

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

The Study Commission on Property Rights and the Public Health, Safety and Welfare was created during the First Regular Session of the 117th Legislature after extensive public hearings and discussion by the Joint Standing Committee on Judiciary on two bills relating to property rights and "takings." Rather than act on the substance of those bills during the session, the Legislature chose to create a 24 member Commission with a broad charge to study issues raised by those bills and report back to the Second Regular Session.

Public hearings on an initial draft of the Study Commission's report were held on Tuesday, November 21, 1995, in the town of Lee and the City of Portland. The comments received by the Commission at those public hearings, along with many other comments and materials received by the Commission, were considered by the Commission as it prepared its final report.

This report summarizes the Commission's meetings and presents a legal analysis of federal and state law pertaining to the takings issue. The report also presents the Commission's proposals and includes legislation necessary to implement those proposals. The two proposals in this report received the unanimous support of all members of the Commission who participated in the study process. Commission member Gregory Fowler was not able to attend any Commission meetings.

The proposals of the Commission are:

First, to provide a "takings" review of proposed rules by the Attorney General and the appropriate committee of the Legislature. This proposal requires the Attorney General to review all proposed rules for takings issues and requires legislative committees, during their review of major substantive rules, to review major substantive rules for issues relating to the effect of the rule on property values. This proposal combines concepts enacted in other states such as Kansas, Indiana and Delaware and builds upon recent changes in Maine law that provide legislative committees with a direct role in the review and approval of agency rules. The purpose of the review by the Attorney General is to ensure, before a rule takes effect, that sufficient "safety valves" exist to prevent the unintended result of depriving a landowner of all economically beneficial or productive use of that land. The rules review by the legislative committees provides an opportunity to balance the economic impact of the rule with the public benefit derived from the rule's proposed application.

Second, to establish a forum for mediating land use disputes before they end up in court. This proposal establishes a "Land Mediation Program" that provides landowners who have been harmed by governmental land use regulations a forum,

as an alternative to court, in which to discuss the problem with the town or state agency and try to achieve a solution. The program would be operated through the Court Mediation Service and would be funded by fees paid by those who are seeking mediation.

The Study Commission wishes to thank all those who have contributed to this process.