

MAINE STATE LEGISLATURE

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LEGISLATIVE COUNCIL

JANUARY 3, 1989

REVISED AGENDA

CALL TO ORDER

ROLL CALL

SECRETARY'S REPORT

- Summary of December 7, 1988, Council Meeting

EXECUTIVE DIRECTOR'S REPORT

Item #1: Approved Step Increases

Item #2: Resignation of Mark Rosen, Legislative Attorney

Item #3: Cloture: Status Report from David Kennedy, Revisor of Statutes

REPORTS FROM COUNCIL COMMITTEES

OLD BUSINESS

Item #1: Review of Water and Sewer District Charter
Legislation: Staff Report pursuant to Legislative
Council order. (Report enclosed).

NEW BUSINESS

Item #1: Step Increases for Secretary of the Senate, Clerk of
the House and their Assistants.

Item #2: Salaries of Constitutional Officers. (Letter enclosed)

LEGISLATIVE COUNCIL AGENDA
January 3, 1989
(Continued)

Item #3: Submission of Study Reports

(Note: Copies of the Study Reports have been delivered to Council members' offices in order to reduce postage costs).

- Committee to Study the Necessity and Feasibility of Establishing a Health Information Recording System (authorized by the Legislative Council and funded by Chapter 138, Private & Special Laws of 1987).
- Commission on Marine Research (authorized by the Legislative Council and funded by Resolves 1987, chapter 112).
- Joint Standing Committee on Banking and Insurance: Study of Laws Regulating Antitrust Activities of the Insurance Industry (authorized by Chapter 122, Private & Special Laws of 1987).

ADJOURNMENT

LEGISLATIVE COUNCIL AGENDA
January 3, 1989
(Continued)

NEW BUSINESS (CONTINUED)

Item #3 Submission of Study Reports

- Committee to Study Municipal Solid Waste Management: Study of Recycling Options for Municipal Solid Waste



REP. JOHN L. MARTIN
CHAIR

SEN. DENNIS L. DUTREMBLE
VICE-CHAIR

STATE OF MAINE

114th LEGISLATURE

LEGISLATIVE COUNCIL

SEN. CHARLES P. PRAY
SEN. NANCY RANDALL CLARK
SEN. CHARLES M. WEBSTER
SEN. PAMELA L. CAHILL
REP. DAN A. GWADOSKY
REP. JOSEPH W. MAYO
REP. MARY CLARK WEBSTER
REP. FRANCIS C. MARSANO

SARAH C. DIAMOND
EXECUTIVE DIRECTOR

LEGISLATIVE COUNCIL

DECEMBER 7, 1988

MEETING SUMMARY

APPROVED JANUARY 3, 1989

CALL TO ORDER

The first meeting of the 114th Legislative Council was called to order in the Council Chambers by the Senate President, Senator Pray, at 6:45 p.m.

ROLL CALL

Senators: Sen. Clark, Sen. Dutremble, Sen. Webster, Sen. Pray, Sen. Cahill

Representatives: Rep. Mayo, Rep. Gwadosky, Rep. Martin, Rep. Webster, Rep. Marsano

Legislative Officers:

Sally Diamond

Lynn Randall

Bent Schlosser

Martha Freeman

David Kennedy

John H. Bailey

Executive Director,

Legislative Council

State Law Librarian

Director, Office of Fiscal
and Program Review

Director, Office of Policy
and Legal Analysis

Revisor of Statutes

Information Systems

Director

ELECTION OF OFFICERS

Senator Pray opened the floor for nominations for the position of Chair of the Legislative Council, noting that the position shall be occupied by a member of the House in accordance with Rules of Procedure adopted by the Legislative Council.

Motion: That Speaker Martin be nominated for the position of Chair of the Legislative Council. (Motion by Sen. Clark; second by Rep. Gwadosky). Hearing no further nominations, Sen. Pray closed the nominations and polled the Council members.. Rep. Martin was elected Chair by a unanimous vote, 10-0.

Sen. Pray turned the gavel over to Rep. Martin, who proceeded to open the floor for nominations for the position of Vice-Chair of the Legislative Council.

Motion: That Senator Dutremble be nominated for the position of Vice-Chair of the Legislative Council. (Motion by Sen. Pray; second by Rep. Mayo).

Motion: That the nominations be closed (Motion by Sen. Clark). Hearing no opposition, Rep. Martin declared that Sen. Dutremble was Vice-Chair by a unanimous vote.

RULES OF PROCEDURE

Copies of the Rules of Procedure adopted by the 113th Legislative Council had been distributed to members of the new Council prior to the meeting.

Discussion: Rep. Martin pointed out to members that Sally Diamond prepares the agendas for Council meetings and encouraged Council members to notify her of items. Rep. Gwadosky requested that items that require Council action be distinguished from items which are informational, in order to assist Council members to prepare for meetings.

Motion: That these Rules of Procedure be adopted for the 114th Legislative Council. (Motion by Sen. Clark; second by Sen. Pray; unanimous).

SECRETARY'S REPORT

- Summaries of the November 28, and December 6, 1988, Council meetings were approved and placed on file. (Motion by Rep. Martin; second by Sen. Dutremble; unanimous).

EXECUTIVE DIRECTOR'S REPORT

Item #1: Legislative Record: Additional Price Information

Sally Diamond directed Council members to a sheet which summarized the estimated total cost of the Legislative Record for a reduced number of copies.

Discussion: Sen. Webster requested that the Secretary of the Senate and Clerk of the House survey all members to determine whether or not they want to have copies of the Record before any contract changes are negotiated. Rep. Martin noted that the Clerk had already initiated such a survey in the House.

Motion: That this item be tabled pending the receipt of further information. (Motion by Sen. Webster; second by Sen. Clark; unanimous).

REPORTS FROM COUNCIL COMMITTEES

None.

OLD BUSINESS

None.

NEW BUSINESS

Item #1: Submission of Study Reports

Joint Standing Committee on Agriculture: Study of the Maine Blueberry Commission

Joint Standing Committee on Transportation: Study of Highway Maintenance and Safety Implications of Heavy Trucks

Motion: That the two Study Reports be accepted and placed on file. (Motion by Sen. Dutremble; second by Sen. Webster; unanimous).

ADJOURNMENT

The Legislative Council meeting was adjourned at 6:56 p.m., upon the motion of Sen. Pray.

SARAH C. DIAMOND
EXECUTIVE DIRECTOR
OF THE LEGISLATIVE COUNCIL

JOHN H. BAILEY
INFORMATION SYSTEMS
DIRECTOR

RICHARD N. SAWYER, JR.
ADMINISTRATIVE SERVICES
DIRECTOR



MAINE STATE LEGISLATURE
OFFICE OF THE EXECUTIVE DIRECTOR
LEGISLATIVE COUNCIL

January 3, 1989

Honorable John L. Martin, Chair
and Members of the Legislative Council
114th Maine Legislature
Augusta, Maine 04333

Dear Speaker Martin and Members of the
Legislative Council:

The Legislative Council has the authority to annually adjust the salaries of the Secretary of the Senate, the Clerk of the House and their Assistants in accordance with guidelines contained in the Statutes (3 M.R.S.A. § 162 - A, para 1 & 2).

The Council last took action on these salaries in December, 1987. The enclosed summarizes the current location of each of these four individuals in their respective ranges. Traditionally, increases in these salaries are effective on the date the Legislature convenes.

I would be happy to answer any questions you may have.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sarah C. Diamond".

