

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1392

7 H.P. 1048

House of Representatives, March 30, 1983

8 Submitted by the Department of Environmental Protection pursuant to
9 Joint Rule 24.

10 Referred to the Committee on Energy and Natural Resources. Sent up for
concurrence and ordered printed. Ordered sent forthwith.

EDWIN H. PERT, Clerk

Presented by Representative Mitchell of Vassalboro.

11 Cosponsors: Representative Michael of Auburn, Senator Twitchell of
Oxford and Representative Bost of Orono.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Authorize Municipalities to
18 Guarantee Delivery of their Solid Wastes to
19 Specific Waste Facilities.
20

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

23 Sec. 1. 38 MRSA §1304-B is enacted to read:

24 §1304-B. Delivery of solid wastes to specific waste
25 facilities

26 1. Findings and purpose. The Legislature makes
27 the following findings of fact. The State requires
28 each municipality to provide a disposal facility for
29 domestic and commercial solid waste generated within
30 the municipality. Solid waste contains valuable re-
31 coverable resources, including energy. Many munici-
32 palities have found that energy recovery reduces the
33 cost of solid waste disposal. Energy recovery tech-
34 nology is complex and the equipment requires a steady

1 supply of waste to operate efficiently. Because of
2 the complicated technology, most energy recovery
3 facilities have high capital costs and long payback
4 periods. In order to remain cost effective throughout
5 their lives, these energy recovery facilities require
6 a guaranteed, steady supply of waste. Consequently,
7 municipalities utilizing energy recovery facilities
8 are usually required to enter long-term agreements to
9 provide the facilities with specific amounts of
10 waste. In order to make these energy recovery facili-
11 ties financially feasible, and thereby simultaneously
12 improve the environmental impacts and the economics
13 of municipal solid waste disposal, municipalities
14 shall have the legal authority to control the han-
15 dling of solid waste generated within their borders.

16 The purpose of this section is to promote the recov-
17 ery of resources from solid waste by creating one of
18 the conditions which make energy recovery economi-
19 cally feasible, assuring municipalities the authority
20 to guarantee a steady supply of solid waste to spe-
21 cific waste facilities.

22 2. Flow control. Municipalities are expressly
23 authorized to enact ordinances that control solid
24 waste collection, its transportation or its delivery
25 to a specific facility, when the purpose and effect
26 of such an ordinance is to gain management control
27 over solid waste and enable the reclamation of
28 resources, including energy, from these wastes. This
29 authorization includes, but is not limited to, ordi-
30 nances:

31 A. Requiring segregation of wastes; and

32 B. Requiring delivery of wastes generated within
33 the municipality, or any portion of those wastes,
34 to a designated disposal or reclamation facility.

35 3. Ordinances. This chapter shall not be con-
36 strued as limiting the authority of any municipality
37 to enact ordinances for the regulation of solid waste
38 disposal, provided that these ordinances are not less
39 stringent than or inconsistent with this chapter or
40 the regulations adopted under this chapter.

4. Contracts. Municipalities may contract with any person for the collection, transportation, storage, processing, salvaging or disposal of wastes.

Sec. 2. 38 MRSA §1305, sub-§2, as amended by PL 1979, c. 541, Pt. A, §277, is repealed.

Sec. 3. 38 MRSA §1305, sub-§3, as enacted by PL 1973, c. 387, is repealed.

STATEMENT OF FACT

Energy recovery is the extraction and use of energy from solid waste. There are a number of ways to extract this energy, but the most common method is incinerating solid waste to produce hot water or steam. The hot water or steam is then sold to offset the cost of incineration.

Energy recovery technology is complex and the equipment requires a steady supply of waste to operate efficiently. Because of the complicated technology, energy recovery facilities have high capital costs and long payback periods. In order to remain cost-effective throughout their lives, energy recovery facilities usually enter long-term agreements with waste suppliers in order to guarantee that they have a steady supply of waste. In most cases, these waste suppliers are municipalities.

Twenty-four municipalities have long-term contracts with Auburn's energy recovery facility which began operation in 1981. Several other groups of municipalities are actively working to develop similar facilities.

During the next 5 years, 120 to 150 municipalities will have to close solid waste disposal sites that have reached capacity or are causing environmental damage. Over 50 of these municipalities may turn to energy recovery as their most cost-effective alternative. Landfill space is getting scarce and energy is expensive. Energy recovery can reduce the need for landfill space and provide a relatively inexpensive source of energy, if there is a large enough waste supply to support the facility and a reliable buyer for the energy produced.

1 In order to guarantee a steady waste supply, most
2 energy recovery facilities require participating
3 municipalities to enter long-term agreements to
4 deliver a minimum amount of waste to the facility or
5 pay a penalty if insufficient waste is delivered.
6 This type of agreement is known as a "put or pay"
7 contract. The municipality must deliver the waste,
8 or pay for it anyway. In order to meet their contrac-
9 tual obligations, most of these municipalities pass
10 ordinances requiring waste generated within the
11 municipality to be delivered to the facility with
12 whom the municipality has the contract. These ordi-
13 nances are often referred to as "flow control ordi-
14 nances," because they control the flow of solid waste
15 from its point of generation to its point of dis-
16 posal.

17 Municipalities need the express authority to
18 enforce this type of ordinance. Recent federal court
19 decisions, such as City of Lafayette v. Louisiana
20 Power and Light Company, 435 United States 389
21 (1978); California Retail Liquor Dealers Association
22 v. Midcal Aluminum, Incorporated, 445 United States
23 97, 1980; Community Communications Company, Incorpo-
24 rated v. City of Boulder, 50 United States L.W. 4144,
25 United States, January 13, 1982; and Hybud Equipment
26 Corporation et al. v. City of Akron et al., 654 F. 2d
27 1187, 1981, vacated, 50 United States L.W. 3667,
28 United States, February 22, 1982, indicate that a
29 state legislature must "clearly articulate and
30 affirmatively express" a policy to promote energy
31 recovery and authorize municipalities to control
32 their solid waste flow before these ordinances can
33 withstand judicial scrutiny. This bill establishes
34 that policy and affirms that authority.

35 Section 1 enacts a new Title 38, section 1304-B,
36 expressing the Legislature's intent to promote energy
37 recovery and authorizing municipalities to guarantee
38 delivery of their solid wastes to specific waste
39 facilities.