

# MAINE STATE LEGISLATURE

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(EMERGENCY)  
FIRST SPECIAL SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1896

H.P. 1398 House of Representatives, October 5, 1987  
Approved for introduction by a majority of the  
Legislative Council pursuant to Joint Rule 26.  
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EDWIN H. PERT, Clerk  
Presented by Representative MOHOLLAND of Princeton.  
Cosponsored by Representative VOSE of Eastport.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Prevent any Landfill from being  
2 Constructed Over or Near an Aquifer,  
3 to Maintain Regional Landfills and to  
4 Clarify the Intent of the Solid Waste  
5 Law.  
6

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

10 Whereas, pending applications for landfills may  
11 pose a serious risk to ground water quality and pub-  
12 lic health; and

13 Whereas, changes in the solid waste disposal mar-  
14 ket and in the ownership of existing landfills may  
15 threaten established patterns of regional use of ex-  
16 isting landfills; and

1       Whereas, these landfills were originally sited  
2 and approved specifically to provide long-term solu-  
3 tions to the solid waste disposal needs of regional  
4 towns and businesses; and

5       Whereas, disruption of these patterns of regional  
6 use will injure the citizens and businesses of the  
7 State that currently rely on those landfills through  
8 an increase in their disposal costs and the siting of  
9 additional landfill capacity in areas which are  
10 marginally suitable for those activities; 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. 38 MRSA §1310-N, sub-§2-A is enacted to  
20 read:

21       2-A. Aquifer protection. The board shall not  
22 issue a license for a solid waste disposal facility  
23 when it finds that the proposed facility overlies a  
24 significant ground water aquifer or when the board  
25 finds that the proposed facility poses an unreason-  
26 able threat to the quality of a significant ground  
27 water aquifer which it does not overlie.

28       A. The term "significant ground water aquifer"  
29 is defined as a water-bearing geological forma-  
30 tion with a water yield in excess of 10 gallons  
31 per minute on a continuous basis including  
32 fractured bedrock, sand and gravel formations.

33       B. In determining whether or not the proposed  
34 facility poses an unreasonable threat to the  
35 quality of a significant ground water aquifer,  
36 the board shall require the applicant to provide:

37       (1) A thorough hydrogeological assessment  
38 of the proposed site and the contiguous area

1 including any classified surface waters and  
2 significant ground water aquifers which  
3 could be affected by the proposed facility  
4 during normal operation or in the event of  
5 unforeseen circumstances including the fail-  
6 ure of any engineered barriers to ground wa-  
7 ter flow. The assessment shall include a  
8 description of ground water flow rates, the  
9 direction of flow and the degree of dilution  
10 that may occur between the proposed site and  
11 any classified surface water or significant  
12 ground water aquifer; and

13 (2) An assessment of any increased risk to  
14 public health and the environment which may  
15 be caused by the proposed facility during  
16 normal operation or in the event of unfore-  
17 seen circumstances including the failure of  
18 any engineered barriers to ground water  
19 flow.

20 Sec. 2. 38 MRSA §1310-Q, sub-§1 is enacted to  
21 read:

22 1. Maintenance of public benefit. The board may  
23 approve the transfer of a license for an existing  
24 solid waste disposal facility only when it finds that  
25 the facility will provide a substantial public bene-  
26 fit consistent with the provisions of this article.  
27 In making its finding, the board shall consider the  
28 extent to which the disposal facility was sited and  
29 developed and is currently operated to meet the ca-  
30 pacity needs of municipalities within a specific geo-  
31 graphic region. The board shall approve the transfer  
32 of license when, in addition to all other require-  
33 ments of this article, the applicant has demonstrated  
34 that:

35 A. The facility will continue to be operated to  
36 meet the disposal capacity needs for which the  
37 facility was sited and developed and for which it  
38 is currently operated;

39 B. The applicant has made substantially equiva-  
40 lent, alternative provisions to satisfy these  
41 disposal capacity needs; or

1 C. These disposal capacity needs no longer exist.  
2

3 **Sec. 3. 38 MRSA §1310-S, sub-§5** is enacted to  
4 read:

5 5. Unincorporated townships and plantations.  
6 For the purposes of this section, county commissioners  
7 shall act as municipal officers for unincorporated  
8 townships, and assessors of plantations shall  
9 act as municipal officers for plantations.

10 **Sec. 4. 38 MRSA §1310-U**, as enacted by PL 1987,  
11 c. 517, §25, is amended by adding at the end a new  
12 paragraph to read:

13 Subject to this section for municipal ordinances,  
14 county commissioners may enact ordinances with respect  
15 to solid waste disposal facilities for the un-  
16 incorporated townships within their jurisdiction.

