

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1994

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Legislative Document

No. 1641

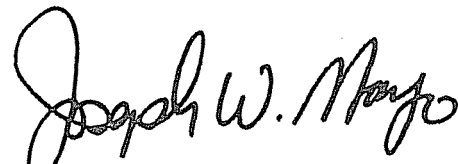
H.P. 1222

House of Representatives, January 5, 1994

**An Act to Amend the Solid Waste Laws to Permit Quasi-municipal Corporations to Enter Agreements for Development and Financing of Waste Facilities.**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.  
Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative DiPIETRO of South Portland.  
Cosponsored by Representative: CARON of Biddeford, Senator: AMERO of Cumberland.

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

2  
3       **Sec. 1. 38 MRSA §1304-B, sub-§1**, as amended by PL 1989, c.  
4 585, Pt. E, §12, is further amended to read:

6       **1. Findings and purpose.** The Legislature makes the  
7 following findings of fact. Subject to the provisions of chapter  
8 24, the State requires each municipality to provide for disposal  
9 services for domestic and commercial solid waste generated within  
10 the municipality. Solid waste contains valuable recoverable  
11 resources, including energy. Many municipalities have found that  
12 energy recovery reduces the cost of solid waste disposal. Energy  
13 recovery technology is complex and the equipment requires a  
14 steady supply of waste to operate efficiently. Because of the  
15 complicated technology, most energy recovery facilities have high  
16 capital costs and long payback periods. In order to remain cost  
17 effective throughout their lives, these energy recovery  
18 facilities require a guaranteed, steady supply of waste.  
19 Consequently, municipalities utilizing energy recovery facilities  
20 are usually required to enter long-term agreements to provide the  
21 facilities with specific amounts of waste. In order to make these  
22 energy recovery facilities financially feasible, and thereby  
23 simultaneously improve the environmental impacts and the  
24 economics of municipal solid waste disposal, municipalities shall  
25 have the legal authority to control the handling of solid waste  
26 generated within their borders.

28       The purpose of this section is to promote the recovery of  
29 resources from solid waste by creating one of the conditions  
30 which make energy recovery economically feasible, assuring  
31 municipalities the authority to guarantee a steady supply of  
32 solid waste to specific waste facilities.

34       Subject to the provisions of chapter 24, the State requires each  
35 municipality to provide for the disposal of all refuse, effluent,  
36 sludge and other materials from all septic tanks and cesspools  
37 located within the municipality and permits municipalities to  
38 provide solid waste disposal services for industrial wastes and  
39 sewage treatment plant sludge. Sludge contains valuable  
40 recoverable resources and recovery of these resources reduces the  
41 cost of disposal of sludge. Recovery of these resources also  
42 requires complicated technology with high capital costs and long  
43 payback periods. Consequently, municipalities and  
44 quasi-municipal corporations that generate sludge are usually  
45 required to enter into long-term agreements to pledge their  
46 credit in order to obtain financing for the construction and  
47 operation of sludge disposal functions. This section promotes  
48 the recovery of resources from sludge by specifically authorizing  
49 municipalities and quasi-municipal corporations to enter into  
50 long-term contracts to provide for the construction and operation  
of waste facilities for processing and disposal of sludge.

2 The State requires each municipality to provide for the disposal  
4 of solid waste and reclamation of resources. Municipalities must  
6 have the authority to control the handling of solid waste  
8 generated in their borders to provide for the health, safety and  
10 welfare of the citizens of this State and to ensure that solid  
12 waste is disposed of in an orderly, regulated, clean and  
14 environmentally responsible manner. This section also authorizes  
16 municipalities to enact ordinances that control solid waste  
18 collection, recycling, disposal, transportation and delivery.

