

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

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No. 1838

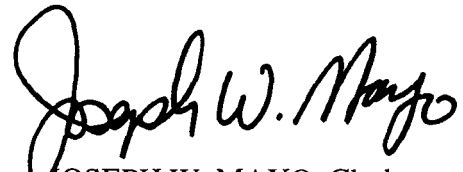
H.P. 1343

House of Representatives, March 11, 1996

**An Act to Remove Statutory References to the Maine Waste
Management Agency.**

Reported by Representative WHITCOMB for the State Planning Office pursuant to Public Law 1995, chapter 465, Part C.

Reference to the Joint Standing Committee on Natural Resources suggested and printing ordered under Joint Rule 20.


JOSEPH W. MAYO, Clerk

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

PART A

Sec. A-1. 10 MRSA §1023-G, sub-§3, ¶D, as enacted by PL 1989, c. 878, Pt. A, §26, is amended to read:

D. The project will contribute to achieving the goals identified in the state waste management and recycling plan adopted under Title 38, chapter 24 and is determined by the ~~Maine-Waste-Management-Agency~~ State Planning Office to be consistent with that plan. Prior to adopting the state waste management and recycling plan, the fund may be used for projects that help achieve the goals identified in the state recycling plan approved under former Title 38, section 1310-M.

Sec. A-2. 10 MRSA §1041, sub-§18, as enacted by PL 1989, c. 585, Pt. C, §11, is amended to read:

18. **Recycling and waste reduction.** Provide financial assistance to businesses for recycling and waste reduction projects that are consistent with the management goals and objectives outlined in the state waste management and recycling plan under Title 38, chapter 24. The ~~Maine-Waste-Management Agency~~ State Planning Office shall provide assistance to the authority in determining consistency, technical eligibility and merit of application for recycling loans.

Sec. A-3. 10 MRSA §1063, sub-§2, ¶I-1, as enacted by PL 1989, c. 585, Pt. C, §14, is amended to read:

I-1. In the case of recycling and waste reduction projects, the proposed facility is consistent with and will contribute to the management goals and objectives outlined in the state waste management and recycling plan under Title 38, chapter 24 and will reduce the amount of solid or hazardous waste requiring disposal. The ~~Maine-Waste-Management-Agency~~ State Planning Office shall provide assistance to the authority in determining consistency, technical eligibility and merit of applications for assistance under this subchapter.

Sec. A-4. 36 MRSA §2526, sub-§3, as amended by PL 1993, c. 433, §1, is further amended to read:

3. **Eligible equipment.** Equipment eligible for the credit allowed under this section includes waste reduction, reuse or recycling equipment used to reduce, reuse or recycle solid waste, at least 90% of which is generated within the State. A certificate that the equipment qualifies for the credit provided

2 for in this section from the ~~Maine-Waste-Management-Agency State~~
3 Planning Office is required before the tax credit may be taken.
4 Equipment associated with the separation of wastes prior to
5 incineration is eligible when the ~~Maine-Waste-Management-Agency~~
6 State Planning Office certifies that the separated wastes are
being recycled.

8 **Sec. A-5. 36 MRSA §5219-D, sub-§3**, as amended by PL 1993, c.
9 433, §2, is further amended to read:

10 3. **Eligible equipment.** Equipment eligible for the credit
11 allowed under this section includes waste reduction, reuse or
12 recycling equipment used to reduce, reuse or recycle solid waste,
13 at least 90% of which is generated within the State. A
14 certificate that the equipment qualifies for the credit provided
15 for in this section from the ~~Maine-Waste-Management-Agency State~~
16 Planning Office is required before the tax credit may be taken.
17 Equipment associated with the separation of wastes prior to
18 incineration is eligible when the ~~Maine-Waste-Management-Agency~~
19 State Planning Office certifies that the separated wastes are
20 being recycled.

22 **Sec. A-6. 38 MRSA §1303-C, sub-§1**, as enacted by PL 1989, c.
23 585, Pt. E, §4, is repealed.

24 **Sec. A-7. 38 MRSA §1303-C, sub-§7, ¶D**, as amended by PL 1991,
25 c. 220, §6, is further amended to read:

26 D. The agency office under chapter 24;

27 **Sec. A-8. 38 MRSA §1303-C, sub-§19-C** is enacted to read:

28 19-C. Office. "Office" means the State Planning Office.

29 **Sec. A-9. 38 MRSA §1304, sub-§4**, as affected by PL 1989, c.
30 890, Pt. A, §40 and amended by Pt. B, §227, is further amended to
31 read:

32 4. **Technical assistance.** The commissioner is authorized to
33 establish guidelines for effective waste management, to provide
34 technical assistance to persons planning, constructing or
35 operating waste facilities, and to conduct applied research
36 activities in the field of waste management, disposal technology
37 and environmental effects, including methods of recycling
38 hazardous or solid waste, sludge or septage. The commissioner
39 shall cooperate with the agency office in the design and delivery
40 of this assistance.

