

# MAINE STATE LEGISLATURE

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L.D. 1359

(Filing No. S-207 )

STATE OF MAINE  
SENATE  
112TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 498, L.D. 1359, Bill, "AN ACT to Encourage the Development of Solid Waste Energy Recovery Facilities in the State of Maine."

Amend the Bill by striking out everything after the title and inserting in its place the following:

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

Whereas, the State requires each municipality to provide for the disposal of solid waste generated within the municipality; and

Whereas, solid waste contains valuable recoverable resources, including energy, and many municipalities have found that energy recovery reduces the cost of solid waste disposal; and

Whereas, solid waste energy recovery technology is complex and most solid waste energy recovery facilities have high capital costs and long payback periods; and

Whereas, to make the solid waste energy recovery facilities financially feasible, the developers of these facilities need to be assured of a steady source of revenues to repay the loans used to finance the construction of the facilities; and

Whereas, the steady stream of revenues needed to pay for these facilities are often provided by municipal service contracts, whereby municipalities agree to pay costs associated with providing such a facility, whether or not this facility is operational; and

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1           Whereas, there are Maine municipalities which  
2 have already entered into or now desire to enter into  
3 agreements in order to provide at the earliest possi-  
4 ble date for the disposal of their solid waste at the  
5 energy recovery facilities in the State; and

6           Whereas, municipalities have the power, alone and  
7 by joint action, to enter into service contracts or  
8 make other arrangements for solid waste disposal pur-  
9 suant to their Home Rule power; and

10           Whereas, the Legislature has clarified the power  
11 of municipalities to enter into service contracts for  
12 solid waste disposal; and

13           Whereas, financial institutions that would under-  
14 write solid waste disposal facilities require further  
15 clarification with respect to the power of Maine mu-  
16 nicipalities to enter into service contracts for sol-  
17 id waste disposal and to jointly undertake the finan-  
18 cial obligations entailed thereby; and

19           Whereas, the power of municipalities to enter in-  
20 to service contracts for solid waste disposal may be  
21 limited by charter or ordinance provisions; and

22           Whereas, there is a need to permit municipalities  
23 to enter into service contracts for solid waste dis-  
24 posal despite inconsistent charter or ordinance pro-  
25 visions; and

26           Whereas, in the judgment of the Legislature,  
27 these facts create an emergency within the meaning of  
28 the Constitution of Maine and require the following  
29 legislation as immediately necessary for the preser-  
30 vation of the public peace, health and safety; now,  
31 therefore,

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

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1           Sec. 1. 30 MRSA §5062, first ¶, as amended by PL  
2           1981, c. 698, §144, is further amended to read:

3           The limitations on municipal debt in section 5061  
4           shall not be construed as applying to any funds re-  
5           ceived in trust by any municipality, any loan which  
6           has been funded or refunded, notes issued in antici-  
7           pation of federal or state aid or revenue sharing  
8           money, tax anticipation loans, notes maturing in the  
9           current municipal year, indebtedness of entities oth-  
10          er than municipalities, indebtedness of any munici-  
11          pality to the Maine School Building Authority, debt  
12          issued under chapter 235 and Title 10, chapter 110,  
13          subchapter IV, obligations payable from revenues of  
14          the current municipal year or from other revenues  
15          previously appropriated by or committed to the munic-  
16          ipality, and the state reimbursable portion of school  
17          debt. The limitations on municipal debt set forth in  
18          section 5061 do not apply to obligations incurred by  
19          one or more municipalities pursuant to Title 38, sec-  
20          tion 1304-B, with respect to solid waste facilities,  
21          which obligations are regulated in the manner set  
22          forth in Title 38, section 1304-B.

