

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 (After Deadline)
3 SECOND REGULAR SESSION
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE
6

7 Legislative Document

No. 2126

8
9 S.P. 837

In Senate, March 4, 1986

10 Approved for introduction by a majority of the Legislative Council
11 pursuant to Joint Rule 27.

12 Reference to the Committee on State Government suggested and ordered
printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Usher of Cumberland.

Cosponsored by Representative Higgins of Scarborough.

13
14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-SIX
18

19 AN ACT Relating to the Issuance of Taxable
20 Bonds and the Refunding of Certain Bonds.
21

22 **Emergency preamble.** Whereas, Acts of the Legis-
23 lature do not become effective until 90 days after
24 adjournment unless enacted as emergencies; and

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

28 Whereas, a number of municipalities in the State
29 have serious problems in disposing municipal solid
30 waste in an environmentally safe manner and are sub-
31 ject to orders of the Department of Environmental
32 Protection to close landfills or to find alternative
33 methods of disposal for solid waste; and

1 Whereas, the public health, safety and welfare
2 are seriously endangered by the current methods of
3 solid waste disposal and require immediate municipal
4 action; and

5 Whereas, a number of municipalities desire to de-
6 velop and finance facilities for the disposal of sol-
7 id waste, which facilities cannot be financed in
8 whole or in part currently with bonds the interest on
9 which is tax exempt under the United States Internal
10 Revenue Code in view of existing tax law and certain
11 tax legislation pending in Congress and approved by
12 the United States House of Representatives; and

13 Whereas, tax laws and tax legislation also may
14 impair the ability of municipalities to finance with
15 tax exempt bonds other essential public projects af-
16 fected thereby; and

17 Whereas, financial institutions that would under-
18 write solid waste disposal facilities require clari-
19 fication with respect to the powers of municipalities
20 to issue bonds, the interest on which is taxable; and

21 Whereas, Public Law 1985, chapter 337, was
22 adopted as an emergency measure to facilitate the is-
23 suance of bonds for solid waste projects under the
24 Maine Revised Statutes, Title 10, chapter 110, sub-
25 chapter IV, and it is desirable to add language in
26 that subchapter to clarify and declare the effect of
27 Public Law 1985, chapter 337 as now in force; and

28 Whereas, the timely completion and financial fea-
29 sibility of municipal solid waste disposal projects
30 will be adversely affected unless legislation to
31 clarify the power to finance the projects is enacted
32 prior to the effective date of any nonemergency leg-
33 islation; and

34 Whereas, in the judgment of the Legislature,
35 these facts create an emergency within the meaning of
36 the Constitution of Maine and require the following
37 legislation as immediately necessary for the preser-
38 vation of the public peace, health and safety; now,
39 therefore,

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

1 Sec. 1. 10 MRSA §1041, sub-§4, as enacted by PL
2 1981, c. 476, §2, is amended to read:

3 4. Refunding securities. Issue revenue refunding
4 obligation securities as provided to refund any out-
5 standing revenue obligation securities issued under
6 this subchapter or under subchapter IV or to refund
7 any obligations or securities of any municipality;

8 Sec. 2. 10 MRSA §1048, as amended by PL 1985, c.
9 344, §76, is further amended to read:

10 §1048. Revenue refunding securities

11 The authority may provide for the issuance of
12 revenue refunding securities of the authority to re-
13 fund any outstanding revenue securities issued under
14 this subchapter or under subchapter IV or to refund
15 any obligations or securities of any municipality,
16 including the payment of any redemption premiums and
17 any interest accrued or to accrue to the date of re-
18 demption, and, if deemed advisable by the authority,
19 to construct or enable the construction of improve-
20 ments, extensions, enlargements or additions of the
21 original project. The authority may provide for the
22 issuance of revenue obligation securities of the au-
23 thority for the combined purpose of refunding any
24 outstanding revenue obligation securities or revenue
25 refunding securities issued under this subchapter or
26 under subchapter IV or to refund any obligations or
27 securities of any municipality, including the payment
28 of redemption premiums and interest accrued or to ac-
29 crue and paying all or any part of the cost of ac-
30 quiring or constructing or enabling the acquisition
31 or construction of any additional project or part or
32 any improvements, extensions, enlargements or addi-
33 tions of any project. The issuance of the securities,
34 the maturities and other details, the rights and reme-
35 dies of the holders and the rights, powers, privi-
36 leges, duties and obligations of the authority shall
37 be governed by the provisions of this subchapter in-
38 sofar as they are applicable.