41 **Sec. A-10. 38 MRSA §1304, sub-§13**, as amended by PL 1991, c.
42 72, §3, is further amended to read:

2 **13. Innovative disposal and utilization.** Recognizing that
3 environmentally suitable sites for waste disposal are in limited
4 supply and represent a critical natural resource, the
5 commissioner may investigate and implement with the approval of
6 the board innovative programs for managing, utilizing and
7 disposing of solid waste. Innovative programs may include
8 agricultural and forest land spreading of wood-derived ash,
9 utilization of ash resulting from combustion of municipal solid
10 waste, paper mill sludges, municipal waste water treatment plant
11 sludges and the composting of yard wastes. The agency office
12 shall first determine that the proposed innovative disposal and
13 waste management programs are consistent with the state plan.
14 The commissioner shall review proposed innovative programs for
15 each waste category and shall apply all controls necessary to
16 ensure the protection of the environment and public health
17 consistent with this chapter. The board may adopt application
18 review procedures designed to review individual applications and
19 their individual waste sources with prior approval of classes of
20 disposal or utilization sites. The board shall adopt provisions
21 for municipal notification prior to use of individual utilization
22 sites.

24 **Sec. A-11. 38 MRSA §1304-B, sub-§4-A, ¶D,** as enacted by PL
25 1989, c. 585, Pt. E, §15, is amended to read:

26 D. A municipality which that anticipates that it will be
27 unable to meet its contract obligation to supply a minimum
28 BTU content level or minimum tonnage due to waste reduction
29 or recycling programs and is unable to reach an agreement
30 with the incinerator for the anticipated reduction may
31 request the agency office to intercede. The agency office
32 shall assist the incinerator in soliciting solid waste to
33 mitigate any anticipated shortfall in minimum BTU content
34 level or minimum tonnage. If no agreement on mitigation of
35 a an anticipated shortfall is reached, the terms of the
36 original contract shall prevail, except as otherwise
37 provided in this chapter.

40 **Sec. A-12. 38 MRSA §1310-S, sub-§1,** as affected by PL 1989, c.
41 890, Pt. A, §40 and amended by Pt. B, §249, is further amended to
42 read:

44 **1. Notification.** A person applying for a license under
45 this article or giving notice to the commissioner pursuant to
46 section 485-A, shall give, at the same time, written notice to
47 the agency office and to the municipal officers of the
48 municipality in which the proposed facility may be located and
49 shall publish notice of the application in a newspaper of general
50 circulation in the area.

2 **Sec. A-13. 38 MRSA §1310-U, first ¶**, as repealed and replaced
by PL 1989, c. 585, Pt. E, §33, is amended to read:

4
6 Municipalities are prohibited from enacting stricter
standards than those contained in this chapter and in the solid
8 waste management rules adopted pursuant to this chapter governing
the hydrogeological criteria for siting or designing solid waste
10 disposal facilities or governing the engineering criteria related
to waste handling and disposal areas of a solid waste disposal
12 facility. Except as provided in section 2173, municipalities are
further prohibited from enacting or applying ordinances that
14 regulate solid waste disposal facilities owned by the agency
office or a regional association.

16 **Sec. A-14. 38 MRSA §1316-B, sub-§2**, as enacted by PL 1991, c.
517, Pt. A, §2, is amended to read:

18 **2. Process and remove.** In consultation with the agency
20 office, cause the processing or removal of all stockpiled tires;

22 **Sec. A-15. 38 MRSA §1705, sub-§1-A**, as enacted by PL 1989, c.
869, Pt. B, §1, is repealed.

24 **Sec. A-16. 38 MRSA §1705, sub-§9-B** is enacted to read:

26 9-B. Office. "Office" means the State Planning Office.

28 **Sec. A-17. 38 MRSA §1721**, as amended by PL 1991, c. 66, Pt.
30 B, §8, is further amended to read:

32 **§1721. Formation**

34 The formation of a disposal district ~~shall---be~~ is
accomplished as follows.

36 **1. Application by municipal officers.** The municipal
38 officers of the municipality or municipalities that desire to
form a disposal district shall file an application with the
40 agency office, after notice and hearing in each municipality, on
a form or forms prepared by the agency office, setting forth the
42 name or names of the municipality or municipalities and
furnishing such other data as the agency office determines
44 necessary and proper. The application must contain, but is not
limited to, a description of the territory of the proposed
46 district, the name proposed for the district that includes the
words "disposal district," a statement showing the existence in
48 that territory of the conditions requisite for the creation of a
disposal district as prescribed in section 1702, and other

documents and materials required by the agency office. The
2 agency office may adopt rules under this chapter.

4 **2. Public hearing.** Upon receipt of the application, the
5 agency office shall hold a public hearing on the application
6 within 60 days of the date of receipt of the application, at some
7 convenient place within the boundaries of the proposed district.
8 At least 14 days prior to the date of the hearing, the agency
9 office shall publish notice of the hearing at least once in a
10 newspaper of general circulation in the area encompassed by the
11 proposed district.