23           Sec. 2. 35 MRSA §2329 is enacted to read:

24           §2329. Energy and capacity purchases from small pow-  
25           er producer and cogenerator facilities

26           1. Establishment of a purchase price for energy  
27           or energy and capacity delivered to a trustee or re-  
28           organized utility. If a public utility which has en-  
29           tered into a power purchase contract with a small  
30           power producer or cogenerator facility for the pur-  
31           chase of energy, or energy and capacity pursuant to  
32           section 2325, subsection 1, or section 2326, files  
33           for bankruptcy or for reorganization under the bank-  
34           ruptcy laws of the United States, and if the trustee  
35           in bankruptcy or debtor, receiver, examiner or any  
36           other party in possession and control of the assets  
37           of the public utility rejects that power purchase  
38           contract pursuant to the United States Bankruptcy

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1 Code or any similar power or law the trustee, debtor,  
2 receiver, examiner or other party in possession and  
3 control of the assets of the public utility shall be  
4 obligated to continue to purchase without interrup-  
5 tion from the small power producer or cogenerator fa-  
6 ility whose contract was rejected any energy or en-  
7 ergy and capacity which the small power producer or  
8 cogenerator facility makes available to it. If the  
9 power purchase contract is rejected, the avoided cost  
10 for the energy or energy and capacity from the small  
11 power producer or cogenerator facility for the time  
12 period commencing on the date of the rejection and  
13 ending on the original expiration date of the re-  
14 jected contract shall be the avoided cost determined  
15 for the period as if the determination were being  
16 made on the date on which the public utility and  
17 small power producer or cogenerator facility entered  
18 into the rejected contract.

19       2. Nature of capacity contract. If a small power  
20 producer or cogenerator facility contracts to provide  
21 a public utility with electric generating capacity,  
22 that portion of the power purchase contract which re-  
23 quires the delivery of the capacity, shall not be ex-  
24 ecutory in nature under the laws of the State once  
25 the small power producer or cogenerator facility has  
26 first made available to the public utility the elec-  
27 tric generating capacity. This section shall not be  
28 interpreted to mean that any other sections of such a  
29 contract are executory in nature.

30       3. Commission approval of rates of reorganized  
31 utility. At any time that the Public Utilities Com-  
32 mission is requested or required to approve rates for  
33 a public utility which has rejected a power purchase  
34 contract with a small power producer or cogenerator  
35 facility as a result of a bankruptcy or reorganiza-  
36 tion proceeding, or to approve rates of a person con-  
37 trolling and in possession of the assets of a public  
38 utility which was a party to such a rejected con-  
39 tract, it shall not grant any such rate approval un-  
40 less the public utility or person seeking the rates

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1 includes within the rates provision for payment of  
2 all energy and energy and capacity made available by  
3 a small power producer or cogenerator facility, ei-  
4 ther at the original contract rate or at the rate  
5 specified in subsection 1.

6 Any person who is obligated to comply with this sec-  
7 tion shall not be permitted to operate as a public  
8 utility in the State, unless it is in full compliance  
9 with this section.

10 Sec. 3. 38 MRSA §1304-B, sub-§4, as enacted by  
11 PL 1983, c. 380, §1, is repealed and the following  
12 enacted in its place:

13 4. Contracts. In order to encourage and facili-  
14 tate the financing and development of solid waste fa-  
15 ilities, including, but not limited to, facilities  
16 for resource recovery, municipalities shall have the  
17 following powers, notwithstanding any law, charter,  
18 ordinance provision or limitation to the contrary:

19 A. To contract with any person, including, but  
20 not limited to, the owner or operator of any  
21 waste facility, for the collection, transporta-  
22 tion, storage, processing, salvaging or disposal  
23 of waste. Any such contract may be for such term  
24 of years and may contain such other provisions as  
25 the municipality may approve. Any such contract  
26 may provide that, in consideration for the obli-  
27 gation of the facility owner or operator to han-  
28 dle all or any portion of the solid waste gener-  
29 ated in the municipality, the municipality shall  
30 pay to the facility owner or operator such fees,  
31 assessments and other payments as shall be estab-  
32 lished in accordance with the contract.

33 B. Without limiting the generality of the powers  
34 conferred in paragraph A, to agree in such a con-  
35 tract to pay fees, assessments or other payments  
36 in such amounts as may be reasonably necessary to  
37 pay:

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1                   (1) Costs associated with financing, devel-  
2                   oping, constructing, repairing, maintaining  
3                   and operating all or any one or more of the  
4                   waste facilities owned or operated by the  
5                   facility owner or operator, including the  
6                   payment of debt service and the maintenance  
7                   of reasonable reserves or sinking funds in  
8                   connection with the financing or operation  
9                   of any such waste facilities;

