property owner filed the action should bear  
9 the greatest portion of responsibility.

10 When the reduction in value complained of is caused by  
11 regulations imposed by a state governmental unit and a federal  
12 regulator, the trier of fact shall determine what percentage of  
13 the reduction was caused by the state governmental unit and what  
14 percentage was caused by the federal regulator. If the  
15 percentage of the reduction cumulatively caused by the joined  
16 state governmental units equals or exceeds 50%, the property is  
17 deemed taken by the joined state governmental units and the  
18 joined state governmental units are responsible among them to pay  
19 the property owner just compensation for the taking, to be  
20 proportioned among them by the trier of fact. If the percentage  
21 of the reduction caused by the joined state governmental units  
22 does not equal or exceed 50%, but the trier of fact finds that  
23 the effect of the regulations, both state and federal, imposed on  
24 the property equals or exceeds 50%, the property is not deemed  
25 taken by the state governmental units, but the state regulators  
26 shall pay to the property owner damages for that percentage of  
27 the reduction in value caused by their regulations.

28 If a local governmental unit is imposing a regulation because  
29 state law compels that local governmental unit to apply that  
30 regulation or a stricter regulation, the governmental unit  
31 determined to be causing the reduction in the value is the unit  
32 compelling the other unit to enact or apply the regulation.

33 **7. Alternate relief.** Instead of paying the compensation  
34 awarded in an inverse condemnation action, the governmental unit  
35 from which inverse condemnation is successfully required under  
36 this section may choose not to apply the regulation reducing the  
37 value of the owner's property to that property. The governmental  
38 unit must still pay the owner for the temporary taking of the  
39 owner's property while the regulation was imposing a 50% or more  
40 reduction in the value of the property. When determining whether  
41 property is reduced in value 50% or more, the trier of fact shall  
42 presume that the regulation causing the reduction is permanent.

43 When the reduction in value equal or exceeding 50% is caused by  
44 multiple joined state governmental units, for any of the joined  
45 state governmental units to avoid compensating the property owner  
46 for a permanent taking, every joined state governmental unit must

2 agree not to apply its regulation reducing the value of the  
owner's property to that property.

4 When a reduction in value is caused by multiple joined state  
6 governmental units and a federal regulator to the extent that the  
8 joined state governmental units are not deemed to have taken the  
10 property but must pay damages pursuant to subsection 6, each  
12 joined state governmental unit may, at its option, choose not to  
14 apply its regulation reducing the value of the owner's property  
to that property. Any joined state governmental unit choosing  
not to apply its regulation to the property at issue shall still  
pay the owner for the damages caused by its regulation while the  
regulation was contributing to the imposition of 50% or more  
reduction in the value of the property.

16 **8. Limited retroactivity.** The 50% standard for determining  
18 when private property has been taken for public use applies when  
20 any regulation or an amendment to a regulation contributing to  
22 the reduction in the value of the property at issue is enacted  
24 or becomes applicable or potentially applicable to the property  
26 after January 1, 1995. If multiple regulations or amendments to  
the regulations reduce the value of the property at issue, only  
one of those regulations or amendments to the regulations need to  
be enacted or become applicable or potentially applicable to the  
property after January 1, 1995 for the 50% standard to apply.

28 **9. Nuisances.** The 50% standard for determining when  
30 private property is taken for public use does not apply when the  
32 only use of the claimant's property that the regulation at issue  
34 precludes constitutes a nuisance. "Nuisance" means a use  
36 restriction inhering in the title of the property or existing in  
background principles of the law or property on the effective  
date of this section. The 50% standard is also inapplicable when  
the regulation at issue regulates air emissions, waste water  
discharges, solid wastes or hazardous wastes, or precludes the  
intense development of property incompatible with the surrounding  
area, as determined by a jury.

38 **10. Statute of limitations.** The statute of limitations for  
40 asserting an inverse condemnation claim is 6 years after the date  
42 the claim becomes ripe for adjudication. If the regulation  
44 allegedly causing the taking is already in effect and potentially  
46 applicable to an owner's property, and the inverse condemnation  
claim is already ripe at the time this section takes effect, then  
the property owner has 6 years from the effective date of this  
section to file a claim.

48 **11. Nonexclusivity.** This section may not be construed to  
50 create an exclusive remedy or to diminish the rights of property  
owners under existing statutory, constitutional or common law.





2 A property owner will have a claim when the restriction is  
enacted and is applicable to the property. If a variance is  
4 available to overcome the restriction, the owner must apply for  
the variance. If the variance application is rejected, the  
property owner's claim becomes ripe.

6  
8 When multiple regulatory entities have combined to cause the  
reduced value of the property, each entity must be included in  
the claim. If it is found that 50% or more of the value of the  
10 property is diminished, then each entity is responsible for its  
portion of compensation based on the burden it imposed. If the  
12 Federal Government is partially responsible in contributing to  
the 50% or more loss in value, the property is not deemed taken  
14 by the State or local regulatory action, but each state or local  
regulatory entity remains responsible for compensating for its  
16 percentage of the taking.

18 Alternate relief is established by allowing the governmental  
entity to choose to suspend the restrictions. All agencies  
20 responsible for the combined 50% or more reduction in property  
value must collectively agree to the suspensions.

22  
24 This bill has limited retroactive effect by providing that  
the law applies when any restriction is enacted or becomes  
applicable after the effective date of the Maine Revised  
26 Statutes, Title 1, section 815. The statute of limitations is 6  
years from the date that the claim is ripe. If the claim  
28 prevails, the property owner can recover reasonable attorney's  
fees and costs. The bill does not require compensation for  
30 abatement of nuisances.