12 **3. Approval of application.** After the public hearing, on
13 consideration of the evidence received, the agency office shall,
14 in accordance with section 1702 and rules adopted by the agency
15 office, make findings of fact and a determination of record
16 whether or not the conditions requisite for the creation of a
17 disposal district exist in the territory described in the
18 application. If the agency office finds that the conditions do
19 exist, it shall issue an order approving the proposed district as
20 conforming to the requirements of this chapter and designating
21 the name of the proposed district. The agency office shall give
22 notice to the municipal officers within the municipality or
23 municipalities involved of a date, time and place of a meeting of
24 the representative of the municipality or municipalities
25 involved. The municipal officers shall elect a representative to
26 attend the meeting who may represent the municipality in all
27 matters relating to the formation of the district. A return
28 receipt properly endorsed is evidence of the receipt of notice.
29 The notice must be mailed at least 10 days prior to the date set
30 for the meeting.

31 **4. Denial of application.** If the agency office determines
32 that the creation of a disposal district in the territory
33 described in the application is not warranted for any reason, it
34 shall make findings of fact and enter an order denying its
35 approval. The agency office shall give notice of the denial by
36 mailing certified copies of the decision and order to the
37 municipal officers of the municipality or municipalities
38 involved. An application for the creation of a disposal
39 district, consisting of exactly the same territory, may not be
40 entertained within one year after the date of the issuance of an
41 order denying approval of the formation of that disposal
42 district, but this provision does not preclude action on an
43 application for the creation of a disposal district embracing all
44 or part of the territory described in the original application,
45 provided that another municipality or fewer municipalities are
46 involved.

2 **5. Joint meeting.** The persons selected by the municipal
3 officers, to whom the notice described in subsection 3 is
4 directed, shall meet at the time and place appointed. When more
5 than one municipality is involved, they shall organize by
6 electing a chair and a secretary. An action may not be taken at
7 any such meeting unless, at the time of convening, there are
8 present at least a majority of the total number of municipal
9 representatives eligible to attend and participate at the
10 meeting, other than to report to the agency office that a quorum
11 was not present and to request the agency office to issue a new
12 notice for another meeting. A quorum is a simple majority of
13 representatives eligible to attend the meeting. The purpose of
14 the meeting is to determine the number of directors, subject to
15 section 1724, to be appointed by and to represent each
16 participating municipality and to determine the duration of terms
17 to be served by the initial directors so that, in ensuing years,
18 1/3 of the directors and their alternates are appointed or
19 reappointed each year, to serve until their respective successors
20 are duly appointed and qualified. Subject to section 1724, the
21 number of directors to represent each municipality is subject for
22 negotiation among the municipal representatives. When a decision
23 has been reached on the number of directors and the number to
24 represent each municipality and the initial terms of the
25 directors, subject to the limitations provided, this decision
26 must be reduced to writing by the secretary and must be approved
27 by a 2/3 vote of those present. The vote so reduced to writing
28 and the record of the meeting must be signed by the chair,
29 attested by the secretary and filed with the agency office. Any
30 agreements among the municipal representatives that are
31 considered essential prerequisites to the formation of the
32 district, whether concerning payments in lieu of taxes to a
33 municipality in which a waste facility is to be located, or any
34 other matter, must be in writing and included in the record filed
35 with the agency office. Subsequent to district formation, the
36 board of directors of the district shall execute all documents
37 necessary to give full effect to the agreements reached by the
38 municipal representatives and filed with the agency office. When
39 a single municipality is involved, a copy of the vote of the
40 municipal officers, duly attested by the clerk of the
municipality, must be filed with the agency office.

42 **6. Submission.** When the record of the municipality, or the
43 record of the joint meeting, when municipalities are involved, is
44 received by the agency office and found to be in order, the
45 agency office shall order the question of the formation of the
46 proposed disposal district and other questions relating to the
47 formation to be submitted to the legal voters residing within the
48 municipalities, except as provided in subsection 7, in which case
49 the municipal officers may determine the questions. The order
50 must be directed to the municipal officers of the municipality or

2 municipalities that propose to form the disposal district,
directing them to call, within 60 days of the date of the order,
4 town meetings or city elections for the purpose of voting in
favor of or in opposition to each of the following articles or
6 questions, as applicable, in substantially the following form:

8 A. Whether the town (or city) of (name of town or city)
will vote to incorporate as a disposal district to be called
10 (name) Disposal District;

12 B. Whether the residents of (name of town or city) will
vote to join with the residents of the (name of town or
14 city) to incorporate as a disposal district to be called
(name) Disposal District: (legal description of the bounds
16 of the proposed disposal district). At a minimum, the
district must consist of (names of essential
18 municipalities); and

20 C. Whether the residents of (name of town or city) will
vote to approve the total number of directors and the
22 allocation of representation among the municipalities on the
board of directors, as determined by the municipal officers
and listed as follows: Total number of directors is
24 (number of directors) and the residents of (town or city)
are entitled to () directors. (The number of directors to
26 which each municipality is entitled must be listed.)

