

# LD 1810 Could Block Broad Range of Future Legislative Action

LD 1810 could block the Legislature from enacting land use laws in the future that are important for Maine's economy, environment, and communities. The scope of laws that could be affected is large, and the range of future challenges for which land use legislation may be needed is unknowable. A clear risk with LD 1810 is that it would have the unintended consequence of preventing enactment of necessary legislation. Below are some scenarios.

**Location of Casinos** – Maine voters have faced eight casino or slot-machine referenda in the past 12 years. The Legislature might decide at some point to pass a comprehensive casino gambling policy to guide the consideration of future casino proposals – including how many and where casinos could be located. Such a policy would be a land use restriction which could trigger a compensation claim – with Maine people potentially having to pay a casino operator or the underlying land owner not to build their casino.

**Scenario:** Black Bear Enterprises—a national corporation which owns and operates many casinos around the country-- is working with a landowner on a possible future casino location. The Maine Legislature passes a law setting limits on the number, size and location of casinos allowed in Maine. The property of the landowner currently working with Black Bear does not fit into the locations specified by the new casino-siting policy. The landowner then demands millions of dollars in compensation from the state for the project that cannot move forward under the new law – or requests a waiver from the new law in order to be allowed to build the casino on his/her property. If LD 1810 had been enacted, then Maine would face two options: 1) Use unappropriated taxpayer funds to pay the landowner to prevent a casino from being built in violation of the new law, or, 2) waive the law and allow the casino to be built – undermining the entire purpose of the statute.

**Location of Wind Power Projects:** --In 2008 a law (P.L. 661) was signed into effect implementing the recommendations of the Governor's Taskforce on Wind Power which set up a policy for expedited permitting of large-scale wind energy developments. The law designated areas in the state where wind developers could pursue an "expedited" siting process through DEP and LURC, and areas that are considered "unexpedited." Passage of LD 1810 could freeze these designations in place, preventing the State from changing even one township from "expedited" to "unexpedited."

**Scenario:** Reacting to concerns about windpower proposals in the "expedited" zones, Maine policy-makers decide to revise the map of expedited wind power developments. Yet, under the provisions of LD 1810, if a certain township were moved out of the expedited development area, landowners of mountain ridgeline property suddenly claim that they will be deprived of millions of dollars from wind power developments (regardless of whether such projects were planned). The State potentially would be required to pay landowners to get them to comply with the change in designation, or waive the restriction and allow the wind farm to be built on the ridgelines. Adoption of a new statewide scenic standard or new statewide sound regulation could similarly trigger takings claims, if could be interpreted to reduce the size or location of a wind power project.

**Deer Wintering Yards**--Several harsh winters, increased predators, and loss of high quality deer wintering habitat have brought Maine's deer population to all-time low levels in northern, eastern and western Maine. Deer density figures have dropped from a normal 7-10 deer per square mile, to 1 ½ or 2 per square mile. Deer yards contain thick, spruce fir cover so that the deer are protected from winter weather and can establish a network of trails to help them find food and escape predators. The loss of

winter habitat is bad for the deer population and bad Maine's economy. The annual economic impact from deer hunting and viewing is more than \$281 million a year. Maine guides, sporting camps, sporting goods stores, hunters and wildlife watchers rely on strong conservation efforts to manage deer populations and their habitat. Voluntary efforts by landowners, sportsmen and the Department of Inland Fish and Wildlife to improve deer habitat through forest management practices, have not had the long-term impact to help the state's herd. Moreover, sportsmen, conservation groups and the state have invested millions of dollars to protect deer habitat across the state. While these investments have proved fruitful, state officials believe the state deer population is facing a crisis. If the population decline continues, the state may have to turn to regulatory approaches to protect key wintering habitat. LD 1810 puts that option very much in doubt.

Scenario: Seeing the plummeting population of Maine's white-tailed deer and the related decline in revenues from hunting and wildlife-related tourism, the Maine Legislature decides to pass a new law that requires protections of deer habitat. Under LD 1810, a landowner with deer habitat on his/her property files a takings claim demanding compensation from the state for a large residential or commercial project he/she claims would have been built but was stopped by the new deer habitat regulations. The temptation to bring a claim for a big expensive project could be strong for a landowner under LD 1810, costing the state untold millions of dollars. Alternatively, instead of demanding compensation, the landowner requests a waiver from the deer habitat protection regulations so that the project could be built. Once the project is built, the deer habitat is no longer protected undercutting the regulations enacted by the Legislature and enforced by the IFW.

**Transportation**—The Maine DOT has "access management" rules that govern the location and design of driveways and entrances to state roads in order to increase safety of the highways and for driveway users. Managing access to state roads also reduces the need for new construction of bypasses or extra lanes on these roads. Access to these roads is managed by limiting the numbers of residential and commercial driveway (access points). The rules establish guidance for the siting of new commercial and residential driveways.

Scenario: With a future upturn in the economy, new development increases along Maine's state roads. The Legislature could decide to review the rules restricting access to these roads. New safety information and new building pressures (both residential and commercial) could lead to a legislative decision to amend the access management rules upwards or downwards. Yet, having enacted these changes, many landowners of either residential or commercial property could bring compensation claims, or request that the new rules be waived, regardless of safety or land use considerations.

**Citing a Future landfill.** If the state needs to adopt a law in the future to create a new landfill, or expand an existing landfill, the Legislature may need to enact land use regulations to pave the way for that action. Were a takings law to be put into effect, abutters of the landfill could potentially file claims for compensation.

**Concentrated Animal Feeding Operations** What if industrial agriculture companies started to pursue massive animal feeding operations in Maine, with tens of thousands of pig or cattle, and Maine wanted to adopt policies that would guide the size, location, and sewage lagoons of these facilities to minimize their impact on abutters, communities, family farms, scenic locations, etc. If a takings law were on the books, then Maine taxpayers might be put in the position of having to compensate an industrial animal operation to get them to obey the policy, or waive the law.