Sarah C. Diamond
Executive Director

Enclosure

LEGISLATIVE OFFICERS' SALARIES

December, 1988

	<u>Current</u>	<u>Next Step*</u>
Secretary of the Senate Joy J. O'Brien	14/D \$51,563.20	14/E \$55,744.00
Clerk of the House Edwin H. Pert	14/D \$51,563.20	14/E \$55,744.00
Ass't Secretary of the Senate Pamela Lovley	9/F \$34,944.00	9/G \$37,752.00
Ass't Clerk of the House Deborah Bedard Wood	9/X \$40,456.00	9/X** \$41,662.40

* Incorporates 3% Cost-of-Living Increase
which has been awarded to all state
employees effective 1/3/89

** Ms. Wood is "topped out" in her statutory
salary range



MAINE STATE LEGISLATURE

Augusta, Maine 04333

STUDY OF MUNICIPAL SOLID WASTE MANAGEMENT

December 15, 1988

Speaker John L. Martin, Chairman
Legislative Council
State House
Augusta, ME 04333

Dear Speaker Martin:

The Legislative Study Committee on Municipal Solid Waste Management is pleased to submit the attached report of our study of solid waste issues pursuant to the order of the Legislative Council. Our efforts and recommendations concentrate on recycling options. We hope you find this report a useful tool in our continuing efforts to resolve the current solid waste problem.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donald Carter".

Rep. Donald Carter, Chair

STATE OF MAINE
113TH LEGISLATURE
SECOND REGULAR SESSION

STUDY OF
RECYCLING OPTIONS
FOR
MUNICIPAL SOLID WASTE

December 1988

MEMBERS:

Rep. Donald Carter, Chairman*
Sen. Margaret G. Ludwig
Rep. Reed Coles
Rep. Richard Gould
Rep. Willis Lord
Rep. Malachi Anderson
Rep. Vinton Ridley*

* Members of Appropriation &
Financial Affairs Committee;
remainder are members of Energy
& Natural Resources Committee.

Staff:

William T. Glidden, Legislative Analyst
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Office of Policy and Legal Analysis
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Augusta, Maine 04333
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STUDY ORIGIN AND PROCESS

As an environmental and economic development issue, solid waste has a long history in Maine. While the Legislature has been actively involved in setting solid waste policy for many years, the past three years have been particularly active ones for solid waste legislation. In 1986, in response to considerable public concern over waste imports, the legislature initiated a comprehensive study of solid waste management in Maine. That study resulted in sweeping revisions to the disposal facility siting process and in the establishment of an Office of Waste Recycling and Reduction. The reader is encouraged to review the study report, Solid Waste Management and Disposal Policy in Maine, June 1987.

Since the completion of the 1986-7 legislative study, a combination of forces have acted to keep the solid waste controversy at the forefront. These forces include:

- A shrinking supply of commercial landfill capacity,
- Delayed expansion of existing and development of new capacity as various proposals await state and local licensing action and court action,
- Continuing state efforts to close polluting municipal landfills which has increased pressure on towns to seek new disposal options,
- An unfinished rule-making effort by the Department of Environmental Protection, authorized on May 22, 1987, and
- Still-embryonic waste recycling efforts by the state.

Together, these forces have sustained public concern over the state's ability to efficiently and safely manage its solid waste. The Legislature responded to this continuing concern by initiating, with the approval of the Legislative Council, a second study of solid waste issues during the summer of 1988.

Recognizing that many proposals were under development for comprehensive solid waste management, the legislative Municipal Solid Waste Study Committee choose to concentrate its efforts on waste recycling.

The study committee consisted of five members of the Joint Standing Committee on Energy and Natural Resources and two members of the Joint Standing Committee on Appropriations and Financial Affairs. The study committee met seven times to take public input and to discuss possible recommendations. In addition, the study committee visited a successful municipal recycling program in Wilton, N.H.

RECOMMENDATIONS

The study committee developed recommendations in five general areas. This section summarizes the recommendations in each area. Complete legislative language is included in Appendix A. Appendix B contains background material which was developed for the committee on several of these topics.

Waste Reduction. The first step in any rational waste management scheme is to reduce the amount of waste generated. Three members of the study committee recommend the adoption of a packaging tax to achieve this goal. This proposal is designed to establish an incentive for the use of packaging materials which are recyclable or are manufactured out of recycled material. The Office of Waste Recycling and Reduction is charged with determining which types of packaging are eligible for the incentive. Packaging not meeting these criteria would be subject to a 3¢ per package tax to be collected at the point of retail sale. The Bureau of Taxation would be responsible for tax collection. Revenues would go to the General Fund.

Enhancement of Collection. Efficient recycling depends on efficient collection systems. Separation of waste by type is important for marketing efforts. "Contamination" of separated material reduces the value of the material. For example, the value of a bin of aluminum waste is reduced to the extent that plastics are also included. The study committee recommends three actions that will enhance collection efforts.

First, the study committee unanimously recommends banning a type of beverage container, known as the "plastic can". These containers closely resemble aluminum soft drink cans but are made largely of plastic. The difficulty in identifying this container type could lead to contamination of aluminum waste streams with a consequent reduction in the value of this material.

Second, the study committee unanimously recommends the establishment of a plastic container coding system. This system, modeled closely on recommendation of the plastics industry, allows recyclers to identify plastic containers by plastic resin type. Subsequent sorting by resin type increases the market value of the recycled material.

Third, the study committee unanimously recommends the expansion of the existing beverage container deposit law to include all types of beverage containers with the exception of dairy products. The "Bottle Bill" has proven to be the most efficient collection and recycling mechanism in Maine today with a container return rate estimated at approximately 95%. While the current law may account for approximately 5% of Maine's municipal solid waste, a very substantial additional quantity of waste remains in the form of beverage containers not subject to the law.

Municipal Recycling Assistance. Municipal recycling efforts have had a mixed recent history in Maine. While almost 60 municipal programs are in existence, the levels of participation and the amounts of material recycled are thought to vary widely. There is a clear role for the state to provide technical and financial assistance to local and regional recycling efforts. The study committee unanimously recommends the establishment of a four-part program within the Office of Waste Recycling and Reduction to provide such assistance. This program would include:

1. A recycling information clearinghouse;
2. Recycling feasibility grants;
3. Recycling capital investment grants; and
4. A recycled waste transportation costs subsidy.

The information clearinghouse will assist municipalities by providing information on the establishment and operation of recycling programs, by finding markets for recycled materials and by matching private sector recycling service providers with interested municipalities. Funds for one staff position are recommended.

The two grants programs are intended to stimulate interest in municipal recycling by both individual municipalities and groups of municipalities or regional councils. The bill as drafted reflects the committee majority recommendation for a preference in grant awards for regional proposals. A committee minority recommends no regional preference. The minority position also recommends establishing a preference for applications which include mandatory recycling provisions as part of the proposal. The bill reflects the majority sentiment against a preference for mandatory programs. Approximately four million dollars is recommended as an appropriation over the next two fiscal years for these programs.

The recycled waste transportation subsidy is intended to help towns which are willing to recycle materials but have found that the transportation costs exceed the cost of disposal. This program should help towns and the state to better incorporate the "avoided costs" advantage of recycling into their decision-making on waste management choices. Approximately one and one quarter million dollars is recommended as an appropriation over the next two fiscal years for this program.

Increasing Demand for Recycled Materials. In addition to the supply of recycled material, successful recycling also depends on healthy markets for products made from recycled material. Brisk sales of these products translate into demand for recycled waste. The study committee unanimously recommends two actions in this area.

First, the study committee recommends that the state establish aggressive goals for the purchase of paper with

recycled content and that a 10% price preference be allowed to achieve these goals. The committee recommends goals of 15% of all paper purchased through July 1, 1991; 30% through July 1, 1993 and 50% after July 1, 1993.

Second, the study committee recommends the establishment of an industrial incentives program in the Finance Authority of Maine (FAME) to encourage the development of manufacturing operations which make products out of recycled material. In addition to the existing industrial incentives administered by FAME, the study committee suggests establishing a low-interest direct loan program to leverage investment in these types of industries. The study committee also suggests that industrial waste reduction projects be eligible for support under this program so long as the project results in a net decrease in solid or hazardous waste generated within the state. The committee recommends an appropriation of two million dollars over the next two fiscal years.

