# Vote NO on the Takings Bill Minority Report (LD 1810) Too Complex, Costly and Risky

## "Government Land Use Action"

?? The property owner may, but is not required to, pursue approval through a "government land use action"? What is such a process? Agencies are allowed to grant variances, but using what standards? Who can participate? What information is required by the property owner?

Denial of Permit/Variance

Permit Appeal

Permit or Variance Approved

 Litigation If waiver provided, neighbors could sue for impacts

**Permit With Conditions** 

 ?? What happens if landowner receives an approval, with conditions? It appears that they can still pursue further remedies.

# **Property Owner Accepts Settlement**

- \$\$ Settlement is self-executing and sovereign immunity is waived, meaning no judicial review, no appeal process, and open access to state treasury for payments.
- Litigation Parties impacted by any waiver of the law could sue the State, their municipality, or the neighbor who received a waiver from Maine law.
- ?? If settlements allow property owner to pursue development that the legislature had prohibited (e.g. casinos, mining, energy projects), how would this patchwork of Maine law be addressed?

## Legislation Passed or Waiver Provided To Benefit Landowner

- ?? If law passed that "ensures" that the complaining landowner no longer suffers a 50% diminution in property value, then the person no longer has a valid claim. What if Committee asserts that its action dropped impact from 51% to 49% diminution? Who decides if basis for claim has been eliminated?
- ?? If Committee directs agency to provide a waiver, municipalities seem to have no right of appeal, so what is their recourse if they oppose?
- Litigation: Waiver of law could trigger a lawsuit by a neighbor whose property value is impacted by the relaxing of regulations on an adjoining property

## Maine Law Waived ("Variance")

- ?? Court may suspend application of Maine law to an individual landowner, but the court may not have a permit application or any factual basis or legal standards before it for purpose of making this decision—so how would a waiver decision be made?
- Litigation: Neighbors could sue the State, town, or claimant for impacts from the waiver
- \$\$: AG could be forced to defend against lawsuits triggered by waivers of Maine law.

## **Property Owner Initiates Action**

- Property owner is not required to pursue a permit application, but instead can initiate a cause of action
  against the Executive, Legislative, and Judicial Branches and keep venue shopping until satisfied.
- Ripeness can be asserted through a self-serving appraisal paid for by the property owner.
- ?? Multiple regulations can be cited to cumulatively reach the 50% diminution standard. This has never been done anywhere in U.S. Maine assessors have informed lawmakers that this would be impossible.
- ?? Claim must be based on regulations that affect a use that is "suitable" for the subject real property and is "compatible with adjacent land uses." What standards will be used for this determination?
- ?? Claim must be tied to a use that is "reasonably foreseeable" based on "evidence that the property owner intended in fact to develop that use." What evidence would meet this test?

# **Mediation Process**

- \$\$ AG will need to hire an appraiser to defend the State and will need attorneys to represent the State in what could be a proliferation of mediation cases
- \$\$ AG and agencies will need to conduct site visits to evaluate the claims
- \$\$ State required to identify "land uses that it will permit the owner to carry out"
   Litigation Over determination of land use being "suitable for the subject real property"
- Litigation Over sufficiency of evidence that property owner intended to actually pursue the claimed development
- Litigation Abutters and "participants of underlying land use action" notified, but no provision made for them to participate. They may sue over mediation process or outcome?

# **Mediation Settlement?**

- ?? State is allowed to single out claimant for waivers of State laws, and adjust permit standards, swap land, accept payments from landowner to disobey the law, purchase the property, etc. How would the State decide among these options? No standards or guidance is provided.
- ?? No transparency is provided for settlement offer decisions. How can interested parties determine what decisions may have been made, and their potential impact?

#### **Property Owner Rejects Settlement**

- Property owner has sole discretion to reject State settlement offer
- AG notified of failed mediation process

## **Regulatory Fairness Committee**

- \$\$ Regulatory Fairness Committee is authorized to report out legislation, turning this
  committee into an ongoing committee with legislative duties and dedicated staff
- \$\$ Regulatory Fairness Committee will need its own appraisers and will need investigative staff to assess merits of claims and possible responses
- ?? How would jurisdiction of this committee relate to committees with responsibility over the underlying bills (e.g. ENR, ACF)?
- Pill seems to imply that the Committee would pass legislation that singles one person, the claimant, for special treatment. Does this violate constitutional doctrine?
- ?? Committee can direct an agency to modify rules for a single landowner. Based on what requirements for facts and what standards?
   33. If multiple requirements are the single landowner.
- ?? If multiple regulations were basis for claim, how does Regulatory Fairness Committee decide which one to change through legislation or waiver?

## Takings Claim Filed With Courts

- ?? Claimant may file a takings claim against the State beginning March 15th after the AG has reported the failure to reach settlement. How could the legislature act and a new law take effect within this short period?
- \$\$ Property owner has right to trial, imposing costs on the Maine court system
- ?? Property owner not held to information included in "underlying land use action" process. Why not?
- ?? How does court reach a decision, given that the bill provides incompatible standards: a 50% diminution standard, and also weighing three specified factors?
- \$\$ & Litigation: AG will need to defend State in debates over "narrow construction" of exemptions for nuisance; public, health and safety; and prospective regulations.

#### **Damages Paid**

 \$\$ The court may award payments of up to \$400,000 per claim, resulting in potentially millions of dollars in payments of unappropriated funds.

\$\$ - Costs to Maine taxpayers

?? - Major legal/implementation questions

Litigation - Points of legal challenge