

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2314

H. P. 2224

House of Representatives, March 22, 1976

Reported by Minority from the Committee on Taxation and printed under
Joint Rules No. 18.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT to Provide Funding for Action on Solid Waste and Litter.

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

Sec. 1. 17 MRSA § 2253, 3rd ¶, as enacted by PL 1969, c. 570, is amended to read:

Nothing in this section shall be construed to prohibit the transportation of waste matter into the State for use as a raw material for the production of new commodities which are not waste matter as defined or for use to produce energy for use or sale.

Sec. 1-A. 17 MRSA § 2263, as last amended by P.L. 1973, c. 235, § 1, is amended by adding a new paragraph before subsection 1 to read:

As used in this section the following terms shall have the following meaning.

Sec. 2. 17 MRSA § 2263, sub-§§ 1-A and 1-B are enacted to read:

1-A. Committee. "Committee" means the Keep Maine Scenic Committee of the Department of Conservation.

1-B. Department. "Department" means the Department of Conservation.

Sec. 3. 17 MRSA § 2263, sub-§ 4, as enacted by PL 1971, c. 405, § 1, is amended to read:

4. Vehicle. "~~Motor vehicle~~" "Vehicle" means every vehicle which is self-propelled and designed for carrying persons or property or which is used for the transportation of persons.

Sec. 4. 17 MRSA § 2264, as enacted by P.L. 1971, c. 405, § 1, is amended to read:

§ 2264. Littering prohibited; penalties

No person shall throw, drop, deposit, discard or otherwise dispose of litter upon any public ~~or private~~ property **or private property not owned by him** in this State or in the waters of this State or on the ice over such waters, which property shall include, but not be limited to, any ~~state~~ **public** park, beach, campground, **forest land, recreational area**, trailer park, highway, road, street or alley, except:

1. **Designation.** When such property is designated by the State or by any of its agencies or political subdivisions for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose;

2. **Receptacle.** Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of said private or public property or waters.

Any person violating this section shall be guilty of a ~~misdemeanor~~ **Class D crime** and on conviction shall be punished by a fine of not ~~more than \$100 for each violation~~ **less than \$100 nor more than \$500 for each conviction**. In addition thereto, in the sound discretion of any court in which conviction is obtained, such person may be directed by the judge to pick up and remove from any public place or any private property, with prior permission of the legal owner, any or all litter deposited thereon prior to the date of execution of sentence.

Sec. 5. 17 MRSA § 2265, first ¶, as enacted by P.L. 1971, c. 405, § 1, is amended to read:

No person shall throw, drop, deposit, discard or otherwise dispose of litter from any vehicle upon private property or along the right-of-way of any public highway, or in any public park, campground, or upon any public beach or into waters or in or upon any other public place, except into a litter receptacle in such a manner that the litter will be prevented from being carried or deposited by the elements. **The operator of a vehicle shall not allow any person within the vehicle to throw, drop, deposit, discard or otherwise dispose of litter in violation of this section.** The operator of the vehicle, unless it is a vehicle being used for the carriage of passengers for hire, as well as the person actually throwing, dropping, depositing, discarding or otherwise disposing of the litter, shall be in violation of this section and such violation shall be enforced in accordance with Title 29, chapter 19.

Sec. 6. 17 MRSA § 2265, 3rd ¶, as enacted by P.L. 1971, c. 405, § 1, is amended to read:

The fine for violation of this section shall not be **less than \$100 nor more than \$500 for each offense conviction** and in addition thereto, in the sound discretion of any court in which conviction is obtained, such person may be directed by the judge to pick up and remove from any place any or all litter deposited thereon by anyone prior to the date of execution of sentence.

Sec. 7. 17 MRSA § 2266, as amended by P.L. 1973, c. 235, §§ 2 and 3, is further amended to read:

§ 2266. Spillage from vehicle or trailer prohibited

No vehicle or trailer shall be driven or towed on any public highway, unless such vehicle or trailer is so constructed, loaded or covered as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom. This section shall only apply to vehicles or trailers carrying trash, rubbish or other materials which may be construed as litter.

