

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

—
H.P. 1086 - L.D. 1477

Resolve, To Review Issues Dealing with Regulatory Takings

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Committee to Review Issues Dealing with Regulatory Takings is established to study issues associated with property rights and the public welfare; and

Whereas, the study must be initiated before the 90-day period expires in order that the study may be completed and a report submitted in time for submission to the next legislative session; 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. Committee established. Resolved: That, notwithstanding Joint Rule 353, the Committee to Review Issues Dealing with Regulatory Takings, referred to in this resolve as "the committee," is established; and be it further

Sec. 2. Committee membership. Resolved: That the committee consists of 11 members appointed as follows:

1. Two members of the Senate appointed by the President of the Senate, including one member from each of the 2 parties holding the largest number of seats in the Legislature;

2. Three members of the House of Representatives appointed by the Speaker of the House, including no more than 2 members from the party holding the largest number of seats in the Legislature;

3. One member representing private property owners with over 100 acres of real property, appointed by the President of the Senate. The President of the Senate may consider recommendations made by the Maine Farm Bureau, the Maine Forest Products Council and the Small Woodland Owners Association of Maine;

4. One member representing municipal government, appointed by the President of the Senate. The President of the Senate may consider recommendations made by the Maine Municipal Association;

5. One member representing conservation interests, appointed by the President of the Senate. The President of the Senate may consider recommendations made by the Natural Resources Council of Maine, the state chapter of the Nature Conservancy and Maine Audubon;

6. One member representing the business sector, appointed by the Speaker of the House. The Speaker of the House may consider recommendations from the Maine State Chamber of Commerce and the Maine National Federation of Independent Business;

7. One member representing private attorneys who have experience practicing in the subject area of takings law in the State, appointed by the Speaker of the House; and

8. The Attorney General or the Attorney General's designee; and be it further

Sec. 3. Chairs. Resolved: That the first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the committee; and be it further

Sec. 4. Appointments; convening of committee. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the chairs shall call and convene the first meeting of the committee. If 30 days or more after the effective date of this resolve a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the committee to meet and conduct its business; and be it further

Sec. 5. Duties. Resolved: That the committee shall study the issues associated with property rights and the public welfare. In examining these issues, the committee shall review whether barriers to relief from a regulatory taking currently exist. The committee may, without limitation, in the course of evaluating whether such barriers exist:

1. Review and analyze the Report of the Study Commission on Property Rights and the Public Health, Safety and Welfare, completed in 1995, and the recommendations made in the report;

2. Study the experiences of the land use mediation program, established in the Maine Revised Statutes, Title 5, section 3341 by the 117th Legislature for the purpose of providing private landowners with an independent forum for mediation of governmental land use actions as an alternative to court action;

3. Study regulatory takings legislation considered in other states, including Oregon and Florida, and also states where such legislation has been considered and not adopted

and the experiences of landowners, municipalities, State Government and the public. The committee shall evaluate fiscal, legal and policy matters raised by these laws;

4. Examine specific cases in which state and municipal laws, regulations, ordinances and investments have affected property values in this State, both positively and negatively; and

5. Suggest measures to mitigate and remove any barriers to relief as may be identified; and be it further

Sec. 6. Consideration of legislation elements. Resolved: That the committee in determining whether to recommend legislation as part of its report shall consider at least the following legislation elements:

1. An appropriate definition of "land use regulation" that should be considered in determining whether a regulatory taking has occurred;

2. An appropriate percentage of diminution in value to establish a compensable regulatory taking;

3. Appropriate governmental agencies and entities to which new regulatory takings standards and procedures should apply;

4. Whether the cumulative effect of multiple land use regulations should be considered in determining whether a compensable regulatory taking has occurred;

5. If multiple land use regulations are cumulated to determine whether a compensable regulatory taking has occurred, how compensation should be allocated among the governmental agencies and entities responsible for those land use regulations;

6. How fair market value is established, including whether written bona fide appraisals are required;

7. Whether property value increases resulting from land use regulations should be taken into account;

8. An effective system for resolution of compensable regulatory takings claims, including payment of compensation when appropriate, without resorting to filing a claim in court;

9. Creation of a Superior Court cause of action seeking appropriate compensation for regulatory takings, including standards for awarding damages;

10. The appropriateness of awarding attorney's fees and costs to a landowner or governmental entity;

11. How to ensure that a claim for a compensable regulatory taking can proceed in a timely manner without unnecessary delay based on ripeness;

12. Whether a new compensable regulatory takings program should be applied to existing land use regulations;

13. Whether the "whole parcel rule" should be part of a new compensable regulatory takings program;

14. Establishment of an appropriate statute of limitations for filing claims for compensation for regulatory takings;

15. Whether a waiver of sovereign immunity is necessary; and

16. Whether a dedicated state fund should be established to pay claims for compensation; and be it further

Sec. 7. Staff assistance. Resolved: That the Legislative Council shall provide necessary staffing services to the committee; and be it further

Sec. 8. Reimbursement. Resolved: That public members of the committee are not entitled to reimbursement for expenses; and be it further

Sec. 9. Report. Resolved: That, no later than December 7, 2011, the committee shall submit a report that includes its findings and recommendations, including suggested legislation, to the Joint Standing Committee on Judiciary. The Joint Standing Committee on Judiciary may report out legislation relating to the report to the Second Regular Session of the 125th Legislature.

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

In House of Representatives, 2011

Read and passed finally.

..... Speaker

In Senate, 2011

Read and passed finally.

..... President

Approved 2011

..... Governor