

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 668

H.P. 488

House of Representatives, February 8, 2005

An Act To Amend the Land Use Regulation Laws

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative JOY of Crystal. (BY REQUEST)
Cosponsored by Representatives: ANNIS of Dover-Foxcroft, CLARK of Millinocket,
RICHARDSON of Carmel, SAVIELLO of Wilton, THOMAS of Ripley, VAUGHAN of
Durham.

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

4 **Sec. 1. 30-A MRSA §4361** is enacted to read:

6 **§4361. Just compensation**

8 1. Just compensation. If a municipality or the State enforces a land use regulation that restricts the use of or reduces the fair market value of private real property, the municipality or the State upon written demand pursuant to subsection 2 shall provide the owner of the property a remedy under subsection 4.

14 2. Written demand. To receive just compensation under this section, an owner of real property affected by the enforcement of a land use regulation must make a written demand to the municipality or the State within 2 years of the effective date of this section or when the municipality or the State attempts to enforce the land use regulation, whichever is later. If the municipality or the State is still enforcing the land use regulation against the property 180 days after the written demand is made, the municipality or the State shall pay the owner just compensation calculated as of the date the written demand was made in an amount equal to the reduction of the fair market value of the property resulting from the enforcement of the regulation. A municipality or the State may adopt procedures to process written demands made under this section but may not use these procedures as a prerequisite for filing a written demand under this section or require a property owner to file a permit application to seek compensation under this section.

32 3. Cause of action. If the municipality or the State does not pay just compensation or continues to enforce the land use regulation that is the subject of the written demand under subsection 2 more than 180 days after the written demand was made, the property owner may file a cause of action in the District Court that has jurisdiction over the real property. A court may order a remedy under subsection 4 in a cause of action filed under this subsection. A property owner who files suit under this subsection is entitled to reasonable attorney's fees, costs and disbursements incurred in collecting the compensation.

42 4. Remedies. A municipality or the State shall pay a demand or modify, remove or not enforce the land use regulation underlying a written demand under subsection 2 within 180 days after the demand is made. If the municipality or the State does not provide a remedy under this subsection within 2 years after a written demand has been made, the demanding property owner may use the property as permitted when the owner acquired the

2 property if the owner has not filed a cause of action under
3 subsection 3.

4 5. Exemptions. Exempted from this section are land use
5 regulations that:

6 A. Restrict or prohibit activities recognized as public
7 nuisances under the common law;

10 B. Protect public health and safety such as fire, life
11 safety and building codes, health and sanitation
12 regulations, solid and hazardous waste regulations and
13 pollution control regulations;

14 C. Are required to comply with federal law;

16 D. Restrict or prohibit the selling of pornography or nude
17 dancing; and

20 E. Were enacted before the owner acquired the property or,
21 if the owner inherited the property from a family member,
22 the family member acquired the property.

24 The exemptions in this subsection must be construed narrowly in
25 favor of compensation of the property owner.

28 SUMMARY

30 This bill allows a property owner to seek just compensation
31 from a municipality or the State if the municipality or the State
32 enforces a land use regulation that restricts the use of or
33 reduces the value of private real property. To receive just
34 compensation, the property owner must file a written demand with
35 the municipality or the State within 2 years of the enactment of
36 this Act or the enforcement of the regulation, whichever comes
37 later. If the municipality or State is still enforcing the
38 regulation 180 days after the written demand was made, the
39 municipality or State owes the property owner just compensation
40 in the amount of the reduction in value of the property at the
41 time the written demand was made. A municipality or the State
42 must either pay the demand or remove, modify or not enforce the
43 land use regulation within 180 days after demand is made. If the
44 property owner does not receive just compensation and the
45 regulation is still being enforced 180 days after written demand
46 was made, the owner may file a cause of action in District Court
47 and receive attorney's fees, costs and disbursements. If after 2
48 years the property owner does not receive just compensation, the
49 owner may use the property as permitted when the owner acquired
50 the property. This bill does not apply to regulations that

2 restrict common-law nuisances, protect public health and safety,
restrict or prohibit the selling of pornography or nude dancing
4 or were enacted prior to the owner's or, if the property was
inherited, the owner's family member's acquisition of the
property.