Funding Sources. To support the programs proposed above, the study committee unanimously recommends the establishment of a tax on certain products which create municipal solid waste problems. These taxes can be considered advance disposal fees on such products as auto batteries, tires, white goods (refrigerators, stoves, freezers, etc.) and brown goods (TVs, personal computers, etc.). These revenues would be collected by the Bureau of Taxation for deposit to the General Fund. As a means of relating subsequent appropriations for state recycling programs to the revenues generated by this tax, the committee further recommends that the Bureau of the Budget include in its recommendations to the Governor an appropriation for the Municipal Assistance Program (see above) which is equivalent to the estimated revenues from the advance disposal tax.

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APPENDIX A:
RECOMMENDED LEGISLATION

STUDY LEGISLATION
Municipal Solid Waste Study Committee
Legislative Council Approved Study
1988 Interim

Title: AN ACT TO PROMOTE RECYCLING AND IMPROVED SOLID WASTE
MANAGEMENT

PART A

Sec. 1. Amend 5 MRSA §1812 by changing the 4th and 5th sentences of the 1st paragraph to read;

...."Whenever supplies and materials, are available for purchase which are composed in whole or in part of recycled materials and are shown by the seller, supplier or manufacturer to be equal in quality and are competitively priced, except in the case of paper and paper products, the State Purchasing Agent shall purchase such recycled supplies and materials. For the purposes of this section and section 1812-B, recycled materials means materials that are composed in whole or in part of elements that are reused or reclaimed."

Sec. 2. Amend 5 MRSA §1812-A as follows:

§1812-A. Report on purchase of recycled products.

The State Purchasing Agent shall report on or before January 14/1988/ 1st of the First Regular Session of each Legislature to the joint standing committee ~~of the Legislature~~ having jurisdiction over natural resources ~~and of the same committee of the First Regular Session of each subsequent Legislature on or before January 1st~~ on the State's efforts to purchase supplies and materials composed in whole or in part of recycled materials ~~pursuant to section 1812~~. The State Purchasing Agent shall also report on any procurement policies, incentives, educational programs, promotional efforts or other activities undertaken by the Bureau of Purchases to encourage the purchase of those supplies and materials. The State Purchasing Agent shall include in the report any recommendations to increase or facilitate the purchase of those supplies and materials.

Sec. 3. 5 MRSA §1812-B is enacted to read:

§1812-B. Purchasing of paper and paper products

1. Purchase of paper and paper products with recycled material content. The State Purchasing Agent shall provide that the total dollar amount spent in each fiscal year on paper and paper products with recycled material content purchased by the State shall be as follows:

A. not less than 15% of the paper and paper products purchased on or after July 1, 1989;

B. not less than 30% of the paper and paper products purchased on or after July 1, 1991; and

C. not less than 50% of the paper and paper products purchased on or after July 1, 1993.

This subsection shall be implemented subject to the conditions imposed by subsection 3 of this section.

2. Federal guidelines and cooperative purchases. To qualify as having recycled material content, paper or paper products must have recycled material content which meets or exceeds the standards established for that paper or paper product category in Table 1 of the Guideline for Federal Procurement of Paper and Paper Products, 40 Code of Federal Regulations, Part 250. The State Purchasing Agent shall determine whether a paper or paper product qualifies. The State Purchasing Agent may join with other states in making cooperative requests for bids to supply paper and paper products.

3. Bids; price preference. A person who submits a bid for a contract to supply paper or paper products shall certify the percentage and nature of any recycled materials content in the product subject to bid. Bids which qualify as a paper or paper product with recycled material content and are within 10% of the lowest bid that meets all other specifications may receive up to a 10% price preference. Any bids which qualify as a paper or a paper product with recycled material content, but exceed by more than 10% the low bid which meets all other specifications shall not be considered. If no bids are received on a request for bids which qualify as a paper or a paper product with recycled material content then the State Purchasing Agent may award the contract to a bidder whose paper or paper product has substandard percentages or no recovered materials content.

Sec. 4. 10 MRSA §963-A, sub§ 10 is amended to read:

10. Eligible project. "Eligible project" or "eligible collateral" means any of the following:

A. Any real property located within the State, including without limitation any land, buildings, fixture, improvement, easement, right-of-way, water right, land lying under water or air right;

B. Any personal property, including without limitation any leasehold, inventory, account receivable, patent, license, franchise, machinery, equipment, merchandise, raw material, supply, product, work in process, stock in trade, capital stock, note, guaranty, insurance contract, bond, mortgage, letter of credit or security agreement;

C. Any fishing vessel documented or to be documented under laws of the United States or registered or to be registered under a state's law which is designed to be used for catching, processing or transporting fish and any vessel outfitted for any such activity;

D. Any vessel registered under the law of the United States or a state;

E. Any energy conservation project;

F. Any energy distribution system project;

G. Any energy generating system project;

H. Any pollution-control project;

I. Any water supply system project; ~~or~~

J. Any underground oil storage facility replacement project; or

K. Any hazardous waste or solid waste recycling or reduction project.

In addition to and without limiting this subsection, "eligible project" or "eligible collateral" also means any project or collateral, the financing of which through the issuance of revenue obligation securities would result in the interest on the revenue obligation securities qualifying, as of the date of issuance, as tax-exempt under the United States Code, Title 26, Section 103, as amended.

Sec. 5. 10 MRSA §963-A, sub§ 32 is amended to read:

32. Manufacturing enterprise. "Manufacturing enterprise" means knowledge, skill or labor applied to giving of new shapes, new qualities or new combinations to matter as material

products and includes assembling, fabricating, making, creating, working, preparing, milling, processing, recycling, manufacturing, finishing, fashioning, producing, storing, warehousing, preserving, distributing, handling or transporting in any manner goods, wares, merchandise, metals, fabrics, materials, substances, product or matter of any kind or nature including materials recovered from solid and hazardous wastes.

Sec. 6. 10 MRSA §963-A, sub§45-A is enacted to read:

45-A. Recycling or waste reduction project. "Recycling or waste reduction project" means any building, structure, machinery, equipment or facility which may be deemed necessary for recovery, separation, remanufacture or reuse of materials in solid or hazardous waste or for the reduced generation of solid or hazardous waste, together with all land, property, rights, rights-of-way, franchises, easements and interests in lands necessary or convenient for the construction or operation of the project.

Sec. 7. 10 MRSA §1023-F is enacted to read:

§1023-F Waste Reduction and Recycling Loan Fund

1. Creation. The Waste Reduction and Recycling Loan Fund is created and established under the jurisdiction and control of the authority.

2. Sources of money. There shall be paid into the fund the following:

A. All money appropriated for inclusion in the fund;

B. Subject to any pledge, contract or other obligation, all interest, dividends or other pecuniary gains from investment of money of the fund;

C. Subject to any pledge, contract or other obligations, any money which the authority receives in repayment of advances from the fund; and

D. Any other money available to the authority and directed by the authority to be paid into the fund.

3. Application of fund. Money in the fund may be used for direct loans for all or part of any project when the authority determines that:

A. The project is

(1) designed to substantially reduce or eliminate the production in a trade or business of solid waste or hazardous waste as those terms are defined in Title 38, section 1303, or

(2) a manufacturing project devoted to resource recovery, as that term is defined in Title 38, section 1303, subsection 8, except that the combustion of hazardous or solid waste shall not be considered "resource recovery" for the purposes of this section.

B. There is a reasonable likelihood that the applicant will be able to repay the loan;

C. The amount and terms of the loan are reasonable in order to provide an incentive to the applicant to undertake the project, which may include a below-market interest rate, and the project will result in a net decrease in solid or hazardous waste generated within the state; and

D. The project will contribute to the achievement of the goals identified in the State Recycling Plan adopted under Title 38, section 1310-M.

The authority, pursuant to Title 5, chapter 375, subchapter II, shall adopt rules for determining eligibility, feasibility, terms, conditions and security for the loans. Money in the fund not needed currently to meet the obligations of the authority as provided in this section may be invested in such a manner as permitted by law.