28 Directors must be chosen to represent municipalities in the
manner provided in section 1725.

30
32 **7. Determination by municipal officers.** In the event that
the charters of the respective municipalities, or any one of
34 them, consistent with such state laws as may otherwise be
applicable, permit the municipal officers of the municipality or
36 municipalities which that propose to form the disposal district
to vote to join such a district, the municipal officers may
38 determine the question of the formation of the proposed disposal
district and other questions relating to the formation without
40 submission to the legal voters residing within the municipality.

42 **Sec. A-18. 38 MRSA §1722**, as repealed and replaced by PL
1991, c. 66, Pt. B, §9, is amended to read:

44 **§1722. Approval and organization**

46 When the residents of the municipality, or each municipality
when more than one is involved, or the municipal officers, as the
48 case may be, have voted upon the formation of a proposed disposal
district and all of the other questions submitted, the clerk of
50 each of the municipalities shall make a return to the agency

2 office in such form as the agency office may determine. If the
3 agency office finds from the returns that each of the
4 municipalities involved, voting on each of the articles and
5 questions submitted to them, has voted in the affirmative, and
6 that the municipalities have appointed the necessary directors
7 and listed the names of the directors to represent each
8 municipality, and that all other steps in the formation of the
9 proposed disposal district are in order and in conformity with
10 law, the agency office shall make a finding to that effect and
11 record the finding upon its records. When 3 or more
12 municipalities are concerned in the voting, and at least 2 have
13 voted to approve each of the articles and questions submitted,
14 appointed the necessary directors and listed the names of the
15 directors to represent each municipality, rejection of the
16 proposed disposal district by one or more does not defeat the
17 creation of a district composed of the municipalities voting
18 affirmatively on the question, if the agency office determines
19 and issues an order stating that it is feasible or practical to
20 constitute the district as a geographic unit composed of the
21 municipalities voting affirmatively, unless the vote submitted to
22 the municipalities provided that specific participants or a
23 minimum number of participants must approve the formation of the
24 district.

25 The ~~agency--shall~~ office, immediately after making its
26 findings, shall issue a certificate of organization in the name
27 of the disposal district in such form as the agency office
28 determines. The original certificate must be delivered to the
29 directors on the day that they are directed to organize and a
30 copy of the certificate duly attested by the executive director
31 of the agency office must be filed and recorded in the office of
32 the Secretary of State. The issuance of the certificate by the
33 agency office is conclusive evidence of the lawful organization
34 of the disposal district. The disposal district is not operative
35 until the date set by the directors under section 1726.

36 **Sec. A-19. 38 MRSA §1725, first ¶**, as repealed and replaced by
37 PL 1991, c. 66, Pt. B, §10, is amended to read:

38 Directors are appointed by the municipal officers of the
39 municipality they represent. Alternate directors may be
40 appointed by the municipal officers to act in the absence of a
41 director. To the extent possible, the board of directors must
42 include a mix of individuals with sufficient managerial,
43 technical, financial or business experience to execute their
44 duties efficiently and effectively. Appointments must be by vote
45 of the municipal officers, attested to by the municipal clerk and
46 presented to the clerk of the district. The municipal officers,
47 by majority vote, may remove their appointed representatives
48 during their term for stated reasons, but directors may not be
49

2 removed except for neglect of duty, misconduct or other acts that
3 indicate an unfitness to serve. Upon receipt of the names of all
4 the directors, the agency office shall set a time, place and date
5 for the first meeting of the directors, notice of the meeting to
6 be given to the directors by certified or registered mail, return
7 receipt requested and mailed at least 10 days prior to the date
8 set for the meeting.

9
10 **Sec. A-20. 38 MRSA §1726-A, sub-§4, ¶A**, as amended by PL 1993,
c. 11, §2, is further amended to read:

12 A. When the question is submitted prior to the issuance of
13 any indebtedness by the district, the directors may decide
14 that approval of such an assessment article by the voters of
15 a municipality is a condition of each municipality's
16 continuance as a member of the district, in which case the
17 ballots must include a statement that municipalities that
18 fail to vote in favor of the proposed assessment article are
19 no longer members of the district if the board determines
20 that it is feasible or practical to constitute a district as
21 a geographic unit made up of the municipalities voting in
22 favor of the proposed assessment article. The ballots must
23 also state the method to be used to allocate assessments
24 among the member municipalities if the article is approved.
25 The ballot may not contain a specific fractional share of
26 the assessment to be borne by each member municipality. The
27 votes must be counted in each municipality and the
28 affirmative vote of a simple majority of votes cast in each
29 municipality is required to grant the district assessment
30 powers over all of the municipalities in the district. When
31 3 or more municipalities are involved in the voting and at
32 least 2 have voted to approve the assessment article
33 submitted to them, rejection of the proposed assessment
34 article by one or more municipalities does not defeat the
35 assessment power with respect to the municipalities voting
36 in favor of it if the board determines that it is feasible
37 or practical to constitute a district made up of the
38 municipalities voting in favor of the article as a
39 geographic unit. In that event, the board shall,
40 immediately after making its findings, shall issue an
41 amended certificate of organization in the name of the
42 district for a district composed only of the municipalities
43 voting in favor of the assessment article. Upon the
44 issuance of a certificate the municipalities not approving
45 the assessment article are no longer members of the
46 district. The original of the amended certificate must be
47 delivered to the directors of the district and a copy of the
48 certificate attested by the ~~Executive~~ Director of the Waste
49 ~~Management-Agency~~ State Planning Office must be filed and
50 recorded in the office of the Secretary of State. The

