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S.P. 353

In Senate, March 14, 2013

An Act To Promote Regulatory Fairness

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator THOMAS of Somerset.
Cosponsored by Representative LOCKMAN of Amherst and
Senators: COLLINS of York, MASON of Androscoggin, SHERMAN of Aroostook,
Representatives: CRAFTS of Lisbon, GIFFORD of Lincoln, TURNER of Burlington, WOOD
of Sabattus.

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 **REGULATORY TAKINGS**

5 **§851. Definitions**

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

8 **1. Fact finder.** "Fact finder" means a jury or, if the right to a jury is waived, the
9 court.

10 **2. Property owner.** "Property owner" means the holder of legal or equitable title to
11 an interest in real property. "Property owner" does not include a governmental entity.

12 **3. Real property.** "Real property" means land and any appurtenances or
13 improvements to the land.

14 **4. Regulation.** "Regulation" means any law, rule, ordinance or other governmental
15 limitation imposed by the State or a state agency on the use of real property.
16 "Regulation" does not include a municipal regulation, except that "regulation" includes an
17 action by a municipality in conformance with a regulation that imposes a mandate on the
18 municipality.

19 **5. Regulator.** "Regulator" means the State, any state agency or any other
20 administrative body of the State.

21 **6. Regulatory taking.** "Regulatory taking" means a burden caused by regulation
22 imposed on a property owner's use of the property owner's real property resulting in a
23 diminution in fair market value.

24 **7. Takings variance.** "Takings variance" means a decision by the State to permit
25 departure from the requirements of a regulation that imposes a regulatory taking.

26 **§852. Right to jury trial**

27 There is a right to trial by jury in any action brought under this chapter.

28 **§853. When a regulatory taking occurs**

29 If the right to use, divide, sell, occupy or possess real property is reduced by the
30 enactment or application of any regulation, the property owner may seek relief in
31 accordance with the provisions of this chapter.

32 **1. Determination.** A property owner is entitled to a determination by the fact finder
33 as to whether a regulatory taking has occurred upon the submission of prima facie

1 evidence, supported by an appraisal, of a diminution in the fair market value of real
2 property.

3 **2. Factors to be weighed.** After a prima facie showing has been made under
4 subsection 1, in determining whether a regulatory taking has in fact occurred, the fact
5 finder shall weigh 3 factors:

6 A. The extent of the diminution in fair market value of the real property caused by
7 the regulation;

8 B. The reasonable investment-backed expectations of the property owner; and

9 C. The character of the use regulated.

10 **3. Cause of action cumulative.** This section provides a cause of action for
11 governmental actions that do not rise to the level of a taking under the Constitution of
12 Maine or the United States Constitution. The remedies provided under this section are
13 cumulative and do not abrogate any other remedy lawfully available, including any
14 remedy lawfully available for governmental actions that rise to the level of a taking under
15 the Constitution of Maine or the United States Constitution.

16 **§854. Measure of diminution of fair market value**

17 For the purposes of this chapter, the diminution of fair market value of real property
18 caused by a regulation must be measured by the diminution of the fair market value of the
19 portion of any such parcel to which the regulation directly applies.

20 **§855. Excluded regulations**

21 The cause of action established under section 853 does not apply to the following
22 regulations, narrowly construed:

23 **1. Nuisance.** Regulations restricting or prohibiting activities recognized as public
24 nuisances under common law;

25 **2. Public health and safety.** Regulations restricting or prohibiting activities for the
26 protection of public health and safety, such as fire and building codes and health and
27 sanitation regulations;

28 **3. Compliance with federal law.** Regulations required to comply with federal law;
29 and

30 **4. Prospective application.** Regulations enacted prior to the effective date of this
31 section.

32 **§856. Relief**

33 Compensation, damages or a takings variance are available as relief for a regulatory
34 taking, at the option of the State.

35 **1. Compensation.** If the State chooses to pay compensation, the fact finder shall
36 award the property owner the fair market value of the real property taken, and the

1 property owner's rights, title and interest in that real property must be transferred to the
2 State or a political subdivision of the State. This option may be exercised only with the
3 consent of the property owner.

4 **2. Damages.** If the State chooses to pay damages, the fact finder shall award the
5 property owner an amount it determines comprises the diminution in fair market value
6 caused by regulation, and title in the real property remains with the property owner.
7 Payment of damages pursuant to this section operates to grant to and vest in the State the
8 right to enforce the regulation as to the real property.

9 **3. Takings variance.** If the State chooses to grant a takings variance, the regulation
10 causing the regulatory taking may not be applied to the real property upon which a
11 regulatory taking would otherwise occur.

12 **§857. Limitations**

13 An action or proceeding may not be brought or maintained under section 853 unless
14 commenced within 3 years after the effective date of the regulation.

15 **§858. Informal dispute resolution**

16 **1. Commencement of process.** Prior to filing an action pursuant to section 853, a
17 property owner may, in the property owner's discretion, file a request with the appropriate
18 regulator to remedy a claimed regulatory taking. The property owner may include with
19 the request any information the property owner believes relevant, such as an appraisal.

20 **2. Response.** Within 60 days of receipt of a request under subsection 1, the regulator
21 shall respond to the property owner in writing, explaining the regulator's position as to
22 whether the property owner has suffered a regulatory taking.

23 **3. Choice of relief.** If the regulator in the response made pursuant to subsection 2
24 concludes that there has been a regulatory taking, the regulator shall indicate in the
25 response that the State chooses not to continue to apply the regulation at issue or that
26 either compensation or damages shall indicate that damages be awarded and, if the latter,
27 the amount that the State is willing to provide as compensation or damages.

28 **4. Inadmissibility of request and response.** Neither the property owner's request
29 under subsection 1 nor the regulator's response under subsections 2 and 3 is admissible as
30 evidence proving or refuting liability in an action under section 853 or otherwise binding
31 upon the property owner or regulator.

32 **§859. Attorney's fees and costs**

33 In an action brought under section 853, each party is responsible for its own
34 attorney's fees and costs.

35 **§860. Land use mediation program**

36 This chapter precludes use of the land use mediation program under Title 5, section
37 3341.

1 **SUMMARY**

2 This bill establishes standards for relief when state regulation takes value from an
3 individual property owner, as well as efficient mechanisms for pursuit of such relief.

4 To eliminate any fiscal impact from the establishment of these new standards and
5 mechanisms, they will apply only to burdens from regulations enacted in the future. The
6 bill provides mechanisms designed to achieve fair results and to resolve disputes
7 efficiently, including the ability to grant variances, which is an option consistent with
8 general land use principles.