12 **Sec. 2. 38 MRSA §1304-B, sub-§4, ¶B,** as amended by PL 1985, c.  
14 593, §8, is further amended to read:

16 B. Without limiting the generality of the powers conferred  
18 in paragraph A, to agree in such a contract to pay fees,  
assessments or other payments in such amounts as may be  
reasonably necessary to pay:

20 (1) Costs associated with financing, developing,  
22 constructing, repairing, maintaining and operating all  
24 or any one or more of the waste facilities owned or  
operated by the facility owner or operator, including,  
26 but not limited to, the payment of debt service and the  
maintenance of reasonable reserves or sinking funds in  
connection with the financing or operation of any such  
waste facilities;

28 (2) Any other costs incurred by the facility owner or  
30 operator in connection with the handling of solid  
waste, whether performed at any waste facility referred  
32 to in subparagraph (1) or at another such facility  
differently owned and operated; and

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

42 (a) The failure of any other municipality so  
44 agreeing to meet its obligations to pay the costs  
46 set forth in subparagraphs (1) and (2) in  
48 accordance with any agreement with the same  
facility owner, which may be an agreement to which  
the municipality and the defaulting municipality  
are both parties; or

50 (b) The failure of any quasi-municipal  
corporation to meet its obligations to pay the

2 costs set forth in subsection 8, paragraph B,  
3 subparagraphs (1) and (2) in accordance with any  
4 agreement between the quasi-municipal corporation  
5 and the same facility owner, which may be an  
6 agreement to which the municipality and the  
7 defaulting quasi-municipal corporation are both  
8 parties; and

9 **Sec. 3. 38 MRSA §1304-B, sub-§5,** as amended by PL 1989, c.  
10 869, Pt. C, §10, is further amended to read:

11 **5. Public waste disposal corporations.** Notwithstanding any  
12 law, charter, ordinance provision or limitation to the contrary,  
13 pursuant to any interlocal agreement entered into in accordance  
14 with Title 30-A, chapter 115, any 2 or more municipalities may  
15 organize or cause to be organized or may participate in one or  
16 more corporations organized as nonprofit corporations under Title  
17 13, chapter 81, or Title 13-B for the purpose, among other  
18 permissible purposes, of owning or operating any one or more  
19 waste facilities described in subsection 4, paragraph A or  
20 subsection 8, and a subscribing municipality may agree in any  
21 such interlocal agreement to pay fees, assessments or other  
22 payments as described in subsection 4, paragraph B, for such term  
23 of years and on such other terms as the interlocal agreement may  
24 provide and may pledge the full faith and credit of the  
25 municipality to the same extent provided in subsection 4,  
26 paragraph C. The applicable interlocal agreement or the articles  
27 of incorporation or bylaws of the corporation must provide that:

28  
29 A. The corporation shall be organized and continuously  
30 thereafter operated as a nonprofit corporation, no part of  
31 the net earnings of which may inure to the benefit of any  
32 member, director, officer or other private person;

33 B. The directors of the corporation shall be elected by the  
34 municipal officers of the municipalities participating in  
35 the corporation; and

36 C. Upon dissolution or liquidation of the corporation,  
37 title to all of its property shall vest in one or more of  
38 the municipalities participating in the corporation.

39 Any interlocal agreement complying with the requirements of this  
40 subsection and subsection 6 must be a properly authorized, legal,  
41 valid, binding and enforceable obligation of the municipality,  
42 regardless of whether the agreement was authorized, executed or  
43 delivered prior to or after the effective date of this  
44 subsection. Any corporation organized in a manner that satisfies  
45 the requirements set forth in this subsection and subsection 6,  
46 whether organized prior to or after the effective date of this  
47 subsection.

