

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2006

Legislative Document

No. 1904

H.P. 1345

House of Representatives, January 4, 2006

An Act To Protect Businesses from Unnecessary Eminent Domain Takings

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative MERRILL of Appleton.
Cosponsored by Representatives: FLETCHER of Winslow, JOY of Crystal, LINDELL of Frankfort, MAKAS of Lewiston, Senators: STRIMLING of Cumberland, TURNER of Cumberland and Representatives: ASH of Belfast, CARR of Lincoln, FAIRCLOTH of Bangor, KAELIN of Winterport, Senators: HOBBS of York, ROSEN of Hancock.

2 **Emergency preamble.** Whereas, acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

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6 **Whereas,** the recent United States Supreme Court decision
makes it clear that state laws must protect the property rights
of individuals and businesses; and

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10 **Whereas,** in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
12 necessary for the preservation of the public peace, health and
safety; now, therefore,

14
16 **Be it enacted by the People of the State of Maine as follows:**

18 **Sec. 1. 1 MRSA §816** is enacted to read:

20 **§816. Absolute necessity required**

22 Notwithstanding any law to the contrary, the State, a
political subdivision of the State or any other entity with
eminent domain power may not take private property unless the
taking is an absolute necessity to carry out the public purpose
for which the property is being taken.

26 **Sec. 2. 1 MRSA §817** is enacted to read:

28 **§817. Limitation on taking**

30 When the State, a political subdivision of the State or any
other entity with eminent domain power takes private property on
which a business is located, the property acquired must be the
minimum amount necessary to carry out the public purpose and to
maximize the ability of the business to continue.

36 **Sec. 3. Application.** Notwithstanding the Maine Revised
38 Statutes, Title 1, section 302, this Act applies to every
exercise of eminent domain power in which the terms of the
40 taking, including the determination of the amount of
compensation, have not been finally determined as of the
42 effective date of this Act.

44 **Emergency clause.** In view of the emergency cited in the
preamble, this Act takes effect when approved.

SUMMARY

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4 This bill applies to all takings under the eminent domain
6 authority of the State, any political subdivision or any other
8 entity that has eminent domain power. It requires that the
10 taking be an absolute necessity to carry out the public purpose
12 that is the basis of the taking. This bill also requires the
14 taking of property on which a business is located to be limited
16 to the minimum amount necessary to carry out the public purpose,
18 thus allowing the business to continue.

20 This bill explicitly applies to takings that have not been
22 completed as of its effective date.

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26 This bill takes effect when approved.