

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1990

H.P. 1383

House of Representatives, March 23, 1999

An Act to Require Economic and Taking Impact Analyses to Protect Individual Rights.

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

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

JOSEPH W. MAYO, Clerk

Presented by Representative JOY of Crystal.
Cosponsored by Representatives: BUCK of Yarmouth, CAMPBELL of Holden, GILLIS of Danforth, JODREY of Bethel, TRAHAN of Waldoboro, WATERHOUSE of Bridgton.

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

4 **Sec. 1. 5 MRSA c. 314, sub-c. III is enacted to read:**

6 **SUBCHAPTER III**
8 **PRIVATE PROPERTY AND INDIVIDUAL RIGHTS PROTECTION ACT**

10 **§3345. Short title**

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

14 **§3346. Private Property and Individual Rights Protection Act**

16 1. Established. The Private Property and Individual Rights
18 Protection Act is established to protect the owners of private
20 property against uncompensated taking of private property and the
22 usurpation of other individual rights by the State Government or
24 its political subdivisions through laws, policies, rules or
26 ordinances.

28 2. Definitions. As used in this subchapter, unless the
30 context otherwise indicates, the following terms have the
32 following meanings.

34 A. "Agency" has the same meaning as is contained in Title
36 5, section 8002, subsection 2.

38 B. "Constitutional taking" or "taking" means the taking of
40 private property due to a governmental action such that
42 compensation to the owner of the property is or would be
44 required by either:

46 (1) The United States Constitution, Amendment V; or

48 (2) The Constitution of the Maine, Article I, Section
50 21.

C. "Economic impact analysis" means the measurement of the
likely impact of a proposed or actual governmental action on
the economy of the State or a political subdivision.

D. "Exaction" means the surrendering of a portion of the
rights or value of an owner's property in exchange for
governmental permission to develop the property in a
proposed manner.

E. "Governmental action" means:

- 2 (1) A rule proposed or adopted by a state agency,
3 including an emergency rule, that may limit the use of
4 private property;
- 6 (2) A proposed or implemented licensing or permitting
7 condition, requirement or limitation on the use of
8 private property unless the condition, requirement or
9 limitation is in accordance with applicable state or
10 federal laws, rules or regulations;
- 12 (3) A required dedication or exaction from an owner of
13 private property; or
- 14 (4) Statutes of this State.

16 "Governmental action" does not include an activity in which
17 the power of eminent domain is exercised; repealing rules,
18 discontinuing governmental programs or amending rules in a
19 manner that lessens interference with the use of private
20 property; law enforcement activity involving seizure or
21 forfeitures of private property for violations of law or as
22 evidence in criminal proceedings; or an order or enforcement
23 action that is issued by a state agency or a court of law in
24 accordance with applicable federal laws or state statutes.

26 F. "Permit review expenses" means all biological,
27 historical or cultural survey expenses or other expenses
28 beyond the presentation of project design expenses that are
29 required of property owners by a state agency or political
30 subdivision.

32 G. "Political subdivision" means a county, municipality,
33 special district, school administrative district or other
34 local government unit in the State.

36 H. "Private property" means any school or institutional
37 trust lands and any real or personal property in the State
38 that is protected by the United States Constitution,
39 Amendment V or the Constitution of Maine, Article I, Section
40 21.

42 I. "Takings impact analysis" means the measurement of the
43 likely impact of a proposed or actual governmental action on
44 the value of an owner's property. For the purpose of this
45 subchapter, a "takings impact analysis" requires the State
46 or its political subdivisions to determine whether a
47 governmental action or proposed governmental action may be a
48 constitutional taking by preparing an assessment that
49 includes:

50 A. A description of how the taking affects the use or
51 value of private property;

2 B. Alternatives to the proposed governmental action
3 that may:

4 (1) Fulfill the legal obligations of the state
5 agency or political subdivision;

6 (2) Reduce the impact on the private property
7 owner; or

8 (3) Reduce the risk of a constitutional taking;
9 and

10 C. An estimate of financial cost to the State for
11 compensation and the source of payment within the
12 agency's budget if a constitutional taking is
13 determined.

14 3. Economic impact and takings analyses required. The
15 State, through its agencies, and all political subdivisions shall
16 conduct an economic impact analysis and a takings impact analysis
17 prior to adoption or enactment of a new governmental action.

18 4. Criteria. In addition to the analyses required by this
19 subsection, each state agency and political subdivision shall
20 adhere, to the extent permitted by law, to the following criteria
21 if implementing or enforcing a governmental action that may be a
22 constitutional taking.

23 A. If a state agency or a political subdivision requires a
24 person to obtain a permit for a specific use of private
25 property, any conditions imposed on issuing the permit must
26 directly relate to the purpose for which the permit is
27 issued and must substantially advance that purpose.

28 B. Any restriction imposed on the use of private property
29 must be proportionate to the extent the use contributes to
30 the overall problem that the restriction is to redress.

31 C. If a governmental action involves a permitting process
32 or any other decision-making process that will interfere
33 with, or otherwise prohibit, the use of private property
34 pending the completion of the process, the duration of the
35 process must be kept to the minimum necessary.

