

Date: (Filing No. H- )

STATE AND LOCAL GOVERNMENT

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " " to H.P. 960, L.D. 1381, Bill, "An Act To Clarify Appeals of Municipal Land Use Decisions"

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

Sec. 1. 30-A MRSA §2691, sub-§3, ¶C, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

C. The board may provide, by regulation which shall that must be recorded by the secretary, for any matter relating to the conduct of any hearing, provided except that the chair may waive any regulation upon good cause shown. Unless otherwise established by charter or ordinance, the board shall conduct a de novo review of any matter before the board subject to the requirements of paragraph D. If a charter or ordinance establishes an appellate review process for the board, the board shall limit its review on appeal to the record established by the board or official whose decision is the subject of the appeal and to the arguments of the parties. The board may not accept new evidence as part of an appellate review.

Sec. 2. 30-A MRSA §2691, sub-§3, ¶F, as amended by PL 2003, c. 635, §1, is further amended to read:

F. The board may reconsider any decision reached under this section within 45 days of its prior decision. A request to the board to reconsider a decision must be filed within 10 days of the decision that is to be reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. The board may conduct additional hearings and receive additional evidence and testimony as provided in this subsection.

Notwithstanding paragraph G, appeal of a reconsidered decision must be made within 15 days after the decision on reconsideration or within the applicable time period

COMMITTEE AMENDMENT

1 under section 4482-A if the final municipal review of the project is by a municipal  
2 administrative review board other than a board of appeals.

3 **Sec. 3. 30-A MRSA §2691, sub-§3, ¶H** is enacted to read:

4 H. For purposes of this section, a decision of the board is a final decision when the  
5 project for which the approval of the board is requested has received all required  
6 municipal administrative approvals by the board, the planning board or municipal  
7 reviewing authority, a site plan or design review board, a historic preservation review  
8 board and any other review board created by municipal charter or ordinance. If the  
9 final municipal administrative review of the project is by a municipal administrative  
10 review board other than a board of appeals, the time for appeal is governed by section  
11 4482-A. Any denial of the request for approval by the board of appeals is considered  
12 a final decision even if other municipal administrative approvals are required for the  
13 project and remain pending. A denial of the request for approval by the board of  
14 appeals must be appealed within 45 days of the date of the board's vote to deny or  
15 within 15 days of final action by the board on a reconsideration that results in a denial  
16 of the request.

17 **Sec. 4. 30-A MRSA §4482, sub-§3** is enacted to read:

18 **3. Final decision.** A party may not file an appeal of a significant municipal land use  
19 decision under this section until the decision is a final decision pursuant to section 2691,  
20 if the decision is by a board of appeals, or pursuant to section 4482-B, if the decision is  
21 by a municipal administrative review board other than a board of appeals.

22 **Sec. 5. 30-A MRSA §4482-A** is enacted to read:

23 **§4482-A. Review of other municipal land use decisions**

24 This section governs the review process for a municipal land use decision that is not a  
25 significant municipal land use decision under section 4482, except as provided in section  
26 4482, subsection 3, or a decision of a board of appeals under section 2691.

27 **1. Filing of appeal.** A party may file an appeal with the Superior Court of a  
28 municipal land use decision subject to this section that is a final decision within 30 days  
29 of the date of the vote on the final decision, except that the time period for filing an  
30 appeal under this subsection may be extended by the court upon motion for good cause  
31 shown. The hearing on an appeal filed pursuant to this section before the Superior Court  
32 must be conducted without a jury.

33 **2. Final decision.** A party may not file an appeal of a municipal land use decision  
34 subject to this section until the decision is a final decision pursuant to section 4482-B.

35 **Sec. 6. 30-A MRSA §4482-B** is enacted to read:

36 **§4482-B. Finality of municipal land use decision**

37 For the purposes of this chapter and except as provided in section 2691, a municipal  
38 land use decision is a final decision when an application for a project requiring the  
39 approval of one or more municipal boards has received all required municipal  
40 administrative approvals by the board of appeals, the planning board or municipal  
41 reviewing authority, a site plan or design review board, a historic preservation review

1 board and any other review board created by municipal charter or ordinance. An appeal  
2 may not be filed under this section prior to the review and final approval of a project by  
3 each applicable municipal administrative review board, except that a denial of an  
4 application by a municipal administrative review board is considered a final decision  
5 even if other municipal administrative approvals are required for the project and remain  
6 pending. An appeal of the denial under this chapter must be in accordance with the  
7 requirements of the Maine Rules of Civil Procedure, Rule 80B.

8 **Sec. 7. Maine Revised Statutes headnote amended; revision clause.** In the  
9 Maine Revised Statutes, Title 30-A, chapter 190, in the chapter headnote, the words  
10 "judicial review of significant municipal land use decision" are amended to read "judicial  
11 review of municipal land use decisions" and the Revisor of Statutes shall implement this  
12 revision when updating, publishing or republishing the statutes.'

13 **SUMMARY**

14 This amendment makes a number of technical, clarifying edits to the bill but retains  
15 all substantive provisions of the bill that provide that a local land use decision is a final  
16 decision when an application has received all required municipal administrative approvals  
17 by a municipal board of appeals, a planning board or municipal reviewing authority, a site  
18 plan or design review board, a historic preservation review board and any other review  
19 board created by municipal charter or ordinance and that an appeal to the Superior Court  
20 may not be made until a final decision occurs.