

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 1994 to June 30, 1995

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 29, 1995

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4

J.S. McCarthy Company
Augusta, Maine
1995

Transfer from Surplus	155,985
Total Available Credits	1,150,043
Amount to be raised by taxation	\$4,464,585

; and be it further

Sec. 4. County fiscal year. Resolved: That the county commissioners shall prepare and submit a county budget for 1996 that changes the county from a calendar fiscal year to a fiscal year of July 1st to June 30th. The county commissioners shall submit a budget for the period January 1, 1996 to June 30, 1997. Thereafter, the county commissioners shall prepare and submit budgets for a fiscal year of July 1st to June 30th; and be it further

Sec. 5. County legal services. Resolved: That the county commissioners shall prepare and request proposals in 1995 for future legal services for the county. A list of the names of attorneys and firms who submitted proposals, a summary of their bid prices and the name of the firm or attorney selected must be provided to the county legislative delegation with the 1996 budget document; and be it further

Sec. 6. County health insurance coverage. Resolved: That the county commissioners shall request proposals in 1995 from health insurance providers to provide health insurance coverage and benefits for county employees now eligible for health insurance benefits. A list of the names of insurance providers who submitted proposals, a summary of their bid prices and the name of the insurance provider selected must be provided to the county legislative delegation with the 1996 budget document; and be it further

Sec. 7. County manager recommendations. Resolved: That the county commissioners shall provide to the county legislative delegation with the 1996 budget a recommendation, including appropriate budget allocations, for a county manager's position. This recommendation must include written language describing the duties, responsibilities and authority of the manager. All allocations of funds for the county manager's position must be offset by equal reductions in allocations in other parts of the county budget. To achieve this goal the county commissioners may combine, eliminate or redefine existing positions to the extent allowed by existing law. This recommendation does not require the establishment of a county manager's position.

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

Effective June 30, 1995.

CHAPTER 45

H.P. 867 - L.D. 1217

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

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

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

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

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

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. 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 further

Sec. 2. Membership. Resolved: That the commission consists of 24 members appointed as follows:

1. The Governor or the Governor's designee;
2. The Attorney General, or the Attorney General's designee;
3. Two representatives of municipal government, appointed by the Governor. The Governor shall consider recommendations made by the Maine Municipal Association;
4. Three representatives of conservation interests, appointed by the Speaker of the House of Representatives. The Speaker of the House of Representatives may consider recommendations made by conservation commissions and organizations, lake associations and watershed districts;
5. Three members representing private property owners, appointed by the President of the Senate. The President of the Senate may consider recommendations made by the Maine Farm Bureau Association, the Maine Forest Products Council and the Maine Association of Realtors;
6. One member representing the business community, appointed by the Governor. The Governor may consider recommendations made by the Maine Alliance and the Maine Chamber of Commerce and Industry.
7. Five members of the Joint Standing Committee on Judiciary, appointed jointly by the Senate Chair and the House Chair. The 5 members of the Judiciary Committee shall choose from one of its members to serve as chair of the commission; and
8. Two members of the Joint Standing Committee on Natural Resources, 2 members of the Joint Standing Committee on Agriculture, Conservation and Forestry, 2 members of the Joint Standing Committee on State and Local Government and 2 members of the Joint Standing Committee on Inland Fisheries and Wildlife, appointed jointly by the President of the Senate and 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 resolve. 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 August 15, 1995; and be it further

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

1. Is there credible evidence that state and municipal governments have engaged in takings in a manner that violates the Constitution of Maine or the Constitution of the United States;
2. Do specific state or local laws, rules or regulations pose an unconstitutional burden on property owners in the context of the government's responsibility to protect public health, safety and welfare;
3. Do issues of ripeness, exhaustion of administrative remedies and statutes of limitations unreasonably delay the adjudication of legitimate claims for compensation;
4. Should a statutory cause of action, beyond the requirements of current statutory and constitutional law, be created for property owners who are subject to diminution in property value as the result of governmental action;
5. Can pursuit of takings claims under the Constitution of Maine and the Constitution of the United States be made less 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;
6. Do the original legislative documents 170 and 1217 from the First Regular Session of the 117th Legislature violate the constitutional principle of equal protection due to enforcement of a law against one property owner while not enforcing the same law against a similarly situated property owner. If constitutional, would the proposed bills violate principles of sound and just public policy because of the disparate treatment;
7. If the State is to create a cause of action for property owners against governmental entities that incrementally decrease property values, should the law, as a matter of sound and just public policy, also create an identical cause of action for property owners against nongovernmental entities that incrementally decrease property values. If not, why not; and
8. How would the proposed takings laws affect the court system and delivery of justice to our citizens; and be it further

Sec. 5. Public participation; activities. Resolved: That the commission shall hold at least 2 public hearings in different geographic areas of the State and give public notice of the hearings in order to

solicit public participation and comment. The commission may undertake other hearings, presentations or analyses it determines useful; and be it further

Sec. 6. Recommendations. Resolved:

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

1. An explanation of the current process in the State that property owners must follow to make a claim for compensation based on the Constitution of Maine and of the Constitution of the United States;
2. An explanation of any recommendation for legislation or further examination of specific laws, rules or regulations;
3. The fiscal impact on the State and its municipalities of any proposed legislation; and
4. An explanation of why legislation or further examination of specific laws, rules and regulations is not needed, if that recommendation is made; and be it further

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

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

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

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

1995-96

LEGISLATURE

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

Personal Services	\$2,860
All Other	3,140
	\$6,000

TOTAL

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

; and be it further

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

1995-96

LEGISLATURE

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

All Other	\$500
Allocates funds to authorize expenditures if private or public funds are received to support the activities of the Study Commission on Property Rights and the Public Health, Safety and Welfare.	

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

Effective July 3, 1995.

CHAPTER 46

H.P. 405 - L.D. 540

Resolve, to Implement the Recommendations of the Healthy Start Task Force

Sec. 1. Healthy Start Pilot Project. Resolved: That the Healthy Start Pilot Project is established in the Department of Human Services to provide in 3 geographically diverse locations a community-based home visitation program that is