4. Accounts within fund. The authority may divide the fund into such separate accounts as it determines are necessary or convenient for carrying out this section, including, but not limited to, accounts reserved for direct loan funds.

5. Revolving fund. The fund shall be a nonlapsing, revolving fund. All money in the fund shall be continuously applied by the authority to carry out this section.

Sec. 8. 10 MRSA §1041, sub§18 is enacted to read:

18. Recycling and waste reduction. Provide financial assistance for recycling and waste reduction projects. The Office of Waste Recycling and Reduction shall provide assistance to the authority in determining technical eligibility and merit of applications for recycling loans.

Sec. . 10 MRSA §1043, sub§2, ¶E-1 is enacted to read:

E-1. . In the case of recycling and waste reduction projects, the proposed facility will contribute to the achievement of the goals identified in the State Recycling Plan adopted under Title 38, section 1310-M, will reduce the amount of solid or hazardous waste requiring disposal.

Sec. 10. 10 MRSA §1063, sub§2, ¶I-1 is enacted to read:

I-1. In the case of recycling and waste reduction projects, the proposed facility will contribute to the achievement of the goals identified in the State Recycling Plan adopted under Title 38, section 1310-M and will reduce the amount of solid or hazardous waste requiring disposal. The Office of Waste Recycling and Reduction shall provide assistance to the authority in determining technical eligibility and merit of applications for assistance under this subchapter.

Sec. 11. 32 MRSA Chapter 26 is enacted to read:

CHAPTER 26
CODING OF PLASTIC CONTAINERS

§1721. Definitions

As used in this chapter, the following terms shall have the following meanings:

1. Beverage. "Beverage" means any liquid produced or packaged for internal human consumption. Beverage includes, but is not limited to water, ale, beer, spirits, soda water, and other carbonated and noncarbonated liquids.

2. Container. "Container" means any bottle, can, jar, case, package or other receptacle intended to hold, carry, and enclose beverages, food items or nonfood products.

3. Rigid plastic container. A "rigid plastic container" is a container made of synthetic or natural polymerized resins or cellulose derivatives including, but not limited to all materials cited in section 1723, which retains the same shape whether full or empty.

§1722. Coding of Plastic Containers.

On or after January 1, 1991, no person shall distribute, sell, or offer for sale any rigid plastic container unless that container has a molded label indicating the plastic resin used to produce the rigid plastic container.

§1723. Labels.

The label shall appear on the bottom of the rigid plastic container and be clearly visible. This label shall consist of a number with letters placed below the number. The numbers and letters shall be as follows:

1. For polyethylene terephthalate, the letters "PETE" and the number 1.

2. For high density polyethylene, the letters "HDPE" and the number 2.
3. For vinyl, the letter "V" and the number 3.
4. For low density polyethylene, the letters "LDPE" and the number 4.
5. For polypropylene, the letters "PP" and the number 5.
6. For polystyrene, the letters "PS" and the number 6.
7. For any other plastic resins, including multilayer, the letters "OTHER" and the number 7.

§1724. Pharmaceutical exemption

Any rigid plastic container with a volume of 8 ounces or less which is used to package pharmaceutical products is exempt from this chapter.

§1725. Penalties.

1. Civil violation. A violation of this chapter by any person shall be a civil violation for which a forfeiture of not more than \$100 may be adjudged.

2. Separate violation. Each day that such violation continues or exists shall constitute a separate offense.

§1726. Rules and Enforcement.

The Office of Waste Reduction and Recycling of the Department of Economic and Community Development shall adopt and enforce rules implementing the provisions of this chapter. In adopting rules the office shall consult with the Recycling Advisory Council, the Department of Agriculture, Food and Rural Resources, plastic container manufacturers and distributors, and the recycling industry. Rules shall be adopted in accordance with the provisions of 5 MRSA, chapter 375.

Sec. 12. 32 MRSA §1868 is amended to read:

§1868 Prohibition on certain types of containers and holders
No beverage ~~containers~~ shall be sold or offered for sale to consumers in this State:

1. Flip tops. In a metal container designed or constructed so that part of the container is detachable for the purpose of opening the container without the aid of a separate can opener; ~~and~~

2. Connectors. ~~With~~ In containers connected to each other by any device or material, including plastic rings or other plastic holding device, which does not decompose by photodegradation, chemical degradation or biodegradation within a reasonable period of time upon exposure to the elements; ~~and~~

3. Plastic cans. In a container which is composed of one or more plastics if the basic structure of the container, exclusive of the closure device, also includes aluminum or steel.

Sec. 13. 38 MRSA §1319-X is enacted to read:

§1310-X Office of Waste Recycling and Reduction; Financial and Technical Assistance for Recycling Activities

Consistent with the state recycling plan, the Office of Waste Recycling and Reduction shall implement a program of financial and technical assistance to support recycling activities which reduce the volume of solid waste requiring disposal.

1. Recycling information clearinghouse. The office shall establish and administer a clearinghouse on recycling markets information. The office shall maintain a current list of municipalities which have established or are seeking to establish recycling programs together with a description of the recycled materials available through the programs. The office shall also maintain a list of brokers, handlers, processors, transporters and other persons providing services and potential markets for recycled materials. The office shall actively market the services of the clearinghouse and shall seek to match municipal recycling programs with appropriate recycling businesses. The office shall make its information on recycling services available to private solid waste generators seeking markets or services for recyclable materials.

2. Recycling feasibility studies. The office shall provide professional technical assistance to municipalities or groups of municipalities in the planning and design of local and regional recycling programs. The purpose of this assistance program is to further the goals established in the

state recycling plan. The office may contract with regional councils and individual municipalities to provide services under this paragraph in order to encourage regional strategies for recycling. The office shall give priority to applications that involve regional approaches. This assistance shall include:

A. The assessment of economically feasible recycling potential including the supply of recyclable materials, probable markets for these materials and the avoided costs of solid waste disposal;

B. The planning for the logistical, administrative and financial management requirements of a recycling program;

C. The design of any flow-control or other ordinances necessary for the implementation of a recycling program;

D. The coordination of the proposed recycling program with overall solid waste management; and

E. The assessment of the relative advantages of participation in a regional recycling effort versus a local recycling program.

The office may develop a priority list of municipalities and regions of the state in need of assistance under this subsection. The office shall consult with the Recycling Advisory Council in the development of the priority list.

3. Recycling capital investment grants. The office may make grants to eligible municipalities and regional councils for the construction of public recycling facilities and the purchase of recycling equipment. The office may establish local cost-share requirements of up to 25% of the total grant amount. The local cost-share may include in-kind services provided by the grant recipient. The office shall encourage recycling programs which require the participation of the waste generators served.

A. The office shall establish grant priorities based on the following objectives:

(1) The development of regional recycling programs to capture the economies of scale in both materials handling and marketing;

(2) The expansion of existing, successful recycling programs at the level of both individual municipalities and regions; and

(3) The promotion of the recycling goals and any other factors identified in the state recycling plan as necessary for the successful implementation.

B. The office shall structure the grants program to ensure the development of successful recycling programs which represent:

(1) rural, suburban and urban areas of the state;

(2) curb-side pick-up and drop-off systems of solid waste collection; and

(3) mandatory and voluntary forms of recycling program participation.

C. The office may develop a priority list of municipalities and regions of the state in need of assistance under this subsection. The office shall consult with the Recycling Advisory Council in the development of the priority list.

4. Recycling avoided cost program. The office may enter into annual agreements with a municipality or group of municipalities to reimburse a portion of the direct costs of transporting recyclable material to a recycling facility for intermediate processing or final use.

A. The office, in consultation with the Recycling Advisory Council, shall designate specific recyclable materials which are eligible for the program established by this subsection. In making these designations, the office shall rely on the goals and objectives identified in the State Recycling Plan.

B. The office shall determine the difference between the projected costs of recycling the material, including transportation costs, and the avoided costs of disposing of the same material at a solid waste disposal facility which is operated in substantial compliance with the requirements of this Chapter. If the costs of recycling, including transportation, are less than the avoided disposal costs, the office shall not make any reimbursement. The office shall review the cost differentials established for each agreement at least quarterly.

