

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

REGULATORY TAKINGS

§ 850. Purpose

The purpose of this chapter is to establish predictable, efficient and fair mechanisms for real property owners to obtain relief when regulation imposes an inordinate burden upon them.

§851. Definitions

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

1. Compensation. “Compensation” means a monetary award to compensate a property owner for a regulatory taking, upon the receipt of which title in real property is transferred to the state.

2. Damages. “Damages” means an award of a sum of money reflecting the diminution of value of real property caused by regulation, the payment of which permits the state to continue to impose the regulation on the real property.

3. Excluded regulations. “Excluded regulations” are those regulations excluded from the applicability of this chapter pursuant to section 855.

4. Factfinder. “Factfinder” means a jury or, if the right to a jury is waived, the court.

5. Property owner. “Property owner” means the holder of legal or equitable title in an interest in real property. The term does not include a governmental entity.

6. Real property. “Real property” means land and any appurtenances and improvements to the land.

7. Regulation. “Regulation” means any law, regulation, rule, ordinance or other governmental limitation imposed by the state or a state agency on the use of real property, other than excluded regulations. Regulation does not include any municipal regulation, except to the extent that state regulation imposes a mandate upon a municipality, in which case the action by

the municipality in conformance to the mandate is deemed regulation to be compensated by the state if the application of the regulation imposes a regulatory taking.

8. Regulator. “Regulator” means the state, any agency or any other administrative body of the state.

9. Regulatory taking. “Regulatory taking” means an inordinate burden caused by regulation imposed on a property owner’s use of its real property.

10. Takings variance. A “takings variance” is the decision of the state to permit departure from the requirements of a regulation that imposes a regulatory taking.

§852. Right to Jury

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

§853. When a Regulatory Taking Occurs

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

1. Determination. A property owner is entitled to a determination by the factfinder as to whether a regulatory taking has occurred upon the submission of *prima facie* evidence, supported by an appraisal, of a diminution in the market value of real property of 50% or greater caused by regulation.

2. Factors to be weighed. After a *prima facie* showing under subsection 1, in determining whether a regulatory taking has in fact occurred, the factfinder may weigh three factors:

- A. The extent of the diminution in value of the real property caused by the regulation;
- B. The reasonable investment backed expectations of the property owner; and
- C. The character of the use regulated.

3. Cause of action cumulative. This section provides a cause of action for governmental actions that may not rise to the level of a taking under the Constitution of Maine or the United States Constitution. The provisions of this section are cumulative, and do not abrogate any other remedy lawfully available, including any remedy lawfully available for governmental actions that rise to the level of a taking under the Constitution of Maine or the United States Constitution.

§854. The Whole Parcel Rule

The diminution of value of real property caused by a regulation shall be measured by the diminution of the value of a contiguous parcel owned by the property owner, and not merely the portion of any such parcel to which the regulation may directly apply.

§855. Excluded Regulations

The cause of action established under section 853 of this chapter shall not apply as to the following excluded regulations, narrowly construed:

1. **Nuisance.** Regulation restricting or prohibiting activities commonly and historically recognized as public nuisances under common law;
2. **Public health and safety.** Regulation restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes and health and sanitation regulations;
3. **Compliance with federal law.** Regulation required to comply with federal law; and
4. **Prospective application.** Regulation enacted prior to the effective date of this chapter.

§856. Relief

1. **Types available.** Compensation, damages or a takings variance are available as relief for a regulatory taking, at the option of the state.
2. **Compensation.** If the state chooses compensation, the factfinder shall award the property owner the fair market value of the real property taken, and the property owner's rights, title and interest in that real property must be transferred to the state or a political subdivision of the state.
3. **Damages.** If the state chooses damages, the factfinder shall award an amount it determines comprises the diminution in value caused by regulation, and title in the real property shall remain with the property owner. Payment of damages pursuant to this section shall operate to grant to and vest in the state the right to enforce the regulation as to the real property, which enforcement right may be held, transferred or otherwise disposed of by the state.
4. **Takings variance.** If the state chooses a takings variance, the regulation causing the regulatory taking shall not be applied to the real property upon which a regulatory taking would otherwise occur.

§857. Limitations

1. **Time period to sue.** No action or proceeding shall be brought or maintained under section 853 of this chapter unless commenced within 3 years after the cause first accrued.
2. **Accrual.** An action accrues on the date that regulation first limits the use of the real property that a property owner claims has been taken.
3. **Multiple regulations.** If an action under section 853 is based on the cumulative impact of multiple regulations, each regulation must have been enacted after the effective date of this chapter.
4. **Tolling.** The limitations period shall be tolled during the period of informal dispute resolution, either under section 858 of this chapter or 5 M.R.S. § 3341.

§858. Informal Resolution

1. **Commencement of process.** Prior to filing suit pursuant to section 853 of this chapter, a property owner may, in its discretion, file a request with the appropriate regulator or regulators to remedy a claimed regulatory taking. The property owner may include with its request any information it believes relevant, such as an appraisal, but need not do so.
2. **Response.** Within 60 days of receipt of a request under subsection 1, the regulator shall respond to the property owner in writing, explaining its position as to whether the property owner has suffered a regulatory taking.
3. **Choice of relief.** If the regulator in its response pursuant to subsection 2 concludes that there has been a regulatory taking, its response shall indicate whether the state chooses to continue to apply the regulation at issue, or would prefer that either compensation or damages be awarded; and, if the latter, the amount that the state is willing to provide as compensation or damages.
4. **Identification of allowed uses.** If the regulator in its response pursuant to subsection 2 concludes that the question whether the property owner has suffered a regulatory taking depends upon whether the property owner could obtain approval(s) for uses under existing state regulatory avenues, the regulator must identify the scope of use(s) that it concludes, for takings purposes, the Property Owner would reasonably be granted under those avenues.
5. **Inadmissibility of request and response.** Neither the property owner's request under subsection 1 nor the regulator's response under subsections 2 to 4 shall be admissible as evidence proving or refuting liability in a suit under section 853, or otherwise binding upon the property owner or regulator.
6. **Land Use Mediation Program.** Nothing in this Act precludes use of the Land Use Mediation Program set forth in 5 M.R.S. § 3341.

§859. Attorney's Fees and Costs

In an action brought under section 853 of this act, the prevailing party will, at the discretion of the court, be entitled to its reasonable attorney's fees and costs in pursuing or defending the action in court.

SUMMARY

This chapter establishes predictable and fair standards for relief when state regulation imposes an inordinate burden on an individual property owner, as well as efficient mechanisms for pursuit of such relief.

To eliminate any fiscal impact from the establishment of these new standards and mechanisms, they will apply prospectively, only to burdens from regulations enacted in the future, if any. Mechanisms adopted to achieve fair results and to resolve disputes efficiently include the ability, at the state's option, to grant variances, which is an option consistent with general land use principles; the encouragement of the use of informal dispute resolution avenues reducing and potentially eliminating any litigation costs; and, when regulatory impact on market value may depend upon other regulatory actions, the ability of an owner to obtain a non-binding identification of the uses the state will allow on the affected property.

Claims of diminution of value based on speculative uses are precluded by the requirement that the property owner provide an appraisal reflecting a diminution in actual market value of the owner's contiguous property of 50% or more, as well as by the limitation of relief to the reasonable investment backed expectations of the owner.