17 **Sec. 5. 38 MRSA §1310-V** as enacted by PL 1987,  
18 c. 517, §25, is amended to read:

19 §1310-V. Moratorium

20 Prior to 91 days after the First Regular Session  
21 of the 113th Legislature adjourns, the department  
22 shall not process or act upon any application for,  
23 and the board shall not issue, a license for a new  
24 commercial landfill facility or the substantial expansion  
25 of a commercial landfill facility. In processing  
26 applications after the moratorium, priority  
27 shall be given to applications for commercial  
28 landfill facilities used for the disposal of solid  
29 waste which is generated by an energy recovery facility  
30 designed to reduce the volume or alter the physical  
31 characteristics of municipal solid waste and to  
32 produce electricity through incineration. Notwithstanding  
33 the provisions of Title 1, section 302, any  
34 application for a new or substantially expanded waste  
35 disposal facility pending or filed after the effective  
36 date of this article shall be subject to departmental  
37 rules regarding solid waste adopted pursuant  
38 to section 1304 and the provisions of Private and  
39 Special Law 1987, chapter 28. Notwithstanding other  
40 provisions of this Title, the department shall not

1 issue a license for a new or substantially expanded  
2 waste disposal facility under this article until it  
3 has adopted rules pursuant to the provisions of Pri-  
4 ivate and Special Law 1987, chapter 28.

5 **Sec. 6. Application.** Notwithstanding the provi-  
6 sions of Title 1, section 302, this Act may apply to  
7 any application for a new or expanded solid waste  
8 disposal facility or for transfer of license for an  
9 existing solid waste disposal facility pending or  
10 filed after the effective date of this Act.

11 **Emergency clause.** In view of the emergency cited  
12 in the preamble, this Act shall take effect when ap-  
13 proved.

14 **STATEMENT OF FACT**

15 The purposes of this bill are to:

16 1. Ensure adequate protection of significant  
17 ground water aquifers;

18 2. Protect the interests of municipalities which  
19 rely on specific landfills for waste disposal capaci-  
20 ty;

21 3. Ensure that inhabitants of the unorganized  
22 territories are represented in the waste disposal fa-  
23 cility licensing process;

24 4. Authorize the county commissioners to adopt  
25 waste disposal facility ordinances for the unincorpor-  
26 ated portions of their jurisdiction; and

27 5. Clarify the application of the moratorium  
28 language in the new solid waste law.

29 The bill prohibits the location of new or ex-  
30 panded waste disposal facilities on or near signifi-  
31 cant aquifers in order to protect existing and future  
32 water quality. While current licensing procedure  
33 blocks such developments directly over aquifers, dis-  
34 posal facilities may still be sited in a manner that  
35 inevitable leakage could contaminate aquifers. These

1 aquifers are a natural resource vital to the well-  
2 being of the citizens of this State.

3 The bill also provides for the continued availa-  
4 bility of disposal capacity for those municipalities  
5 which have shifted from local to regional disposal  
6 facilities with the expectation of long-term stabili-  
7 ty in their waste management situation.

8 The bill makes clear the existing authority of  
9 county commissioners, the Maine Revised Statutes, Ti-  
10 tle 30, section 5901, and assessors of plantations,  
11 Title 1, section 72, to act in place of municipal of-  
12 ficers where incorporated municipal governments do  
13 not exist. This authority is logically required to  
14 ensure that inhabitants of these areas be afforded  
15 the same opportunities for participation in the sit-  
16 ing process as inhabitants of incorporated towns.

17 The bill also clarifies and reasserts the intent  
18 of the Legislature in the enactment of the 1986-87  
19 moratorium on commercial landfills, the subsequent  
20 passage of emergency legislation in 1987 mandating  
21 revision in the department rules governing various  
22 aspects of solid waste disposal including proper cat-  
23 egorization of incinerator ash and siting; design,  
24 construction and operational requirements for  
25 landfills, (Private and Special Law 1987, chapter  
26 28); and comprehensive solid waste legislation as in  
27 Public Law 1987, chapter 17. The original moratorium  
28 language clearly provided a complete halt for all  
29 commercial landfill development beyond nonsubstantial  
30 expansion of existing facilities. Provisions were  
31 included to assure priority processing of applica-  
32 tions designed for waste incinerator ash once the  
33 moratorium expired, September 29, 1987.

34 During the moratorium, the Legislature enacted an  
35 emergency appropriation and directive to the Depart-  
36 ment of Environmental Protection mandating the revi-  
37 sion of departmental rules governing aspects of solid  
38 waste management. The original intent was to have  
39 the revised rules in place prior to the expiration of  
40 the moratorium.

41 When it became clear that these revisions would  
42 not be effective before the end of the moratorium,

1 the Legislature included language in its comprehen-  
2 sive solid waste legislation to provide for a transi-  
3 tion between the cessation of the moratorium and the  
4 adoption of the new rules. The intent of this lan-  
5 guage was that, while processing of applications  
6 could proceed, final approval of any new or substan-  
7 tially expanded waste disposal facility would be sub-  
8 ject to and would be delayed until adoption of the  
9 revised rules. The requirement was intended to apply  
10 regardless of the commercial or noncommercial status  
11 of the proposed facility. This intent is consistent  
12 with the Legislature's expressed concern over the is-  
13 sues identified in Private and Special Law 1987,  
14 chapter 28.

15 To ensure that the intent of this bill is applied  
16 to all future disposal capacity, a final provision is  
17 included to make all pending applications for solid  
18 waste disposal facilities subject to this bill.

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