

# MAINE STATE LEGISLATURE

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R. of S.

1

L.D. 2443

2

(Filing No. S-572)

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STATE OF MAINE

4

SENATE

5

112TH LEGISLATURE

6

THIRD SPECIAL SESSION

7

SENATE AMENDMENT "B " to S.P. 988, L.D. 2443,  
8 Bill, "AN ACT to Impose a Moratorium on the Licensing  
9 of Commercial Landfills for the Disposal of Solid  
10 Waste."

11

Amend the bill by striking out everything after  
12 the enacting clause and inserting in its place the  
13 following:

14

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

17

Whereas, the surface and ground waters of the  
18 State are precious natural resources upon which the  
19 people of this State vitally depend for their drink-  
20 ing water, and which support recreational and other  
21 valuable land uses on which the economy and welfare  
22 of many communities of the State depend; and

23

Whereas, plans for increasing development of com-  
24 mercial solid waste landfills within this State place  
25 these vital natural resources at risk; and

26

Whereas, currently available regulatory programs  
27 and law enforcement resources are inadequate to pro-  
28 tect against the risk that commercial landfills will  
29 become sites for unlicensed hazardous waste disposal,  
30 or will allow pollutants to escape into the State's  
31 air, land and waters; and

32

Whereas, current environmental and land use regu-  
33 lations are also inadequate to insure that commercial  
34 landfill projects internalize the full social and ec-  
35 onomic costs of such projects to the host and nearby  
36 communities, and do not adequately provide for the  
37 costs of accident or landfill failure; and

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1           Whereas, a moratorium on new commercial solid  
2 waste landfill projects is necessary in order to al-  
3 low the Legislature time to fully examine the insti-  
4 tutional, economic and environmental issues involved  
5 and to develop a comprehensive solid waste management  
6 policy, including a coherent scheme for the licensing  
7 and regulatory supervision of commercial solid waste  
8 landfills, and in order to allow municipalities to  
9 plan for new commercial landfills in a manner con-  
10 sistent with existing land uses; and

11           Whereas, in the judgment of the Legislature,  
12 these facts create an emergency within the meaning of  
13 the Constitution of Maine and require the following  
14 legislation as immediately necessary for the preser-  
15 vation of the public peace, health and safety; now,  
16 therefore,

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

19           Sec. 1. 30 MRSA §4962-B is enacted to read:

20           §4962-B. State policy relating to municipal commer-  
21           cial landfill facilities moratoria

22           It is the policy of this State, with respect to  
23           commercial landfill facilities:

24           1. State and municipal control. To affirm the  
25           importance of state and municipal control over the  
26           establishment of new commercial landfill facilities  
27           and over the substantial expansion of existing com-  
28           mercial landfill facilities; and

29           2. Recognition of home rule authority. To rec-  
30           ognize that any municipality may, in the exercise of  
31           its home rule authority under section 1917 and the  
32           Constitution of Maine, Article VIII, Section 1, enact  
33           a moratorium on the issuance or processing of any mu-  
34           nicipal permit for a new commercial landfill facility

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1 or the substantial expansion of a commercial landfill  
2 facility, as defined by Title 38, section 1303, sub-  
3 section 11-B.

4 Sec. 2. 38 MRSA §1303, sub-§1-C is enacted to  
5 read:

6 1-C. Commercial landfill facility. "Commercial  
7 landfill facility" means a privately-owned waste fa-  
8 cility which accepts solid waste for a fee or other  
9 consideration, which is used for the burial of solid  
10 waste and which is used for the disposal of waste  
11 other than waste generated by its owners. "Commer-  
12 cial landfill facility" does not include a waste fa-  
13 cility owned, controlled, operated or used exclusive-  
14 ly by:

15 A. A public waste disposal corporation under  
16 section 1304-B, subsection 5;

17 B. A municipality under section 1305; or

18 C. A refuse disposal district under chapter 17.

19 Sec. 3. 38 MRSA §1303, sub-§11-B is enacted to  
20 read:

21 11-B. Substantial expansion of a commercial  
22 landfill facility. "Substantial expansion of a com-  
23 mercial landfill facility" means an expansion of an  
24 existing licensed commercial waste facility by more  
25 than 50%, as measured by either volume of waste or  
26 land area affected, whichever is more of its current-  
27 ly licensed operation. "Substantial expansion" does  
28 not include an expansion which is necessary, as de-  
29 termined by the board, to:

30 A. Dispose of municipal solid waste; or

31 B. Accomodate any commercial, industrial or res-  
32 idential development that requires site location  
33 of development approval.