2 subsection, shall be deemed for all purposes as organized  
3 pursuant to this subsection. If so provided in the applicable  
4 interlocal agreement, any such corporation shall have the power,  
5 in addition to any other powers that may be delegated under Title  
6 30-A, chapter 115, to issue, on behalf of one or more of the  
7 municipalities participating in the corporation, in order to  
8 finance the facilities, revenue obligation securities issued in  
9 accordance with Title 10, chapter 110, subchapter IV, and any  
10 other bonds, notes or debt obligations which municipalities are  
11 authorized to issue by applicable law. For these purposes, the  
12 term "municipal officers" as used in Title 10, chapter 110,  
13 subchapter IV, means the board of directors of any corporation  
14 described in this subsection. Title 10, section 1064, subsection  
15 6, may not be construed to prohibit the assignment or pledge as  
16 collateral security of any contract of a municipality authorized  
17 by this section, any contract of a quasi-municipal corporation  
18 authorized by subsection 8 or of any or all of the payments under  
19 this section, regardless of whether the provisions of subsection  
20 4, paragraph C or subsection 8, paragraph C are applicable to the  
21 contract or payments. The provisions of Title 10, sections 1063  
22 and 1064, subsection 1, paragraph A and paragraph C, subparagraph  
23 (4) do not apply to revenue obligation securities issued by any  
24 public waste disposal corporation described in this subsection.

25 **Sec. 4. 38 MRSA §1304-B, sub-§6**, as amended by PL 1989, c.  
26 104, Pt. C, §§8 and 10, is further amended to read:

27 **6. Relationship to other laws.** The obligation of a  
28 municipality to pay any fees, assessments or other payments in  
29 accordance with any agreement entered into pursuant to subsection  
30 4 or any interlocal agreement referred to in subsection 5 shall  
31 not constitute a "debt" or "indebtedness" of the municipality  
32 within the meaning of any statutory, charter or ordinance  
33 provision limiting the incurrence or the amount of municipal  
34 indebtedness nor shall the authorization or incurrence of the  
35 obligation or any municipal action to raise funds to meet the  
36 obligation by any means set forth in subsection 4, paragraph C,  
37 require or be subject to any voter referendum or approval under  
38 any law or any charter or ordinance provision.

39 **A.** A municipality may agree to make payments in accordance  
40 with subsection 4, paragraph B, or in accordance with the  
41 provisions of any interlocal agreement referred to in  
42 subsection 5 with regard to all or any portion of debt  
43 incurred or to be incurred for the financing of one or more  
44 waste facilities, provided that no such payments shall be  
45 made with respect to debt or any portion of debt which, when  
46 incurred, would cause the total principal balance of all  
47 then outstanding debt or portions of debt to which the  
48 payments apply to exceed:  
49  
50

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

4  
6 (2) The municipality's then obtaining allocable share  
of any debt or portions of debt described in paragraph  
B with regard to which it is obliged to make payments.

8  
10 B. Notwithstanding paragraph A, 2 or more municipalities  
12 may agree to make payments in accordance with subsection 4,  
14 paragraph B, or in accordance with any interlocal agreement  
referred to in subsection 5 with regard to all or any  
16 portion of debt incurred or to be incurred for the financing  
of one or more waste facilities, provided that no such  
18 payments may be made with respect to debt or any portions of  
debts which, when incurred, would cause the total principal  
balance of all then outstanding debt or portions of debt to  
which the payments apply to exceed:

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

22  
24 (2) Any amounts of debt or portions of debt described  
in paragraph A in connection with which any such  
municipality is obliged to make payments.

26  
28 The limitations set forth in paragraphs A and B shall only  
apply to agreements by which a municipality or group of  
municipalities have agreed to make payments directly based,  
30 among other things, on a facility owner's costs of debt  
service and other costs of financing and shall not be  
32 construed to apply to contract payments calculated on any  
other basis, even if the facility owner uses the payments to  
34 meet its debt service obligations.

36 The obligation of the municipality to pay fees, assessments and  
other payments in accordance with subsection 4 or any interlocal  
38 agreement referred to in subsection 5 shall be binding upon and  
enforceable against the municipality without regard to whether  
40 all or any one or more of the waste facilities referred to in  
subsection 4, paragraph B, subparagraph (1) or subsection 8,  
42 paragraph B, subparagraph (1) becomes operational or was or will  
be in operation during the period for which the fees, assessments  
44 or other payments are so charged.