2 issuance of the certificate by the board is conclusive
evidence of the lawful reorganization of the district. If
4 the board determines that it is not feasible or practical to
constitute the district as a geographic unit composed of the
6 municipalities voting affirmatively on the article, the
district continues to exist with no assessment power and the
8 municipalities that did not approve the assessment article
remain members of the district.

10 **Sec. A-21. 38 MRSA §1727**, as repealed and replaced by PL
1991, c. 66, Pt. B, §11, is amended to read:

12 **§1727. Admission of new member municipalities**

14 The board of directors may authorize the inclusion of
16 additional member municipalities in the district upon the terms
and conditions as the board, in its sole discretion, determines
18 to be fair, reasonable and in the best interest of the district,
except that on proper application any municipality that is host
20 to a waste facility of the district ~~shall~~ must be admitted on
equal terms with existing members, provided that the new member
22 municipality assumes or becomes responsible for a proportionate
share of liabilities of the district in a manner similar to that
24 of existing municipalities. The legislative body of any
nonmember municipality that desires to be admitted to the
26 district shall make application for admission to the board of
directors of the district. The directors shall determine the
28 effects and impacts that are likely to occur if the municipality
is admitted and shall either grant or deny authority for
30 admission of the petitioning municipality. If the directors
grant the authority, they shall also specify any terms and
32 conditions, including, but not limited to, financial obligations
upon which the admission is predicated. The petitioning
34 municipality shall comply with the voting procedures specified in
section 1721. The vote, if in the affirmative, must be certified
36 by the clerk of that municipality to the board of directors and
to the agency office. Upon satisfactory performance of the terms
38 and conditions of admission, the municipality ~~shall~~ by resolution
of the board of directors ~~become~~ becomes and thereafter ~~be~~ is a
40 member municipality of the district. The clerk of the district
shall promptly certify to the agency and the Secretary of State
42 that the municipality has become a member of the district. The
certification is conclusive evidence that the municipality is a
44 lawful member of the district. Upon admission of a municipality
to a district, the provisions of section 1724 determine the
46 number of votes to be cast by the director or directors
representing that municipality.

48 **Sec. A-22. 38 MRSA §2101-A, sub-§1**, as enacted by PL 1995, c.
50 465, Pt. A, §28 and affected by Pt. C, §2, is repealed.

2 **Sec. A-23. 38 MRSA §2154, sub-§2**, as enacted by PL 1989, c.
585, Pt. A, §7, is amended to read:

4
6 **2. Siting; general.** Subsequent to the siting process under
subsection 1, the Facility Siting Board shall identify additional
8 sites as requested by the office and as capacity needs are
identified in the state plan. The Facility Siting Board shall
10 employ the same criteria and considerations employed under
subsection 1. The Facility Siting Board shall hold a public
12 hearing in each municipality within which the agency office may
recommend the location of any solid waste disposal or
14 refuse-derived fuel processing facility.

16 **Sec. A-24. 38 MRSA §2154, sub-§3**, as enacted by PL 1991, c.
794, §4 and affected by §9, is amended to read:

18 **3. Municipal reimbursement.** At the conclusion of
proceedings before the Facility Siting Board conducted pursuant
20 to subsection 1, the agency office shall reimburse a municipality
for eligible expenses incurred as a result of that municipality's
22 direct, substantive participation in proceedings before the
Facility Siting Board. The amount reimbursed under this
24 subsection may not exceed \$50,000 for any municipality. For the
purposes of this subsection, "eligible expenses" has the same
26 meaning as "expenses eligible for reimbursement" under section
1310-S, subsection 4, and any rules adopted by the Board of
28 Environmental Protection pursuant to that section.

30 **Sec. A-25. 38 MRSA §2159**, as enacted by PL 1989, c. 585, Pt.
A, §7, is amended to read:

32 **§2159. Real and personal property; right of eminent domain**

34 The agency office may acquire and hold real and personal
36 property ~~which~~ that it ~~deems~~ considers necessary for its
purposes, is granted the right of eminent domain and, for those
38 purposes, may take and hold, either by exercising its right of
eminent domain or by purchase, lease or otherwise, for public
40 use, any land, real estate, easements or interest therein,
necessary for constructing, establishing, maintaining, operating
42 and the closure of solid waste disposal facilities.

44 **Sec. A-26. 38 MRSA §2160, sub-§§1 and 4**, as enacted by PL 1989,
c. 585, Pt. A, §7, are amended to read:

46
48 **1. Notice to owner.** The agency office shall provide to the
owner or owners of record notice of the following:

- 2 A. The determination of the agency office that it proposes
to exercise the right of eminent domain;
- 4 B. A description and scale map of the land or easement to
be taken;
- 6 C. The final amount offered for the land or easement to be
8 taken, based on the fair value as estimated by the agency
office; and
- 10 D. Notice of the time and place of the hearing provided in
12 subsection 4.