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1           Sec. 4. 38 MRSA §1304, sub-§8, ¶A, as enacted by  
2 PL 1979, c. 699, §12, is amended to read:

3           A. The board shall issue a license for a waste  
4 facility whenever it finds it will not pollute  
5 any water of the State, contaminate the ambient  
6 air, constitute a hazard to health or welfare, or  
7 create a nuisance. Licenses shall be issued under  
8 the terms and conditions as the board may pre-  
9 scribe, and for a term not to exceed 5 years. The  
10 board may establish reasonable time schedules for  
11 compliance with this subchapter and regulations  
12 promulgated by the board. Prior to 91 days after  
13 the First Regular Session of the 113th Legisla-  
14 ture adjourns, the department shall not process  
15 or act upon any application for, and the board  
16 shall not issue, a license for a new commercial  
17 landfill facility or the substantial expansion of  
18 a commercial landfill facility. In processing  
19 applications after the moratorium, priority shall  
20 be given to applications for commercial landfill  
21 facilities used for the disposal of solid waste  
22 which is generated by an energy recovery facility  
23 designed to reduce the volume or alter the physi-  
24 cal characteristics of municipal solid waste and  
25 to produce electricity through incineration.

26           Sec. 5. Application. Notwithstanding the Maine  
27 Revised Statutes, Title 1, section 302, this Act ap-  
28 plies to any pending application for a license for a  
29 commercial landfill facility under the Maine Revised  
30 Statutes, Title 38, section 1304, subsection 8, or  
31 under municipal ordinance, or to any pending applica-  
32 tion for the substantial expansion of a licensed com-  
33 mercial landfill facility. This Act does not apply  
34 to any pending or future application to renew a li-  
35 cense previously issued under the Maine Revised Stat-  
36 utes, Title 38, section 1304, subsection 8, or for  
37 permission to proceed with the construction or opera-  
38 tion of a previously licensed waste facility or pre-  
39 viously licensed substantial expansion of an existing

1 waste facility.

2 Emergency clause. In view of the emergency cited  
3 in the preamble, this Act shall take effect when ap-  
4 proved.'

5 STATEMENT OF FACT

6 This amendment modifies the original bill in sev-  
7 eral ways, including shortening the length of the  
8 moratorium, adding certain necessary exemptions from  
9 the moratorium and establishing a priority for pro-  
10 cessing applications after the moratorium ends.

11 This amendment replaces section 1 of the original  
12 bill to reaffirm that the State places importance on  
13 state and municipal control of new commercial  
14 landfill facility development. It also specifically  
15 recognizes that municipalities may exercise their  
16 home rule authority extended under the Maine Revised  
17 Statutes and the Constitution of Maine to enact their  
18 own moratoria on the processing or issuance of a per-  
19 mit for a new or expanded commercial landfill facili-  
20 ty.

21 This amendment changes section 2 of the bill to  
22 further define "commercial landfill facilities" as  
23 solid waste landfills that are paid by waste genera-  
24 tors to accept solid waste. This excludes from the  
25 definition of "commercial landfill facility" those  
26 sites which accept solid waste, other than waste the  
27 owner generates, without charging a fee. Section 2  
28 is also amended to clarify that a facility used ex-  
29 clusively by a public waste disposal corporation, mu-  
30 nicipality or a refuse disposal district is not con-  
31 sidered a "commercial landfill facility."

32 This amendment modifies section 3 of the bill  
33 which defines "substantial expansion." The original  
34 bill defines "substantial expansion" in terms of

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1 present volume or land area affected, whichever is  
2 less. The amendment allows expansions to be based on  
3 the larger of the 2 figures.

4 Section 3 is also amended to give the Board of  
5 Environmental Protection discretion to allow  
6 expansions of existing commercial landfill facilities  
7 when necessary to accommodate municipal waste or sol-  
8 id waste from economic growth and development. This  
9 change addresses the required guarantee for solid  
10 waste capacity at a site the Department of Environ-  
11 mental Protection considers in compliance before site  
12 location of development approval is granted. This is  
13 required under the Fitzpatrick decision.

14 Section 4 reduces the length of the moratorium on  
15 the processing and approval of commercial landfill  
16 facility applications. The moratorium in the origi-  
17 nal bill terminated on January 1, 1988. The amend-  
18 ment moves the termination date of the moratorium to  
19 91 days after the First Regular Session of the 113th  
20 Legislature adjourns. This will allow the Legisla-  
21 ture to act on the recommendations of the Solid Waste  
22 Management Subcommittee. The Department of Environ-  
23 mental Protection will give priority in processing,  
24 once the moratorium ends, to applications for commer-  
25 cial landfill facilities which will dispose of waste  
26 from energy recovery facilities processing municipal  
27 solid waste.

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(Sen. Usher)

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