

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2051

S.P. 803

In Senate, December 29, 1989

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

Received by the Secretary of the Senate on December 29, 1989. Referred to the Committee on Energy and Natural Resources and 1,600 ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator DUTREMBLE of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Regulate Trash to Energy Waste Recovery Corporations.



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

2
4 Sec. 1. 35-A MRSA §102, sub-§§9-A and 9-B are enacted to read:

6 9-A. Incineration plant. "Incineration plant" includes all
8 real estate, fixtures and personal property owned, controlled,
10 operated or managed in connection with or to facilitate the
12 incineration of municipal solid waste, as defined in chapter 33,
14 or industrial solid waste for purposes of either disposal or
16 electric power generation, or both. A facility which incinerates
18 municipal or industrial solid waste in small amounts which
20 constitute less than 2% by weight of its fuel is not considered
22 an incineration plant.

24 9-B. Incineration utility. "Incineration utility" includes
26 every person, the utility's lessees, trustees, receiver or
28 trustees appointed by any court owning, controlling, operating or
30 managing any incineration plant for compensation within this
32 State.

34 Sec. 2. 35-A MRSA §102, sub-§13, as enacted by PL 1987, c.
36 141, Pt. A, §6, is amended to read:

38 13. Public utility. "Public utility" includes every gas
40 utility, incineration utility, natural gas pipeline utility,
42 electric utility, telephone utility, telegraph utility, water
44 utility, public heating utility and ferry, as those terms are
defined in this section and each of those utilities is declared
to be a public utility. "Public utility" does not include the
operation of a radio paging service, as that term is defined in
this section. Nothing in this subsection precludes the
jurisdiction, control and regulation by the commission pursuant
to private and special act of the Legislature.

46 Sec. 3. 35-A MRSA §102, sub-§16-A is enacted to read:

48 16-A. Solid waste. "Solid waste" means useless, unwanted
50 or discarded solid material with insufficient liquid content to
be free flowing, including, but not limited to, rubbish, garbage,
scrap materials, junk, refuse, inert fill material and landscape
refuse, but does not include septic tank sludge or agricultural
wastes. "Solid waste" includes fuel, whether solid, liquid or
gas, derived from materials such as those listed.

52 Sec. 4. 35-A MRSA §116, sub-§1, as amended by PL 1989, c. 58,
54 §1, is further amended to read:

56 1. Utilities subject to assessments. Every electric, gas,
58 incineration, telegraph, telephone and water utility and ferry
60 subject to regulation by the commission shall be subject to an
assessment of not more than .25% on its intrastate gross

2 operating revenues to produce no more than \$2,696,000 in revenues
4 annually beginning in the 1989-90 fiscal year and not more than
6 \$2,910,000 in revenues annually beginning in the 1990-91 fiscal
8 year. The commission shall determine the assessments annually
10 prior to May 1st and assess each utility for its pro rata share.
12 Each utility shall pay the assessment charged to the utility on
14 or before July 1st of each year. Any increase in the assessment
16 that becomes effective subsequent to May 1st may be billed on the
18 effective date of the act authorizing the increase.

20 A. The assessments charged to utilities under this section
22 are just and reasonable operating costs for rate-making
24 purposes.

26 B. For the purposes of this section, "intrastate gross
28 operating revenues" means intrastate revenues derived from
30 filed rates, except revenues derived from sales for resale.

32 C. Gas utilities subject to the jurisdiction of the
34 commission solely with respect to safety shall not be
36 subject to any assessment.

38 D. The commission may correct any errors in the assessments
40 by means of a credit or debit to the following year's
42 assessment rather than reassessing all utilities in the
44 current year.

46 E. The commission may exempt utilities with annual
48 intrastate gross operating revenues under \$50,000 from
50 assessments under this section.

52 **Sec. 5. 35-A MRSA §310, sub-§3, ¶B,** as enacted by PL 1987, c.
141, Pt. A, §6, is amended to read:

142 B. Consumer-owned electric utilities organized in
144 accordance with chapter 35, which are not incineration
146 utilities, unless by the express terms of chapter 35, the
148 provisions of this section are made applicable to those
150 districts.