C. The office shall limit reimbursements to the lesser of the following amounts:

(1) the amount derived under paragraph B, or

(2) 30% of the actual transportation costs.

D. If the office is unable to determine the cost differential under paragraph B because no suitable solid waste disposal facility exists within the state, the office may make matching grants in an amount which matches the disposal or acceptance fee imposed by the municipality originally accepting the recyclable material. The office shall condition matching grants under this paragraph on the use of the fee and the matching grant to recycle the material in question.

E. The costs of transporting unseparated or mixed municipal solid waste are not eligible for reimbursement under this subsection.

F. The office shall adopt rules, in consultation with the Recycling Advisory Council, necessary for the implementation of this subsection including procedures for the determination of cost differentials under paragraph B.

Sec. 14. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

ECONOMIC & COMMUNITY DEVELOPMENT

Office of Waste Recycling and Reduction

	1989-90	1990-91
Positions	(1)	(1)
Personal Services	\$23,340	\$31,186
All Other	1,500	2,000
Capital	<u>3,250</u>	<u> </u>
TOTAL	\$28,090	\$33,186

Provides funds for a Planner II, computer equipment and general operating expenses to administer the proposed recycling information clearing-house.

**Office of Waste Recycling
and Reduction**

	1989-90	1990-91
Positions	(1)	(1)
Personal Services	\$ 23,340	\$ 31,186
All Other	256,500	252,000
Capital	<u>750</u>	<u></u>
TOTAL	\$280,590	\$283,186

Provides funds for a Planner II, contractual arrangements for feasibility analysis, and general operating expenses to administer the proposed technical assistance program.

**Office of Waste Recycling
and Reduction**

	1989-90	1990-91
Positions	(3)	(3)
Personal Services	\$ 66,358	\$ 88,477
All Other	754,500	2,506,000
Capital	<u>2,250</u>	<u></u>
TOTAL	\$823,108	\$2,594,477

Provides funds for 2 Management Analyst II positions, a Clerk Typist II, construction grants for recycling facilities and general operating expenses to administer the proposed Recycling Capital Grants Program.

**Office of Waste Recycling
and Reduction**

	1989-90	1990-91
Positions	(1)	(1)
Personal Services	\$ 25,574	\$ 33,965
All Other	253,000	1,004,000
Capital	<u>750</u>	<u></u>
TOTAL	\$279,324	\$1,037,965

Provides funds for a
Management Analyst II,
contractual agreements
with municipalities and
general operating expenses
to administer the proposed
Recycling Avoided Cost
Program.

TOTAL	<u>\$1,411,112</u>	<u>\$3,948,814</u>
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FINANCE AUTHORITY OF MAINE

	1989-90	1990-91
Waste Reduction and Recycling Loan Program		
All Other	\$1,000,000	\$1,000,000

Provides funds to be used
for direct loans for projects
designed to reduce solid or
hazardous waste.

FINANCE AUTHORITY OF MAINE

TOTAL	<u>\$1,000,000</u>	<u>\$1,000,000</u>
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PART B

Section 1. The Department of Agriculture, Food and Rural Resources shall form an advisory committee consisting of representatives of the Office of Waste Reduction and Recycling, the Bureau of Alcoholic Beverages, the operator of the bailment warehouse, the certificate of approval holders for spirits and fortified wines, distributors of other affected beverages, operators of certified redemption facilities, and other affected interests as the Department finds necessary. The Department of Agriculture, Food and Rural Resources shall consult with the advisory committee in developing proposed rules for the implementation of sections 2 through 7.

Section 2. 32 MRSa §1862, sub-§1 is repealed.

Section 3. 32 MRSa §1862, sub-§1-A is enacted to read:

1-A. Beverage. "Beverage" means beer, ale or other drink produced by fermenting malt; spirits; wine; wine coolers; soda or noncarbonated water; and all nonalcoholic carbonated or noncarbonated drinks in liquid form and intended for internal human consumption except for milk and dairy-derived products.

Section 4. 32 MRSa §1862, sub-§12-B is amended to read:

12-B. Spirits. "Spirits" means spirits as defined in Title 28-A, section 2.

Section 5. 32 MRSa §1862, sub-§§14 and 15 are enacted to read:

14. Wine. "Wine" means wine as defined in Title 28-A, section 2 except that for the purposes of this chapter wine shall not include wine coolers.

15. Wine cooler. "Wine cooler" means a beverage of less than 8% alcohol content by volume consisting of wine and:

A. Plain, sparkling or carbonated water; and

B. Any one or more of the following:

(1) Fruit juices;

(2) Fruit adjuncts;

(3) Artificial or natural flavors or flavorings;

(4) Preservatives;

(5) Coloring; or

(6) Any other natural or artificial blending material.

Section 6. 32 MRSA §1863 is repealed:

Section 7. 32 MRSA §1863-A is enacted to read:

§ 1863-A. Refund Value

Every beverage container sold or offered for sale to a consumer in this State shall have a refund value. The refund value shall be:

A. Refillable containers. For refillable beverage containers, except wine and spirits containers, the refund value shall be determined by the manufacturer according to the type, kind and size of the beverage container but shall not be less than 5-cents;

B. Nonrefillable containers. For nonrefillable beverage containers, except wine and spirits containers, the deposit and refund value shall be determined and initiated by the distributor according to the type, kind and size of the beverage container, but shall not be less than 5-cents; and

C. Wine and spirits containers. For wine and spirits containers of greater than 50 milliliters, the refund value shall not be less than 20-cents. On January 1, 1992 the department shall issue a finding on the percentages of wine containers and spirits containers returned for deposit. If the department finds the return rate of wine containers was less than 60 percent during 1991, then on July 1, 1992, the refund value on wine containers shall not be less than 50-cents. If the department finds the return rate of spirits containers was less than 60 percent during 1991, then on July 1, 1992, the refund value of spirits containers shall not be less than 50-cents.

Section 8. Sections 2 through 7 of this Act shall take effect January 1, 1990.

Sec. 9. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	<u>1988-89</u>	<u>1990-91</u>
AGRICULTURE, DEPARTMENT OF		
Public Services - Agriculture		
Positions	(2)	(2)
Personal Services	\$28,170	\$40,860
All Other	6,165	8,520
Capital Expenditures	<u>770</u>	<u> </u>
Total	\$35,105	\$49,380

Provides funds for a Consumer Foods Inspector, a Clerk Typist II, anticipated travel expenses and other general operating costs required to assist the Department in handling the proposed expansion of the existing Beverage Container Deposit System.

PART C

Sec. 1. 5 MRSA §1665 is further amended by adding a 4th ¶:

In preparing estimates of expenditure and appropriation requirements for each fiscal year of the ensuing biennium for the Office of Waste Recycling and Reduction, Department of Economic and Community Development, the Bureau of the Budget shall recommend to the Governor as amount to support the activities of that Office pursuant to Title 38, section 1310-X which shall be no less than the amount of General Fund revenues estimated to be received from the "Advance Disposal Tax", as established in Title 36, chapter 719, for each year of the ensuing biennium.

Sec. 2. 36 MRSA chapter 719 is enacted to read:

CHAPTER 719

SOLID WASTE ADVANCE DISPOSAL TAX

§4830. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Brown good. "Brown good" means an electronic device containing printed circuit boards, capacitors, resistors or transistors which is not included in the definition of white goods and which weighs more than 10 pounds.

2. Business. "Business" means any trade, occupation, activity or enterprise engaged in for the purpose of selling or distributing tires, white goods, brown goods or lead acid batteries in this State.

3. Distributor. "Distributor" means any of the following:

A. any person engaged in the business of producing or manufacturing tires, white goods, brown goods or lead-acid batteries in this State for sale in this State,

B. any person engaged in the business of selling tires, white goods, brown goods or lead-acid batteries in this State who brings, or causes to be brought, into this State any tires, white goods, brown goods or lead-acid batteries for sale to a retailer or

C. any person engaged in the business of selling tires, white goods, brown goods or lead-acid batteries who ships or transports tires, white goods, brown goods or lead-acid batteries to retailers for sale in this State.

