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Date: (Filing No. H-)

JUDICIARY

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

COMMITTEE AMENDMENT “ ” 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.

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

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

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

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

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

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

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

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

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

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

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.

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)**