

MAINE STATE LEGISLATURE

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L.D. 1217

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 867, L.D. 1217, Bill, "An Act to Protect Constitutional Property Rights and to Provide Just Compensation"

Amend the amendment by striking out all of sections 1 to 10 and inserting in their place the following:

Sec. 1. Commission established. The Study Commission on Constitutional Property Rights and the Public Interests, referred to in this Act as "the commission," is established.

Sec. 2. Membership. The commission consists of 9 members appointed as follows:

1. Five members from the Joint Standing Committee on Judiciary, appointed by the Senate chair and the House chair of that committee; one member from the Joint Standing Committee on Natural Resources; one member from the Joint Standing Committee on Inland Fisheries and Wildlife, appointed by the President of the Senate; and one member from the Joint Standing Committee on State and Local Government and one member from the Joint Standing Committee on Agriculture, Conservation and Forestry, appointed by the Speaker of the House of Representatives.

Sec. 3. Appointments. All appointments must be made no later than 10 days following the effective date of this Act. The appointing authorities shall notify the Executive Director of the Legislative Council upon making their appointments. When the appointment of all members is complete, the chair of the commission shall call and convene the first meeting of the

HOUSE AMENDMENT

R.S.

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "" to H.P. 867, L.D.
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commission no later than October 1, 1995. The commission shall
select a chair from among its members.

Sec. 4. Duties. The commission shall study federal and state
constitutional private property rights and examine the following
questions and issues and any other issues concerning property
rights that may arise.

1. Is there evidence that the State and other governmental
entities have violated the rights protected by the Fifth
Amendment of the United States Constitution by taking property
through regulations?

2. Do state or other governmental entities' laws, rules,
regulations or ordinances infringe on private property rights as
the laws, rules, regulations and ordinances interrelate to a
government's responsibility for public health, safety and welfare?

3. Is access of private property owners to the
constitutional right to compensation unreasonably delayed in the
current adjudicatory process because of issues such as ripeness,
exhaustion of remedies and statute of limitations?

4. Should a statutory cause of action and a statutory
process be created for property owners who are subject to
diminution in property value as the result of governmental
action? Should it state standards that have not yet been
delineated by court decisions?

5. Should an alternative dispute resolution system or other
procedure be offered in a takings claim if it provides a
cost-efficient and expeditious mechanism for property owners?

6. Is there an equal protection issue due to a governmental
unit's action of exempting a property owner from application of a
specific regulation on that property, because it may result in a
takings by the government of property for a public purpose, but
not exempting other property owners that do not suffer a
takings? Regardless of the constitutional right, does the
ability of a government to avoid compensating a landowner for a
takings contradict public policy on grounds of fairness or
justice?

7. If a statutory process is enacted for private property
owners to pursue the constitutional right to just compensation
for property taken for public use, should a statutory process be
created for property owners against nongovernmental entities that
decrease property values?

2 8. What will be the impact on the state judicial branch and
its service, if a statutory process for private property owners
4 to pursue a takings claim is enacted? Will the effect of its
enactment be any different than similar new laws that increase
burdens on the state judicial branch?

6
8 9. Should the statutory process apply only to state actions
or should it also include municipalities and local governments?

10 10. Should private property owners be given the option of
choosing inverse condemnation or damages?

12
14 11. Should the property owner be compensated the fair
market value or highest and best use for the property taken?

16 12. Should a threshold be included in a statutory process
that addresses the issue of self-definition of property lot size,
18 such as a minimum reduction of \$10,000 by the implementation of a
regulation?

20
22 13. Should multiple regulations be considered in an inverse
condemnation claim, so that federal regulations are included in
24 the consideration of a takings claim assessment in the diminution
of value in the property?

26 14. Should attorney's fees for establishing a ripe claim
beginning at the application for a variance, special exception or
28 exemption be provided?