4. Lead-acid battery. "Lead-acid" battery means a device designed and used for the storage of electrical energy through chemical reactions involving lead and acids.

5. Manufacturer. "Manufacturer" means a person who manufactures and sells tires, white goods, brown goods or lead-acid batteries.

6. Motorized vehicle. "Motorized vehicle" means any self-propelled vehicle, including motorcycles, construction and farm vehicles and other off-road vehicles, not operating exclusively on tracks.

7. Place of business. "Place of business" means any place where tires, white goods, brown goods or lead-acid batteries are sold or where tires, white goods, brown goods or lead-acid batteries are manufactured, stored, or kept for the purpose of sale.

8. Retailer. "Retailer" means any person engaged in the business of selling tires, white goods, brown goods or lead-acid batteries to ultimate consumers.

9. Retail outlet. "Retail outlet" means a place of business from which tires, white goods, brown goods or lead-acid batteries are sold to consumers.

10. Sale. "Sale" means any transfer, exchange, barter or gift in any manner or by any means whatsoever, for a consideration. It shall include a gift for advertising by a person engaged in the business of selling tires, white goods, brown goods or lead-acid batteries.

11. Tire. "Tire" means the device made of rubber or any similar substance which is intended to be attached to a motorized vehicle or trailer and is designed to support the load of the motor vehicle or trailer.

12. Trailer. "Trailer" means any vehicle without motive power drawn by a motorized vehicle.

13. Unclassified importer. "Unclassified importer" means any person, firm, corporation or association within this State, other than a distributor, as defined, who imports, receives or acquires from without the State, tires, white goods, brown goods or lead-acid batteries for use or sale within the State.

14. White good. "White good" means any appliance employing electricity, natural gas or any liquified petroleum gas to supply heat or motive power

A. to preserve or cook food,

B. to wash clothing, dishes, kitchen utensils, glasses or other related items, or

C. to cool or heat air or water.

§4831. Licenses

Every person engaging in the business of selling tires, white goods, brown goods or lead-acid batteries as a distributor shall secure a license from the tax assessor before engaging in that business. Every license application shall be made on a form prescribed by the tax assessor and shall state the name and address of the applicant, address of his principal place of business, and such other information as the tax assessor may require for the proper administration of this chapter. The application shall be accompanied by a fee of \$25. A person without the State who ships or transports tires, white goods, brown goods or lead-acid batteries to retailers in this State shall make application as a distributor and be granted by the tax assessor a license subject to all the provisions of this chapter and agree, upon applying for a license, to submit his books, accounts and records to examination by the Bureau of Taxation during reasonable business hours, and to accept service of process by mail when service is made in any proceeding involving enforcement of this chapter.

Each unclassified importer before importing, receiving or acquiring tires, white goods, brown goods or lead-acid batteries from without the State shall secure a license from the tax assessor. There is no fee for that license.

Each license issued expires on July 31st of each year unless sooner revoked by the tax assessor. The license shall be prominently displayed on the premises covered by the license and no license may be transferred to any other person.

The tax assessor may revoke or suspend the license or licenses of any person for violation of this chapter applicable to the sale of tires, white goods, brown goods or lead-acid batteries. No license may be revoked, cancelled or suspended until after notice and hearing by the tax assessor.

§4832. Advance disposal fee on tires, white goods, brown goods or lead-acid batteries

1. Tires. A fee is imposed on the sale of tires at the rate of \$1.00 per tire.

2. White goods. A tax is imposed on the sale of white goods at the rate of \$15 per white good.

3. Brown goods. A tax is imposed on the sale of brown goods at the rate of \$15 per brown good.

4. Lead-acid batteries. A tax is imposed on the sale of lead-acid batteries at the rate of \$1 per battery.

5. Imposition. The fee shall be imposed at the time the distributor or unclassified importer brings or causes to be brought into this State tires, white goods, brown goods or lead-acid batteries that are for sale to consumers or to retailers or for use or at the time tires, white goods, brown goods or lead-acid batteries are manufactured or fabricated in this State for sale in this State.

6. Exclusion. The tax imposed on tires, white goods, brown goods or lead-acid batteries does not apply to those products exported from this State or to any tires, white goods, brown goods or lead-acid batteries which under laws of the United States may not be subject to taxation by this State. The tax imposed on tires does not apply to those tires which are remanufactured from used tires also known as "retreads" or "recaps".

§4833. Returns; payment of tax and penalty

Every distributor, or unclassified importer shall on or before the last day of each month render, on forms to be furnished by the tax assessor, a report together with payment of the tax due under this chapter to the tax assessor stating the quantity of all tires, white goods, brown goods or lead-acid batteries held, purchased, manufactured, brought in or caused to be brought in from without the State or shipped or transported to retailers within the State during the preceding calendar month. Every distributor or unclassified importer shall keep a complete and accurate record at his principal place of business to substantiate all receipts of tires, white goods, brown goods or lead-acid batteries. This record shall be preserved for a period of 2 years in such manner as to insure permanency and accessibility for inspection.

The monthly reports shall contain any further information as the tax assessor prescribes and shall show a credit for any tires, white goods, brown goods or lead-acid batteries exempted as provided in section 4833, subsection 6. Records shall be maintained to substantiate the exemption. Tires, white goods, brown goods or lead-acid batteries previously taxed which are returned to a manufacturer because the produce has become unfit for use or unsaleable may be taken as a credit on a subsequent return upon receipt of the credit notice from the original supplier.

If the monthly report required by this chapter is not filed, or payment is not rendered by the last day of the month the distributor or unclassified importer is liable to a penalty of \$1 a day for each day in arrears or 10% of the tax liability, whichever is the greater, together with interest at the rate of 1% per month or fraction thereof due on demand by the tax assessor, and recoverable in a civil action. The tax assessor may waive the penalty for cause.

§4834. The tax assessor may estimate liability

Whenever any distributor or unclassified importer neglects or refuses to make and file any report required by this chapter or files an incorrect or fraudulent report, the tax assessor shall from such information as the tax assessor may obtain fix the amount of taxes, penalties and interest payable and proceed to collect the amount so fixed.

In any action or proceeding for collection of the solid waste advance disposal fee, any penalties and interest imposed in connection with an assessment by the tax assessor of the tax, penalty or interest due the State constitutes prima facie evidence of the claim of the State. The burden of proof is on the distributor or unclassified importer to show that the assessment was incorrect and contrary to law.

§4835. Disposition of taxes

The revenue derived from the tax imposed by this chapter shall be deposited in the General Fund less the costs incurred by the tax assessor in collecting the tax.

Statement of Fact

This bill is the product of the Legislative Study Committee on Municipal Solid Waste. This study was authorized by the Legislative Council in 1988 in light of many solid waste issues affecting the interest of the citizens of Maine. Except where specifically noted below, this bill is the study committee's unanimous report.

Part A of the bill incorporates a variety of changes in state programs to stimulate further recycling of solid waste.

Sections 1 - 3 amend the existing provisions of statute governing state procurement procedures to establish goals for the purchase of paper with recycled content and to establish a 10% price preference for such purchases.

Sections 4 - 10 establish a new low-interest loan program administered by the Finance Authority of Maine to stimulate the establishment of new businesses which recycle waste material into new products or which provide some form of intermediate recycled waste processing. These sections also make a number of minor amendments to the statutes governing the Finance Authority of Maine to allow FAME to use its other programs to the same end. One million dollars is appropriated in each of the next 2 fiscal years for this program.

Section 11 requires the implementation of a plastic container coding system. This system uses symbols representing the type of plastic resin used in a container. The symbols are molded into the bottom of the container. Recycling programs can then sort the containers by resin type. This sorting facilitates marketing of recycled plastic containers.

