LD 471 is Unconstitutional

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In my view, there are several serious constitutional problems with LD 471, but let me focus on two less complex and more obvious aspects of this LD that lead me to conclude it is unconstitutional.

First, the Legislature may certainly modify Title 1, §302 as it sees fit. In doing so, however, the Legislature may not violate constitutional provisions prohibiting ex post facto laws. Art. 1, §11 of the Maine Constitution states: "The Legislature shall pass no bill of attainder, **ex post facto law,** nor law impairing the obligation of contracts...." The Federal Constitution, Art. 1, §9, clause 3, contains a similar prohibition: "No bill of attainder or **ex post facto law** shall be passed."

The last sentence of LD 471 reaches back in time 6½ years in the application of its substantive provision, i.e., the imposition of a requirement for 2/3 legislative approval of a lease between CMP and the Bureau of Public Lands. No such requirement existed in 2014 when negotiations between these parties was begun and eventually consummated. In my view, it is clearly a prohibited ex post facto law. Though limited reach back provisions have been allowed in unique settings, they are seldom longer than a few months or a year. To my knowledge, no Maine court has ever sustained a 6½ year reach back provision that would circumvent both the State and the Federal Constitution.

Second, in imposing a requirement for 2/3 legislative approval of a lease between CMP and the Bureau of Public Lands, LD 471 does not lay out any new or additional legislative guidelines or standards for the Bureau to follow in negotiating 12 MRS §1852, sub-§4 leases; it does not lay out any new supporting data or information that a transmission line applicant must present to secure a legislatively approvable lease; and (more importantly) it does not state the standards and factors that the Legislature will/must consider in determining whether to grant the 2/3 approval needed. In short, LD 471 confers unfettered discretion on the Legislature to approve or disapprove a needed lease thereby preventing a transmission line applicant from obtaining a PUC order and a Certificate of Public Convenience and Necessity (CPCN).

Maine and national case law hold this to be unconstitutional on any of several grounds. For example, a Maine case, *Waterville Hotel Corp. v. Bd. of Zoning Appeals* states: "The failure to spell out standards reduces the property owner to a state of total uncertainty and amounts to depriving him of the use of his property. Without definite standards an ordinance [or statute] becomes an open door to favoritism and discrimination…"[1] In short, the Legislature cannot delegate to itself an unfettered discretion to issue or not issue required approvals. To do so violates an applicant's constitutional "due process" rights. This is precisely what LD 471 does.

Finally, it must be recognized that transmission lines are an essential use of private property. Maine's, the nation's, electrical grid system could not function without them. It follows that these lines must exist somewhere. Existing statutory and regulatory processes allow proposed transmission line projects to be submitted to the PUC to obtain a CPCN. When/if needed statutory provisions allow public lands to be leased to accommodate such projects. LD 471 ignores these orderly processes. In my view, the proposed legislation is both unwise and unconstitutional. I urge this Committee to vote "ought not to pass."

[1] 241 A2d 50 (Me. 1968) at pg.53.