

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1712, L.D. 2363, Bill, "An Act to Amend the Solid Waste Landfill Remediation and Closure Laws Administered by the Department of Environmental Protection"

Amend the bill in the 3rd paragraph after the title in the first line (page 1, line 9 in L.D.) by inserting after the following: "Whereas," the following: 'municipalities and'

Further amend the bill in section 1 in paragraph H by striking out all of subparagraphs (1) and (2) and inserting in their place the following:

'(1) Primary drinking water standards adopted under Title 22, section 2611;

(2) Maximum exposure guidelines adopted under Title 22, section 2602-A; or'

Further amend the bill by striking out all of section 2 and inserting in its place the following:

'Sec. 2. 38 MRSA §1310-C, sub-§§6 and 7 are enacted to read:

6. Contractor liability. Except as provided in subsection 7, a contractor that closes a municipal solid waste landfill in compliance with a closure plan approved by the department is not liable for the death of or injury to persons or for property damages resulting from contamination or a discharge of pollutants if:

A. The discharge is at or from the landfill site or the contamination resulted from a discharge at or from the landfill site; and

B. The contamination or discharge is related to on-site landfill closure activities.

7. Exceptions. Nothing in subsection 6 affects the liability of a contractor:

A. For its employees under Title 39; or

B. Under state and federal criminal laws.

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

5. Certification of completion. A municipality that engages a contractor to close a landfill under a plan approved by the department shall hire a licensed engineer independent of the contractor to supervise all on-site landfill closure activities performed by the contractor. Upon completion of the closure work in compliance with the plan approved by the department, that engineer shall provide the department and municipality with a written report that certifies that the work performed by the contractor conforms with the plan approved by the department and all applicable laws and regulations. The cost to the municipality to engage the licensed engineer is a cost of closure under section 1310-F. No later than 60 days after receipt of the engineer's report, the department shall accept or reject the engineer's certification. If the department rejects the certification, the department shall identify and direct the municipality to undertake any measures necessary for completion of the closure in compliance with the plan.

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

3. Insurance. Notwithstanding subsection 1, the department may not issue a grant under this section to a municipality for the costs of closure unless the municipality demonstrates to the department that each person who will perform work to implement the closure plan is self-insured or is covered by a workers' compensation insurance policy in accordance with Title 39.

Sec. 5. Study; liability and insurance for landfill closures. The Joint Standing Committee on Legal Affairs shall study the following issues regarding the closure of municipal solid waste landfills under the Maine Revised Statutes, Title 38, chapter 13, subchapter I-A:

1. The liability of contractors under state and federal law for a release or discharge of pollutants from a landfill during closure activities and after closure is completed;

2. The availability and cost of insurance coverage for contractors that undertake closure activities;

3. State or municipal indemnification of contractors;

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4. The ability of insurers to form a joint underwriting association to provide liability coverage to contractors;

5. The ability of municipalities to self-insure under Title 30-A, section 2253;

6. The ability of contractors, with the assistance of the Bureau of Insurance, to receive needed liability coverage pursuant to a market assistance plan;

7. Options under existing law for providing reimbursement for damages to persons and property harmed by contamination or discharge of pollutants;

8. The liability of the State and municipalities under state and federal law as a result of contamination or discharge of pollutants;

9. In cooperation with the Bureau of Insurance, the actual losses due to pollution liability experienced during the preceding 5 years by contractors in the State;

10. The experience of contractors and insurers in other states regarding liability for damages caused by closure of municipal landfills; and

11. Any other issue consideration of which the committee determines is necessary for an understanding of pertinent insurance and liability issues.

The committee shall conduct its study during the First Regular Session of the 115th Legislature and, by April 16, 1991, develop legislation necessary to facilitate prompt and environmentally sound closure of landfills under Title 38, chapter 13, subchapter I-A.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

If enacted, this legislation will result in some minor costs to the Department of Environmental Protection in dealing with engineer's certification of project completion reports. However, the department will absorb any additional costs utilizing existing budgeted resources.

This legislation will require the Joint Standing Committee on Legal Affairs to study liability and insurance issues related to closure of municipal solid waste landfills during the First Regular Session of the 115th Legislature. Any costs resulting

from this study will be absorbed by the Legislature. Also, there is no reporting requirement in this legislation and the committee will not experience any expenses for printing.'

STATEMENT OF FACT

This amendment makes several changes to clarify the liability of contractors that undertake to close municipal solid waste landfills under the Maine Revised Statutes, Title 38, chapter 13, subchapter I-A.

1. It amends the emergency preamble to clarify that the immediate need for this legislation is caused in part by municipalities' desire to close their solid waste landfills.

2. It clarifies that while a contractor engaged in closure of a municipal solid waste landfill is not liable for damages resulting from contamination or a discharge of pollutants related to on-site closure activities, the contractor remains liable to its employees under workers' compensation laws and remains liable under criminal laws.

3. It provides that the Department of Environmental Protection may not issue a grant under Title 38, section 1310-F, to a municipality to cover closure costs unless the municipality demonstrates to the department that each person who will perform closure work is self-insured or covered by a workers' compensation insurance policy.

4. It requires a municipality that engages a contractor to close its landfill to hire a licensed engineer to oversee the on-site construction work. That engineer must, upon completion of the closure work in accordance with the closure plan, certify to the department and the municipality that the work conforms to the plan and applicable laws and regulations. The department must within 60 days accept the engineer's certification or reject it and direct the municipality to take the necessary steps to complete the closure satisfactorily.

5. It requires the Joint Standing Committee on Legal Affairs to study during the First Regular Session of the 115th Legislature a number of issues regarding liability and insurance for municipal solid waste landfill closures and, by April 16, 1991, develop legislation to facilitate prompt and environmentally sound closure of municipal solid waste landfills.