

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

SMA  
R OF S

MAJ

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

Date: 4/6/12

majority

L.D. 1810  
(Filing No. H- 921)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
125TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1334, L.D. 1810, Bill, "An Act To Implement Recommendations of the Committee To Review Issues Dealing with Regulatory Takings"

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

'An Act To Provide Ongoing Review of the Effectiveness and Fairness of Land Use Laws and Rules'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 1 MRSA c. 22 is enacted to read:

CHAPTER 22

LAND USE MEDIATION PROGRAM

§831. Land use mediation program

1. Program established. The land use mediation program is established to provide eligible private landowners with a prompt, independent, inexpensive and local forum for mediation of governmental land use actions as an alternative to court action. State agencies with responsibilities for land use laws shall assist in promoting awareness of the program.

2. Provision of mediation services; forms, filing and fees. The Court Alternative Dispute Resolution Service created in Title 4, section 18-B shall provide mediation services under this chapter. The Court Alternative Dispute Resolution Service shall:

A. Assign mediators under this chapter who are knowledgeable in land use regulatory issues and environmental law;

B. Establish a simple and expedient application process. Not later than January 10th of each year, the Court Alternative Dispute Resolution Service shall send a copy of each completed application received and each agreement signed during the previous

**COMMITTEE AMENDMENT**

1 calendar year to the chairs of the joint legislative committee created to review  
2 effectiveness and fairness of land use laws and rules under Title 3, chapter 39; and

3 C. Establish a fee for services in an amount not to exceed \$175 for every 4 hours of  
4 mediation services provided. In addition, the landowner is responsible for the costs of  
5 providing notice as required under subsection 8.

6 **3. Application; eligibility.** A landowner may apply for mediation under this chapter  
7 if that landowner:

8 A. Has suffered significant harm as a result of a governmental action regulating land  
9 use;

10 B. Applies for mediation under subsection 4 within the time allowed under law or  
11 rules of the court for filing for judicial review of that governmental action;

12 C. Has:

13 (1) For mediation of municipal governmental land use action, sought and failed  
14 to obtain a permit, variance or special exception and has pursued all reasonable  
15 avenues of administrative appeal; or

16 (2) For mediation of state governmental land use action, sought and failed to  
17 obtain governmental approval for a land use of that landowner's land and has a  
18 right to judicial review under Title 5, section 11001 either due to a final agency  
19 action or the failure or refusal of an agency to act; and

20 D. Submits to the Superior Court clerk all necessary fees at the time of application.

21 **4. Submission of application for mediation.** A landowner may apply for mediation  
22 under this chapter by filing an application for mediation with the Superior Court clerk in  
23 the county in which the land that is the subject of the conflict is located. The Superior  
24 Court clerk shall forward the application to the Court Alternative Dispute Resolution  
25 Service. The Court Alternative Dispute Resolution Service shall make available online  
26 brochures about the land use mediation program and applications for landowner  
27 participation in the land use mediation program.

28 **5. Agency responsibilities; publicity.** State agencies that administer land use laws  
29 shall provide information about the land use mediation program, along with the right of  
30 appeal, when making regulatory decisions, including any decisions that deny approval of  
31 a permit application or license. The special advocate appointed by the Secretary of State  
32 pursuant to Title 5, section 90-P shall provide the land use mediation program brochure to  
33 businesses that are pursuing permit applications with state agencies. State agencies that  
34 administer land use laws and the Court Alternative Dispute Resolution Service shall  
35 ensure that information about the land use mediation program is available in an electronic  
36 format on agency publicly accessible websites.

37 **6. Stay of filing period.** Notwithstanding any other provision of law, the period of  
38 time allowed by law or by rules of the court for any person to file for judicial review of  
39 the governmental action for which mediation is requested under this chapter is stayed for  
40 30 days beyond the date the mediator files the report required under subsection 13 with  
41 the Superior Court clerk, but in no case longer than 120 days from the date the landowner  
42 files the application for mediation with the Superior Court clerk.

