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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:

