

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 1568**

H. P. 1397

House of Representatives, April 28, 1981

(Submitted by the Department of Environmental Protection pursuant to Joint Rule 24)

Out of Order, Referred to the Committee on Energy and Natural Resources.  
Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Kany of Waterville.

Cosponsors: Senator Trafton of Androscoggin and Representative Kiesman of Fryeburg.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

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**AN ACT to Facilitate the Development of Hazardous Waste Management Facilities.**

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Be it enacted by the People of the State of Maine, as follows:

**Sec. 1. 38 MRSA § 1303, sub-§ 11-A is enacted to read:**

**11-A. Substantially expand. "Substantially expand" means the expansion of an existing licensed hazardous waste facility by more than 25%, as measured by volume of waste or affected land area, from the date of its initial licensed operation.**

**Sec. 2. 38 MRSA § 1304, sub-§§ 6 and 7, as repealed and replaced by PL 1979, c. 699, § 11, are repealed.**

**Sec. 3. 38 MRSA § 1304-A is enacted to read:**

**§ 1304-A. Hazardous waste management planning**

**The board shall have data on the generation, transportation and handling of hazardous waste collected and monitored in a coordinated manner. It shall use**

that data to review the need for adequate waste facilities for generators in this State, and it shall develop appropriate policies and recommendations to insure that suitable waste facilities are available.

1. Report to the board. The commissioner shall annually, prior to October 1st, prepare a report to the board covering the last fiscal year which shall include the following data:

- A. The amount of hazardous waste by type that is generated, treated, recycled or disposed of within the State;
- B. The amount of hazardous waste by type that is handled at commercial hazardous waste storage, treatment and disposal facilities within the State;
- C. The number of hazardous waste facility permits by type currently active and the number granted and revoked in the year;
- D. The amount of hazardous waste by type generated outside of the State that was handled at permitted facilities within the State and the amount of hazardous waste generated within the State that is handled at facilities located outside the State;
- E. A list of hazardous waste treatment, storage and disposal facilities located within the State and those located outside the State which are available for use by generators in the State; and
- F. A list of known firms that provide testing, consulting, brokerage, waste exchange, transport or other services to hazardous waste generators.

2. Facility needs plan. The board shall, prior to January 1st of each year, prepare a plan which shall consider the need for new hazardous waste facilities. Specifically, it shall include:

- A. An identification of hazardous wastes generated within the State for which new commercial treatment facilities would be desirable and the preferred methods or technology to be utilized;
- B. An identification of hazardous wastes by type generated within the State which are capable of being reused and recycled, and a corresponding reference to available technology or facilities;
- C. An identification of the wastes generated within the State that cannot be treated at facilities within or outside the State;
- D. A survey of generators of wastes in paragraph C and facilities used by them, which obtains the best estimates of future waste quantities and costs, and capacity for the disposal of those wastes; and
- E. A list of those areas of the State which, based on siting criteria in rules adopted by the United States Environmental Protection Agency and the board, are unsuitable for disposal facilities. The plan may list any areas of the State which are suitable for siting of disposal facilities.

3. **Legislative recommendations.** The commissioner shall make an annual status report to the Legislature concerning hazardous waste management, which shall include any recommendations of the board for legislative action to develop and establish needed hazardous waste facilities. These may include tax and other financial incentives or recommendations to directly, or through an instrumentality, acquire suitable sites for hazardous waste facilities, or to construct and operate hazardous waste facilities. Recommendations made shall be based solely on the information and plans prepared pursuant to this section and information obtained at public hearings held pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375.

4. **Procedural requirements.** Except for the report required in subsection 1, all policies, plans and recommendations shall, prior to final adoption by the board, be subject to the notice and hearing requirements of the Maine Administrative Procedure Act, Title 5, chapter 375.

Sec. 4. 38 MRSA § 1310-A, as reallocated by PL 1979, c. 663, § 238, is repealed and the following enacted in its place:

**§ 1310-A. Municipal participation**

1. **Municipal ordinances.** Hazardous waste facilities approved by the board in accordance with section 1304, subsection 8, may not be prohibited from locating in a municipality, provided that the facility is located in accordance with provisions of any municipal zoning ordinance duly adopted under Title 30, chapter 239, whose requirements are applied equally to hazardous waste facilities and to other facilities, operations and uses which present the same or greater risk to the public. The board shall incorporate in any such approval the terms and provisions of applicable local ordinances and permits to the fullest extent practicable.

2. **Municipality a party in site review process.** All persons who make application for a permit to construct, operate or substantially expand a hazardous waste facility shall, at the same time, give written notice to the municipal officers of the municipality in which the proposed facility will be located.

The municipality through its municipal officers shall be a party in the site review proceeding of disposal and treatment facilities before the board, and shall be reimbursed by the department for up to 50% of its direct costs, not to exceed \$5,000.

The Governor may appoint a person to facilitate communications between the applicant and the municipality, and between the department and the municipality.

The Governor may accept public and private funds from any source for the purpose of carrying out responsibilities under this section.

The board shall hold at least one public hearing within the municipality in which the facility will be located.

3. **Municipal fees authorized.** Hazardous waste facilities which accept waste other than that generated by the owner of the facility are exempt from municipal

property taxes. Municipalities may levy a fee in lieu of such taxes. Fees so levied shall be applied as a percentage of the annual billings of the facility to its customers. No fees so levied may exceed 5% of the annual billings. The department may audit the accounts of a facility to determine the amount of the fee owed to the municipality.

#### STATEMENT OF FACT

This bill provides the mechanism by which the Board of Environmental Protection may gather pertinent data relating to the generating, transportation, treatment and handling of hazardous waste in the State. It also requires the identification of out-of-state waste facilities for hazardous waste which may be available to Maine generators. It requires an annual plan, describing the need for new commercial hazardous waste facilities, as well as identification of wastes which may be reused and recycled, as well as hazardous waste that cannot be treated. Sites which are unsuitable for hazardous waste disposal facilities also need to be identified.

There is a provision which requires hazardous waste facilities approved by the State to comply with municipal zoning ordinances and mandates that any Board of Environmental Protection approval contain the requirements of local ordinance and permits. Funds are provided from the Hazardous Waste Fund to help municipalities defray the cost of participating in the site review process before the board.

Municipalities may levy a tipping fee on any hazardous waste facility which accepts waste from persons other than the owner of the hazardous waste facility. This levy is in lieu of the property tax.

The Legislature will be kept informed of the status of hazardous waste management in the State by an annual report of the Commissioner of Environmental Protection.

It is the intent of the Legislature that funds for municipal reimbursement under this Act shall come from the proposed Hazardous Waste Fund now under consideration by the Legislature.