Section 12 bans the use of beverage containers made of both plastic and metal. These types of containers can create serious problems for recycling programs, particularly those targeted to aluminum.

Section 13 establishes a municipal technical and financial assistance program in the Office of Waste Recycling and Reduction. The program has four components:

1. A recycling information clearinghouse;
2. Recycling feasibility grants;
3. Recycling capital investment grants; and
4. Transportation costs of recycling subsidies.

The information clearinghouse will assist municipalities by providing information on the establishment and operation of recycling programs, by finding markets for recycled materials and by matching private sector recycling service providers with interested municipalities. Funds for one staff position are appropriated.

The two grants programs are intended to stimulate interest in municipal recycling by both individual municipalities and groups of municipalities or regional councils. The bill as drafted reflects the committee majority recommendation for a preference in grant awards for regional proposals. A committee minority recommends no regional preference. The minority position also recommends establishing a preference for applications which include mandatory recycling provisions as part of the proposal. The bill reflects the majority sentiment against this recommendation. Approximately four million dollars is appropriated over the next 2 fiscal years for these programs.

The transportation subsidy is intended to help towns which are willing to recycle materials but have found that the transportation costs exceed the cost of disposal. This program should help towns and the state to better incorporate the "avoided costs" advantage of recycling into their decision making on waste management choices. Approximately one and one quarter million dollars is appropriated over the next 2 fiscal years for this program.

Part B incorporates the changes necessary to extend the current beverage container deposit system to include all beverage containers with the exception of dairy beverages. An appropriation is also included to cover the state's administrative costs.

Part C establishes a new source of revenues to support state recycling initiatives.

Section 1 of Part C institutes changes in the current budget procedure to ensure that appropriation recommendations for recycling made by the Bureau of the Budget to the Governor take full account of new revenues raised.

Section 2 establishes an advance disposal tax on tires, auto batteries, white goods and brown goods to generate the revenues needed to support state recycling initiatives. The study committee estimates that this tax will generate approximately \$5.4 million annually.

7491

STUDY LEGISLATION
Municipal Solid Waste Study Committee
Legislative Council Approved Study
1988 Interim

Title: AN ACT TO CREATE TAX INCENTIVES FOR THE USE OF
RECYCLED PACKAGING

36 MRSA chapter 720 is enacted to read:

CHAPTER 720

WASTE REDUCTION PACKAGING TAX

§4840 Definitions.

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Container. "Container" means a rigid or semirigid package composed of any material or combination of materials, in any shape or form and intended for use in packing or packaging any product intended for retail sale. Containers include, without limitation, barrels, baskets, bottles, boxes, cans, cartons, carrying cases, cups, cylinders, drums, glasses, jars, jugs, pails, pots, rigid metal foil containers, trays, tubs, tubes, tumblers and vessels. All materials used in packaging a single product for retail sale constitute a single container.

2. Office. "Office" means the Office of Waste Recycling and Reduction established in Title 38, section 1310-J.

3. Recovered material. "Recovered material" means any material recovered from or otherwise destined for the waste stream, including post-consumer material, industrial scrap material and overstock or obsolete inventories from distributors, wholesalers and other companies. The term does not include any material and by-product generated from, and commonly reused within, an original manufacturing process.

4. Retailer. "Retailer" means any person who makes retail sales of food or nonfood items packaged in containers, and includes establishments that sell products intended for human consumption on or off the premises which products are prepared and ready to be consumed

5. Retail sale. "Retail sale" and "sale at retail" mean any sale of tangible personal property, in the ordinary course of business, for consumption or use, or for any purpose other than resale, except resale as a casual sale as that term is defined in section 1752, subsection 1-D.

6. Tangible personal property. "Tangible personal property" is defined under section 1752, subsection 17.

§4841. Tax on packaging

1. Amount of tax. A tax is imposed in the amount of 3-cents on the container of any product sold at retail.

2. Liability. The tax is imposed at the time of retail sale on the purchaser of the product employing a container. The retailer shall add the tax to the sales price.

3. Exemptions. The following containers are exempt from the tax imposed by this chapter:

A. Containers certified by the office as being composed of 50% or more recovered material;

B. Containers certified by the office as being recycled in the state at a average annual rate of at least 75%;

C. Containers used to package food or food products sold for human consumption which products are exempt from the sales and use tax imposed under part 3 of this title. Notwithstanding this exemption, containers are taxable which are used to package:

(1) any alcoholic beverage; and

(2) food and drink of any nature when sold in or by restaurants, taverns or other establishments which sell prepared food at retail; excepting containers used to package wine or other alcoholic beverages and containers of food and drink of any nature when sold in or by restaurants, taverns or other establishments which sell prepared food at retail; and

D. Containers sold or supplied containing a product intended for use in manufacturing processes;

E. Containers used to package a prescription medication sold or supplied for retail sale;

F. Containers sold or furnished for retail sale for which retailer requires a refundable deposit of at least 5-cent per container and which may be redeemed for its refund value by a purchaser.

G. Containers designed to be refillable with the same product with which it was originally filled and which is customarily refilled and reused; and

H. Containers required by federal law.

§4842. Certification

The office shall determine which types of containers qualify for the exemptions provided under §4841, sub§3, 1A and B according to the following provisions.

1. Composition. The office shall adopt and annually revise a list of containers which it certifies as being composed of at least 50% recovered material.

2. Recycling rate. The office shall adopt and annually revise a list of containers which it certifies as being recycled at a rate of at least 75% in the preceding year.

3. Procedures. The office may establish application procedures, reporting requirements, testing methodologies and any other procedures necessary to conduct the certification process under this section.

4. Exemption label. The office shall develop an exemption label or other suitable method of designating the containers which have been certified as exempt from the packaging tax. The designation method shall serve to notify both the retailer and the consumer of the exemption.

§4843. Administration

1. Collection. The State Tax Assessor shall collect the tax provided by this chapter from retailers under the provisions of Part 3. The tax assessor may adopt any additional rules necessary to administer this chapter.

2. Penalties. Failure to pay the tax required by this chapter or file any of the forms required by the State Tax Assessor shall be subject to the penalties and procedures provided in chapter 7.

§4844. The tax assessor may estimate liability

Whenever any retailer neglects or refuses to make and file any report required by this chapter or files an incorrect or fraudulent report, the tax assessor shall from such information as he may obtain fix the amount of taxes, penalties and interest payable and proceed to collect the amount so fixed.

In any action or proceeding for collection of the packaging tax, any penalties and interest imposed in connection with an assessment by the tax assessor of the tax, penalty or interest due the State constitutes prima facie evidence of the claim of the State. The burden of proof is on the distributor or unclassified importer to show that the assessment was incorrect and contrary to law.

§4844. Disposition of taxes

The revenue derived from the tax imposed by this chapter shall be deposited in the General Fund.

Statement of Fact

This bill is the product of the Legislative Study Committee on Municipal Solid Waste. This study was authorized by the Legislative Council in 1988 in light of many solid waste issues affecting the interest of the citizens of Maine. Three members of the committee voted to support this bill; three voted to oppose the bill and the remaining, seventh committee member was absent from the final vote.

The purpose of the bill is to establish an incentive for the use of packaging which is either a) currently recycled at a high rate or b) is made largely of recycled material. Packaging which does not meet these criteria would be subject to a 3¢ per item tax to be collected at the point of retail sale. All packaging associated with a single retail product is to be considered a single container subject to the tax.

The Office of Waste Recycling and Reduction is charged with certifying packaging under the two criteria listed above. The Bureau of Taxation would undertake tax collection. Revenues would be deposited in the General Fund.

In order not to conflict with certain federal requirements and other state laws, a set of exemptions from the tax are included. These include items subject to Maine's bottle bill and items which can be purchased with food stamps. Medicine containers, refillable containers and packaging for products used in manufacturing are also exempt from the tax.

APPENDIX B:
SELECTED BACKGROUND MATERIAL

Introduction

This appendix incorporates a selection of background material which was prepared for the study committee.