10                   (2) Any other costs incurred by the facili-  
11                   ty owner or operator in connection with the  
12                   handling of solid waste, whether performed  
13                   at any waste facility referred to in subpar-  
14                   agraph (1) or at another such facility dif-  
15                   ferently owned and operated; and

16                   (3) Any deficiencies arising by virtue of  
17                   the failure of any other municipality to  
18                   meet its obligations to pay the costs set  
19                   forth in subparagraphs (1) and (2) in ac-  
20                   cordance with any similar agreement with the  
21                   same facility owner; and

22                   C. To pledge the full faith and credit of the  
23                   municipality for the payment of fees, assessments  
24                   and other payments, as provided in paragraphs A  
25                   and B, and to levy upon and raise from taxable  
26                   estates within the municipality by general taxes  
27                   the amounts required to pay these fees, assess-  
28                   ments and payments or to raise those amounts by  
29                   means of any fee, user charge or other cost-  
30                   sharing or assessment mechanism duly adopted and  
31                   authorized by the municipality or to borrow those  
32                   amounts by issuance of general obligation bonds  
33                   or notes.

34                   Any contract complying with the requirements of this  
35                   subsection and subsection 6 shall be a properly au-  
36                   thorized, legal, valid, binding and enforceable obli-  
37                   gation of the municipality, regardless of whether the

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1 agreement was authorized, executed or delivered prior  
2 to or after the effective date of this subsection.

3       Sec. 4. 38 MRSA §1304-B, sub-§§5 and 6 are en-  
4 acted to read:

5       5. Public waste disposal corporations. Notwith-  
6 standing any law, charter, ordinance provision or  
7 limitation to the contrary, pursuant to any  
8 interlocal agreement entered into in accordance with  
9 Title 30, chapter 203, any 2 or more municipalities  
10 may organize or cause to be organized or may partici-  
11 pate in one or more corporations organized as non-  
12 profit corporations under Title 13, chapter 81, or  
13 Title 13-B for the purpose, among other permissible  
14 purposes, of owning or operating any one or more  
15 waste facilities described in subsection 4, paragraph  
16 A, and a subscribing municipality may agree in any  
17 such interlocal agreement to pay fees, assessments or  
18 other payments as described in subsection 4, para-  
19 graph B, for such term of years and on such other  
20 terms as the interlocal agreement may provide and may  
21 pledge the full faith and credit of the municipality  
22 to the same extent provided in subsection 4, para-  
23 graph C. The applicable interlocal agreement or the  
24 articles of incorporation or bylaws of the corpora-  
25 tion shall provide that:

26       A. The corporation shall be organized and con-  
27 tinuously thereafter operated as a nonprofit cor-  
28 poration, no part of the net earnings of which  
29 may inure to the benefit of any member, director,  
30 officer or other private person;

31       B. The directors of the corporation shall be  
32 elected by the municipal officers of the municipi-  
33 palities participating in the corporation; and

34       C. Upon dissolution or liquidation of the corpo-  
35 ration, title to all of its property shall vest  
36 in one or more of the municipalities participat-  
37 ing in the corporation.



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1 Any interlocal agreement complying with the require-  
2 ments of this subsection and subsection 6 shall be a  
3 properly authorized, legal, valid, binding and en-  
4 forceable obligation of the municipality, regardless  
5 of whether the agreement was authorized, executed or  
6 delivered prior to or after the effective date of  
7 this subsection. Any corporation organized in a man-  
8 ner which satisfies the requirements set forth in  
9 this subsection and subsection 6, whether organized  
10 prior to or after the effective date of this subsec-  
11 tion, shall be deemed for all purposes as organized  
12 pursuant to this subsection. If so provided in the  
13 applicable interlocal agreement, any such corporation  
14 shall have the power, in addition to any other powers  
15 which may be delegated under Title 30, chapter 203,  
16 to issue, on behalf of one or more of the municipali-  
17 ties participating in the corporation, in order to  
18 finance the facilities, revenue obligation securities  
19 issued in accordance with Title 10, chapter 110, sub-  
20 chapter IV, and any other bonds, notes or debt obli-  
21 gations which municipalities are authorized to issue  
22 by applicable law.