~~Any person found guilty of violating this section shall be punished by the same penalties which apply to section 2265~~

Any conduct in violation of this section is a civil violation for which a forfeiture of not more than \$100 nor less than \$10 may be adjudged for the first violation and for a 2nd or subsequent violation a forfeiture of not more than \$500 nor less than \$100 may be adjudged. In addition thereto, any court in which a forfeiture is adjudged against any person, the judge may direct that person to pick up and remove from any place any or all litter deposited thereon by anyone prior to the date of the adjudication.

Sec. 8. 17 MRSA § 2267, as enacted by P.L. 1971, c. 405, § 1, is amended to read:

§ 2267. Littering from watercraft prohibited; penalties

No person shall throw, drop, deposit, discard or otherwise dispose of litter from any watercraft upon public or private property or along the right-of-way of any public highway, or in any public park, campground or upon any public beach or into any waters within the jurisdiction of this State, ~~or in or upon any other public place~~ except into a litter receptacle in such a manner that the litter will be prevented from being carried or deposited by the elements. **The operator of a watercraft shall not allow any person within the watercraft to throw, drop, deposit, discard or otherwise dispose of litter in violation of this section.** The operator of the watercraft, unless it is a watercraft being used for the carriage of passengers for hire, as well as the person actually throwing, dropping, discarding or otherwise disposing of the litter will be in violation of this section.

Any person violating this section shall be guilty of a ~~misdemeanor~~ **Class D crime** and upon conviction shall be punished by a fine of not less than ~~\$10~~ **\$100 nor more than \$500** for each ~~violation~~ **conviction**.

This section shall not be construed to prohibit fishermen, lobstermen and other harvesters of the waters from returning to those waters materials which naturally originated therein.

Sec. 9. 17 MRSA § 2268, as last amended by P.L. 1973, c. 537, § 20, is further amended to read:

§ 2268. Enforcement

Every law enforcement officer in the State, including but not limited to State Police, county sheriffs and their deputies, municipal police, wardens of

the Department of Inland Fisheries and ~~Game Wildlife~~, wardens of the Department of Marine Resources, ~~foresters and wardens~~ rangers of the Bureau of Forestry and liquor inspectors of the ~~Department of Public Safety~~ State Liquor Commission shall have authority to enforce this chapter and Title 17, section 3961.

Political sub-divisions of the State may offer rewards for information which leads to the conviction of violators of this chapter.

Sec. 10. 17 MRSA § 226g, as enacted by P.L. 1971, c. 405, § 1, and as amended, is further amended to read:

§ 226g. Litter receptacles; selection and placement

Litter receptacles, as defined in section 2263, shall be placed ~~by the proprietors at all privately owned establishments~~ at all public places or establishments which serve the public, including, but not limited to campgrounds, trailer parks, drive-in restaurants, gasoline service stations, parking lots, shopping centers, grocery store parking lots, parking lots of major industrial firms, marinas, boat launching areas, boat moorage and fueling stations, beaches and bathing areas, the school grounds and business district sidewalks. The number of such receptacles required ~~to be placed as specified~~ shall be related to the need for such receptacles as follows:

1. Tent and trailer parks for transient habitation—10 receptacles, either in one or several locations, for each 50 sites;
2. Drive-in restaurants—one receptacle for every 15 parking spaces;
3. Parking lots, shopping centers, grocery store parking lots and parking lots of major industrial firms—one receptacle, plus one additional receptacle for each 200 parking spaces in excess of 50 spaces;
4. Gasoline service stations—one receptacle per gasoline pump island;
5. Marinas, boat launching areas and boat moorage and fueling stations—one receptacle at each such location;
6. Beaches and bathing areas—one receptacle at each public rest room facility, plus one additional receptacle for every 250 feet of public bathing beach area;
7. School grounds—one receptacle at each playground area and one at each school bus loading zone; and
8. Business district sidewalks—one receptacle per 1,000 feet of sidewalk curbing.