30 15. What have other states done to address the issue of
inverse condemnation and regulatory takings? Have other states
32 taken further steps to protect rights under the Fifth Amendment
of the United States Constitution?

34
36 16. Should a trigger of less than 50%, similar to the
federal proposals, also be considered for the State?

38 17. If other governmental entities are included with the
State, is there an issue with the unfunded mandate provision
40 requiring a 2/3 vote?

42 18. Should the laws be broadened to include other property,
such as personal property, or be confined to real property?

44
46 19. Should a private landowner be paid for temporary
takings?

48 **Sec. 5. Public participation; activities.** The commission shall
hold at least 3 public hearings in different geographic areas of
50 the State and shall give public notice of the hearings

2 d 8.

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "" to H.P. 867, L.D.
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to solicit public participation and comment. The commission may undertake other hearings, presentations or analyses it determines useful.

Sec. 6. Recommendations. The commission shall submit a report of its findings and recommendations with accompanying legislation to the Second Regular Session of the 117th Legislature and to the Joint Standing Committee on Judiciary by December 15, 1995. The commission report must represent the consensus of the members to the greatest extent possible. The report must include:

1. An explanation of the current situation in the State for property owners who make a claim for compensation based on the Constitution of Maine and the United States Constitution;

2. An explanation of any recommendation for legislation or further examination of specific laws, rules or regulations;

3. The fiscal impact on the State or its municipalities of any proposed legislation;

4. The fiscal impact on landowners because of current laws, rules or regulations that reduce the value of their land; and

5. An explanation of whether legislation or further examination of specific laws, rules and regulations is needed or not needed.

Sec. 7. Staff assistance. The commission shall request staffing and clerical assistance from the Legislative Council.

Sec. 8. Compensation; funding. The commission members who are Legislators are not entitled to receive the legislative per diem for each day's attendance at meetings of the commission. The commission may seek, receive and expend funds from sources other than the General Fund. The Executive Director of the Legislative Council shall administer the commission's budget.

Sec. 9. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1995-96

LEGISLATURE

Study Commission on Constitutional
Property Rights and the Public Interests

All Other \$4,250

Provides funds for the expenses of members
and for public hearing and miscellaneous
costs of the Study Commission on
Constitutional Property Rights and the
Public Interests.

Sec. 10. Allocation. The following funds are allocated from
Other Special Revenue funds to carry out the purposes of this Act.

1995-96

LEGISLATURE

Study Commission on Constitutional Property Rights and the Public Interests

All Other \$500

Allocates funds to authorize expenditures if
private or public funds are received to
support the activities of the Study
Commission on Constitutional Property Rights
and the Public Interests.'

Further amend the amendment by striking out all of the
fiscal note and inserting in its place the following:

FISCAL NOTE

1995-96

APPROPRIATIONS/ALLOCATIONS

General Fund \$4,250
Other Funds 500

The bill provides a General Fund appropriation of \$4,250 in
fiscal year 1995-96 for the Legislature for the expenses of
members and public hearing and miscellaneous costs of the Study
Commission on Constitutional Property Rights and the Public
Interests.

The bill additionally provides an allocation of Other
Special Revenue funds of \$500 in fiscal year 1995-96 to the
Legislature to provide expenditure authority if public or private
funds are received to support activities of the commission.

The additional costs to provide staff and clerical assistance to the commission can be absorbed by the Legislature utilizing existing budgeted resources.'

STATEMENT OF FACT

This amendment replaces the study commission with the study commission established in the minority committee amendment.

The major differences are as follows:

1. The number of members is reduced from 20 to 9;

2. The duties are more specifically enumerated in the minority study commission structure, and more extensive, including determining the fiscal impact of inverse condemnation and whether attorney's fees should be provided;

3. Concomitantly, the scope of the recommendations is increased; and

4. The allocation for the minority study commission is less than that for the majority committee report's study commission.

SPONSORED BY: Debra Plowman
(Representative PLOWMAN)

TOWN: Hampden