

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 886

H.P. 663

House of Representatives, February 20, 2003

**An Act To Require State Reimbursement When Laws or Rules
Devalue Private Property**

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative JOY of Crystal.
Cosponsored by Senator STANLEY of Penobscot and
Representatives: CARR of Lincoln, CLOUGH of Scarborough, FLETCHER of Winslow,
GLYNN of South Portland, GOODWIN of Pembroke, JACKSON of Fort Kent, JODREY of
Bethel, PEAVEY-HASKELL of Greenbush.

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. Short 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 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.

20 **2. Owner.** "Owner" means the individual, business, corporation or other legal entity that holds legal title to the property.

22 **3. Preregulatory fair market value.** "Preregulatory fair market value" means the fair market value of a piece of property on the day before the implementation of a regulation caused the property value to fall by at least 25%.

24 **4. 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.

26 **§843. Regulatory takings**

28 **1. Regulatory takings.** For purposes of this Act, whenever implementation of a regulation by the State reduces the fair market value of real property by at least 25% of its preregulatory fair market value, the property is deemed to be taken for the use of the public.

30 **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 State to purchase the property at the preregulatory fair market value or to pay compensation for the

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

4 **3. Exemption for regulation of noxious or harmful uses.**
5 Purchase or compensation is not required under this Act if the
6 regulation is an exercise of the police power to prevent property
7 use that is noxious or poses demonstrable harm to the health and
8 safety of the public. A use is considered a noxious use only if
9 it amounts to a public nuisance in fact. Determination by the
10 State that a use is noxious or poses a demonstrable harm to
11 public health and safety is not binding on the court. Review of
12 that determination must be de novo.

14 **§844. Statute of limitations**

16 The statute of limitations for actions brought pursuant to
17 this Act is the statute of limitations for civil actions for
18 injuries to real property. The statute of limitations begins to
19 run when a final administrative decision is issued affecting that
20 property, except that, if passage of the regulation alone reduces
21 the fair market value of real property by at least 25% of its
22 preregulatory fair market value without further governmental
23 action and the regulation contains no provision for relief from
24 the regulation's operation, the statute of limitations begins to
25 run on the date the regulation becomes effective.

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

28 The State may not make waiver of the provisions of this Act
29 a condition for approval of the use of real property or the
30 issuance of any permit. An owner may accept an approval of use
31 or a permit granted by the State without compromising rights
32 under this Act if:

34 **1. Rights in writing.** The owner reserves the rights in
35 writing at the time of acceptance of an authorization or permit;
36 or

38 **2. Oral statement.** The owner makes an oral statement
39 reserving the rights before the State at a public meeting at
40 which the State renders its decision.

42 **§846. Legal challenges**

44 This Act does not preclude an owner from challenging a
45 regulation affected by this Act under any other law or
46 constitutional provision.

48 **§847. Review of laws and rules**

50

2 1. Review of Legislature. By January 15, 2004, the
Legislature shall review all state laws currently in effect to
4 identify laws that result in the devaluation of property.

6 2. Review by departments; report. By December 15, 2003,
each department and agency of the State shall review the laws and
8 rules it administers to identify laws and rules that result in
the devaluation of property. By January 15, 2004, each
10 department and agency shall submit a written report to the
Legislature of all the laws and rules identified that result in
12 the devaluation of property.

14 3. Notification. By March 1, 2004, the Legislature shall
notify all owners of the laws and rules that have been identified
16 as resulting in the devaluation of property.

18 **§848. Application**

20 1. Implementation of regulation. This Act applies to every
devaluation of property that results from an implementation of a
22 regulation that occurs on or after the effective date of this Act.

24 2. Regulation in effect prior to chapter. For purposes of
determining the right to relief and the statute of limitations
26 under this chapter, a regulation in effect on the effective date
of this chapter is deemed to have been passed on the effective
28 date of this chapter.

30 **SUMMARY**

32 This bill requires the State to pay a property owner when
state regulations lower the owner's property value by at least
34 25%.

36 This bill also requires the Legislature and all departments
and agencies to review and identify laws and rules that result in
38 the devaluation of property. The Legislature must notify all
property owners of such laws and rules.