It shall be the responsibility of any person owning or operating any establishment or public place in which litter receptacles are required by this chapter to procure, place and maintain receptacles at their own expense in accordance with this chapter.

Any person or business organization, operating a business of the types described in this section who fails to place such litter receptacles on the premises in the numbers required, or who fails to comply within 10 days of

being notified by registered letter by the committee that he is in violation, shall be subject to a fine of ~~not less than~~ \$10 for each violation. Each day a violation continues shall be a separate offense.

Sec. 11. 17 MRSA §§ 2272-2278 are enacted to read:

§ 2272. Promiscuous dumping prohibited

No person shall deposit household garbage, leaves, clippings, prunings or gardening refuse in any litter receptacle.

Persons violating the provisions of this section shall be liable for the same penalties as provided for violation of section 2264.

§ 2273. Penalty warning signs

The Department of Transportation shall erect one sign within each 100 miles of state highway mileage in each county, warning motorists of the penalties for littering or asking for their cooperation in keeping the highways clean. One such sign may be located within a reasonable distance of all state highway entry points into this State from other states or countries. If the state highway leads to or from an international border crossing point, the sign shall be bilingual.

§ 2274. Littering while hunting or fishing

In addition to any other penalties provided for violations of section 2264, the commissioner of Inland Fisheries and Wildlife may suspend a convicted person's hunting or fishing license for a period of not more than 30 days if the violation occurred while the convicted person was hunting or fishing.

§ 2275. Driver license and registration procedures

With the assistance of the committee, the Division of Motor Vehicles shall include a summary of this chapter with each reregistration and new vehicle operator license issued.

The Division of Motor Vehicles shall include a summary of this chapter in the next revision and printing of the driver license information materials and shall include at least one question concerning the contents of section 2265 in the driver's license examination.

§ 2276. State and local regulations

Municipalities of this State and the Department of Human Services, Division of Health Engineering, pursuant to Title 22, section 2496, may adopt more stringent ordinances, rules or regulations dealing with the subject matter of this chapter. Any less restrictive ordinances, rules or regulations now in effect dealing with the subject matter of this chapter and the minimum standards which it establishes are declared invalid and of no force and superseded by this chapter on its effective date.

§ 2277. Prohibition on certain types of containers or holders

No beverage shall be sold or offered for sale in this State after June 30, 1977:

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;

2. Connectors. In containers connected to each other by a separate holding device constructed of plastic rings or other device or material which cannot be broken down by bacteria into basic elements; or

3. Nonaluminum cans. In metal containers of 16 ounces or less made of any metal other than aluminum in its entirety.

§ 2278. Report to the Legislature

The Keep Maine Scenic Committee shall report in 1978, and annually thereafter, to the Legislature on the litter problem in the State, the programs implemented to meet this problem, the expenditures made by the committee, the results obtained for the expenditures and plans and programs planned for the coming year.

Sec. 12. 30 MRSA § 2151, sub-§ 6, is enacted to read:

6. Solid waste management. Providing for household garbage to be separated into recyclable components, including but not limited to glass, metal and aluminum, prior to disposal from the household premises.

Sec. 13. 36 MRSA c. 719 is enacted to read:

CHAPTER 719
BOTTLED BEVERAGE TAX

§ 4901. Definitions

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

1. Bottled beverage. "Bottled beverage" shall mean all canned or bottled beverages, including, but not limited to, wines, malt beverages, liquors and carbonated beverages, including carbonated water.

2. Bottled beverage distributor. "Bottled beverage distributor" shall mean any person, association of persons, firms or corporations importing bottled beverages into this State for resale or manufacturing bottled beverages in this State or making sales to the Maine State Liquor Commission of bottled beverages.