46 No contract entered into in accordance with subsection 4 nor any  
ordinance adopted under the authority of subsection 2 may be  
48 deemed a contract in restraint of trade or otherwise unlawful  
under Title 10, chapter 201.

50

2 Notwithstanding any law, charter or ordinance provisions to the  
3 contrary, the powers conferred upon a municipality pursuant to  
4 subsections 4 and 5 and this subsection may be exercised by the  
5 municipal officers as defined in Title 30-A, section 2001,  
6 including the assessors of a plantation, only when authorized, in  
7 the case of a municipality with a city or town council, by action  
8 of the council and, in the case of a municipality without such a  
9 council, by action of the town meeting. This paragraph shall  
10 apply whether or not the action of the city council, town council  
11 or town meeting was taken before or after March 21, 1986.

12 Nothing in this section may be construed to be a limitation on  
13 the Home Rule powers granted to municipalities under Title 30-A,  
14 section 3001, or on the ability of communities to jointly  
15 exercise their powers as is recognized in Title 30-A, section  
16 2201. This section provides an additional and alternative method  
17 for carrying out this subchapter.

18 **Sec. 5. 38 MRSA §1304-B, sub-§8** is enacted to read:

19 8. Quasi-municipal corporations. For purposes of this  
20 subsection, "quasi-municipal corporation" means a quasi-municipal  
21 corporation as defined in Title 30-A, chapter 120 and includes,  
22 but is not limited to, sewer districts, sanitary districts, water  
23 districts and multipurpose districts, whether created by private  
24 and special law or pursuant to chapter 11 or 12. Notwithstanding  
25 any law, charter, ordinance provision or limitation to the  
26 contrary, a quasi-municipal corporation has the following powers.

27 A. A quasi-municipal corporation may contract with a  
28 corporation described in subsection 5 or a refuse disposal  
29 district organized under chapter 17 or any person,  
30 including, but not limited to, the owner or operator of any  
31 waste facility, for the collection, transportation, storage,  
32 processing, salvaging or disposal of waste. Such a contract  
33 may be for a term of years and may contain other provisions  
34 that the quasi-municipal corporation approves. The contract  
35 may provide that, in consideration for the obligation of the  
36 facility owner or operator to handle all or any portion of  
37 the solid waste generated by or within the territory or  
38 boundaries of any quasi-municipal corporation, the  
39 quasi-municipal corporation shall pay to the facility owner  
40 or operator fees, assessments and other payments established  
41 in accordance with the contract.

42 B. A quasi-municipal corporation, without limiting the  
43 general powers contained in paragraph A, may agree in such a  
44 contract to pay fees, assessments or other payments in  
45 amounts necessary to pay:

50



2           (1) Costs associated with financing, developing,  
4           constructing, repairing, maintaining and operating all  
6           or any one or more of the waste facilities owned or  
8           operated by the facility owner or operator pursuant to  
          the contract, including, but not limited to, the  
          payment of debt service and the maintenance of  
          reasonable reserves or sinking funds in connection with  
          the financing or operation of those waste facilities;

10           (2) Any other costs incurred by the facility owner or  
12           operator in connection with the handling of solid  
14           waste, whether performed at any waste facility under  
          subparagraph (1) or at another facility differently  
          owned and operated pursuant to the contract; and

16           (3) Any deficiencies arising by virtue of:

18                   (a) The failure of any quasi-municipal  
20                   corporation to meet its contractual obligations to  
22                   pay the costs set forth in subparagraphs (1) and  
24                   (2) in accordance with any agreement with the same  
                  facility owner, which may be an agreement to which  
                  the quasi-municipal corporation and the defaulting  
                  quasi-municipal corporation are both parties; or

26                   (b) The failure of any municipality to meet its  
28                   obligations, pursuant to the contract, to pay the  
30                   costs set forth in subsection 4, paragraph B,  
32                   subparagraphs (1) and (2) in accordance with any  
34                   agreement with the same facility owner, which may  
                  be an agreement to which the quasi-municipal  
                  corporation and the defaulting municipality are  
                  both parties.