39 Sec. 3. 10 MRSA §1054, as enacted by PL 1985, c.
40 344, §78, is amended to read:

41 §1054. Taxable bond option

1 With respect to all or any portion of any issue
2 of any bonds or any series of bonds which the author-
3 ity may issue in accordance with the limitations and
4 restrictions of this subchapter, the authority may
5 covenant and consent that the interest on the bonds
6 shall be includable, under the United States Internal
7 Revenue Code of 1954 or any subsequent corresponding
8 internal revenue law of the United States, in the
9 gross income of the holders of the bonds to the same
10 extent and in the same manner that the interest on
11 bills, bonds, notes or other obligations of the
12 United States is includable in the gross income of
13 the holders under the United States Internal Revenue
14 Code or any subsequent law. The powers conferred by
15 this section shall not be subject to any limitations
16 or restrictions of any law which may limit the au-
17 thority's power to so covenant and consent or to the
18 procedures set forth in section 1043 or in section
19 1044, subsections 1, 11 and 12.

20 Sec. 4. 10 MRSA §1061, sub-§3, as enacted by PL
21 1981, c. 476, §2, is amended to read:

22 3. Refunding securities. Issue revenue refunding
23 obligation securities of the municipality to refund
24 any outstanding revenue obligation securities issued
25 under this subchapter or under subchapter III or to
26 refund any other obligations or securities of the
27 municipality;

28 Sec. 5. 10 MRSA §1064, sub-§6, as enacted by PL
29 1981, c. 476, §2, is amended to read:

30 6. Credit not pledged. Securities issued under
31 this subchapter shall not constitute any debt or lia-
32 bility of the State, its political subdivisions or
33 any municipality; shall not constitute a pledge of
34 the faith and credit of the State, its political sub-
35 divisions or any municipality; shall be payable sole-
36 ly from the revenues of the project or projects for
37 which they are issued; and shall contain on their
38 face a statement to that effect. The securities is-
39 sued under this subchapter shall not directly or in-
40 directly or contingently obligate the State, its po-
41 litical subdivisions or any municipality to levy or
42 to pledge any form of taxation whatever or to make
43 any appropriation for their payment. The prohibi-

1 tions or limitations of this subsection shall not be
2 construed to restrict any rights or obligations of a
3 municipality arising under Title 38, section 1304-B.

4 Sec. 6. 10 MRSA §1068, as amended by PL 1985, c.
5 344, §92, is further amended to read:

6 §1068. Revenue refunding securities

7 The municipal officers are authorized to provide
8 by resolution for the issuance of revenue refunding
9 securities of the municipality for the purpose of re-
10 funding any outstanding revenue obligation securities
11 issued under this subchapter or under subchapter III
12 or refunding any other obligations or securities of
13 the municipality, including the payment of any re-
14 demption premium and any interest accrued or to ac-
15 cruer to the date of redemption, and, if deemed advis-
16 able by the municipal officers, to construct improve-
17 ments, extensions, enlargements or additions of the
18 original project. The municipal officers may provide
19 by resolutions for the issuance of revenue obligation
20 securities of the municipality for the combined pur-
21 pose of refunding any outstanding revenue obligation
22 securities or revenue refunding securities issued un-
23 der this subchapter or under subchapter III or of re-
24 funding any other obligations or securities of the
25 municipality, including the payment of any redemption
26 premiums and any interest accrued or to accrue to the
27 date of redemption, and paying all or any part of the
28 cost of acquiring or constructing any additional
29 project or part or any improvements, extensions, en-
30 largements or additions of any project. The issuance
31 of the securities, the maturities and other details,
32 the rights and remedies of the holders and the
33 rights, powers, privileges, duties and obligations of
34 the municipality and the municipal officers shall be
35 governed by the provisions of this subchapter insofar
36 as applicable; provided that any action or proceeding
37 in any court to set aside a resolution authorizing
38 the issuance of revenue refunding securities under
39 this subchapter or to obtain any relief on the ground
40 the resolution was improperly adopted, was adopted
41 for unauthorized purposes or is otherwise invalid for
42 any reason, must be commenced within 30 days after
43 publication by the clerk of the municipality in the
44 state newspaper and in a newspaper of general circu-

1 lation in the municipality of a notice stating that
2 the resolution has been adopted, the principal amount
3 of revenue refunding securities authorized to be is-
4 sued and the purpose of that issuance. After the ex-
5 piration of the period of limitations, no right of
6 action or defense founded upon the invalidity of that
7 resolution or any of its provisions shall be asserted
8 nor shall the validity of that resolution or any of
9 its provisions be open to question in any court upon
10 any ground whatever.