23 6. Relationship to other laws. The obligation of  
24 a municipality to pay any fees, assessments or other  
25 payments in accordance with any agreement entered in-  
26 to pursuant to subsection 4 or any interlocal agree-  
27 ment referred to in subsection 5 shall not constitute  
28 a "debt" or "indebtedness" of the municipality within  
29 the meaning of any statutory, charter or ordinance  
30 provision limiting the incurrence or the amount of  
31 municipal indebtedness nor shall the authorization or  
32 incurrence of the obligation or any municipal action  
33 to raise funds to meet the obligation by any means  
34 set forth in subsection 4, paragraph C, require or be  
35 subject to any voter referendum or approval under any  
36 law or any charter or ordinance provision. A munici-  
37 pality may agree to make payments in accordance with  
38 subsection 4, paragraph E, subparagraph (1), or in  
39 accordance with the provisions of any interlocal  
40 agreement referred to in subsection 5 with respect to

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1 long-term financing obtained by the owner of one or  
2 more waste facilities, provided that the total prin-  
3 cipal balance of the long-term financing does not ex-  
4 ceed 3% of its last full state valuation. Notwith-  
5 standing this subsection, 2 or more municipalities  
6 may separately agree with the owner of one or more  
7 waste facilities to make payments in accordance with  
8 subsection 4, paragraph B, subparagraph (1), or any  
9 interlocal agreement referred to in subsection 5 with  
10 respect to the long-term financing obtained by the  
11 owner of the facilities, provided that the total  
12 principal balance of the long-term financing does not  
13 exceed 3% of the sum of the last full state valuation  
14 of all municipalities in question.

15 The obligation of the municipality to pay fees, as-  
16 essments and other payments in accordance with sub-  
17 section 4 or any interlocal agreement referred to in  
18 subsection 5 shall be binding upon and enforceable  
19 against the municipality without regard to whether  
20 all or any one or more of the waste facilities re-  
21 ferred to in subsection 4, paragraph B, subparagraph  
22 (1), becomes operational or was or will be in opera-  
23 tion during the period for which the fees, assess-  
24 ments or other payments are so charged.

25 No contract entered into in accordance with subsec-  
26 tion 4 nor any ordinance adopted under the authority  
27 of subsection 2 shall be deemed a contract in re-  
28 straint of trade or otherwise unlawful under Title  
29 10, chapter 201.

30 Notwithstanding any law, charter or ordinance provi-  
31 sions to the contrary, the powers conferred upon a  
32 municipality pursuant to subsections 4 and 5 and this  
33 subsection shall be exercised, in the case of a mu-  
34 nicipality with a city or town council, by action of  
35 the council and, in the case of a municipality with-  
36 out such a council, by action of the town meeting.  
37 This paragraph shall apply whether or not the action  
38 of the city council, town council or town meeting was  
39 taken before or after the effective date of this sub-

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1 section.

2 Nothing in this section may be construed to be a lim-  
3 itation on the Home Rule powers granted to municipal-  
4 ities under Title 30, section 1917, or on the ability  
5 of communities to jointly exercise their powers as is  
6 recognized in Title 30, section 1951. This section  
7 provides an additional and alternative method for  
8 carrying out this subchapter.

9           Sec. 5. 38 MRSa §1751, sub-§3, as enacted by PL  
10 1983, c. 820, §2, is amended to read:

11           3. Maturity; interest; form; temporary bonds.  
12 The bonds issued under this chapter shall be dated,  
13 shall mature at such time or times not exceeding 40  
14 years from their date or dates and shall bear inter-  
15 est at such rate or rates as may be determined by the  
16 board of directors or determined pursuant to a formu-  
17 la approved by the board of directors or by a 3rd  
18 party rate-setting agent selected by the board of  
19 directors, and may be made redeemable before maturi-  
20 ty, at the option of the district, at such price or  
21 prices and under such terms and conditions as may be  
22 fixed by the board of directors prior to the issuance  
23 of the bonds. The board of directors shall determine  
24 the form of the bonds, including any interest coupons  
25 to be attached, and the manner of execution of the  
26 bonds, and shall fix the denomination or denomina-  
27 tions of the bonds and the place or places of payment  
28 of principal and interest, which may be at any finan-  
29 cial institution having trust powers within or with-  
30 out the State. Bonds shall be executed in the name  
31 of the district by the manual or facsimile signature  
32 of such officer or officers as may be authorized in  
33 the resolution to execute the bonds, but at least one  
34 signature on each bond shall be a manual signature.  
35 Coupons, if any, attached to the bonds shall be exe-  
36 cuted with the facsimile signature of the officer or  
37 officers of the district designated in the resolu-  
38 tion. In case any officer, whose signature or fac-  
39 simile signature appears on any bonds or coupons,

