

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1450

S.P. 532

In Senate, April 24, 2013

An Act To Connect the Citizens of the State to the State's Natural Resources by Establishing Standards for Relief from Regulatory Burdens

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator COLLINS of York.
Cosponsored by Representative CHASE of Wells and
Senators: THIBODEAU of Waldo, THOMAS of Somerset, Representatives: GILLWAY of
Searsport, KINNEY of Limington, LIBBY of Waterboro, NUTTING of Oakland, PARRY of
Arundel, POWERS of Naples.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **PART A**

3 **Sec. A-1. 1 MRSA c. 22-A** is enacted to read:

4 **CHAPTER 22-A**

5 **REGULATORY TAKINGS**

6 **§851. Definitions**

7 As used in this chapter, unless the context otherwise indicates, the following terms
8 have the following meanings.

9 **1. Affiliate.** "Affiliate" means a legal person that is related to another corporation by
10 one owning shares of the other, by common ownership or by other means of control.

11 **2. Fact finder.** "Fact finder" means a jury or, if the right to a jury is waived, the
12 court.

13 **3. Property owner.** "Property owner" means the holder of legal or equitable title to
14 an interest in real property. "Property owner" does not include a governmental entity.

15 **4. Real property.** "Real property" means land and any appurtenances or
16 improvements to the land.

17 **5. Regulation.** "Regulation" means any law, rule, ordinance or other governmental
18 limitation imposed by the State or a state agency on the use of real property.

19 **6. Regulatory taking.** "Regulatory taking" means a burden caused by regulation
20 imposed on a property owner's use of the property owner's real property resulting in a
21 diminution in fair market value of 50% or greater.

22 **7. Underlying governmental land use action.** "Underlying governmental land use
23 action" means a regulatory proceeding preceding mediation pursuant to section 831 in
24 which a property owner seeks and fails to obtain governmental approval for a use of that
25 property owner's real property and in which the property owner has a right to judicial
26 review under Title 5, section 11001 due to either a final agency action or the failure or
27 refusal of an agency to act.

28 **§852. Right to jury trial**

29 There is a right to trial by jury in any action brought under this chapter.

30 **§853. When a regulatory taking occurs**

31 If the right to use, divide, sell, occupy or possess real property is reduced by the
32 enactment or application of any regulation, the property owner may seek relief in
33 accordance with the provisions of this chapter.

1 **1. Determination.** A property owner is entitled to a determination by the fact finder
2 as to whether a regulatory taking has occurred upon the submission of prima facie
3 evidence, supported by a professional appraisal, of a diminution in the fair market value
4 of real property of 50% or greater caused by regulation.

5 **2. Factors to be weighed.** After a prima facie showing has been made under
6 subsection 1, in determining whether a regulatory taking has in fact occurred, the fact
7 finder shall weigh 3 factors:

8 A. The extent of the diminution in fair market value of the real property caused by
9 the regulation;

10 B. The reasonable investment-backed expectations of the property owner at the time
11 of acquisition or immediately prior to the implementation of the regulation at issue,
12 whichever is later, under the regulations then in effect and under common law; and

13 C. The character of the use regulated.

14 **3. Cause of action cumulative.** This section provides a cause of action for
15 governmental actions that do not rise to the level of a taking under the Constitution of
16 Maine or the United States Constitution. The remedies provided under this section are
17 cumulative and do not abrogate any other remedy lawfully available, including any
18 remedy lawfully available for governmental actions that rise to the level of a taking under
19 the Constitution of Maine or the United States Constitution.

20 **§854. Entire parcel**

21 For the purposes of this chapter, the diminution of fair market value of real property
22 caused by a regulation must be measured by the diminution of the fair market value of the
23 entire contiguous parcel owned in whole or in part by the property owner and its affiliates
24 and not merely the portion of any such parcel to which the regulation directly applies. A
25 property owner whose entire contiguous parcel, along with that of its affiliates, has not
26 been diminished by at least 50% is not entitled to relief under this chapter.

