

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 162

H.P. 120

House of Representatives, January 27, 2015

An Act To Protect the Rights of Property Owners

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative O'CONNOR of Berwick.
Cosponsored by Senator COLLINS of York and
Representatives: CRAFTS of Lisbon, FARRIN of Norridgewock, FOLEY of Wells, LONG of
Sherman, PICCHIOTTI of Fairfield, POULIOT of Augusta, WINSOR of Norway, Senator:
BURNS of Washington.

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 **§851. Definitions**

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

8 **1. Compensation.** "Compensation" means a payment of money to an owner of
9 privately owned land equal to the amount of fair market value that is taken by a public
10 entity.

11 **2. Family member.** "Family member" means a spouse, child, parent, sibling,
12 grandparent, grandchild, brother-in-law, sister-in-law, son-in-law, daughter-in-law,
13 mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent or stepchild of an
14 owner. "Family member" includes an estate of or a legal entity owned by one or a
15 combination of persons listed in this subsection.

16 **3. Land use regulation.** "Land use regulation" means:

17 A. A statute restricting the use of or interest in privately owned land;

18 B. A state administrative, departmental or agency rule that restricts or prohibits the
19 use of or interest in privately owned land; or

20 C. A municipal comprehensive plan, ordinance or code that restricts or prohibits the
21 use of or interest in privately owned land.

22 **4. Owner.** "Owner" means the owner of record of or an interest in privately owned
23 land.

24 **5. Public entity.** "Public entity" means the State, a political subdivision of the State,
25 a department or agency of the State or of any political subdivision of the State or a quasi-
26 governmental entity established or authorized by the State, including but not limited to a
27 public water or sewer district, a public housing authority or a public transportation
28 agency.

29 **6. Taking.** "Taking" means the reduction in fair market value created by restricting
30 the use of or an interest in privately owned land through the operation of a land use
31 regulation enacted by a public entity.

32 **§852. Taking of private property**

33 A public entity may not create a taking without providing compensation to the owner.
34 A public entity may not enact a land use regulation without a provision for compensation
35 to an affected owner if the land use regulation will create a taking. Except as provided in

1 section 853, subsection 8, a public entity may not enforce a land use regulation that
2 creates a taking without first providing compensation to an affected owner.

3 **§853. Remedy**

4 **1. Remedy for taking.** An owner of privately owned land subject to a taking in
5 violation of section 852 may seek a remedy pursuant to this section.

6 **2. Written demand.** An owner who seeks a remedy under this section must provide
7 a written demand for remedy to the public entity creating the taking.

8 **3. Public entity to determine remedy.** The public entity responsible for the taking
9 shall determine the remedy for an owner making a written demand under subsection 2,
10 which must be provided to the owner within 180 days of the written demand and include
11 one of the following:

12 A. Repealing the land use regulation;

13 B. Modifying the land use regulation to eliminate the taking;

14 C. Exempting the owner from the land use regulation and providing the owner a
15 written and attested confirmation of the exemption, which must remain in effect until
16 the land use regulation is repealed or modified so that it no longer creates a taking; or

17 D. Providing compensation to the owner.

18 **4. Procedure for processing written demands.** A public entity may adopt a
19 procedure to process a written demand under subsection 2, but the procedure may not be
20 used to establish a prerequisite for filing a written demand, and the failure of the owner to
21 file an application for a land use permit may not serve as grounds for dismissal,
22 abatement or delay of a remedy under this section.

23 **5. Cause of action.** An owner who made a written demand under subsection 2 who
24 has not received a remedy under subsection 3 within 180 days of making a written
25 demand has a cause of action to compel the remedy with the Superior Court of the county
26 in which the privately owned land subject to the taking is located. An owner who
27 prevails in a cause of action under this subsection is entitled to reasonable attorney's fees,
28 expenses and costs incurred in compelling a remedy under this section.

29 **6. Failure to remedy.** If a public entity has failed to provide a remedy under
30 subsection 3 within 180 days from the date of the written demand under subsection 2, the
31 owner may use the privately owned land in accordance with the land use regulation in
32 effect at the time the owner or a family member first acquired the privately owned land,
33 and the land use regulation creating the taking may not be enforced against the owner.

34 **7. Statute of limitations.** A written demand under subsection 2 must be made
35 within 3 years of the effective date of this chapter or of the date on which a public entity
36 applies a land use regulation creating the taking as a criterion for approval of a land use
37 permit application submitted by the owner.

38 **8. Exceptions.** Subsection 1 does not apply to a land use regulation:

- 1 A. Restricting or prohibiting an activity commonly and historically recognized as a
- 2 public nuisance under common law. This paragraph must be construed narrowly in
- 3 favor of finding a remedy under this section;
- 4 B. Restricting or prohibiting activities for the protection of public health and safety,
- 5 including fire codes, health and sanitation regulations and solid and hazardous waste
- 6 or pollution control regulations;
- 7 C. Enacted prior to the date of acquisition of the privately owned land by the owner
- 8 or a family member; or
- 9 D. To the extent that the land use regulation is consistent with the powers authorized
- 10 under the United States Constitution and the Constitution of Maine and in accordance
- 11 with the intent of the people at the time the constitutions and any relevant
- 12 amendments were ratified by the states or by the people.
- 13 9. Construction. This section must be construed to strictly limit the powers and
- 14 duties of a public entity under the United States Constitution and the Constitution of
- 15 Maine in any taking of private property rights, directly or indirectly, in whole or in part,
- 16 and to provide a remedy for owners when private property rights have been taken or
- 17 restricted without due process as a result of enactment and enforcement of land use
- 18 regulations.

19

SUMMARY

20 This bill requires that any entity enacting or enforcing a land use regulation that
 21 creates a taking of privately owned land, defined as a reduction in fair market value of the
 22 land, provide compensation in the amount of the reduction in fair market value to the
 23 owner of the land or repeal or not enforce the regulation against that owner. The bill
 24 provides a remedy and cause of action for owners of privately owned land who are
 25 subject to a taking by a land use regulation, with a statute of limitations of 3 years of the
 26 effective date of this legislation or when a land use regulation creating a taking is used as
 27 a criterion for approval of a land use permit application by an owner of privately owned
 28 land, whichever comes later. Exceptions to the compensation requirements include
 29 common law nuisances, public health and safety protections, regulations enacted prior to
 30 the date of acquisition of the property by the owner or a family member of the owner and
 31 regulations consistent with the original intent of the United States Constitution and the
 32 Constitution of Maine.