

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 933

H.P. 682

House of Representatives, March 21, 1995

**An Act to Clarify and Provide Municipal Authority to Implement
Comprehensive Waste Management Services.**

Reference to the Committee on Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative RICHARDSON of Portland.

Cosponsored by Representatives: BRENNAN of Portland, CLOUTIER of South Portland, DiPIETRO of South Portland, DORE of Auburn, JOYNER of Hollis, KERR of Old Orchard Beach, KONTOS of Windham, LEMAIRE of Lewiston, LEMKE of Westbrook, O'GARA of Westbrook, ROWE of Portland, Senators: ABROMSON of Cumberland, AMERO of Cumberland, ESTY of Cumberland, HARRIMAN of Cumberland, LORD of York, RAND of Cumberland.

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

2 Sec. 1. 30-A MRSA §3008-A is enacted to read:

4 §3008-A. Solid waste franchises

6 1. State policy. It is the policy of this State, with
8 respect to solid waste:

10 A. To affirm the importance of municipal control of solid
12 waste franchises, consistent with Title 38, chapters 13 and
14 24, ensuring that the needs and interests of local citizens
are adequately met and that the public health, safety and
welfare are protected; and

16 B. To provide express statutory authorization to
18 municipalities to make franchising and regulatory decisions
implementing this policy and avoiding the costs and
20 uncertainty of lawsuits challenging that authority.

22 2. Ordinances. A municipality may enact any ordinances,
24 not contrary to this chapter or to Title 38, chapters 13 and 24,
governing franchises for the handling, as that term is defined in
26 Title 38, section 1303-C, subsection 14, of solid waste generated
within the municipality.

28 3. Franchise procedures. Pursuant to subsection 2, a
30 municipality may enact ordinances governing the procedures for
awarding solid waste handling franchises. These ordinances must
32 be enacted before granting any such franchise or franchises, and
must be designed to ensure that the terms and conditions of a
34 franchise will adequately protect the needs and interests of the
municipality. These ordinances must include, but are not limited
to, the following provisions:

36 A. The filing of franchise applications and related
38 documents as public records, with reasonable notice to the
public that the records are open to inspection during
40 reasonable hours;

42 B. A reasonable opportunity for public input before the
municipal officers award franchises; and

44 C. The assessment of reasonable fees upon applicants to
46 defray the costs of public notice, advertising and other
expenses incurred by the municipality in acting upon
48 applications.

50 4. Franchise agreements. The municipal officers may
contract on such terms and conditions and impose such fees as are

2 in the best interest of the municipality including, but not
3 limited to, the grant of exclusive or nonexclusive franchises for
4 a period not to exceed 15 years for the handling of some or all
5 of the solid waste generated within the municipality. Each
6 franchise agreement must contain the following provisions:

7 A. The area or areas to be served;

8 B. A provision for renewal, the terms of which may not
9 exceed 15 years;

10 C. A provision for termination upon violation of the
11 franchise agreement; and

12 D. Reasonable regulations regarding the handling of solid
13 waste.

14 **Sec. 2. 38 MRSA §1304-B, sub-§1**, as amended by PL 1989, c.
15 585, Pt. E, §12, is further amended to read:

16 **1. Findings and purpose.** The Legislature makes the
17 following findings of fact. Subject to the provisions of chapter
18 24, the State requires each municipality to provide for disposal
19 services for domestic and commercial solid waste generated within
20 the municipality. Solid waste contains valuable recoverable
21 resources, including energy. Many municipalities have found that
22 energy recovery reduces the cost of solid waste disposal. Energy
23 recovery technology is complex and the equipment requires a
24 steady supply of waste to operate efficiently. Because of the
25 complicated technology, most energy recovery facilities have high
26 capital costs and long payback periods. In order to remain cost
27 effective throughout their lives, these energy recovery
28 facilities require a guaranteed, steady supply of waste.
29 Consequently, municipalities utilizing energy recovery facilities
30 are usually required to enter long-term agreements to provide the
31 facilities with specific amounts of waste. In order to make these
32 energy recovery facilities financially feasible, and thereby
33 simultaneously improve the environmental impacts and the
34 economics of municipal solid waste disposal, municipalities shall
35 must have the legal authority to control the handling of solid
36 waste generated within their borders. Further, municipalities
37 must have legal authority to assess service charges as provided
38 in subsection 3-A for the handling of solid waste generated
39 within the municipalities.

40 The purpose of this section is to promote the recovery of
41 resources from solid waste by creating one of the conditions
42 which that make energy recovery economically feasible, assuring
43 ensuring municipalities the authority to guarantee a steady
44 supply of solid waste to specific waste facilities.

2 **Sec. 3. 38 MRSA §1304-B, sub-§3-A** is enacted to read:

4 **3-A. Solid waste handling service charges.** A municipality
5 may enact an ordinance that provides for the payment of service
6 charges for municipal solid waste handling services in order to
7 defray the municipality's solid waste handling costs, whether the
8 solid waste handling services are provided directly by the
9 municipality, its contractor or by a regional association in
10 which the municipality is a participating municipality. These
11 service charges may be collected by mechanisms that include, but
12 are not limited to, service fees, pay-per-bag programs, stickers
13 or a combination of those mechanisms. However, these service
14 charge mechanisms are subject to the following requirements.

15 A. A municipality that enacts an ordinance that provides
16 for service fees may authorize the municipal officers to
17 establish a schedule of service fees from time to time upon
18 real estate improved by residential dwellings or commercial
19 buildings or structures for the use of municipal solid waste
20 handling services. Service fees established by such an
21 ordinance and this section must be certified by the
22 municipal officers and filed with the tax collector for
23 collection in the same manner as municipal property taxes.

24 B. The municipal officers may charge interest on delinquent
25 accounts at a rate not to exceed the highest lawful rate set
26 by the Treasurer of State for municipal taxes.

27 C. There is a lien on real estate benefited by municipal
28 solid waste handling services to secure the payment of
29 service fees and interest on delinquent accounts established
30 under an ordinance and this section. This lien takes
31 precedence over all other claims, except a claim for taxes.
32 In the event that there are other liens on the same real
33 estate that take precedence over all other claims except a
34 claim for taxes, the lien evidenced by the earliest recorded
35 lien certificate must be given priority.

36 D. The municipality must collect service fees and interest
37 and enforce tax liens in the same manner as provided for
38 municipal real and personal property taxes.

39 **Sec. 4. 38 MRSA §1305, sub-§1**, as repealed and replaced by PL
40 1989, c. 585, Pt. E, §17, is amended to read:

41 **1. Disposal services.** Each municipality shall provide
42 solid waste disposal services for domestic and commercial solid
43 waste generated within the municipality and may provide these
44 services for industrial wastes and sewage treatment plant
45

2 sludge. Each municipality may provide these solid waste disposal
3 services by itself, through a regional association in which it is
4 a participating municipality or by exclusive or nonexclusive
5 contract or franchise with a 3rd party.

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7
8 **STATEMENT OF FACT**

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10 This bill makes the following changes to laws regarding
11 solid waste handling services provided by a municipality.

12 1. It clarifies that a municipality may enact an ordinance
13 under which it may award exclusive or nonexclusive franchises to
14 perform solid waste collection, transportation and other handling
15 tasks.

16 2. It gives a municipality authority to assess service
17 charges for the handling of solid waste generated in the
18 municipality.

19 3. It specifies the manner in which these service charges
20 may be assessed and collected.

21 4. It authorizes a municipality to provide solid waste
22 disposal services itself, through a regional association or by a
23 contract or franchise with a 3rd party.
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