11 Sec. 7. 10 MRSA §1074 is enacted to read:

12 §1074. Taxable bond option

13 With respect to all or any portion of any issue
14 of bonds or any series of bonds which any municipali-
15 ty may issue in accordance with the limitations and
16 restrictions of this subchapter, the municipality may
17 covenant and consent that the interest on the bonds
18 shall be includable, under the United States Internal
19 Revenue code of 1954 or any subsequent corresponding
20 internal revenue law of the United States, in the
21 gross income of the holders of the bonds to the same
22 extent and in the same manner that the interest on
23 bills, bonds, notes or other obligations of the
24 United States is includable in the gross income of
25 the holders under the United States Internal Revenue
26 Code or any subsequent law. The powers conferred by
27 this section shall not be subject to any limitations
28 or restrictions of any law which may limit the
29 municipality's power to so covenant and consent or to
30 the procedures set forth in section 1063 or in sec-
31 tion 1064, subsection 1. Any bonds or issue or se-
32 ries of bonds with respect to which the municipality
33 convenants and consents that the interest on the
34 bonds shall be includable, under the United State In-
35 ternal Revenue Code of 1954 or any subsequent corre-
36 sponding internal revenue law of the United States in
37 the gross income of the holders of the bonds to the
38 same extent and in the same manner that interest on
39 bills, bonds, notes or other obligations of the
40 United States is includable in the gross income of
41 the holders under the United States Internal Revenue
42 Code or any subsequent law shall be a properly autho-
43 rized, legal, valid, binding and enforceable obliga-
44 tion of the municipality, regardless of whether the

1 bonds were authorized, executed, delivered or issued
2 prior to or after the effective date of this section.

3 Sec. 8. 38 MRSA §1304-B, sub-§4, ¶¶A and B, as
4 enacted by PL 1985, c. 337, §3, are amended to read:

5 A. To contract with a corporation described in
6 subsection 5 or a refuse disposal district or-
7 ganized under chapter 17 or any person, includ-
8 ing, but not limited to, the owner or operator of
9 any waste facility, for the collection, transpor-
10 tation, storage, processing, salvaging or dispos-
11 al of waste. Any such contract may be for such
12 term of years and may contain such other provi-
13 sions as the municipality may approve. Any such
14 contract may provide that, in consideration for
15 the obligation of the facility owner or operator
16 to handle all or any portion of the solid waste
17 generated in the municipality, the municipality
18 shall pay to the facility owner or operator such
19 fees, assessments and other payments as shall be
20 established in accordance with the contract.

21 B. Without limiting the generality of the powers
22 conferred in paragraph A, to agree in such a con-
23 tract to pay fees, assessments or other payments
24 in such amounts as may be reasonably necessary to
25 pay:

26 (1) Costs associated with financing, devel-
27 oping, constructing, repairing, maintaining
28 and operating all or any one or more of the
29 waste facilities owned or operated by the
30 facility owner or operator, including, but
31 not limited to, the payment of debt service
32 and the maintenance of reasonable reserves
33 or sinking funds in connection with the fi-
34 nancing or operation of any such waste fa-
35 cilities;

36 (2) Any other costs incurred by the facili-
37 ty owner or operator in connection with the
38 handling of solid waste, whether performed
39 at any waste facility referred to in subpar-
40 agraph (1) or at another such facility dif-
41 ferently owned and operated; and

1 (3) Any deficiencies arising by virtue of
2 the failure of any other municipality so
3 agreeing to meet its obligations to pay the
4 costs set forth in subparagraphs (1) and (2)
5 in accordance with any similar agreement
6 with the same facility owner; and

7 Sec. 9. 38 MRSA §1304-B, sub-§5, as enacted by
8 PL 1985, c. 337, §4, is amended to read:

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

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

35 B. The directors of the corporation shall be
36 elected by the municipal officers of the munici-
37 palities participating in the corporation; and

38 C. Upon dissolution or liquidation of the corpo-
39 ration, title to all of its property shall vest
40 in one or more of the municipalities participa-
41 ting in the corporation.