152 **Sec. 6. 35-A MRSA §3304, first ¶,** as amended by PL 1987, c.
613, §4, is further amended to read:

154 Notwithstanding Except for any incineration utility,
156 notwithstanding the definition of a public utility or of an
158 electric plant in section 102, a small power production facility
160 and a cogeneration facility, as defined in section 3303, is not
162 deemed a public utility and is not subject to control or
164 regulation by the commission, except that the commission may
166 treat all or a portion of the equity investment, whether direct
168 or indirect, by an electric utility in a qualifying cogeneration
170 facility or a qualifying small power production facility as

2 public utility property for retail rate-making purposes.
3 Commission determination and regulation of rates of electric
4 utilities, which include purchases of power from a qualifying
5 small power production facility or cogeneration facility, shall
6 not be considered control or regulation of these facilities.

7 Sec. 7. 35-A MRSA c. 34 is enacted to read:

8 CHAPTER 34

10 INCINERATION UTILITIES

12 §3401. Short title

14 This chapter shall be known and may be cited as the
16 "Incineration Utility Regulation Act."

18 §3402. Rates

20 Notwithstanding any other provision in this Title,
22 incineration utilities are subject to rate regulation by the
24 commission in accordance with chapter 3. The rate regulation
shall apply to the fees, rates, tolls and other charges which the
utility charges for disposal of solid waste from its customers.

26 §3403. Sale of electric power or heat

28 1. Sale of electric power. Sale of electric power by an
30 incineration utility is regulated in accordance with this
32 chapter. Any incineration utility which sells electric power to
34 the general public and falls within the definition of electric
utility in section 102 is also regulated for those activities as
an electric utility, in accordance with this Title. The sale of
electricity by an incineration utility to an electric utility is
governed by chapter 31 or 33, as applicable.

36 2. Sale of heat. Any incineration utility which sells heat
38 to the general public and falls within the definition of a public
40 heating utility in section 102 is also regulated for those
42 activities as a public heating utility, in accordance with this
Title.

44 §3404. Rules

46 The commission shall adopt rules as necessary to ensure
48 conformity with the requirements of this Title and shall order
action as necessary to bring all incineration utilities into
compliance by January 1, 1991.

50 Sec. 8. 38 MRSA §482, sub-§2, ¶¶G and H, as enacted by PL
52 1987, c. 812, §§2 and 18, are amended to read:

2 G. Is a subdivision as defined in this section; or

4 H. Is a multi-unit housing development as defined in this
6 section located wholly or in part within the shoreland zone;
8 or

10 **Sec. 9. 38 MRSA §482, sub-§2, ¶I** is enacted to read:

12 I. Is an incineration plant as defined in Title 35-A,
14 section 102, subsection 9-A.

16 **Sec. 10. Existing contracts.** Contracts for sale of electric
18 power or heat by an incineration utility to an electric utility
20 which have previously been approved explicitly or implicitly by
22 the Public Utilities Commission shall be reviewed by the
24 commission to ensure compliance with this Act.

26 Contracts for disposal of solid waste in existence on the
28 effective date of this Act shall remain in effect, but any
30 proposed change in the fees, rates, tolls or other charges by the
32 incineration utility shall initiate a full review of the same by
34 the commission under the Maine Revised Statutes, Title 35-A and
36 shall not take effect without commission approval.

38 STATEMENT OF FACT

40 This bill identifies entities which own or operate an
42 incineration plant for compensation as public utilities. This
44 includes public waste disposal corporations as defined in the
46 Maine Revised Statutes, Title 35-A, section 102, or other
48 municipal or quasi-municipal corporations, as well as privately
50 owned entities. It covers plants which incinerate municipal or
52 industrial solid waste for purposes of electric power generation
or solid waste disposal, unless the waste constitutes less than
2% of the fuel.

The bill establishes a general economic regulatory system
for incineration utilities. Incineration utilities, like other
public utilities regulated by the State, provide an essential
public service and are a natural monopoly. In addition, many
incineration utilities are engaged in electric power generation,
in which the State has exercised regulation for years. As public
utilities, economic regulation of incineration utilities is to be
carried out by the Public Utilities Commission, in a manner
similar to regulation of other public utilities. The basic
purpose of this regulatory system is to ensure safe, reasonable
and adequate service of rates which are just and reasonable to
the customer and the utilities. Under the bill, incineration
utilities, like other utilities, would pay an annual assessment
to the commission to help cover the cost of regulation.

2 In addition, the bill amends the site location of
development law to make it clear that incineration plants are
4 subject to review under that law, in addition to any other review
required by law.