

# MAINE STATE LEGISLATURE

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

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 bill by striking out the title and substituting the following:

**'Resolve, Establishing the Study Commission on Property Rights and the Public Health, Safety and Welfare'**

Further amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

**Emergency preamble. Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and**

**Whereas, Article 1, Section 21 of the Constitution of Maine and the Fifth Amendment of the Constitution of the United States provide that private property may not be taken for public use without just compensation; and**

**Whereas, every property owner holds property with the responsibility that it not be used to injure the health, safety, welfare, communities and environment of the people of the State; and**

**Whereas, Maine and United States Supreme Court decisions state that governmental actions including rules, that do not formally invoke the condemnation power, may result in a taking for which compensation is required; and**

**COMMITTEE AMENDMENT**

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2       **Whereas,** under the Constitution of Maine and the  
Constitution of the United States, courts currently determine  
4       whether a law or regulation amounts to an unconstitutional  
"taking" of property requiring government compensation based on  
the facts of each case; and

6  
8       **Whereas,** any change in the takings laws of the State may  
have far reaching effects on the public treasury of the State and  
municipalities; and

10  
12       **Whereas,** there is an issue regarding resolution of claims  
for property owners seeking compensation under the Constitution  
of Maine and the Constitution of the United States; and

14  
16       **Whereas,** in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
Maine and require the following legislation as immediately  
18       necessary for the preservation of the public peace, health and  
safety; now, therefore, be it

20  
22       **Sec. 1. Commission established. Resolved:** That the Study  
Commission on Property Rights and the Public Health, Safety and  
Welfare, referred to as the commission, is established; and be it  
24       further

26       **Sec. 2. Membership. Resolved:** That the commission consists  
of 20 members appointed as follows:

- 28           A. The Governor or the Governor's designee;
- 30           B. The Attorney General, or the Attorney General's designee;
- 32           C. Two representatives of municipal government, appointed  
34           by the Governor. The Governor shall consider  
recommendations made by the Maine Municipal Association;
- 36           D. Three representatives of conservation interests,  
38           appointed by the Speaker of the House of Representatives.  
The Speaker of the House of Representatives may consider  
40           recommendations made by conservation commissions and  
organizations, lake associations and watershed districts;
- 42           E. Three members representing private property owners,  
44           appointed by the President of the Senate. The President of  
the Senate may consider recommendations made by the Maine  
46           Farm Bureau Association, the Maine Forest Products Council  
and the Maine Association of Realtors;
- 48           F. One member representing the business community,  
50           appointed by the Governor. The Governor may consider

2 recommendations made by the Maine Alliance and the Maine  
Chamber of Commerce and Industry.

4 G. Five members of the Joint Standing Committee on  
6 Judiciary, appointed jointly by the Senate Chair and the  
8 House Chair. The 5 members of the Judiciary Committee shall  
choose from one of its members to serve as chair of the  
commission;

10 H. One member of the Joint Standing Committee on Natural  
12 Resources and one member of the Joint Standing Committee on  
Agriculture, Conservation and Forestry, appointed by the  
14 President of the Senate; and

16 I. One member of the Joint Standing Committee on State and  
Local Government and one member of the Joint Standing  
18 Committee on Inland Fisheries and Wildlife, appointed by the  
Speaker of the House of Representatives; and be it further

20 **Sec. 3. Appointments. Resolved:** That all appointments must be  
made no later than 10 days following the effective date of this  
22 resolve. The appointing authorities shall notify the Executive  
Director of the Legislative Council upon making their  
24 appointments. When the appointment of all members is complete,  
the chair of the commission shall call and convene the first  
26 meeting of the commission no later than August 15, 1995; and be  
it further

28 **Sec. 4. Duties. Resolved:** That the commission shall study  
30 constitutional private property rights protections and examine  
the following questions and issues:

32 A. Is there credible evidence that state and municipal  
34 governments have engaged in takings in a manner that  
violates the Constitution of Maine or the Constitution of  
36 the United States;

38 B. Do specific state or local laws, rules or regulations  
pose an unconstitutional burden on property owners in the  
40 context of the government's responsibility to protect public  
health, safety and welfare;

42 C. Do issues of ripeness, exhaustion of administrative  
44 remedies and statutes of limitations unreasonably delay the  
adjudication of legitimate claims for compensation;

46 D. Should a statutory cause of action, beyond the  
48 requirements of current statutory and constitutional law, be  
created for property owners who are subject to diminution in  
50 property value as the result of governmental action;

2 E. Can pursuit of takings claims under the Constitution of  
 4 Maine and the Constitution of the United States be made less  
 6 costly and more expeditious for property owners by  
 establishing an alternative dispute resolution or other  
 procedure that may resolve property owners' claims without  
 having to file an action in court in the first instance;