27 **§855. Excluded regulations**

28 The cause of action established under section 853 does not apply to the following
29 regulations, narrowly construed:

30 **1. Nuisance.** Regulations restricting or prohibiting activities recognized as public
31 nuisances under common law;

32 **2. Public health and safety.** Regulations restricting or prohibiting activities for the
33 protection of public health and safety, such as fire and building codes and health and
34 sanitation regulations;

35 **3. Compliance with federal law.** Regulations required to comply with federal law;
36 and

37 **4. Prospective application.** Regulations enacted prior to August 1, 2014.

1 **§856. Relief**

2 Damages are available as relief for a regulatory taking. The fact finder shall award
3 the property owner an amount it determines comprises the diminution in fair market value
4 caused by regulation, and title in the real property remains with the property owner.
5 Payment of damages pursuant to this section operates to grant to and vest in the State the
6 right to enforce the regulation as to the real property. Damages are limited to damages
7 pursuant to Title 14, section 8105, subsection 1.

8 **§857. Limitations**

9 **1. Time period to sue.** An action or proceeding may not be brought or maintained
10 under section 853 unless commenced within 3 years after the cause of action first accrues.

11 **2. Accrual.** A cause of action accrues on the date that regulation first limits the use
12 of the real property that a property owner claims has been subject to a regulatory taking.

13 **3. Multiple regulations.** If an action under section 853 is based on the cumulative
14 impact of multiple regulations, each regulation must have been enacted after the effective
15 date of this chapter.

16 **4. Tolling.** The limitations period is tolled during the period of mandatory mediation
17 under section 859 and during the period of any relevant underlying governmental land
18 use action and appeal thereof pursuant to Title 5, section 11001. If a settlement does not
19 result from mandatory mediation under section 859, the limitations period is tolled for the
20 period ending on the March 15th first occurring after the Attorney General submits the
21 report required under section 859, subsection 8.

22 **§858. Municipal mandates**

23 **1. Municipal regulation required by State.** If a state regulation requires a
24 municipality to enact regulation, the municipality may not be held liable under this
25 chapter for any regulation it enacts pursuant to that regulation. Such regulation must
26 instead be deemed state regulation for which only the State may be held liable. If the
27 municipality expressly provides in its enactment of the mandated regulation that it
28 endorses the regulation, the regulation must be considered municipal regulation and not
29 actionable as state regulation under this chapter.

30 **2. Municipal immunity.** A municipality is immune from any liability under this
31 chapter for any application of a regulation, state mandated or otherwise, and may not be
32 considered a necessary or proper party in any mediation or action under this chapter,
33 although the municipality may participate in mediation or an action under section 853, if
34 and only to the degree it chooses.

35 **3. Appearance costs.** Any party in an action under this chapter who for whatever
36 reason calls a municipal officer, employee or representative as a witness or deponent, or
37 otherwise seeks action from the municipality, such as the production of documents, shall
38 compensate the municipality for its actual costs in responding, as determined by the
39 court.

1 **§859. Mandatory mediation**

2 **1. Commencement.** Prior to filing an action pursuant to section 853, a property
3 owner must pursue relief under the land use mediation program established under section
4 831, except as provided in this section.

5 **2. Application.** The application of the property owner for mediation must include a
6 professional appraisal indicating a 50% or greater diminution in value of real property
7 caused by a regulation or regulations enacted after the effective date of this chapter. By
8 applying for mediation, the property owner consents to grant the mediator and the State
9 reasonable access to the real property with advance notice at a time and in a manner
10 acceptable to the property owner.

11 **3. Ripeness.** Unless the impact of a regulation on the real property clearly and
12 unequivocally in its terms acts as a 50% diminution in value of the real property, a
13 property owner must seek a formal denial of a written request for development or
14 variance in an underlying governmental land use action before the property owner may
15 commence mediation. The findings made in such an underlying governmental land use
16 action are not admissible and have no estoppel effect in an action pursuant to section 853.
17 The property owner may, but need not, appeal the underlying governmental action under
18 Title 5, section 11001 in order to make either the application for mediation or an action
19 pursuant to section 853 ripe, and mediation must be tolled during the period any such
20 appeal is pending.

