

MAINE STATE LEGISLATURE

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Date: 6/9/11

L.D. 1477
(Filing No. H-600)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1086, L.D. 1477, Bill, "An Act To Protect Owners of Real Property"

Amend the bill by striking out the title and substituting the following:

'Resolve, To Review Issues Dealing with Regulatory Takings'

Amend the bill by striking out everything after the title and before the summary and inserting 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, the Committee to Review Issues Dealing with Regulatory Takings is established to study issues associated with property rights and the public welfare; and

Whereas, the study must be initiated before the 90-day period expires in order that the study may be completed and a report submitted in time for submission to the next legislative session; and

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 necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Committee established. Resolved: That the Committee to Review Issues Dealing with Regulatory Takings, referred to in this resolve as "the committee," is established; and be it further

Sec. 2. Committee membership. Resolved: That the committee consists of 13 members appointed as follows:

- 1. Three members of the Senate appointed by the President of the Senate, including at least one member from each of the 2 parties holding the largest number of seats in the Legislature;

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1 2. Four members of the House of Representatives appointed by the Speaker of the
2 House, including no more than 2 members from the party holding the largest number of
3 seats in the Legislature;

4 3. One member representing private property owners with over 100 acres of real
5 property, appointed by the President of the Senate. The President of the Senate may
6 consider recommendations made by the Maine Farm Bureau, the Maine Forest Products
7 Council and the Small Woodland Owners Association of Maine;

8 4. One member representing municipal government, appointed by the President of
9 the Senate. The President of the Senate may consider recommendations made by the
10 Maine Municipal Association;

11 5. One member representing conservation interests, appointed by the President of the
12 Senate. The President of the Senate may consider recommendations made by the Natural
13 Resources Council of Maine, the state chapter of the Nature Conservancy and Maine
14 Audubon;

15 6. One member representing the business sector, appointed by the Speaker of the
16 House. The Speaker of the House may consider recommendations from the Maine State
17 Chamber of Commerce and the Maine National Federation of Independent Business;

18 7. One member representing private attorneys who have experience practicing in the
19 subject area of takings law in the State, appointed by the Speaker of the House; and

20 8. The Attorney General or the Attorney General's designee; and be it further

21 **Sec. 3. Chairs. Resolved:** That the first-named Senate member is the Senate
22 chair and the first-named House of Representatives member is the House chair of the
23 committee; and be it further

24 **Sec. 4. Appointments; convening of committee. Resolved:** That all
25 appointments must be made no later than 30 days following the effective date of this
26 resolve. The appointing authorities shall notify the Executive Director of the Legislative
27 Council once all appointments have been completed. After appointment of all members,
28 the chairs shall call and convene the first meeting of the committee. If 30 days or more
29 after the effective date of this resolve a majority of but not all appointments have been
30 made, the chairs may request authority and the Legislative Council may grant authority
31 for the committee to meet and conduct its business; and be it further

32 **Sec. 5. Duties. Resolved:** That the committee shall study the issues associated
33 with property rights and the public welfare. In examining these issues, the committee
34 shall review whether barriers to relief from a regulatory taking currently exist. The
35 committee may, without limitation, in the course of evaluating whether such barriers
36 exist:

37 1. Review and analyze the Report of the Study Commission on Property Rights and
38 the Public Health, Safety and Welfare, completed in 1995, and the recommendations
39 made in the report;

40 2. Study the experiences of the land use mediation program, established in the Maine
41 Revised Statutes, Title 5, section 3341 by the 117th Legislature for the purpose of

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1 providing private landowners with an independent forum for mediation of governmental
2 land use actions as an alternative to court action;

3 3. Study regulatory takings legislation considered in other states, including Oregon
4 and Florida, and also states where such legislation has been considered and not adopted
5 and the experiences of landowners, municipalities, State Government and the public. The
6 committee shall evaluate fiscal, legal and policy matters raised by these laws;

