

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Protect the Rights of Property Owners

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

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

CHAPTER 22

PROTECTION OF RIGHTS OF PROPERTY OWNERS

§ 841. Definitions

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

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

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

- A. Statutes regulating the use of land or any interest in land;
- B. Municipal comprehensive plans and ordinances; and
- C. Statutes and administrative rules regulating farming and forest practices.

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

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

§ 842. Reduction in fair market value; compensation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 843. Remedy not exclusive

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

SUMMARY

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

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