14 Notice may be made by personal service in hand by an officer duly
qualified to serve civil process in this State or by certified
16 mail, return receipt requested, to the last known address of the
owner or owners. If the owner or owners are not known or cannot
18 can not be notified by personal service or certified mail, notice
may be given by publication in the manner provided in subsection
20 4.

22 **4. Hearing.** The agency office shall hold a public hearing
on the advisability of its proposed exercise of the right of
24 eminent domain. Notice of the hearing shall must be made by
publication in a newspaper of general circulation in the area of
26 the taking and shall--be--given published once a week for 2
successive weeks, the last publication to be at least 2 weeks
28 before the time appointed in the hearing. The hearing notice
shall must include:

- 30 A. The time and place of the hearing;
- 32 B. A description of the land or easement to be taken; and
- 34 C. The name of the owners, if known.

36 **Sec. A-27. 38 MRSA §2161**, as enacted by PL 1989, c. 585, Pt.
38 A, §7, is amended to read:

40 **§2161. Condemnation proceedings**

42 At the time ~~it~~ the office sends the notice in section 2160,
the agency office shall file in the ~~office--of--the--county~~
44 ~~commissioners-of-the-county~~ county commissioner's office in which
the property to be taken is located and cause to be recorded in
46 the registry of deeds in the county plans of the location of all
lands, real estate, easements or interest therein, with an
48 appropriate description and the names of the owners thereof, if
known. When for any reason the agency office fails to acquire
50 property ~~which~~ that it is authorized to take ~~and,~~ which is

2 described in that location, or if the location so recorded is
3 defective and uncertain, it may, at any time, correct and perfect
4 the location and file a new description. In that case, the
5 agency office is liable in damages only for property for which
6 the owner had not previously been paid, to be assessed as of the
7 time of the original taking, and the agency office is not liable
8 for any acts which that would have been justified if the original
9 taking had been lawful. No entry may be made on any private
10 lands, except to make surveys, until the expiration of 10 days
11 from the filing, whereupon, possession may be had of all the
12 lands, real estate, easements or interests therein and other
13 property and rights as aforesaid to be taken, but title shall may
14 not vest in the agency office until payment for the property is
made.

16 **Sec. A-28. 38 MRSA §2165, sub-§9**, as enacted by PL 1991, c.
17 808, §2, is repealed.

18 **Sec. A-29. 38 MRSA §2166, sub-§2**, as enacted by PL 1991, c.
19 808, §2, is amended to read:

22 **2. Exemption.** The executive director of the office may
23 exempt products from the provisions of this section upon
24 application from the manufacturer if, in the executive director's
25 judgment, the product can not reasonably be redesigned and
26 manufactured to comply with this section or, if redesigned,
27 results in significant danger to public health and safety.

28 **Sec. A-30. 38 MRSA §2170**, as enacted by PL 1993, c. 310, Pt.
29 B, §2, is amended to read:

32 **§2170. Host community benefits; application limited to facilities
33 owned or operated by the office**

34 This subchapter applies only to solid waste disposal
35 facilities owned or operated by the agency office. Wherever in
36 this subchapter the term "solid waste disposal facility" or
37 "facility" is used, those terms may be construed only to mean a
38 solid waste disposal facility owned or operated by the agency
39 office.

42 **Sec. A-31. 38 MRSA §2172**, as amended by PL 1993, c. 310, Pt.
43 B, §6, is further amended to read:

44 **§2172. Dispute resolution**

46 A host municipality may establish a process, including, but
47 not limited to, negotiation, mediation and arbitration to resolve
48 disputes and to negotiate additional rights and benefits related
49 to the siting and operation of a solid waste disposal facility
50

2 within the municipality. The citizen advisory committee must be
3 consulted and shall assist in the development and implementation
4 of any process established under this section. At the option of
5 the municipality, the Chair of the Board of Environmental
6 Protection may appoint a neutral mediator to resolve disputes.
7 The municipality is eligible for grants from the agency office to
8 fund dispute resolution programs under this section related to
the siting and operation of a solid waste disposal facility.