7 4. Examine specific cases in which state and municipal laws, regulations, ordinances
8 and investments have affected property values in this State, both positively and
9 negatively; and

10 5. Suggest measures to mitigate and remove any barriers to relief as may be
11 identified; and be it further

12 **Sec. 6. Consideration of legislation elements. Resolved:** That the committee
13 in determining whether to recommend legislation as part of its report shall consider at
14 least the following legislation elements:

15 1. An appropriate definition of "land use regulation" that should be considered in
16 determining whether a regulatory taking has occurred;

17 2. An appropriate percentage of diminution in value to establish a compensable
18 regulatory taking;

19 3. Appropriate governmental agencies and entities to which new regulatory takings
20 standards and procedures should apply;

21 4. Whether the cumulative effect of multiple land use regulations should be
22 considered in determining whether a compensable regulatory taking has occurred;

23 5. If multiple land use regulations are cumulated to determine whether a
24 compensable regulatory taking has occurred, how compensation should be allocated
25 among the governmental agencies and entities responsible for those land use regulations;

26 6. How fair market value is established, including whether written bona fide
27 appraisals are required;

28 7. Whether property value increases resulting from land use regulations should be
29 taken into account;

30 8. An effective system for resolution of compensable regulatory takings claims,
31 including payment of compensation when appropriate, without resorting to filing a claim
32 in court;

33 9. Creation of a Superior Court cause of action seeking appropriate compensation for
34 regulatory takings, including standards for awarding damages;

35 10. The appropriateness of awarding attorney's fees and costs to a landowner or
36 governmental entity;

37 11. How to ensure that a claim for a compensable regulatory taking can proceed in a
38 timely manner without unnecessary delay based on ripeness;

39 12. Whether a new compensable regulatory takings program should be applied to
40 existing land use regulations;

1 13. Whether the "whole parcel rule" should be part of a new compensable regulatory
2 takings program;

3 14. Establishment of an appropriate statute of limitations for filing claims for
4 compensation for regulatory takings;

5 15. Whether a waiver of sovereign immunity is necessary; and

6 16. Whether a dedicated state fund should be established to pay claims for
7 compensation; and be it further

8 **Sec. 7. Staff assistance. Resolved:** That the Legislative Council shall provide
9 necessary staffing services to the committee; and be it further

10 **Sec. 8. Report. Resolved:** That, no later than December 7, 2011, the committee
11 shall submit a report that includes its findings and recommendations, including suggested
12 legislation, to the Joint Standing Committee on Judiciary. The Joint Standing Committee
13 on Judiciary may report out legislation relating to the report to the Second Regular
14 Session of the 125th Legislature.

15 **Emergency clause.** In view of the emergency cited in the preamble, this
16 legislation takes effect when approved.'

17 **SUMMARY**

18 This amendment replaces the bill with a resolve that establishes the Committee to
19 Review Issues Dealing with Regulatory Takings. The committee consists of 13 members
20 including 7 Legislators and representatives of various interested groups, appointed by the
21 President of the Senate and the Speaker of the House, and the Attorney General or the
22 Attorney General's designee.

23 The committee will study issues associated with property rights and the public
24 welfare and report to the Joint Standing Committee on Judiciary by December 7, 2011.

25 **FISCAL NOTE REQUIRED**

26 (See attached)



Approved: 06/07/11 *MAC*

125th MAINE LEGISLATURE

LD 1477

LR 1866(02)

An Act To Protect Owners of Real Property

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Legislative Cost/Study

Legislative Cost/Study

The general operating expenses of this study are projected to be \$4,690 in fiscal year 2011-12. The Legislature's proposed budget includes \$10,000 in fiscal year 2011-12 for legislative studies. Whether this amount is sufficient to fund all studies will depend on the number of studies authorized by the Legislative Council and the Legislature.

Fiscal Detail and Notes

The Department of the Attorney General can absorb the minor additional costs of participation on the study committee within existing budgeted resources.

The Legislature will be able to absorb the costs of providing staff assistance to the study committee during the interim between legislative sessions.