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. For these purposes, the term "mu-
23 nicipal officers" as used in Title 10, chapter 110,
24 subchapter IV, means the board of directors of any
25 corporation described in this subsection. Title 10,
26 section 1064, subsection 6 shall not be construed to
27 prohibit the assignment or pledge as collateral secu-
28 rity of any contract of a municipality authorized by
29 this section or of any or all of the payments under
30 this section, regardless of whether the provisions
31 of subsection 4, paragraph C are applicable to the
32 contract or payments.

33 Sec. 10. 38 MRSA §1304-B, sub-§6, as amended by
34 PL 1985, c. 506, Pt. B, §38, is repealed and the fol-
35 lowing enacted in its place:

36 6. Relationship to other laws. The obligation of
37 a municipality to pay any fees, assessments or other
38 payments in accordance with any agreement entered in-
39 to pursuant to subsection 4 or any interlocal agree-
40 ment referred to in subsection 5 shall not constitute
41 a "debt" or "indebtedness" of the municipality within
42 the meaning of any statutory, charter or ordinance
43 provision limiting the incurrence or the amount of
44 municipal indebtedness nor shall the authorization or
45 incurrence of the obligation or any municipal action

1 to raise funds to meet the obligation by any means
2 set forth in subsection 4, paragraph C, require or be
3 subject to any voter referendum or approval under any
4 law or any charter or ordinance provision.

5 A. A municipality may agree to make payments in
6 accordance with subsection 4, paragraph B, or in
7 accordance with the provisions of any interlocal
8 agreement referred to in subsection 5 with regard
9 to all or any portion of debt incurred or to be
10 incurred for the financing of one or more waste
11 facilities, provided that no such payments shall
12 be made with respect to debt or any portion of
13 debt which, when incurred, would cause the total
14 principal balance of all then outstanding debt or
15 portions of debt to which the payments apply to
16 exceed:

17 (1) Three percent of the last full state
18 valuation of the municipality; minus

19 (2) The municipality's then obtaining allo-
20 cable share of any debt or portions of debt
21 described in paragraph B with regard to
22 which it is obliged to make payments.

23 B. Notwithstanding paragraph A, 2 or more munic-
24 ipalities may agree to make payments in accord-
25 ance with subsection 4, paragraph B, or in ac-
26 cordance with any interlocal agreement referred
27 to in subsection 5 with regard to all or any por-
28 tion of debt incurred or to be incurred for the
29 financing of one or more waste facilities, pro-
30 vided that no such payments may be made with re-
31 spect to debt or any portions of debts which,
32 when incurred, would cause the total principal
33 balance of all then outstanding debt or portions
34 of debt to which the payments apply to exceed:

35 (1) Three percent of the sum of the last
36 full state valuation of all municipalities
37 so agreeing; minus

38 (2) Any amounts of debt or portions of debt
39 described in paragraph A in connection with
40 which any such municipality is obliged to
41 make payments.

1 The limitations set forth in paragraphs A and B
2 shall only apply to agreements by which a municipi-
3 ality or group of municipalities have agreed to
4 make payments directly based, among other things,
5 on a facility owner's costs of debt service and
6 other costs of financing and shall not be constr-
7 ued to apply to contract payments calculated
8 on any other basis, even if the facility owner
9 uses the payments to meet its debt service obli-
10 gations.

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

21 No contract entered into in accordance with subsec-
22 tion 4 nor any ordinance adopted under the authority
23 of subsection 2 may be deemed a contract in restraint
24 of trade or otherwise unlawful under Title 10, chap-
25 ter 201.

26 Notwithstanding any law, charter or ordinance provi-
27 sions to the contrary, the powers conferred upon a
28 municipality pursuant to subsections 4 and 5 and this
29 subsection may be exercised by the municipal officers
30 as defined in Title 30, section 1901, only when au-
31 thorized, in the case of a municipality with a city
32 or town council, by action of the council and, in the
33 case of a municipality without such a council, by ac-
34 tion of the town meeting. This paragraph shall apply
35 whether or not the action of the city council, town
36 council or town meeting was taken before or after the
37 effective date of this subsection.

38 Nothing in this section may be construed to be a lim-
39 itation on the Home Rule powers granted to municipali-
40 ties under Title 30, section 1917, or on the ability
41 of communities to jointly exercise their powers as is
42 recognized in Title 30, section 1951. This section
43 provides an additional and alternative method for
44 carrying out this subchapter.