36           C. A quasi-municipal corporation may pledge the full faith  
38           and credit of the quasi-municipal corporation for the  
40           payment of fees, assessments and other payments, as provided  
42           in paragraphs A and B, except that in the case of a  
44           quasi-municipal corporation that is a multipurpose district,  
46           the full faith and credit of the quasi-municipal corporation  
48           is limited to the wastewater and sewage operations of that  
50           quasi-municipal corporation, and in the case of any  
          quasi-municipal corporation that has the power under its  
          charter or applicable law to levy upon, raise from,  
          apportion or assess municipalities participating in or  
          located within the boundaries or territory of that  
          quasi-municipal corporation, the amounts required to pay  
          those fees, assessments and payments, or in the case of any  
          quasi-municipal corporation, to raise those amounts by means  
          of any fee, rate, toll-user charge or other cost-sharing or

2 assessment mechanism duly adopted and authorized by the  
3 quasi-municipal corporation or to borrow those amounts by  
4 the issuance of general obligation bonds or notes, or  
5 revenue bonds or notes.

6 If a quasi-municipal corporation has any power under its  
7 charter or applicable law to levy upon, raise from,  
8 apportion or assess any costs, expenses or charges to any  
9 municipality or municipalities participating in or located  
10 within the boundaries or territory of that quasi-municipal  
11 corporation, then the quasi-municipal corporation may levy  
12 upon, raise from, apportion or assess those costs, expenses  
13 and charges to the municipality or municipalities  
14 participating in or located within the boundary or territory  
15 of that quasi-municipal corporation in the same manner and  
16 proportion as applicable under the charter of the  
17 quasi-municipal corporation with respect to other costs,  
18 expenses and charges, and unless the costs, expenses and  
19 charges are paid from other revenues or funds, the  
20 quasi-municipal corporation shall levy upon, raise from,  
21 apportion or assess those costs, expenses and charges to the  
22 municipalities in that manner.

23 A contract complying with the requirement of this subsection  
24 must be a properly authorized legal, valid, binding and  
25 enforceable obligation of the quasi-municipal corporation  
26 and the owner or operator of a waste facility and the party  
27 with which it contracts pursuant to this subsection,  
28 regardless of whether the agreement was authorized, executed  
29 or delivered prior to or after the effective date of this  
30 subsection.

31 The obligation of a quasi-municipal corporation to pay any  
32 fees, assessments or other payments in accordance with any  
33 agreement entered into pursuant to this subsection does not  
34 constitute a debt or indebtedness of the quasi-municipal  
35 corporation within the meaning of any statutory, charter or  
36 ordinance provision limiting the incurrence or the amount of  
37 indebtedness of the quasi-municipal corporation, nor does  
38 the authorization or incurrence of the obligation or any  
39 action of the quasi-municipal corporation to raise funds to  
40 meet the obligation by any means set forth in this paragraph  
41 require or be subject to any voter referendum or approval  
42 under any law or any charter or ordinance provision.

43 (1) A quasi-municipal corporation may agree to make  
44 payments in accordance with paragraph B with regard to  
45 all or any portion of debt incurred or to be incurred  
46 for the financing of one or more waste facilities,  
47 except that, if the quasi-municipal corporation would,  
48   
49   
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2 but for this subsection, be subject to any debt  
3 limitation under its charter or applicable law, then  
4 payments may not be made with respect to the debt or  
5 any portion of that debt that, when incurred, would  
6 cause the total principal balance of all then  
7 outstanding debt or portions of debt to which the  
8 payments apply to exceed:

9  
10 (a) Three percent of the sum of the last full  
11 state valuation of all municipalities served by,  
12 participating in or located within the territory  
13 or boundaries of the quasi-municipal corporation,  
14 minus the quasi-municipal corporation's then  
15 obtaining allocable share of any debt or portions  
16 of debt described in subparagraph (2) with regard  
17 to which the quasi-municipal corporation is  
18 obliged to make payments.