21 A property owner may only seek to mediate and thereafter pursue a claim under section
22 853 when a regulation affects a use existing on the real property at the time the regulation
23 is enacted or a reasonably foreseeable, nonspeculative use that is suitable for the subject
24 real property and is compatible with adjacent land uses. A use is reasonably foreseeable
25 if there is evidence that the property owner intended in fact to develop that use or a
26 similar use of similar intensity.

27 **4. Notice.** All abutters to the property that the property owner claims has been taken,
28 as well as any participant in any relevant underlying governmental land use action must
29 be notified by the property owner of the commencement of mediation under section 831,
30 subsection 8. Notice must be made by sending a copy of the mediation application by
31 United States mail or hand delivery at the address on the latest property tax roll.

32 **5. Identification of allowed uses; settlement offer.** If the State has not previously
33 identified in any preceding underlying governmental land use action what land uses, if
34 any, it will permit the owner to carry out on the real property that the property owner
35 claims has been taken, the State shall do so in the mediation. Additionally, the State may
36 present a written settlement offer to:

37 A. Swap or exchange real property;

38 B. Accept mitigation, including payments in lieu of on-site mitigation;

39 C. Accept location of development on the least sensitive portion of the regulated real
40 property; or

1 D. Purchase the real property, or an interest in the real property or a portion of the
2 real property, or pay compensation.

3 If the State chooses, it may submit in an action under section 853 the list of identified
4 allowed uses it previously provided the property owner and the content of any settlement
5 offer previously proposed by the State, and it may ask the fact finder to determine
6 whether a regulatory taking would be averted by the allowance of such previously
7 identified uses or the terms of the settlement offer. If the jury so finds, the State may, if it
8 chooses, allow the previously identified uses or terms of the settlement offer in lieu of
9 damages as relief.

10 **6. Timing.** The schedule to be followed in the mediation must be set by the
11 mediator, but mediation must be completed no later than one year after the property
12 owner applies for mediation, unless the State and the property owner agree to an
13 extension.

14 **7. Execution of settlement.** A settlement reached pursuant to mediation must be
15 formalized in writing and self-executing, and sovereign immunity to enforce a settlement
16 against the State is waived.

17 **8. Failure to reach settlement.** If a property owner and the State fail to agree to a
18 settlement during the mandatory mediation process, the property owner shall notify the
19 Office of the Attorney General. The Office of the Attorney General shall catalog this
20 information and present it to the joint legislative committee created to review
21 effectiveness and fairness of land use laws and rules under Title 3, chapter 39 by January
22 15th of each year. If mediation fails to produce a settlement, the property owner may file
23 an action against the State under section 853 beginning on the March 15th after the
24 Attorney General has reported the failure under this subsection. If during mediation the
25 State makes a bona fide settlement offer and the owner rejects that offer and proceeds to
26 file a claim under section 853, the property owner is liable for the costs and fees of the
27 State from the point in time of rejection of the State's bona fide settlement offer until
28 resolution of the claim under section 853 as long as the resolution of the claim under
29 section 853 is either a finding of no taking or the damages awarded under the claim under
30 section 853 are of a smaller dollar value than that contained in the State's bona fide
31 settlement offer.

32 **9. Fees.** The cost of the mediation is as set forth in section 831, supplemented by an
33 administrative fee to be determined by the judicial branch.

34 **§860. Attorney's fees and costs**

35 In an action brought under section 853, the prevailing party is, at the discretion of the
36 court, entitled to reasonable attorney's fees and costs. The court may at its discretion also
37 award to either party attorney's fees and costs for the mediation if it concludes that the
38 State did not make or the property owner did not accept a bona fide settlement offer in the
39 mediation.

40 **Sec. A-2. Judicial branch report on case load.** The judicial branch shall
41 compile information regarding the number of cases filed in state courts pursuant to the
42 Maine Revised Statutes, Title 1, section 853. This information must include whether the

1 cases at issue involve only a cause of action under Title 1, section 853 or whether these
2 cases involve multiple causes of action, including a cause of action under Title 1, section
3 853. The judicial branch shall submit this information to the joint standing committee of
4 the Legislature having jurisdiction over judiciary matters no later than February 1, 2015
5 and every 2 years thereafter.