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1 ceases to hold that office before the delivery of the  
2 bonds, the signature or its facsimile shall neverthe-  
3 less be valid and sufficient for all purposes, as if  
4 he had remained in office until the delivery. Not-  
5 withstanding any of the other provisions of this  
6 chapter or any recitals in any bonds issued under  
7 this chapter, all such bonds shall be deemed to be  
8 negotiable instruments under the laws of this State.  
9 The bonds may be issued in coupon or registered form,  
10 or both, as the board of directors may determine,  
11 and provision may be made for the registration of any  
12 coupon bonds as to principal alone and as to both  
13 principal and interest, and for the reconversion into  
14 coupon bonds of any bonds registered as to both prin-  
15 cipal and interest. The board of directors may sell  
16 the bonds in the manner, either at public or private  
17 sale, and for such price as they may determine to be  
18 for the best interests of the district. The proceeds  
19 of the bonds of each issue shall be used solely for  
20 the purpose for which those bonds have been author-  
21 ized and shall be disbursed in such manner and under  
22 such restrictions as the board of directors may pro-  
23 vide in the resolution authorizing the issuance of  
24 the bonds or in the trust agreement securing the  
25 bonds. The resolution providing for the issuance of  
26 bonds, and any trust agreement securing the bonds,  
27 may contain such limitations upon the issuance of ad-  
28 ditional bonds as the board of directors may deem  
29 proper, and these additional bonds shall be issued  
30 under such restrictions and limitations as may be  
31 prescribed by that resolution or trust agreement.  
32 Prior to the preparation of definitive bonds, the  
33 board of directors may, under like restrictions, is-  
34 sue interim receipts or temporary bonds, with or  
35 without coupons, exchangeable for definitive bonds  
36 when those bonds are executed and are available for  
37 delivery. The board of directors may provide for the  
38 replacement of any bond which is mutilated, destroyed  
39 or lost.

40 **Emergency clause.** In view of the emergency cited  
41 in the preamble, this Act shall take effect when ap-

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1 proved.'

2 STATEMENT OF FACT

3 The purpose of this amendment is to provide  
4 unequivocal authority for Maine municipalities to enter  
5 into agreements, separately or jointly, with the  
6 developers of solid waste disposal facilities whereby  
7 the municipalities are able to guarantee, separately  
8 or jointly, a steady source of revenues to the devel-  
9 opers to pay, among other items, debt service on the  
10 solid waste disposal projects financed by the devel-  
11 opers, whether or not the facilities become opera-  
12 tional or cease to be operational for any period pri-  
13 or to full payment of the debt service. This measure  
14 also provides unequivocal authority for municipali-  
15 ties to jointly own or operate the solid waste dis-  
16 posal facilities and to exercise similar powers in  
17 connection therewith.

18 The amendment addresses the question of whether  
19 municipalities already have the power to enter into  
20 service contracts for solid waste disposal. The emer-  
21 gency preamble states that they do have this power,  
22 but that the legislation is necessary to override  
23 inconsistencies in provisions of charters and ordi-  
24 nances and to further clarify the power of municipali-  
25 ties to enter into those service contracts. The  
26 amendment also specifies that obligations incurred  
27 pursuant to its provisions shall not be debt for pur-  
28 poses of any debt limit. It also regulates the amount  
29 of the obligations in the manner provided. Various  
30 provisions of the amendment are intended to be appli-  
31 cable to agreements signed and organizations created  
32 prior to its effective date.

33 The amendment also allows the use of new financ-  
34 ing vehicles, such as variable rate bonds, in a prac-  
35 tical manner while still retaining local control.

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1           The amendment also provides some protection for  
2 small power producers and cogenerators, including mu-  
3 nicipal waste-to-energy projects, the economic  
4 viability of which relies on contracts with electric  
5 utilities.

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