

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1135

S.P. 344

In Senate, March 16, 2011

An Act To Protect the Rights of Property Owners

Reference to the Committee on Judiciary suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator SNOWE-MELLO of Androscoggin.
Cosponsored by Representative MORISSETTE of Winslow, Representative WATERHOUSE of Bridgton and
Senator: COLLINS of York, Representatives: O'CONNOR of Berwick, OLSEN of Phippsburg, SIROCKI of Scarborough.

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

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

3 **CHAPTER 22**

4 **PROTECTION OF RIGHTS OF PROPERTY OWNERS**

5 **§841. Definitions**

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

8 **1. Family member.** "Family member" means the wife, husband, domestic partner,
9 son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law,
10 daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent,
11 stepchild, grandparent or grandchild of an owner, an estate of any of these family
12 members or a legal entity owned by any one or combination of these family members or
13 the owner.

14 **2. Land use regulation.** "Land use regulation" means:

15 A. Statutes regulating the use of land or any interest in land;

16 B. Municipal comprehensive plans and ordinances; and

17 C. Statutes and administrative rules regulating farming and forest practices.

18 **3. Owner.** "Owner" means the current owner of property or any interest in property.

19 **4. Public entity.** "Public entity" means the State, a municipality or a county.

20 **§842. Reduction in fair market value; compensation**

21 **1. Enactment or enforcement of land use regulation.** If a public entity enacts or
22 enforces a new land use regulation or enforces a land use regulation enacted prior to the
23 effective date of this chapter that restricts the use of private real property or any interest
24 in the property and has the effect of reducing the fair market value of the property or any
25 interest in the property, the owner has a right to be paid just compensation.

26 **2. Just compensation.** Just compensation under this chapter is equal to the
27 reduction in the fair market value of the affected property interest resulting from
28 enactment or enforcement of the land use regulation as of the date the owner makes
29 written demand for compensation under this chapter.

30 **3. Exceptions.** Subsection 1 does not apply to a land use regulation:

31 A. Restricting or prohibiting activities commonly and historically recognized as
32 public nuisances under common law. This paragraph must be construed narrowly in
33 favor of a finding of compensation under this chapter;

1 B. Restricting or prohibiting activities for the protection of public health and safety,
2 including but not limited to fire and building codes, health and sanitation regulations,
3 solid or hazardous waste regulations and pollution control regulations;

4 C. To the extent the land use regulation is required to comply with federal law;

5 D. Restricting or prohibiting the use of a property for the purpose of selling
6 pornography or performing nude dancing. Nothing in this paragraph is intended to
7 affect or alter rights provided by the Constitution of Maine or the United States
8 Constitution; or

9 E. Enacted prior to the date of acquisition of the property by the owner or a family
10 member who owned a property prior to acquisition or inheritance by the owner,
11 whichever occurred first.

12 **4. Compensation due after 180 days.** Just compensation under subsection 1 is due
13 an owner if the land use regulation continues to be enforced against the property 180 days
14 after the owner makes written demand for compensation under this section to the public
15 entity enacting or enforcing the land use regulation.

16 **5. Statute of limitations.** For claims arising from land use regulations enacted prior
17 to the effective date of this chapter, written demand for compensation under subsection 4
18 must be made within 2 years of the effective date of this chapter or the date the public
19 entity applies the land use regulation as an approval criteria to an application submitted
20 by the owner, whichever is later. For claims arising from land use regulations enacted on
21 or after the effective date of this chapter, written demand for compensation under
22 subsection 4 must be made within 2 years of the enactment of the land use regulation or
23 the date the owner submits a land use application in which the land use regulation is an
24 approval criteria, whichever is later.

25 **6. Cause of action for compensation.** If a land use regulation continues to apply to
26 a property more than 180 days after the owner has made written demand for
27 compensation under this section, the owner has a cause of action for compensation under
28 this section in the Superior Court for the county in which the property is located, and the
29 owner is entitled to reasonable attorney's fees, expenses, costs and other disbursements
30 reasonably incurred to collect the compensation.

31 **7. Procedures for processing claims.** A public entity may adopt or apply
32 procedures for the processing of claims under this chapter, but the procedures may not be
33 used as a prerequisite to the filing of a compensation claim under subsection 6, and the
34 failure of an owner to file an application for a land use permit with the local government
35 may not serve as grounds for dismissal, abatement or delay of a compensation claim
36 under subsection 6.

37 **8. Modify, remove or not apply.** Notwithstanding any other law or the availability
38 of funds under subsection 9, in lieu of payment of just compensation under this section,
39 the governing body of the public entity responsible for enacting the land use regulation
40 may modify, remove or not apply the land use regulation or land use regulations to allow
41 the owner to use the property for a use permitted at the time the owner acquired or
42 inherited the property.

1 **9. Payment of claims.** Claims made under this section must be paid from funds, if
2 any, specifically allocated by the Legislature, municipality or county for payment of
3 claims under this section. Notwithstanding the availability of funds under this subsection,
4 a public entity may use available funds to pay claims or may modify, remove or not apply
5 a land use regulation or land use regulations pursuant to subsection 8.

6 **10. Nonpayment of claim.** If a claim under this section has not been paid within 2
7 years from the date on which it accrues, the owner may use the property as permitted at
8 the time the owner acquired or inherited the property.

9 **§843. Remedy not exclusive**

10 The remedy created by this chapter is in addition to any other remedy under the
11 Constitution of Maine and the United States Constitution and is not intended to modify or
12 replace any other remedy.

13 **SUMMARY**

14 This bill requires the State or a municipality or county to pay compensation for the
15 enactment or application of land use regulations that reduce the fair market value of
16 private property, with some exceptions.

17 The owner is due compensation 180 days after making a written demand for
18 payment. If the public entity does not pay the compensation, the owner may file the
19 claim in Superior Court and is entitled to attorney's fees and other costs. If compensation
20 is not paid within 2 years, the owner may use the property as permitted at the time the
21 owner acquired the property.