

OPPOSE

L.D 1135 – An Act To Protect the Rights of Property Owners:

Sponsor: Senator SNOWE-MELLO of Androscoggin

Co-Sponsors: Senator COLLINS of York, and Representatives MORISSETTE of Winslow, O’CONNOR of Berwick, OLSEN of Phippsburg, SIROCKI of Scarborough, and WATERHOUSE of Bridgton

Summary: The bill requires the state to pay landowners for any asserted decrease in property value resulting from any land use, farming or forestry related law or regulation (with a few exceptions listed in the bill*) adopted or enforced by the state or towns. It applies to current laws and to new laws or regulations passed in the future.

Explanation: This bill is a sweeping attack on all of Maine’s land use, farming, and forestry laws and regulations. The bill would result in huge costs to the state, counties, and towns through direct payments and litigation. If payments are not made within two years, then LD 1135, remarkably, would allow landowners to ignore Maine law.

Laws and regulations affected by this bill include all local zoning ordinances, including shoreland zoning; local ordinances affecting subdivisions and industrial or commercial uses such as cell towers and wind turbines; zoning and regulations administered by the Land Use Regulation Commission; state or local regulations to protect wildlife habitat (incl. deer yards, eagle’s nests, endangered species); state and local forest practices laws and regulations; and all state and local laws regulating farming. *Any* landowner could claim compensation for *any* alleged decrease in property value that they may assert is connected to *any* of these laws or regulations. The potential for litigation and conflict would be enormous. Interestingly, no provision is made for payments to run in the other direction if land values *increase* due to land-use laws that, for example, result in improved water quality or conserved land.

Supporters of these types of bills often claim that the laws and regulations of concern represent “unconstitutional takings” of private property rights. That is incorrect. Under the Constitution, the state and towns have the right and obligation to carefully balance the rights of private property owners to enjoy the use of their land, with the rights of the public to the protection of their health, communities, and environment. This bill would upset the careful balance that exists in Maine by requiring the state and towns to pay individuals to comply with constitutional laws designed to protect public interests. As a practical matter, LD 1135 would drastically undercut the ability of the Legislature and towns to adopt land use laws, regulations, and ordinances because landowners could ignore such measures by asserting that they be paid to comply with such requirements, and ignoring the laws if payments are not made.

The bill could have enormous costs for the state. Voters in Oregon adopted a similar measure in 2005, which resulted in so much expense, litigation, and uncertainty that, in 2007, the Oregon voters repealed the law. However, even as late as Dec. 29, 2010, the Oregon courts were still dealing with an array of litigation caused by the law.

Over the past 20 years, the Maine Legislature has repeatedly considered bills similar to LD 1135. Each time, the Maine Attorney General’s office has strongly opposed the bill. Each time, the bill has generated a significant fiscal note. And each time the bill has been rejected. The Legislature should do the same with LD 1135.

NRCM opposes LD 1135.

* Laws and regulations exempted from the bill: Activities considered “public nuisances” under common law; public health and safety regulations; federal laws; restrictions on pornography and nude dancing; laws passed before the landowner acquired the property.