ROFS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

**7. Purpose; conduct of mediation.** The purpose of a mediation under this chapter is to facilitate, within existing land use laws, ordinances and rules, a mutually acceptable solution to a conflict between a landowner and a governmental entity regulating land use. The mediator, whenever possible and appropriate, shall conduct the mediation in the county in which the land that is the subject of the conflict is located. When mediating that solution, the mediator shall balance the need for public access to proceedings with the flexibility, discretion and private caucus techniques required for effective mediation.

**8. Schedule; notice; participants.** The mediator is responsible for scheduling all mediation sessions. The mediator shall provide a list of the names and addresses and a copy of the notice of the mediation schedule to the Superior Court clerk, who shall mail the notices. The mediator shall include on the list persons identified in the following ways.

A. The landowner and the governmental entity shall provide to the mediator the names and addresses of the parties, intervenors and other persons who significantly participated in the underlying governmental land use action proceedings.

B. Any other person who believes that that person's participation in the mediation is necessary may file a request with the mediator to be included in the mediation.

C. The mediator shall determine if any other person's participation is necessary for effective mediation.

**9. Parties to mediation.** A mediator shall include in the mediation process any person the mediator determines is necessary for effective mediation, including persons representing municipal, county or state agencies and abutters, parties, intervenors or other persons significantly involved in the underlying governmental land use action. A mediator may exclude or limit a person's participation in mediation when the mediator determines that exclusion or limitation necessary for effective mediation. This subsection does not require a municipality to participate in mediation under this chapter.

**10. Sharing of costs.** Participants in the mediation may share the cost of mediation after the initial 4 hours of mediation services have been provided.

**11. Admissibility.** The admissibility in court of conduct or statements made during mediation, including offers of settlement, is governed by the Maine Rules of Evidence, Rule 408(a) for matters subsequently heard in a state court and Federal Rules of Evidence, Rule 408 for matters subsequently heard in a federal court.

**12. Agreements.** A mediated agreement must be in writing. The landowner, the governmental entity and all other participants who agree must sign the agreement as participants and the mediator must sign as the mediator.

A. An agreement that requires any additional governmental action is not self-executing. If any additional governmental action is required, the landowner is responsible for initiating that action and providing any additional information reasonably required by the governmental entity to implement the agreement. The landowner must notify the governmental entity in writing within 30 days, after the mediator files the mediator's report under subsection 13, that the landowner will be taking action in accordance with the agreement.

ROFS

1 B. Notwithstanding any procedural restriction that would otherwise prevent  
2 reconsideration of the governmental action, a governmental entity may reconsider its  
3 decision in the underlying governmental land use action in accordance with the  
4 agreement as long as that reconsideration does not violate any substantive application  
5 or review requirement.

6 13. Mediator's report. Within 90 days after the landowner files an application for  
7 mediation, the mediator shall file a report with the Superior Court clerk. The mediator  
8 shall file the report as soon as possible if the mediator determines that a mediated  
9 agreement is not possible. The report must contain:

10 A. The names of the mediation participants, including the landowner, the  
11 governmental entity and any other persons;

12 B. The nature of any agreements reached during the course of mediation, which  
13 mediation participants were parties to the agreements and what further action is  
14 required of any person;

15 C. The nature of any issues remaining unresolved and the mediation participants  
16 involved in those unresolved issues; and

17 D. A copy of any written agreement under subsection 12.

18 **Sec. 2. 2 MRSA §8**, as amended by PL 2001, c. 184, §1, is further amended to  
19 read:

20 **§8. Land use mediation; obligation to participate**

21 Agencies within the executive branch shall participate in mediation under Title 5,  
22 ~~chapter 314, subchapter II 1, chapter 22~~, when requested to participate by the Court  
23 Alternative Dispute Resolution Service.

24 **Sec. 3. 3 MRSA c. 39** is enacted to read:

25 **CHAPTER 39**

26 **REGULATORY FAIRNESS REVIEW**

27 **§1101. Committee on regulatory fairness**

28 1. Committee defined. "Committee" means a joint legislative committee  
29 established by joint rule of the Legislature to provide a forum for ongoing legislative  
30 review of the effectiveness and fairness of land use laws and rules.

