

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 85

H.P. 76

House of Representatives, January 9, 2001

**An Act Requiring Compensation for Loss of Property Value Due to State
or Local Regulation.**

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative GLYNN of South Portland.
Cosponsored by Representative WATERHOUSE of Bridgton.

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 Protection Act."

14 **§842. Definitions**

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

18 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 real property.

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

30 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.

34 **§843. Regulatory takings**

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

42 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 purchase the property at the preregulatory fair market value or 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. Fair market value. If the property 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% of its preregulatory fair market
24 value without further governmental action and the regulation
25 contains no provision for relief from the regulation's operation,
26 the statute of limitations begins to run on the date the
27 regulation becomes effective.

28 2. Application. This Act applies to regulations that are
29 applied or that become effective after the effective date of this
30 Act and to the application of regulations in effect on the
31 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 1. Rights in writing. The person reserves the rights in
39 writing at the time of acceptance of an authorization or permit;
40 or

41 2. Oral statement. The person makes an oral statement
42 reserving the rights before the governmental unit granting the
43 authorization or permit at a public meeting at which the
44 governmental unit renders its decision.