10 **Sec. A-32. 38 MRSA §2173**, as amended by PL 1993, c. 310, Pt.
11 B, §7, is further amended by repealing and replacing the headnote
12 to read:

14 **§2173. Municipal jurisdiction over office and regional**
15 **association disposal facilities**

16 **Sec. A-33. 38 MRSA §2174, sub-§2**, as amended by PL 1993, c.
17 310, Pt. B, §8, is further amended by amending the first
18 paragraph to read:

19 **2. Information.** The host municipality of a solid waste
20 disposal facility has a right to all information from the
21 department and the agency office, pursuant to Title 1, chapter
22 13, subchapter I. All information provided under this subsection
23 must be made available to the citizen advisory committee and the
24 public by the host municipality.
25

26 **Sec. A-34. 38 MRSA §2175-A**, as corrected by RR 1993, c. 1,
27 §137, is amended to read:

28 **§2175-A. Property value offset**

29 Owners of property, the value of which has been affected by
30 a solid waste disposal facility, are eligible for reimbursement
31 from the agency office for loss in property value directly
32 attributable to the construction and operation of the facility.
33 The agency office shall adopt rules to establish the formula and
34 procedure for reimbursement, including, without limitation,
35 definition of the impact area, a process for establishing
36 baseline real estate values, a time frame within which the
37 property value offset program will be in effect and an accounting
38 of real estate trends in the area.
39

40 **Sec. A-35. 38 MRSA §2176, first ¶**, as amended by PL 1995, c.
41 465, Pt. A, §71 and affected by Pt. C, §2, is further amended to
42 read:

43 In addition to payment in lieu of taxes provided in section
44 2175-B, the office shall make impact payments to a municipality
45 in which a solid waste disposal facility is located or, in the
46

2 case of an unorganized territory, to the State Tax Assessor upon
3 request by the community involved or by the State Tax Assessor.
4 The agency office shall base its impact payments on measurable
5 criteria including, without limitation:

6 **Sec. A-36. 38 MRSA §2177**, as amended by PL 1993, c. 310, Pt.
7 B, §12, is further amended to read:

8
9 **§2177. Water supply monitoring and protection**

10
11 Upon written request from persons owning land contiguous to
12 a solid waste disposal facility, the agency office shall have
13 quarterly sampling and analysis conducted of private water
14 supplies used by the requestors for drinking water. The sampling
15 and analysis must be conducted in a manner specified by and that
16 meets criteria developed by the department.

17
18 If a facility adversely affects a public or private water
19 supply by pollution, degradation, diminution or other means that
20 result in a violation of the state drinking water standards as
21 determined by the commissioner, the agency office shall restore
22 the affected supply at no cost to the consumer or replace the
23 affected supply with an alternative source of water that is of
24 like quantity and quality to the original supply at no cost to
25 the consumer.

26
27 **1. Extent of analysis.** Water supplies must be analyzed for
28 all parameters or chemical constituents determined by the
29 commissioner to be indicative of typical contamination from solid
30 waste disposal facilities. The laboratory performing the
31 sampling and analysis shall provide written copies of sample
32 results to the agency office, the landowner and to the
33 commissioner.

34
35 **2. Additional sampling required.** If the analysis indicates
36 possible contamination from a solid waste disposal facility, the
37 commissioner shall conduct, or require the agency office to
38 conduct, additional sampling and analysis to determine more
39 precisely the nature, extent and source of contamination. The
40 commissioner shall, if necessary, require this sampling beyond
41 the boundaries of the contiguous property.

42
43 **3. Written notice of rights.** On or before December 1,
44 1989, for permits issued under this chapter prior to October 1,
45 1989, and at or before the time of permit issuance for permits
46 issued under this chapter after October 1, 1989, the agency
47 office shall provide owners of contiguous land with written
48 notice of their rights under this section on a form prepared by
49 the commissioner.

2 **Sec. A-37. 38 MRSA §2191**, as enacted by PL 1989, c. 585, Pt.
A, §7, is amended to read:

4 **§2191. Fees**

6 The agency office shall establish reasonable fees for waste
disposal services provided by the agency office.

8 **Sec. A-38. 38 MRSA §2192, first ¶**, as enacted by PL 1989, c.
10 585, Pt. A, §7, is amended to read:

12 The fees charged to users of agency-owned office-owned
14 facilities and established by the agency office under this
article, by rule, shall provide revenue for the following
purposes:

16 **Sec. A-39. 38 MRSA §2192, sub-§§2 to 4**, as enacted by PL 1989,
18 c. 585, Pt. A, §7, are amended to read:

20 2. **Interest.** To provide for the payment of interest on the
indebtedness created or assumed by the agency office;

22 3. **Indebtedness.** To provide an annual sum equal to not
24 less than 2% nor more than 10% of the term indebtedness
represented by the issuance of bonds created or assumed by the
26 agency office, which sum shall must be turned into a sinking fund
and there maintained to provide for the extinguishment of term
28 indebtedness. The money set aside in this sinking fund shall
must be devoted to the retirement of the term obligations of the
30 agency office and may be invested in such securities as savings
banks in the State are allowed to hold;

32 4. **Principal payments.** To provide for annual principal
34 payments on serial indebtedness created or assumed by the agency
office;

36 **Sec. A-40. 38 MRSA §2193**, as enacted by PL 1989, c. 585, Pt.
38 A, §7, is amended to read:

40 **§2193. Host municipality fees**

42 The agency office may set fees under this article for the
host municipality at a level lower than the fees charged to other
44 municipalities or users, provided that such the lower fees are
set in a manner consistent with the rules promulgated by the
46 agency office.

