

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 2121

H.P. 1481

House of Representatives, March 30, 1999

An Act Regarding Regulations and Compensation to Property Owners.

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

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative JOY of Crystal.
Cosponsored by Representatives: BUCK of Yarmouth, GLYNN of South Portland,
MENDROS of Lewiston, PINKHAM of Lamoine, TRAHAN of Waldoboro, WATERHOUSE
of Bridgton.

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

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

CHAPTER 22

REGULATORY PROPERTY TAKINGS COMPENSATION

§851. Definitions

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

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

2. Preregulatory fair market value. "Preregulatory fair market value" means the fair market value of a piece of property on the day before a regulation caused the property value to fall.

3. Regulation. "Regulation" means any law, rule or ordinance that directly or indirectly affects the value of property, including a land use or zoning ordinance or law, except that it does not include any tax regulation or penalty action related to a piece of property.

§852. Regulatory takings

1. Regulatory takings. For purposes of this chapter, property is deemed taken by a governmental unit for the use of the public whenever implementation of a regulation by this State or a political subdivision of the State reduces the fair market value of the property and:

A. There is destruction, damage or trespass on the property; or

B. There is a restriction on the rightful use of the property.

2. Purchase or compensation required. The owner of property deemed to be taken under subsection 1 may file a petition in Superior Court in the district in which the property is located to require the governmental unit that imposed the regulation to pay compensation for the reduction in value caused by the regulation. The property owner may elect to have the issue of compensation decided by a jury.

2 3. Exceptions. Compensation is not required under this
3 chapter if the regulation:

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5 A. Is an exercise of the police power to prevent property
6 use that is noxious or poses demonstrable harm to the health
7 and safety of the public. A use is considered a noxious use
8 only if it amounts to a public nuisance in fact.
9 Determination by a governmental unit that a use is noxious
10 or poses a demonstrable harm to public health and safety is
11 not binding on the court. Review of that determination must
12 be de novo; or

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14 B. Produces benefits to the owner of the piece of property
15 equivalent to or greater than any loss in fair market value.

16 **§853. Statute of limitations**

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18 1. Injuries to real property. The statute of limitations
19 for actions brought pursuant to this chapter is the statute of
20 limitations for civil actions for injuries to real property. The
21 statute of limitations begins to run when a final administrative
22 decision is issued affecting that property, except that, if
23 passage of the regulation alone reduces the fair market value of
24 real property 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.

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29 2. Application. This chapter applies to regulations that
30 are applied or that become effective after the effective date of
31 this chapter.

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33 **§854. Legal challenges**

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35 This chapter does not preclude a property owner from
36 challenging a regulation affected by this chapter under any other
37 law or constitutional provision.

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40 **SUMMARY**

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43 This bill allows a property owner to seek compensation from
44 a unit of government in Maine when a regulation imposed by that
45 unit of government reduces the fair market value of the property
46 and there is destruction or damage to or trespass upon the
47 property or a loss of the rightful use of the property.
48 Compensation must be equivalent to the loss in value. The bill
49 provides exceptions to compensation for regulations that protect
50 public health and safety or that produce benefits to the property
owner that equal or exceed the loss in value.