36 5. Public health and safety restrictions. Before taking a
37 governmental action restricting private property use for the
38 protection of public health or safety, the state agency or
39 political subdivision shall, in its internal deliberative
40 documents:

2 A. Clearly identify, with as much specificity as possible,
3 the public health or safety risk created by the private
4 property use;

6 B. Establish that the governmental action substantially
7 advances the purpose of protecting public health and safety
8 against the specifically identified risk;

10 C. Establish, to the extent possible, that the restrictions
11 imposed on the private property are proportionate to the
12 extent that the use contributes to the overall risk; and

14 D. Estimate, to the extent possible, the potential cost to
15 the government if a court determines that the governmental
16 action constitutes a taking.

18 If there is an immediate threat to public health and safety that
19 constitutes an emergency and requires an immediate response, the
20 analyses required by this subsection may be made when the
21 response is completed. Before the state agency or political
22 subdivision implements a governmental action that may be a
23 constitutional taking, the state agency or political subdivision
24 shall submit a copy of the assessment set forth in this
25 subsection to the Governor and the joint standing committee of
26 the Legislature having jurisdiction over state and local
27 government matters.

28 6. Permit review expenses. The State and a political
29 subdivision may not require a property owner to bear the direct
30 cost of any permit review expenses required by state or local
31 agencies as part of any permitting process. A property owner may
32 not be assessed the cost of a takings impact analysis or an
33 economic impact analysis conducted by the State or any political
34 subdivision.

36 7. Application; exception. This Act applies to all new
37 laws, policies, regulatory actions and local ordinances proposed
38 after the effective date of this Act. It does not apply when the
39 State or any political subdivision formally exercises its power
40 of eminent domain.

42 8. Adoption of rules. Each state agency shall adopt rules
43 and each political subdivision shall adopt bylaws and ordinances
44 to assist in carrying out the requirements of this Act. State
45 agency rules are routine technical rules under Title 5, chapter
46 375, subchapter II-A, Rules, ordinances or bylaws required under
47 this subsection must be established within 120 days of the
48 effective date of this subchapter.

50 9. Review of decisions. Decisions of the State and
51 political subdivisions may be appealed as follows.

2 A. A decision by a state agency that may result in a
3 constitutional taking must be appealed under Title 5,
4 chapter 375, subchapter VII.

5 B. Each political subdivision shall enact ordinances that
6 establish a procedure for review of a governmental action
7 that may result in a constitutional taking and meet the
8 requirements of this section, including the following
9 requirements.

10 (1) Any owner of private property whose interest in
11 the property is subject to a taking or exaction by a
12 political subdivision may appeal the political
13 subdivision's decision within 30 days after the
14 decision is made.

15 (2) The legislative body of the political subdivision,
16 or an individual or body designated by it, shall hear
17 and approve or reject the appeal with 14 days after it
18 is submitted.

19 (3) If the legislative body of the political
20 subdivision fails to hear and decide the appeal within
21 14 days, the decision is deemed approved.

22 **10. Public processes.** All activities related to the
23 regulatory process or to land acquisition for preservation or any
24 other public uses are subject to the open government and open
25 meeting provisions of Title 1, chapter 13. Notwithstanding the
26 provisions of Title 1, section 405, subsection 6, all aspects of
27 the regulatory process and land acquisitions for public purposes
28 must be open and accessible to the public.

29 **11. Effective date.** This subchapter takes effect January
30 1, 2001.

31 **Sec. 2. Federal and state court decisions regarding constitutional**
32 **takings.** The State and political subdivisions of the State shall
33 comply with the legal principles set forth in the following state
34 and federal court cases that address constitutional takings
35 issues:

36 1. Cordeco Development Corp. v. Vasquez (354 F. Supp. 1355,
37 1972);

38 2. Dolan v. Tigard (512 U.S. 687, 1994);

39 3. Hafer v. Melo (502 U.S. 21, 1991);

40 4. Nollan v. California Coastal Commission (483 U.S. 825,
41 1987);

- 2 5. Florida Rock Industries Inc. v. United States (18 F.3d
1560, Fed. Cir. 1994);
- 4 6. Pennsylvania Coal Co. v. Mahon (260 U.S. 393, 1922);
- 6 7. Armstrong v. United States (364 U.S. 40, 1960);
- 8 8. First English Evangelical Lutheran Church of Glendale v.
Los Angeles County, CA. (482 U.S. 304, 1987);
- 10 9. Chicago B. & Q. R. Co. v. Chicago (166 U.S. 226, 1897);
- 12 and
- 14 10. State of Maine v. Johnson (265 A2d 711, Maine 1970).

16

SUMMARY

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20 This bill creates the Private Property and Individual Rights
22 Protection Act, which requires economic impact analyses and
24 takings impact analyses to be conducted prior to the adoption or
26 enactment of all laws, policies, regulatory actions or local
ordinances. This bill also requires the State and its political
subdivisions to comply with the constitutional takings principles
espoused in several state and federal court cases.