

## MEMO

To: Members of the Energy, Utilities, & Technology Committee; Mark Lawrence, Senate Chm;  
Seth Berry, House Chm.

From: Orlando E. Delogu, Emeritus Professor of Law

Subject: Comments on LD 1587

Date: May 3, 2021

I would make only two points: First, the ability of a statewide agency (e.g., in LD 1587, the PUC) to exempt (upon a showing of “reasonable necessity”) a project approved by the agency from prohibitions or regulations imposed by a local ordinance is an essential recognition of the fact that statewide interests prevail over local governmental interests. Such provisions recognize the inherent power of the sovereign to override the narrower (sometimes parochial) interests of subordinate units of government. We are not a nation of city-states; the interests of the people viewed through the larger prism of the state as a whole are entitled to prevail over the interests of those residing in one or more towns. The tail does not wag the dog.

These exemption provisions are never more essential than when state agencies approve a linear project (passing through many towns with widely different views) such as CMP’s NECEC project, or looking back a generation or so, when the Maine Turnpike was under construction and/or Federal Interstate Highway projects were on the drawing board. I venture, we would still be wrangling over the final location of these essential highways if exemption provisions similar to those found in Title 35-A did not exist. LD 1587 (in the name of “local control”) would abrogate the PUC’s power to put statewide interests first. It is an affront to the people of Maine, and the sovereign power of state government. Its intent seems clear—to kill the NECEC project—nothing more. I urge the Committee to vote “not to pass” LD 1587.

Second, in the recent Avangrid case, the Law Court in striking down an initiative aimed at overturning the PUC’s approval of the NECEC project, the court parenthetically noted that: “...the Legislature may not enact a private resolve singling out an individual for unique treatment.” [other Law Court cases making the same point are omitted here] The targeting of a particular individual or firm for “unique treatment” under the law is a facial violation of “equal protection” provisions under both Maine’s and the Federal Constitution. That is precisely what LD 1587 does. It is not aimed at grid systems generally; nor is it aimed at other forms of linear utility type projects. Its provisions are so carefully drawn/defined that they apply only to CMP’s NECEC project. As such they violate “equal protection.” I again urge the Committee to vote “not to pass” LD 1587.