

MAINE STATE LEGISLATURE

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STATE OF MAINE
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January 17, 2006

Senator Elizabeth Schneider, Senate Chair
Representative Christopher Barstow, House Chair
Joint Standing Committee on State and Local Government
100 State House Station
Augusta, ME 04333-0003

Re: Proposed Committee Amendment to LD 1481

Dear Senator Schneider and Representative Barstow:

During the work session on LD 1481 held on January 11, 2006, you asked for an opinion concerning a proposed Committee Amendment to the bill, a copy of which is attached. Specifically, you have asked whether the constitutional issue identified in our June 10, 2005 opinion has been resolved by the language of the Committee Amendment.

LD 1481 contains provisions that would have prohibited a municipal initiative or referendum from having any retroactive effect on existing land use permits or approvals without imposing such a restriction directly upon municipalities. By doing so, as we stated in our opinion of June 10, 2005, the bill would have limited the subject matter of municipal ordinances that are subject to the municipal initiative and people's veto process in conflict with the requirements of Art. IV, Pt. 3, § 21 of the Maine Constitution. The proposed Committee Amendment removes all the provisions of the bill that would have limited the scope of ordinances enacted by municipal initiative and referendum as distinct from other ordinances. Instead, the amendment imposes the retroactivity limitation directly upon municipalities, which we believe to be within the Legislature's authority. In doing so, the amendment eliminates the constitutional issue we identified in our opinion.

As always, the determination of the policy issues posed by this amendment are for the Legislature to determine, and in providing this information we do not express an opinion on matters of policy.

Sincerely,

G. STEVEN ROWE
Attorney General

GSR/elf

cc: Anna Broome, Legislative Analyst, OPLA

Committee: SLG

LA: ATB

File Name: G:\COMMITTEES\SLG\AMENDMTS\122nd2nd\198103.doc(1/12/2006 4:19:00 PM)

LR (item)#: 198103

New Title?: No

Add Emergency?: No

Date: January 10, 2006

Committee Amendment “ ” to LD 1481, An Act To Amend the Laws Governing the Enactment Procedures for Ordinances

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

‘Sec. 1. 30-A MRS §3007, sub-§6 is enacted to read:

§3007, sub-§6 Restriction on nullification of final permit

A municipality may not nullify or amend a municipal land use permit by a subsequent enactment, amendment or repeal of a local ordinance after the permit has received its lawful final approval and a period of 30 days has passed. For the purposes of this section, a municipal land use permit includes municipal building permits, zoning permits, subdivision approvals, and site plan approvals.

SUMMARY

This amendment replaces the original bill. It limits the municipalities from nullifying or amending permits by a subsequent enactment, amendment or repeal of a local ordinance.