3. Sale price. "Sale price" shall mean the total amount of the sale, including any services that are part of such sale, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property of any kind or nature, and any amount for which credit is allowed by the seller to the purchaser, without deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses or any other expenses whatsoever. Discounts allowed and taken on sales shall not be included. "Sale price" shall not include allowances in cash or by credit made upon the return of merchandise pursuant to warranty,

or the price of property returned by customers when the full price thereof is refunded either in cash or by credit.

§ 4902. Tax imposed

For the privilege of engaging in the business of a bottled beverage distributor, there is levied a tax on all bottled beverages. The tax shall be based upon bottled beverages sold by bottled beverage distributors at the rate of 1% of the sale price.

§ 4903. Nontaxable distribution

Delivery by a bottled beverage distributor to a point outside this State or sale to a registered bottled beverage distributor, or sales made by the Maine State Liquor Commission, shall be exempt from the tax imposed by this chapter.

§ 4904. Reporting and payment of tax

Every bottled beverage distributor shall file with the State Tax Assessor on or before the 15th day of each month a report made, under the pains and penalties of perjury, disclosing the total sale price of all sales of bottled beverages sold during the preceding calendar month. This report shall be in the form, and shall contain such other information, as prescribed by the State Tax Assessor. At the time of filing the report, the bottled beverage distributor shall pay to the State Tax Assessor the tax levied in this chapter and the State Tax Assessor shall pay over all receipts from the tax to the Treasurer of State daily. These receipts shall be credited to the General Fund.

§ 4905. Registration of bottled beverage distributors

Every bottled beverage distributor shall register with the State Tax Assessor.

Forms for application for registration certificates and registration certificates shall be prescribed and furnished by the Tax Assessor. For each place of business the Tax Assessor, shall issue a registration certificate which shall be conspicuously displayed at each place. No certificate shall be assignable, but it may be used by the legal representative of a registrant deceased, incompetent, bankrupt or insolvent.

§ 4906. Maintenance and examination of records

Every bottled beverage distributor shall keep records, the kind and form of which shall be adequate to enable the Tax Assessor to determine tax liability under this chapter. All such records shall be preserved for 3 years, and shall be available for inspection by the Tax Assessor or by any of his employees engaged in the administration of this chapter.

§ 4907. Deficiency assessments

If any bottled beverage distributor fails to make a report as required, the Tax Assessor may make an estimate of the taxable liability of the bottled beverage distributor from any information he may obtain, and according to

the estimate so made by him, assess the taxes, interest and penalties due the State from the bottled beverage distributor, give notice of the assessment to the bottled beverage distributor and make demand upon him for payment, but no assessment can be made after 6 years from the date the transactions upon which liability is based were required to be reported. After a report is filed under this chapter, the Tax Assessor shall cause the same to be examined, and may make further audits or investigations as he may deem necessary and if therefrom he shall determine that there is a deficiency with respect to the payment of any tax due under this chapter, he shall assess the taxes and interest due the State, give notice of such assessment to the person liable, and make demand upon him for payment, but no assessment can be made after 2 years from the date the transactions upon which liability is based were required to be reported.

§ 4908. Reconsideration of assessment

Any bottled beverage distributor against whom an assessment shall be made by the Tax Assessor under this chapter may petition for a reconsideration of assessment within 15 days after notice shall have been given the bottled beverage distributor as provided in section 4910. If a petition for a reconsideration of assessment is not filed within the 15-day period, the amount of the assessment becomes final at the expiration thereof as to law and fact. If a petition for a reconsideration of assessment is filed within the 15-day period, the Tax Assessor shall reconsider the assessment and if the petitioner has so requested in his petition, shall grant the petitioner an oral hearing and shall give the petitioner 10 days' notice of the time and place thereof. For cause shown, the Tax Assessor may extend the time for filing the petition. If appeal is not taken as provided in section 4909, the amount of the assessment upon reconsideration becomes final as to law and fact at the expiration of the 30-day period therein allowed for the taking of appeals.