6 **PART B**

7 **Sec. B-1. 1 MRSA c. 22** is enacted to read:

8 **CHAPTER 22**

9 **LAND USE MEDIATION PROGRAM**

10 **§831. Land use mediation program**

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

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

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

21 B. Establish a simple and expedient application process. Not later than January 10th
22 of each year, the Court Alternative Dispute Resolution Service shall send a copy of
23 each completed application received and each agreement signed during the previous
24 calendar year to the chairs of the joint legislative committee created to review
25 effectiveness and fairness of land use laws and rules under Title 3, chapter 39; and

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

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

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

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

35 C. Has:

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

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

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

6 **4. Submission of application for mediation.** A landowner may apply for mediation
7 under this chapter by filing an application for mediation with the Superior Court clerk in
8 the county in which the land that is the subject of the conflict is located. The Superior
9 Court clerk shall forward the application to the Court Alternative Dispute Resolution
10 Service. The Court Alternative Dispute Resolution Service shall make available online
11 brochures about the land use mediation program and applications for landowner
12 participation in the land use mediation program.

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

22 **6. Stay of filing period.** Notwithstanding any other provision of law, the period of
23 time allowed by law or by rules of the court for any person to file for judicial review of
24 the governmental action for which mediation is requested under this chapter is stayed for
25 30 days beyond the date the mediator files the report required under subsection 13 with
26 the Superior Court clerk, but in no case longer than 120 days from the date the landowner
27 files the application for mediation with the Superior Court clerk.

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

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

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

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

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

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

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

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

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

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

28 B. Notwithstanding any procedural restriction that would otherwise prevent
29 reconsideration of the governmental action, a governmental entity may reconsider its
30 decision in the underlying governmental land use action in accordance with the
31 agreement as long as that reconsideration does not violate any substantive application
32 or review requirement.

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

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

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

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

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

4 **Sec. B-2. 2 MRSA §8**, as amended by PL 2001, c. 184, §1, is further amended to
5 read:

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

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

10 **Sec. B-3. 3 MRSA c. 39** is enacted to read:

11 **CHAPTER 39**

12 **REGULATORY FAIRNESS REVIEW**

13 **§1101. Committee on regulatory fairness**

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

17 **2. Membership.** The membership of the committee and the selection of chairs are
18 established by joint rule of the Legislature. The President of the Senate and the Speaker
19 of the House may use the following as guidance for appointing members to the
20 committee:

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

24 B. The Senate chair, the House chair, the ranking minority Senate member and the
25 ranking minority House member of the joint standing committee of the Legislature
26 having jurisdiction over agriculture, conservation and forestry matters;

27 C. The Senate chair, the House chair, the ranking minority Senate member and the
28 ranking minority House member of the joint standing committee of the Legislature
29 having jurisdiction over judiciary matters;

30 D. One additional member of the Senate, appointed by the President of the Senate;
31 and

32 E. One additional member of the House, appointed by the Speaker of the House.

33 **3. Meetings.** The committee shall meet at least 2 times a year and as needed to
34 fulfill its responsibilities. A meeting may be called by the chairs or by any 4 members.

35 **4. Duties and powers.** The committee:

- 1 A. Shall conduct public meetings to obtain information concerning the effectiveness
2 and efficiency of rules affecting land use, including specific information on laws and
3 rules that may have resulted in more than a minor reduction in the economically
4 beneficial or productive uses of land. The primary focus of such review must be on
5 laws and rules that have been adopted within the previous 3 years;
- 6 B. Shall request from relevant state agencies the purpose and background
7 surrounding any law or rule alleged to have resulted in more than a minor reduction
8 in the economically beneficial or productive uses of land, including but not limited to
9 any major substantive rule to be submitted to the Legislature pursuant to Title 5,
10 section 8072, and any information the agency has about the specific application of the
11 law or rule in question, including any benefit-cost analysis conducted by the agency
12 pursuant to Title 5, section 8063-A, and any other data that would assist the
13 committee in reviewing the benefits and costs of the law or rule;
- 14 C. Shall receive and review information from the Office of the Attorney General
15 regarding activities of the Attorney General, pursuant to Title 5, section 8056,
16 subsection 6, to review proposed rules to determine whether they may reasonably be
17 expected to result in a taking of private property under the Constitution of Maine,
18 including whether the rules provide sufficient variance provisions to avoid such a
19 taking;
- 20 D. Shall review information about the land use mediation program pursuant to Title
21 1, chapter 22, including information about completed applications received and each
22 agreement signed during the previous calendar year;
- 23 E. Shall solicit input from organizations that may be interested in providing input to
24 the committee, including but not limited to organizations that represent small farmers
25 and woodlot owners;
- 26 F. May develop recommendations for changes in land use laws and rules and refer
27 such recommendations, with supporting documentation, to the joint standing
28 committee of the Legislature with appropriate jurisdiction, including any
29 recommendations that further analysis of benefits and costs, pursuant to Title 5,
30 section 8063-A, be conducted by the relevant state agency. A joint standing
31 committee of the Legislature that receives a recommendation from the committee
32 may submit a bill for subsequent reference and public hearing;
- 33 G. May make recommendations to the joint standing committee of the Legislature
34 with appropriate jurisdiction regarding major substantive rules, pursuant to Title 5,
35 section 8072, as appropriate;
- 36 H. Shall receive and review information from the Office of the Attorney General
37 regarding claims in the past year that were not successfully resolved pursuant to Title
38 1, section 859 and whose claimants are allowed to proceed to litigation pursuant to
39 Title 1, section 859, subsection 8. Upon receipt of this information, the committee
40 may report out legislation to amend the underlying law or to direct the relevant
41 agency to amend the underlying rule in such a way that the complaining property
42 owner no longer suffers a 50% diminution in real property value. If a new law or
43 resolve takes effect that ensures that the complaining property owner no longer

1 suffers a 50% diminution in real property value, that property owner no longer has a
2 valid claim under Title 1, section 853;

3 I. Shall undertake a review of Title 1, chapter 22 by February 15, 2018 and every 5
4 years thereafter. The review must include an assessment of the number of mediations
5 entered into by the State, the number of claims filed in court and the costs of the land
6 use mediation program under Title 1, chapter 22 to the State in terms of both
7 administration and damages awarded to property owners. Based upon this review,
8 the committee may recommend legislation that amends or repeals Title 1, chapter 22
9 to the joint standing committee of the Legislature having jurisdiction over judiciary
10 matters, which may report out legislation based on the committee's
11 recommendations; and

12 J. May undertake other activities consistent with its listed responsibilities under this
13 subsection.

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

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

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

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

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

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

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

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

37 **6. Attorney General review and approval.** The review required in subsection 1
38 may not be performed by any person involved in the formulation or drafting of the
39 proposed rule. The Attorney General may not approve a rule if it is reasonably expected
40 to result in a taking of private property under the Constitution of Maine unless such a

1 result is directed by law or sufficient procedures exist in law or in the proposed rule to
2 allow for a variance designed to avoid such a taking. By December 15th of each year, the
3 Attorney General shall provide to the joint legislative committee created to review
4 effectiveness and fairness of land use laws and rules under Title 3, chapter 39 a copy of
5 each proposed rule reviewed under this subsection that was the subject of public
6 comment suggesting either that the rule might result in a potential taking of real property
7 under the Constitution of Maine or that a variance was necessary to avoid such a taking.

8 **SUMMARY**

9 This bill establishes standards for relief when state regulation imposes an inordinate
10 burden on an individual property owner, as well as efficient mechanisms for pursuit of
11 such relief. The bill provides that, if a property owner's right to use, divide, sell, occupy
12 or possess real property is reduced by the enactment or application of a government
13 regulation, the property owner may seek and obtain relief. Under the provisions of the
14 bill, prior to filing an action, the property owner must pursue relief under a land use
15 mediation program.