48 **Sec. A-41. 38 MRSA §2201, 2nd ¶**, as repealed and replaced by
PL 1991, c. 824, Pt. A, §88, is amended to read:

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2 Money in the fund not currently needed to meet the
obligations of the agency office must be deposited with the
4 Treasurer of State to the credit of the fund and may be invested
as provided by law. Interest on these investments must be
credited to the fund.

6
8 **Sec. A-42. 38 MRSA §2201, 3rd ¶**, as amended by PL 1995, c.
395, Pt. P, §8 and affected by §11, is further amended to read:

10 Funds related to administration may be expended only in
accordance with allocations approved by the Legislature for
12 administrative expenses directly related to the agency's office's
and the department's programs, including actions by the
14 department necessary to abate imminent threats to public health,
safety and welfare posed by the illegal disposal of solid waste.
16 Funds related to operations may be expended only in accordance
with allocations approved by the Legislature and solely for the
18 development and operation of publicly owned facilities owned or
approved by the agency office and for the repayment of any
20 obligations of the agency office incurred under article 3. These
allocations must be based on estimates of the actual costs
22 necessary for the agency office and the department to administer
their programs, to provide financial assistance to regional
24 associations and to provide other financial assistance necessary
to accomplish the purposes of this chapter. Beginning in the
26 fiscal year ending on June 30, 1991 and thereafter, the fund must
annually transfer to the General Fund an amount necessary to
28 reimburse the costs of the Bureau of Taxation incurred in the
administration of Title 36, section 5219-D and Title 36, chapter
30 719 and an amount equal to the General Fund revenues lost as the
result of Title 36, sections 2526 and 5219-D. Allowable
32 expenditures include "Personal Services," "All Other" and
"Capital Expenditures" associated with all agency office
34 activities other than those included in the operations account.

36 **Sec. A-43. 38 MRSA §2204**, as amended by PL 1995, c. 465, Pt.
A, §§75 and 76 and affected by Pt. C, §2, is further amended to
38 read:

40 **§2204. Municipal disposal surcharge; import fees**

42 The agency department shall impose the following fees.

44 1. **Landfill surcharge.** A disposal surcharge of \$4 per ton
is assessed on any municipal solid waste disposed of by
46 landfilling at a commercial landfill facility.

48 3. **Imported municipal solid waste.** To support those
regulatory and administrative costs associated with imported
50 municipal solid wastes, an administrative fee of \$4 per ton, or

the maximum fee on out-of-state waste authorized by federal law, whichever is greater, is assessed on any municipal solid waste originating outside the State and delivered to a commercial solid waste disposal facility or solid waste disposal facility owned by the office or a regional association for disposal.

Sec. A-44. 38 MRSA §2232, first ¶, as enacted by PL 1991, c. 676, §1, is amended to read:

An incineration facility shall submit an annual report to the agency office no later than 90 days after the end of the incineration facility's fiscal year. For reasonable cause shown and upon written application by an incineration facility, the agency office may grant an extension of the 90-day period. The report must be certified by an appropriate executive officer of the incineration facility as being complete and accurate. The agency office may prescribe the form of the annual report and the number of copies that must be submitted. The report must include the following information:

Sec. A-45. 38 MRSA §2232, sub-§§4 and 5, as enacted by PL 1991, c. 676, §1, are amended to read:

4. Expenditures. The total expenditures of the incineration facility during the last completed fiscal year including details of those expenditures as required by the agency office; and

5. Other information. Any other information required by the agency office.

Sec. A-46. 38 MRSA §2235, as enacted by PL 1991, c. 676, §1, is amended to read:

§2235. Use of files

The agency office shall keep on file for public inspection and use all reports submitted under this subchapter.

Sec. A-47. 38 MRSA §2236, as corrected by RR 1993, c. 1, §138, is amended to read:

§2236. Limitation

Nothing in this subchapter may be construed to create or expand any agency office authority over financial, organizational or rate regulation of incineration facilities.

PART B

2 **Sec. B-1. Legislative intent.** The Legislature intends that the
3 repeal of the Maine Revised Statutes, Title 38, sections 2103,
4 2122 and 2157 in Public Law 1995, chapter 465 eliminates the
5 statutory authority for the adoption of rules under those
6 sections or the enforcement of any rules adopted under those
7 sections.

8

10

STATEMENT OF FACT

12

This bill removes remaining statutory references to the former Maine Waste Management Agency and clarifies the status of its administrative rules.

14

16

Public Law 1995, chapter 465, Part C, section 1 requires the State Planning Office to submit legislation eliminating statutory references to the Maine Waste Management Agency. This bill removes the remaining statutory references that were not contained in chapter 465.

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Chapter 465 also repealed specific statutory authority for 4 of the rules adopted by the Maine Waste Management Agency. However, transition language in Part C of chapter 465 retains all Maine Waste Management Agency rules in effect until rescinded by the "proper authority." Because the State Planning Office does not have any general independent rule-making authority, this bill clarifies that the Legislature intended to eliminate the statutory authority for rules adopted pursuant to the Maine Revised Statutes, former Title 38, sections 2103, 2122 and 2157.

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