§ 4909. Appeals

Any taxpayer aggrieved by the decision upon a petition, may, within 30 days after notice thereof from the Tax Assessor, appeal therefrom to the Superior Court in any county where he has a regular place of business, or, if he has no place of business within the State, to the Superior Court in Kennebec County. The appellant shall, when an appeal is taken, file an affidavit stating his reasons of appeal and serve a copy thereof on the Tax Assessor, and in the hearing of the appeal shall be confined to the reasons of appeal set forth in the affidavit. Jurisdiction is granted to the Superior Court to hear and determine appeals and to enter the order and decrees as the nature of the case may require. The decision upon all questions of fact shall be final. An appeal may be taken to the law court as in other actions. Decisions shall be certified forthwith by the clerk of courts to the Tax Assessor.

§ 4910. Notices

Any notice required to be given by the Tax Assessor pursuant to this chapter may be served personally, or by sending the same by registered or certified mail to the person for whom it is intended, addressed to the person at the address given in the last report filed by him pursuant to this chapter

or if no report has been filed, then to the address of his last known abode; or in the case of other than an individual to the last known business address.

§ 4911. Overpayment; refunds

Upon written application by the taxpayer, if the Tax Assessor determines that any tax, interest or penalty has been paid more than once, or has been erroneously or illegally collected or computed, the Tax Assessor shall certify to the State Controller the amount collected in excess of what was legally due, from whom it was collected or by whom paid, and the same shall be credited by the Tax Assessor on any taxes then due from the retailer under this Title, and the balance shall be refunded to the taxpayer, or his successors, administrators, executors or assigns, but no credit or refund shall be allowed after 2 years from the date of overpayment unless a written petition therefor, setting forth the grounds upon which refund is claimed, shall have been filed with the Tax Assessor within that period. The Tax Assessor shall have the right to cancel or abate any tax which has been illegally levied. Nothing shall authorize the taxpayer, or anyone in his behalf, to apply for a refund of any amount assessed when the assessment has become final as provided in section 4908.

Any taxpayer dissatisfied with the decision of the Tax Assessor, upon a written request for refund filed under this section, may request reconsideration and appeal therefrom to the Superior Court in the same manner and under the same conditions as in the case of assessments made under this chapter. The decision of the Tax Assessor upon written request for refund shall become final as to law and fact in the same manner and under the same conditions as in the case of assessments made under this chapter.

§ 4912. Penalties and interest

Whenever the Tax Assessor shall determine that any tax assessed under section 4907 was unpaid due to negligence or intentional disregard of this chapter or of any ruling, rule or regulation of the Tax Assessor issued pursuant to this chapter but without intent to defraud, a penalty of 10% of the amount of the tax as determined by the Tax Assessor shall be added to the assessment. Whenever any tax assessed under section 4907 was unpaid due to fraud with intent to evade the tax imposed by this chapter, a penalty of 25% of the amount of the tax as determined by the Tax Assessor shall be added to the assessment. Penalties shall be in addition to any interest and other penalties provided by law but interest shall not accrue on penalties. For cause, the Tax Assessor may waive or abate all or any part of the penalties. Any person who shall fail to pay any tax imposed by this chapter on or before the day when the same shall be required to be paid shall pay interest on the tax at the rate of 1% each month or fraction thereof that the same remains unpaid, to be calculated from the date the tax was required to be paid. All interest shall be payable to, and recoverable by, the Tax Assessor in the same manner as if it were a tax imposed by this chapter. If the failure to pay the tax when required to be paid is explained to the satisfaction of the Tax Assessor, he may abate or waive the payment of the whole or any part of the interest, and, for cause, may abate the whole or any part of the tax.

The Tax Assessor shall pay over all penalties and interest to the Treasurer of State daily and the receipts shall be credited to the General Fund.

§ 4913. Tax a debt; recovery; preference

The taxes, interest and penalties imposed by this chapter, from the time the same shall be due, shall be a personal debt of the bottled beverage distributor to the State of Maine, recoverable in any court of competent jurisdiction in a civil action in the name of the State of Maine, and shall have preference in any distribution of the assets of the taxpayer, whether in bankruptcy, insolvency or otherwise.