31 2. Membership. The membership of the committee and the selection of chairs are  
32 established by joint rule of the Legislature. The President of the Senate and the Speaker  
33 of the House may use the following as guidance for appointing members to the  
34 committee:

35 A. The Senate chair, the House chair, the ranking minority Senate member and the  
36 ranking minority House member of the joint standing committee of the Legislature  
37 having jurisdiction over environment and natural resources matters;

- 1           B. The Senate chair, the House chair, the ranking minority Senate member and the
- 2           ranking minority House member of the joint standing committee of the Legislature
- 3           having jurisdiction over agriculture, conservation and forestry matters;
- 4           C. The Senate chair, the House chair, the ranking minority Senate member and the
- 5           ranking minority House member of the joint standing committee of the Legislature
- 6           having jurisdiction over judiciary matters;
- 7           D. One additional member of the Senate, appointed by the President of the Senate;
- 8           and
- 9           E. One additional member of the House, appointed by the Speaker of the House.
- 10          3. Meetings. The committee shall meet at least 2 times a year and as needed to
- 11          fulfill its responsibilities. A meeting may be called by the chairs or by any 4 members.
- 12          4. Duties and powers. The committee:
- 13           A. Shall conduct public meetings to obtain information concerning the effectiveness
- 14           and efficiency of rules affecting land use, including specific information on laws and
- 15           rules that may have resulted in more than a minor reduction in the economically
- 16           beneficial or productive uses of land. The primary focus of such review must be on
- 17           laws and rules that have been adopted within the previous 3 years;
- 18           B. Shall request from relevant state agencies the purpose and background
- 19           surrounding any law or rule alleged to have resulted in more than a minor reduction
- 20           in the economically beneficial or productive uses of land, including but not limited to
- 21           any major substantive rule to be submitted to the Legislature pursuant to Title 5,
- 22           section 8072, and any information the agency has about the specific application of the
- 23           law or rule in question, including any benefit-cost analysis conducted by the agency
- 24           pursuant to Title 5, section 8063-A, and any other data that would assist the
- 25           committee in reviewing the benefits and costs of the law or rule;
- 26           C. Shall receive and review information from the Office of the Attorney General
- 27           regarding activities of the Attorney General, pursuant to Title 5, section 8056,
- 28           subsection 6, to review proposed rules to determine whether they may reasonably be
- 29           expected to result in a taking of private property under the Constitution of Maine,
- 30           including whether the rules provide sufficient variance provisions to avoid such a
- 31           taking;
- 32           D. Shall review information about the land use mediation program pursuant to Title
- 33           1, chapter 22, including information about completed applications received and each
- 34           agreement signed during the previous calendar year;
- 35           E. Shall solicit input from organizations that may be interested in providing input to
- 36           the committee, including but not limited to organizations that represent small farmers
- 37           and woodlot owners;
- 38           F. May develop recommendations for changes in land use laws and rules and refer
- 39           such recommendations, with supporting documentation, to the joint standing
- 40           committee of the Legislature with appropriate jurisdiction, including any
- 41           recommendations that further analysis of benefits and costs, pursuant to Title 5,
- 42           section 8063-A, be conducted by the relevant state agency. A joint standing

1 committee of the Legislature that receives a recommendation from the committee  
 2 may submit a bill for subsequent reference and public hearing;

3 G. May make recommendations to the joint standing committee of the Legislature  
 4 with appropriate jurisdiction regarding major substantive rules, pursuant to Title 5,  
 5 section 8072, as appropriate; and

6 H. May undertake other activities consistent with its listed responsibilities under this  
 7 subsection.

8 **5. Information protocol.** The committee shall develop a user-friendly form that  
 9 may be used by members of the public to assist the committee in understanding the  
 10 history, land use issues, regulatory impacts and agency interactions associated with cases  
 11 presented to the committee. Completed forms and associated documents submitted to the  
 12 committee are public records.

13 **6. Staffing.** Based on available resources, the Legislative Council shall provide staff  
 14 support for the committee.

