

## **Amendment Package to Address Issues Raised by LD 1810**

### **Section 1 – Creation of Committee on Regulatory Fairness**

- The proposed approach builds on the success of the Regulatory Reform Committee process (LD 1) by creating a new Legislative Committee on Regulatory Fairness that would consider the impacts of regulation on property owners.
- The Regulatory Fairness Committee would be required to meet at least twice annually to provide a forum at which information would be received concerning the efficiency, effectiveness, and fairness of land use laws and regulations.
- The Regulatory Fairness Committee could develop legislative recommendations, and provide those recommendations to the committees of jurisdiction. Those committees would be authorized to submit legislation for subsequent reference and public hearing.
- The bi-partisan 14-member Regulatory Fairness Committee would be comprised of four (4) members from each of the Judiciary; the Environment and Natural Resources; and the Agriculture, Conservation and Forestry committees, plus one additional House member appointed by the Speaker of the House and one additional Senator appointed by the Senate President.
- The Regulatory Fairness Committee shall regularly solicit input from organizations that represent small farmers and woodlot owners.

### **Sections 2 and 3 – Improvements in Land Use Mediation Program**

- The existing land use mediation program would be improved by expanding the level of communication about the process, including through requirements that state agencies that administer land use laws provide information about the program to parties involved in permitting and licensing decisions.
- The land use mediation program is required to provide information annually to the Committee on Regulatory Fairness.

### **Section 4 – Additional Reporting Requirement for Attorney General**

- The Attorney General is required to provide the Committee on Regulatory Fairness each year with a copy of each proposed rule that it has reviewed that was the subject of public comments suggesting either that the rule might result in a potential taking of real property under the Maine Constitution or that a variance was necessary to avoid such a taking.

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 3 MRSA §998 is enacted to read:**

**1. Committee established.** The Committee on Regulatory Fairness, referred to as the “Regulatory Fairness Committee,” is established to provide a forum for ongoing legislative review of the effectiveness and fairness of land use laws and regulations.

**2. Membership.** The committee consists of the following members:

A. The Senate chair, House chair, ranking minority Senate member and ranking minority House member of the joint standing committee of the Legislature having jurisdiction over environment and natural resources;

B. The Senate chair, House chair, ranking minority Senate member and ranking minority House member of the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry;

C. The Senate chair, House chair, ranking minority Senate member and ranking minority House member of the joint standing committee of the Legislature having jurisdiction over the judiciary;

D. One additional member of the House, appointed by the Speaker of the House.

E. One additional member of the Senate, appointed by the Senate President.

**3. Chairs.** The Speaker of the House shall designate a member of the House of Representatives to serve as the House chair of the committee, and the President of the Senate shall designate a member of the Senate to serve as the Senate chair.

**4. Meetings.** The Committee on Regulatory Fairness shall meet at least 2 times a year, and as needed to fulfill its responsibilities. A meeting may be called by the chairs or by any 4 members.

**5. Duties and powers.** The committee:

A. Shall conduct public meetings to obtain information concerning the effectiveness and efficiency of regulations affecting land use, including specific information on laws and regulations that may have *resulted in more than a minor reduction in* the economically beneficial or productive uses of land. The primary focus of such review should be on laws and regulations that have been adopted within the previous three years;

B. Shall request from relevant state agencies the purpose and background surrounding any law or regulation alleged to have *resulted in more than a minor reduction in* the economically beneficial or productive uses of land, including but not limited to any major substantive rule to be submitted to the Legislature pursuant to 5 M.R.S.A. § 8072, and any information the agency has about the specific application of the law or regulation in question, including any benefit-cost analysis conducted by the agency, pursuant to 5 MRSA section 8063-A, and any other data that would assist the committee in reviewing the benefits and costs of the law or regulation;

C. Shall receive and review information from the Office of the Attorney General regarding activities of the Attorney General, pursuant to 5 MRSA §8056(6), to review proposed rules to determine whether they may reasonably be expected to result in a taking of private property under the Constitution of Maine, including whether the rules provide sufficient variance provisions to avoid such a taking;

D. Shall review information about the land use mediation program, pursuant to 5 MRSA §3341, including information about completed applications received and each agreement signed during the previous calendar year;

E. Shall solicit input from organizations that may be interested in providing input to the Regulatory Fairness Committee, including organizations that represent small farmers and woodlot owners.

F. May develop recommendations for changes in land use laws and regulations and refer such recommendations, with supporting documentation, to the joint standing committee with appropriate jurisdiction, including any recommendations that further analysis of benefits and costs, pursuant to 5 MRSA section 8063-A, be conducted by the agency. Any committee of jurisdiction that receives a recommendation from the Regulatory Fairness Committee may submit a bill for subsequent reference and public hearing.

