

MAINE STATE LEGISLATURE

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M
R. 019

L.D. 1217

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DATE: June 27, 1995 (Filing No. S- 360)

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STATE OF MAINE
SENATE
117TH LEGISLATURE
FIRST REGULAR SESSION

SENATE 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. Resolved: That the Study Commission on Constitutional Property Rights and the Public Interests, referred to in this Act as "the commission," is established; and be it further

Sec. 2. Membership. Resolved: That 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; and be it further

Sec. 3. Appointments. Resolved: That 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 commission no later than October 1, 1995. The commission shall select a chair from among its members; and be it further

SENATE AMENDMENT

2 **Sec. 4. Duties. Resolved:** That the commission shall study
4 federal and state constitutional private property rights and
6 examine the following questions and issues and any other issues
8 concerning property rights that may arise.

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

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

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

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

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

50 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?

 8. What will be the impact on the state judicial branch and
its service, if a statutory process for private property owners
to pursue a takings claim is enacted? Will the effect of its

R 48

SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 867,
L.D. 1217

2 enactment be any different than similar new laws that increase
burdens on the state judicial branch?

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

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

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

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

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

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

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

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

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

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

42 19. Should a private landowner be paid for temporary
44 takings?; and be it further

46 **Sec. 5. Public participation; activities. Resolved:** That the
commission shall hold at least 3 public hearings in different
48 geographic areas of the State and shall give public notice of the
hearings to solicit public participation and comment. The
commission may undertake other hearings, presentations or
50 analyses it determines useful; and be it further

SENATE AMENDMENT

2 **Sec. 6. Recommendations. Resolved:** That the commission shall
3 submit a report of its findings and recommendations with
4 accompanying legislation to the Second Regular Session of the
5 117th Legislature and to the Joint Standing Committee on
6 Judiciary by December 15, 1995. The commission report must
7 represent the consensus of the members to the greatest extent
8 possible. The report must include:

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

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

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

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

20 5. An explanation of whether legislation or further
21 examination of specific laws, rules and regulations is needed or
22 not needed; and be it further

23 **Sec. 7. Staff assistance. Resolved:** That the commission shall
24 request staffing and clerical assistance from the Legislative
25 Council; and be it further

26 **Sec. 8. Compensation; funding. Resolved:** That the commission
27 members who are Legislators are not entitled to receive the
28 legislative per diem for each day's attendance at meetings of the
29 commission. The commission may seek, receive and expend funds
30 from sources other than the General Fund. The Executive Director
31 of the Legislative Council shall administer the commission's
32 budget; and be it further

33 **Sec. 9. Appropriation. Resolved:** That the following funds are
34 appropriated from the General Fund to carry out the purposes of
35 this resolve.

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1995-96

LEGISLATURE

**Study Commission on Constitutional
Property Rights and the Public Interests**

All Other

\$4,250

R. 819

2 Provides funds for the expenses of members
and for public hearing and miscellaneous
4 costs of the Study Commission on
Constitutional Property Rights and the
6 Public Interests; and be it further

8 **Sec. 10. Allocation. Resolved:** That the following funds are
allocated from Other Special Revenue funds to carry out the
10 purposes of this resolve.

12 **1995-96**

14 **LEGISLATURE**

16 **Study Commission on Constitutional Property
Rights and the Public Interests**

18 All Other \$500

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

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

30 **FISCAL NOTE**

32 **1995-96**

34 **APPROPRIATIONS/ALLOCATIONS**

36 General Fund \$4,250
Other Funds 500

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

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

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L.D. 1217

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

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STATEMENT OF FACT

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

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The major differences are as follows:

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

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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;

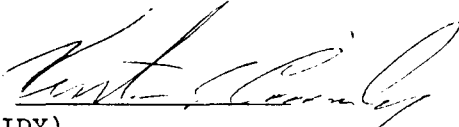
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3. Concomitantly, the scope of the recommendations is
increased; and


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

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SPONSORED BY: 
(Senator CASSIDY)

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COUNTY: Washington 

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