§ 4914. Criminal penalties

Any violation of any provision of this chapter, for which a penalty is not otherwise provided, shall be punishable by a fine of not less than \$20 nor more than \$500, or by imprisonment for not more than 11 months, or by both. For the purpose of this section, every person required to register under this chapter who shall engage in the business of a bottled beverage distributor without being the holder of a currently valid registration certificate shall commit a separate offense for each calendar week or part thereof during which he shall be so engaged.

§ 4915. Powers of Tax Assessor

The Tax Assessor is authorized and empowered to carry into effect this chapter and, in pursuance thereof, to make and enforce such reasonable rules and regulations consistent therewith as he may deem necessary.

Sec. 14. 38 MRSA § 1309 is enacted to read:

§ 1309. Report to the Legislature

The department shall report in 1978, and annually thereafter, to the Legislature on the solid waste problem in the State, the programs implemented by the department to meet this problem, the expenditures made by the department under this chapter, the results obtained for such expenditures and the plans and programs planned for the coming year.

Sec. 15. Appropriation. There is appropriated from the General Fund the sum of \$1,169,000 for 1976-1977 to the following departments for the following purposes. The breakdown shall be as follows:

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FINANCE AND ADMINISTRATION,
DEPARTMENT OF

Bureau of Taxation		
Administration	2-088	
Positions		(4)
Personal Services		\$ 40,000
All Other		45,000
Capital Expenditures		4,000
		<hr/>
		\$ 89,000

Provides for the increased cost of administering and collecting the Beverage Container Tax.

CONSERVATION,
DEPARTMENT OF

Parks—Operation and Maintenance of State Parks	3-308	
Positions		(4)
Personal Services		\$ 40,000
All Other		195,000
Capital Expenditures		15,000
		<hr/>
		\$ 250,000

Provides for additional programs by the Keep Maine Scenic Committee to fund and encourage litter clean-up and recycling, enforcement of the litter laws, distributing litter bags, and anti-litter education.

ENVIRONMENTAL PROTECTION,
DEPARTMENT OF

Bureau of Land Quality		
Control	3-374	
Positions		(4)
Personal Services		\$ 40,000
All Other		300,000
Capital Expenditures		10,000
		<hr/>
		\$ 350,000

Provides for expansion of present programs in Solid Waste Management and additional programs in data gathering, identification of secondary materials, markets, technical assistance and transportation for resource recovery and recycling programs in the State.

TRANSPORTATION,
DEPARTMENT OF

Highway-litter clean-up		
Positions		(20)
Personal Services		\$ 200,000
All Other		50,000
Capital Expenditures		100,000
		<hr/>
		\$ 350,000

Provides for increased litter clean-up along highways, experimental recycling or recovery programs, distribution and maintenance of litter receptacles and posting of highways.

EXECUTIVE DEPARTMENT

All Other

\$ 130,000

Provides for promotion of tourism in the State of
Maine.

FISCAL NOTE

The tax imposed under this Act will generate approximately \$1,170,000 in 1976-77 for the General Fund. The appropriations provide for disbursement of \$1,169,000 during the same period. Thus, additional revenue for the General Fund would equal \$1,000.

This Act would continue to generate revenue in the future, which would go to the General Fund. Appropriations from the General Fund would have to be made in each biennium to continue the programs funded under this Act.

STATEMENT OF FACT

The purpose of this new draft makes the following major changes :

1. Increases the fines for littering ;
2. Changes the requirements for litter receptacles ;
3. Bans completely nonaluminum beverage cans of 16 ounces or less ;
4. Expands the definition of beverages to include noncarbonated beverages ;
5. Appropriates money for promotion of tourism in Maine ; and
6. Gives municipalities the **option** of having household garbage be separated into recyclable components prior to disposal.