

To: Key and Elected Municipal Officials, Code Enforcement Officers, Planning Boards and LPC members

From: Rebecca Graham, Legislative Advocate, State and Federal Relations
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Date: Monday, June 7, 2021

Re: Constitutional Amendments

While the [Senate Calendar](#) does not include items of municipal significance, there are two constitutional amendments of note on the June 7 [House Calendar](#) that could be taken up on the floor any day.

The first is [LD 95](#), *Resolution, Proposing an Amendment to the Constitution of Maine To Establish a Right to Food*. The bill is printed as item 20 on page 87 of the House Calendar. If passed, Maine voters will be asked if they would like to amend the Constitution through the ballot question:

"Do you favor amending the Constitution of Maine to declare that all individuals have a natural, inherent and unalienable right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health and well-being?"

While the ballot question would seem like a laudable goal, the actual amendment is likely to have the effect of limiting any state or local regulation regarding food safety, acceptable farming practices and any restrictions on location of farming or applications of chemicals that can be seen as beneficial to growing, saving, or consuming food of one's choice.

The amendment will read: *"All individuals have a natural, inherent and unalienable right to food including the right to save and exchange seeds and the right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health and well-being, as long as an individual does not commit trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources in the harvesting, production or acquisition of food."*

Should voters support the question without understanding the implications of the vague amendment language, it will be up to the courts to decide if municipal ordinances limiting phosphorous run off, pesticide applications, urban livestock farming, state food safety and regulations, or even local food licensing processes infringe upon an individual's right to food.

The second amendment of interest to municipal officials, [LD 489](#), *Resolution, Proposing an Amendment to the Constitution of Maine To Establish a Right to a Healthy Environment*, grants the people of Maine the right to a clean and healthy environment and to the preservation

of the natural, cultural, and healthful qualities of the environment. The bill is printed as item 2 on page 79 of the House Calendar.

The amendment will read: *“The people of the State have the right to a clean and healthy environment and to the preservation of the natural, cultural and healthful qualities of the environment. The State may not infringe upon these rights. The State shall conserve, protect and maintain the State’s natural resources, including, but not limited to, its air, water, land and ecosystems for the benefit of all the people, including generations yet to come.”*

In summary, this amendment which received divided support from the Environment and Natural Resources Committee, broadens the scope of environmental impact to include an activity that is deemed an infringement on a healthy environment, as determined by anyone. Opposition to the bill is rooted in the feasibility of enforcement of this amendment and the extent to which it deters needed and safe development.

Since the definition of “healthy environment” includes vague terminology there is also concern that numerous legal challenges will force the court system to decipher the meaning of cultural, scenic, or healthful qualities, potentially delaying the efficacy of this bill. In the interim, disagreements over existing and proposed development is expected, leading to extensive litigation costs.

LD 489 puts responsibility on municipalities to cautiously approve planning decisions that do not violate this broad amendment, otherwise they open themselves up to claims of negligence or malfeasance from all parties. It is feared that interest groups, businesses, and citizens would be able to initiate litigation against a municipality based off misinterpretations of the bill’s ambiguous language. Development in Maine’s communities occurs best and most equitably when statute clearly defines what is permitted and what is not. LD 489 blurs those lines to the extent that past and future development could be called into question.

Before these amendments are debated on the House floor, consider how an amendment protecting every aspect of your municipality or granting a right to food would be interpreted by your community. If you feel these amendments would be a burden or risk to your town or city, please consider expressing these concerns to your elected officials in the House.

To search for your House of Representative member and their contact information check the site available [here](#). For your Senator and their contact information check this [site](#).

Thank you for your assistance with this issue. If you have any questions on LD 95, please contact Rebecca Graham at either rgraham@memun.org or 207-350-0419. If you have any questions on LD 489, please contact Neal Goldberg at either ngoldberg@memun.org or 301-785-6740.