G. May make recommendations to the joint standing committee with appropriate jurisdiction regarding major substantive rules, pursuant to 5 M.R.S.A. § 8072, as appropriate;

H. May undertake other activities consistent with its listed responsibilities.

**6. Information protocol.** The committee shall develop a user-friendly form that can be utilized by members of the public to assist the committee in understanding the history, land use issues, regulatory impacts, and agency interactions associated with cases presented to the committee. Completed forms and associated documents submitted to the committee shall be considered public records under MRSA 1 §403.

**7. Staffing.** Based on available resources, the Legislative Council shall provide staff support for the committee.

**Sec. 2.** 5 MRSA §3341, is amended to read:

**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 subchapter. The Court Alternative Dispute Resolution Service shall:

- A. Assign mediators under this subchapter who are knowledgeable in land use regulatory issues and environmental law;
- B. Establish a simple and expedient application process. Not later than ~~February 1st~~ January 10<sup>th</sup> of each year, the Court Alternative Dispute Resolution Service shall send to the ~~chair of the Land and Water Resources Council~~ Committee on Regulatory Fairness a copy of each completed application received and each agreement signed during the previous calendar year; and
- C. Establish a fee for services in an amount not to exceed \$175 for every 4 hours of mediation services provided. In addition, the landowner is responsible for the costs of providing notice as required under subsection 7.

**3. Application; eligibility.** A landowner may apply for mediation under this subchapter if that landowner:

- A. Has suffered significant harm as a result of a governmental action regulating land use;
- B. Applies for mediation under subsection 4 within the time allowed under law or rules of the court for filing for judicial review of that governmental action;
- C. Has:
  - (1) For mediation of municipal governmental land use action, sought and failed to obtain a permit, variance or special exception and has pursued all reasonable avenues of administrative appeal; or
  - (2) For mediation of state governmental land use action, sought and failed to obtain governmental approval for a land use of that landowner's land and has a right to judicial review under section 11001 either due to a final agency action or the failure or refusal of an agency to act; and
- D. Submits to the Superior Court clerk all necessary fees at the time of application.

**4. Submission of application for mediation.** A landowner may apply for mediation under this subchapter by filing an application for mediation with the Superior Court clerk in the county in which the land that is the subject of the conflict is located. The Superior Court clerk shall forward the application to the Court Mediation Service. The Court Alternative Dispute Resolution Service shall provide municipalities with copies of brochures about the mediation program and applications for landowner participation in the mediation program.

**5. Agency Responsibilities; publicity.** State agencies that administer land use laws shall provide information about the mediation program, along with right of appeal, when making regulatory decisions, including any decisions that deny approval of a permit application or license. The Special Advocate in the Department of the Secretary of State, shall provide the mediation program brochure to businesses that are pursuing permit applications with state

agencies. State agencies that administer land use laws and the Court Alternative Dispute Resolution Service shall ensure that information about the mediation program is available in an electronic format on agency websites.

**Sec. 3.** 5 MRSA §3341, is amended by renumbering the subsections to read consecutively.

**Sec. 4.** 5 MRSA sec. 8056(6), is amended to read:

**6. Attorney General review and approval.** The review required in subsection 1 may not be performed by any person involved in the formulation or drafting of the proposed rule. The Attorney General may not approve a rule if it is reasonably expected to result in a taking of private property under the Constitution of Maine unless such a result is directed by law or sufficient procedures exist in law or in the proposed rule to allow for a variance designed to avoid such a taking. By December 15th of each year, the Attorney General shall provide to the Joint Standing Committee on Regulatory Fairness a copy of each proposed rule that it has reviewed pursuant to this subsection that was the subject of public comment suggesting either that the rule might result in a potential taking of real property under the Maine Constitution or that a variance was necessary to avoid such a taking.

#### SUMMARY

This bill creates a Committee on Regulatory Fairness, to provide a forum for ongoing legislative review of the effectiveness and fairness of land use laws and regulations. The Regulatory Fairness Committee is required to meet at least twice annually, and additionally as needed, to obtain information concerning the effectiveness and efficiency of regulations affecting land use, including specific information on laws and regulations that may have significantly reduced the economically beneficial or productive uses of land. The Regulatory Fairness Committee also shall review information from the Attorney General regarding review by that office of rules for which public comments suggested either that the rule might result in a potential taking of real property under the Maine Constitution or that a variance was necessary to avoid such a taking. The Regulatory Fairness Committee also shall receive and review information about the land use mediation program, and shall solicit input from organizations that may be interested in providing input to the Committee, including organizations that represent farmers and woodlot owners. The Regulatory Fairness Committee may recommend changes to land use laws by referring proposed changes to the appropriate legislative committee of jurisdiction, which may submit a bill for subsequent reference and public hearing.

This bill also amends the land use mediation program to increase awareness and utilization of the program. The bill also requires the land use mediation program and the Attorney General to provide the Regulatory Fairness Committee with information each year that will assist the committee in its review of the efficiency, effectiveness, and fairness of Maine's land use laws.