19  
20 (2) Notwithstanding subparagraph (1), any combination  
21 of one or more municipalities or one or more  
22 quasi-municipal corporations or one or more public  
23 waste disposal corporations organized pursuant to  
24 subsection 5 may agree to make payments in accordance  
25 with this subsection with regard to all or any portion  
26 of debt incurred or to be incurred for the financing of  
27 one or more waste facilities, except that with respect  
28 to any municipality or quasi-municipal corporation that  
29 would, but for this subsection, be subject to any debt  
30 limitation under its charter or applicable law,  
31 payments may not be made with respect to debt or any  
32 portions of debt that, when incurred, would cause the  
33 total principal balance of all then outstanding debt or  
34 portions of debt to which the payments apply to exceed:

35  
36 (a) Three percent of the sum of the last full  
37 state valuation of all municipalities so agreeing  
38 and all municipalities served by, participating in  
39 or located within the territory or boundaries of  
40 all quasi-municipal corporations and public waste  
41 disposal corporations so agreeing, minus any  
42 amounts of debt or portions of debt described in  
43 subparagraph (1) in connection with which any such  
44 municipality, public waste disposal corporation or  
45 quasi-municipal corporation is obliged to make  
46 payments.

47 The limitations set forth in subparagraphs (1) and (2) apply  
48 only to agreements by which a quasi-municipal corporation or  
49 any group of one or more quasi-municipal corporations or  
50 public waste disposal corporations and one or more

2 municipalities have agreed to make payments directly based,  
4 among other things, on a facility owner's costs of debt  
6 service and other costs of financing and may not be  
8 construed to apply to contract payments calculated on any  
10 other basis, even if the facility owner uses the payments to  
12 meet its debt service obligations. For purposes of this  
14 subsection and subsection 6, the term "waste facilities" or  
"waste facility" excludes any sewage disposal or treatment  
or wastewater treatment plant sludge disposal facilities  
owned by any sewer district, water district or sanitary  
district, but includes, without limitation, any waste  
facility owned, operated or financed by any public waste  
disposal corporation referred to in subsection 5.

16 In consideration for the obligation of the owner or operator of a  
18 waste facility to handle all or any portion of the solid waste  
20 generated by or within the territory or boundaries of any  
22 quasi-municipal corporation, the obligation of a quasi-municipal  
24 corporation to pay fees, assessments and other payments in  
26 accordance with this subsection must be binding upon and  
28 enforceable against the quasi-municipal corporation and  
30 constitutes costs and expenses of the quasi-municipal corporation  
for the purpose of determining rates, tolls, charges and  
assessments on ratepayers and participating municipalities, all  
in accordance with the charter of or applicable provisions of law  
relating to the quasi-municipal corporation without regard to  
whether all or any one or more of the waste facilities referred  
to in this subsection becomes operational or was or will be in  
operation during the period for which the fees, assessments or  
other payments are charged.

32 A contract entered into in accordance with this subsection may  
34 not be deemed a contract in restraint of trade or otherwise  
unlawful under Title 10, chapter 201.

36 Notwithstanding any law, charter or ordinance provisions to the  
38 contrary, the powers conferred upon a quasi-municipal corporation  
40 pursuant to this subsection may be exercised by the board of  
42 directors or board of trustees of that quasi-municipal  
corporation, regardless of whether or not the action of such a  
board was taken before or after the effective date of this  
subsection.

44 This subsection may not be construed to limit any powers granted  
46 to any quasi-municipal corporation under any charter or by  
applicable law.

48

2

## STATEMENT OF FACT

4

This bill amends the Maine Revised Statutes, Title 38, section 1304-B to ensure and confirm that legal authority exists to permit quasi-municipal corporations, such as sewer and water districts, to enter agreements of the type that municipalities are authorized to enter under the existing law in order to develop and finance waste facilities to handle waste, including sludge, generated by those quasi-municipal corporations.

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This document has not yet been reviewed to determine the need for cross-reference, stylistic and other technical amendments to conform existing law to current drafting standards.

18