15 **Sec. 4. 4 MRSA §18-B, sub-§10,** as amended by PL 2001, c. 184, §2, is further  
 16 amended to read:

17 **10. Land use mediation.** The land use mediation program is a program within the  
 18 Court Alternative Dispute Resolution Service.

19 A. The Director of the Court Alternative Dispute Resolution Service shall administer  
 20 the land use mediation program established in Title 5, ~~chapter 314, subchapter H 1,~~  
 21 chapter 22.

22 B. A land use mediation fund is established as a nonlapsing, dedicated fund within  
 23 the Administrative Office of the Courts. Fees collected for mediation services  
 24 pursuant to Title 5, ~~chapter 314, subchapter H 1, chapter 22~~ must be deposited in the  
 25 fund. The Administrative Office of the Courts shall use the resources in the fund to  
 26 cover the costs of providing mediation services as required under Title 5, ~~chapter 314,~~  
 27 subchapter H 1, chapter 22.

28 **Sec. 5. 5 MRSA c. 314, sub-c. 2,** as amended, is repealed.

29 **Sec. 6. 5 MRSA §8056, sub-§6,** as amended by PL 1995, c. 537, §6, is further  
 30 amended to read:

31 **6. Attorney General review and approval.** The review required in subsection 1  
 32 may not be performed by any person involved in the formulation or drafting of the  
 33 proposed rule. The Attorney General may not approve a rule if it is reasonably expected  
 34 to result in a taking of private property under the Constitution of Maine unless such a  
 35 result is directed by law or sufficient procedures exist in law or in the proposed rule to  
 36 allow for a variance designed to avoid such a taking. By December 15th of each year, the  
 37 Attorney General shall provide to the joint legislative committee created to review  
 38 effectiveness and fairness of land use laws and rules under Title 3, chapter 39 a copy of  
 39 each proposed rule reviewed under this subsection that was the subject of public  
 40 comment suggesting either that the rule might result in a potential taking of real property  
 41 under the Constitution of Maine or that a variance was necessary to avoid such a taking.





ROFS

COMMITTEE AMENDMENT "A" to H.P. 1334, L.D. 1810

1 State agencies that administer land use laws and the Court Alternative Dispute Resolution  
2 Service must ensure that information about the land use mediation program is available in  
3 an electronic format on agency publicly accessible websites.

4 The amendment also adds an appropriations and allocations section.

5 **FISCAL NOTE REQUIRED**

6 **(See attached)**



# 125th MAINE LEGISLATURE

LD 1810

LR 2684(02)

## An Act To Provide Ongoing Review of the Effectiveness and Fairness of Land Use Laws and Rules

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-921)

Committee: Judiciary

Fiscal Note Required: Yes

### Fiscal Note

#### Legislative Cost/Study

Potential current biennium cost increase - General Fund

Potential current biennium cost increase - Highway Fund

	FY 2011-12	FY 2012-13	Projections FY 2013-14	Projections FY 2014-15
<b>Net Cost (Savings)</b>				
General Fund	\$0	\$20,693	\$43,474	\$45,632
<b>Appropriations/Allocations</b>				
General Fund	\$0	\$20,693	\$43,474	\$45,632

#### Legislative Cost/Study

The estimated cost for 2 interim meetings of this committee are projected to be \$5,000 annually beginning in fiscal year 2012-13. If additional meetings are held the estimated cost for each additional meeting is \$2,500. The Legislature's proposed budget includes \$10,000 in fiscal year 2012-13 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.

This bill also includes a General Fund appropriation of \$20,693 in fiscal year 2012-13 to increase a part-time Legislative Analyst position to full-time effective January 1, 2013 in order to provide the required staffing to the new legislative committee. The General Fund costs for the position change increase to \$43,474 in fiscal year 2013-14 and \$45,632 in fiscal year 2014-15.

#### Fiscal Detail and Notes

This legislation creates a process for landowner relief related to regulatory takings. Depending upon the number or extent of any lawsuits filed, both General Fund and Highway Fund costs could be increased as a result of any payments to landowners. The additional costs to the Judicial Department can be absorbed utilizing existing budgeted resources.