

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2134

H. P. 1948

House of Representatives, January 29, 1976

Referred to the Committee on Natural Resources. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Bachrach of Brunswick.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

**AN ACT Enabling Municipalities to Conduct Soil Tests to Determine
Feasibility of Solid Waste Disposal Sites.**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment of the Legislature unless enacted as emergencies; and

Whereas, the Revised Statutes, Title 38, section 1305 requires municipalities to provide solid waste disposal facilities; and

Whereas, without the permission of the landowner, there is no legal way municipalities may enter upon private premises to make soil tests and other related tests to determine the feasibility of solid waste disposal sites to the end that the best possible site may be established; and

Whereas, that permission is not always forthcoming; and

Whereas, the Department of Environmental Protection is demanding that the several municipalities comply with the solid waste management law which was established by the Legislature in 1973; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

38 MRSA § 1305-A is enacted to read:

§ 1305-A. Soil tests and other related tests

In order to determine the best possible site for the establishment of a solid waste disposal facility, a municipality may enter upon private property to view the premises and conduct necessary soil tests and other related tests according to the following procedure:

1. **Determination of necessity or convenience.** The municipal officers shall determine that public necessity or convenience require that soil tests and other related tests be made of certain sites in the municipality in order to determine site feasibility for the establishment of a solid waste disposal facility. This determination is final and not subject to appeal or injunction.

2. **Notice of testing.** At least 7 days before the tests are to be made, the municipality shall send a written notice of its intention to enter upon the premises for testing purposes and a copy of this section by certified mail to the landowner at his address as shown on the municipal tax assessment records.

3. **Conduct of tests.** After the notice period has elapsed, the municipality shall conduct the necessary tests as soon as it is feasible to do so. It shall then restore the premises as near as reasonably possible to their former condition.

4. **Compensation.** Upon request of the landowner within 30 days after entry on his premises, the municipal officers shall hold a public hearing to determine whether he is entitled to compensation for actual damages caused by the testing. The municipal officers shall publish a notice of the time and place of hearing in a newspaper having general circulation in the municipality at least 7 days before the hearing. The municipality shall pay the landowner forthwith the amount of compensation to which the municipal officers determine he is entitled. If the landowner is aggrieved by the decision of the municipal officers, he may appeal to the Superior Court as provided in Rule 80B of the Maine Rules of Civil Procedure.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

The purpose of this bill is reflected in the emergency preamble.