8 F. Do the original legislative documents 170 and 1217 from  
 10 the First Regular Session of the 117th Legislature violate  
 the constitutional principle of equal protection due to  
 12 enforcement of a law against one property owner while not  
 enforcing the same law against a similarly situated property  
 14 owner. If constitutional, would the proposed bills violate  
 principles of sound and just public policy because of the  
 disparate treatment;

16 G. If the State is to create a cause of action for property  
 18 owners against governmental entities that incrementally  
 decrease property values, should the law, as a matter of  
 20 sound and just public policy, also create an identical cause  
 of action for property owners against nongovernmental  
 22 entities that incrementally decrease property values. If  
 not, why not; and

24 H. How would the proposed takings laws affect the court  
 26 system and delivery of justice to our citizens; and be it  
 further

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

36 **Sec. 6. Recommendations. Resolved:** That the commission shall  
 submit a report of its findings and recommendations with  
 38 accompanying legislation, if any, to the Second Regular Session  
 of the 117th Legislature and to the Joint Standing Committee on  
 40 Judiciary by December 1, 1995. The commission's report must  
 represent the consensus of the members to the greatest extent  
 42 possible. The report must include:

44 A. An explanation of the current process in the State that  
 property owners must follow to make a claim for compensation  
 46 based on the Constitution of Maine and of the Constitution  
 of the United States;

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

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2 C. The fiscal impact on the State and its municipalities of  
any proposed legislation; and

4 D. An explanation of why legislation or further examination  
of specific laws, rules and regulations is not needed, if  
6 that recommendation is made; and be it further

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

12 **Sec. 8. Compensation; funding. Resolved:** That the members of  
the commission who are Legislators are entitled to receive the  
14 legislative per diem for each day's attendance at meetings of the  
commission. The commission may seek, receive and expend funds  
16 from sources other than the General Fund. The Executive Director  
of the Legislative Council shall administer the commission's  
18 budget; and be it further

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

24 1995-96

26 **LEGISLATURE**

28 **Study Commission on Property Rights  
and the Public Health, Safety and Welfare**

30	Personal Services	\$2,475
32	All Other	4,250

34 Provides funds for the per diem and expenses  
of legislative members and a public hearing  
36 and miscellaneous costs of the Study  
Commission on Property Rights and the Public  
38 Health, Safety and Welfare.

40 **LEGISLATURE**  
42 **TOTAL** \$6,725

44 ; and be it further

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

50 1995-96

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2 **Study Commission on Property Rights  
and the Public Health, Safety and Welfare**

4 All Other \$500

6 Allocates funds to authorize expenditures if  
8 private or public funds are received to  
10 support the activities of the Study  
Commission on Property Rights and the Public  
Health, Safety and Welfare.

12 **Emergency clause.** In view of the emergency cited in the  
14 preamble, this resolve takes effect when approved.'

16 Further amend the resolve by inserting at the end before the  
statement of fact the following:

18 **FISCAL NOTE**

20 **1995-96**

22 **APPROPRIATIONS/ALLOCATIONS**

24 General Fund \$6,275  
26 Other Funds 500

28 This resolve includes a General Fund appropriation of \$6,725  
30 in fiscal year 1995-96 for the Legislature for the per diem and  
expenses of legislative members and the public hearing and  
miscellaneous costs of the Study Commission on Property Rights  
and the Public Health, Safety and Welfare.

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

38 The minor additional costs to participate on the commission  
40 can be absorbed within the existing budgeted resources of the  
member state departments and agencies.

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

46

**STATEMENT OF FACT**

48

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2 This is the majority report of the Joint Standing Committee  
on Judiciary. This amendment replaces the bill. It establishes  
4 a Study Commission on Property Rights and Public Health, Safety  
and Welfare. The commission consists of 20 members from  
6 different backgrounds and legislative committees to provide a  
diversity of perspectives on the issues regarding private  
8 property rights protections afforded under the Constitution of  
Maine and the Constitution of the United States and the need to  
10 protect the public health, safety, welfare, communities and  
environment through laws, rules and regulations. The commission  
12 shall hold at least 3 public hearings to afford full public  
participation.

14 The commission must be convened by August 15, 1995 and shall  
submit its report, including findings, recommendations and any  
16 proposed legislation, to the Joint Standing Committee on  
Judiciary and to the Legislature by December 1, 1995.

18 The commission shall work toward a consensus report from all  
20 members to the greatest extent possible.

22 This amendment adds an appropriation section and an  
allocation section to the resolve. It also adds a fiscal note.

**COMMITTEE AMENDMENT**