Plastic Container Coding

Plastic containers are made from many types of plastic resins. The most commonly used plastic resins are high and low density polyethylene, polyethylene terephthalate (PET), polyvinyl chloride, polypropylene and polystyrene. Containers made of single resins are often recyclable. Containers made of mixed resins or collections of containers made of different resins have limited recycling potential, lower resale value and consequently are less easily recycled. Nationally less than 1 percent of the plastic in the waste stream is now recycled.

In 1987, 13 billion pounds of plastics were used in U.S. packaging; 7.5 billion pounds in rigid containers and 5.5 billion pounds in flexible packaging. Of the 2.75 billion pounds of plastic bottles produced, 1.7 billion pounds (62%) were made of high density polyethylene (HDPE) and .6 billion pounds were made of PET. These figures indicate that PET and HDPE plastic bottles represent about 18% of the plastics packaging waste stream.

Because of container deposit laws and because they are easily identified, PET soft drink containers and HDPE milk bottles are increasingly being recycled. The Plastics Recycling Foundation reports that in 1987 about 150 million pounds of reclaimed PET were used for making fiberfill, paints, and molded or extruded plastic products. Fifty million pounds of reclaimed HDPE were used in making pails and pipe. Uses for mixed or commingled plastics include plastic lumber and outdoor furniture. Other uses are being developed.

One obstacle to increasing plastic container recycling is the difficulty of identifying the plastic resin used to make the container. Implementation of a coding system is the first step in establishing markets for hard to identify plastic resins. Placing a code on rigid containers made of plastic resins would allow easier separation of plastic containers by recyclers and could lead to the increased reuse of plastic resins by manufacturers.

Requests from legislators led to development by the Society of the Plastics Industry of a voluntary coding system to identify plastic containers by material type. The Society expects the use of these codes to be voluntarily phased in over a 3 year period. In 1988, Florida, Connecticut, Minnesota and Wisconsin enacted legislation requiring the use of a coding system on plastic containers. Florida specifically

incorporates the code developed by the Plastic Bottle Institute. The Florida law applies to beverage containers of 16 or more ounces and rigid plastic containers of 8 or more ounces. Connecticut, Wisconsin and Minnesota coding systems will be determined by regulation. Connecticut's law applies to plastic bottles of 16 or more ounces; Minnesota's law applies to plastic bottles, cans or jars of 16 or more ounces; and Wisconsin will establish any size exemption by regulation. California, Illinois, Michigan and New York are also considering adoption of a code for plastic containers.

After deciding to code plastic containers the most basic policy questions are container sizes and products to be included. Staff conversations with the Society of Plastics revealed that their intent was to code all containers large enough for convenient handling by plastic recyclers. As drafted the proposal recommended by the study committee applies to beverage, food and non-food containers of any size. Only pharmaceutical containers are exempted. Non-rigid plastic containers such as wrappers for bread, meat and cheese are not covered.

The effective date of January 1, 1991 is based on projections by the Plastic Bottle Institute that it would take plastic bottle manufacturers three years to completely phase in changes to their production processes. Effective dates adopted by other states are: Florida, July 1, 1990; Connecticut, January 1, 1990; Wisconsin, January 1, 1990; and Minnesota, rules required by March 31, 1989.

Paper Procurement

State government can play an important role in establishing markets for recycled materials by purchasing products made of or containing recycled components. The Bureau of Purchases has not actively sought paper or paper products with recycled content in the past, but the Bureau believes that both paper towels and toilet tissue contain a large percentage of recycled paper. Annual purchases of these items are approximately 29,050 cases at a cost of \$101,600. FY 1988 purchases of all paper and paper products totaled \$1,275,000.

Representatives of the Bureau of Purchases and the Office of Waste Recycling and Reduction have attended meetings of the Northeast Recycling Council held throughout 1988. The Council's development of consensus procurement standards for paper with recycled content may lead to cooperative purchases by several states. Consistent state specifications and cooperative purchases should encourage manufacturers to increase both production of paper goods with recycled content and the percentage of recycled content. At the same time, implementation of this procurement policy should serve to support prices for recycled paper while keeping the cost of paper with recycled content reasonable.

Requests for bids to supply state government paper in FY 1990 will ask for information on recycled content. The Bureau of Purchases reports that in recent months they have been unable to obtain paper with recycled content because the price has been up to 50% over paper of virgin materials.

Experience in other states indicates this is probably a short-term phenomenon. For example, New York has a 10% price preference for paper with 40% recycled fiber. In 1984, 6 of 14 New York recycled paper contracts were lowest bid, 48% of paper purchased met the state's definition of recycled, and the price preference increased the cost of paper by just 1%.

Bottle Deposit Law

Current System. Maine's bottle deposit law (32 MRSA §1861 et. seq.) is administered by the Department of Agriculture, Food and Rural Resources. A dealer-initiated 5¢ minimum deposit is required on beer, wine coolers and carbonated drinks. Dealers can only sell these beverages in containers clearly labeled with the refund value. One Maine distributor estimates annual sales of approximately 500 million soft drink and 240 million beer containers. The bottle deposit law is generally credited with a beverage container return rate of 90-95%. Other estimates suggest that these returns constitute 5-8% of the municipal solid waste stream in Maine.

Expansion Issues. Expansion of the bottle deposit law to cover liquor*, wine* and juice beverage containers has been proposed in recent years. Approximately 400 million nonalcoholic, 8 million liquor (2,200,000 gallons in FY 1987) and 4 million wine containers were sold without a deposit in 1988. Precise estimates of the number of nonalcoholic containers are subject to some dispute among industry observers.

Liquor, wine and juice containers are distributed by different systems, each with a particular set of impediments to implementation of deposit legislation. But, the most important impediments to implementation are common to all three types of containers. These impediments are the assignment of responsibility for attaching a refund value label and provision for the collection of returned containers. Iowa and Vermont are currently addressing these problems.

* Note that liquor as used here includes spirits and fortified wines, but excludes beer and wines of less than 15.5% alcohol by volume.

Iowa, a liquor control state, required a deposit on liquor and wine when they initiated their bottle deposit law 10 years ago. At the time Iowa, sold liquor and wine only in state-operated stores which accepted the returned containers. Iowa has since eliminated state-operated stores and now both liquor and wine can be purchased in agency stores. The state remains the in-state wholesaler for liquor, but both the state and licensed wholesalers may sell wine to retailers. When state-operated stores were eliminated, the state originally retained responsibility for collecting returned bottles, but opposition from the Division of Alcoholic Beverages eventually caused the liquor bottle deposit to be dropped.

Wine containers in Iowa still have a refund value. Labels are attached by the manufacturers (as liquor labels were), container returns are collected by the distributors. A new solid waste bill recommends putting the deposit back on liquor bottles with collection once again by a Division of Alcoholic Beverages' contractor.

Vermont controls on alcoholic beverages are similar to Maine controls. Vermont has both state-operated and agency liquor stores. Wine can be purchased from state licensed retailers. In 1988, the Vermont Legislature expanded their bottle deposit law to include liquor containers. H.221 places a deposit on liquor containers as of January 1, 1990 and sets up an advisory commission to study how to implement liquor container recycling and the feasibility of requiring a deposit on wine bottles. An initial 15¢ deposit on liquor containers was chosen to provide a strong incentive for recycling the relatively low-turnover and expensive liquor containers. Returns of less than 60% by January 1, 1992 will increase the deposit to 25¢. The advisory commission, whose report is due January 15, 1989, has found that manufacturers are willing to label 90% of the liquor bottles sold in Vermont before they enter the state. Labeling of bottles in holiday gift boxes remains a problem. At this writing, the commission is reportedly leaning toward a system where 1) bottles will be labeled by the manufacturer, 2) retail liquor outlets and certified redemption centers will accept returns, and 3) a regional collection system will be set up and run by a state-hired contractor. Proposals to place a deposit on wine bottles are not yet developed.

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