

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1998

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Legislative Document

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H.P. 1439

House of Representatives, January 14, 1998

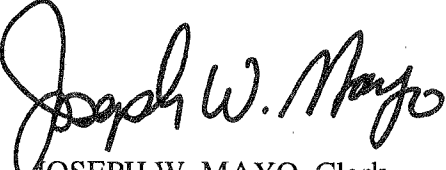
**An Act to Clarify and Enhance Certain Municipal Powers Regarding  
Solid Waste Disposal.**

(EMERGENCY)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on State and Local Government suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative SAXL of Bangor.  
Cosponsored by Senator MURRAY of Penobscot and  
Representatives: CLARK of Millinocket, CROSS of Dover-Foxcroft, JONES of Bar Harbor,  
KONTOS of Windham, TAYLOR of Cumberland, Senators: CAREY of Kennebec,  
GOLDTHWAIT of Hancock, MITCHELL of Penobscot.

2           **Emergency preamble.** Whereas, Acts of the Legislature do not  
become effective until 90 days after adjournment unless enacted  
as emergencies; and

4           Whereas, in order to better effect the purposes of the  
6 electric rate stabilization laws as recently modified by the  
passage of Public Law 1997, chapter 492; and

8           Whereas, in some instances, the participation of large  
10 numbers of municipalities is necessary to assist financially  
challenged electric utilities in the State to mitigate the  
12 adverse effects of pricing in power purchase contracts with solid  
waste disposal facilities that dispose of municipal solid waste;  
14 and

16           Whereas, the powers of municipalities to participate in  
assisting in mitigation need clarification; and

18           Whereas, in the judgment of the Legislature, these facts  
20 create an emergency within the meaning of the Constitution of  
Maine and require the following legislation as immediately  
22 necessary for the preservation of the public peace, health and  
safety; now, therefore,

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

26           **Sec. 1. 38 MRSA §1303-C, sub-§24, ¶B,** as enacted by PL 1989,  
28 c. 869, Pt. A, §5, is amended to read:

30           B. Creation of a nonprofit corporation that consists  
exclusively of municipalities and is organized under Title  
32 13, chapter 81 or Title 13-B, for the purpose, among other  
permissible purposes, of owning, constructing or operating a  
34 solid waste disposal facility, including a public waste  
disposal corporation under section 1304-B, or whose members  
36 contract for the disposal of solid waste with a solid waste  
disposal facility, including, but not limited to, a  
38 qualifying facility as defined in Title 35-A, section 3303;

40           **Sec. 2. 38 MRSA §1304-B, sub-§5-A** is enacted to read:

42           5-A. Other regional associations. Notwithstanding any law,  
charter, ordinance provision or limitation to the contrary, any 2  
44 or more municipalities, counties, refuse disposal districts,  
public waste disposal corporations or other quasi-municipal  
46 corporations may organize or cause to be organized a regional  
association or may acquire membership in one or more corporations  
48 organized as nonprofit corporations under Title 13, chapter 81 or  
Title 13-B that is a regional association. In accordance with

2 this subsection, a regional association may conduct business  
3 without an interlocal agreement.

4 A. Each member entity must enter into at least one solid  
5 waste disposal agreement with the owners of at least one  
6 solid waste disposal facility, including, but not limited  
7 to, a solid waste disposal facility that is a qualifying  
8 facility as defined in Title 35-A, section 3303.

10 B. Each member must be in good standing with the regional  
11 association and abide by the bylaws of the regional  
12 association.

14 C. Each member may participate in the ownership of:

16 (1) One or more solid waste disposal facilities;

18 (2) An entity that owns one or more solid waste  
19 disposal facilities;

20 (3) An electric utility that has a power purchase  
21 agreement with the owners of a solid waste disposal  
22 facility that, in turn, has a solid waste disposal  
23 contract with the member;

24 (4) An electric power generation company established  
25 by a public utility whether or not it is regulated by  
26 the Public Utilities Commission or a successor state  
27 agency; and

28 (5) A subsidiary entity formed by an electric utility.

30  
31  
32 D. Each member may delegate the following functions and  
33 authority, among others, to the regional association of  
34 which it is a member:

35  
36 (1) The authority on behalf of members to receive and  
37 direct distributions of cash from and ownership  
38 interests in solid waste disposal facilities, public  
39 utilities and generation companies or their owners as  
40 well as other revenues from activities authorized under  
41 this subsection, including, but not limited to:

42  
43 (a) Distribution on behalf of members based on  
44 tonnage guaranteed to be delivered or actually  
45 delivered to solid waste disposal facilities; and

46  
47 (b) Earnings and other distributions from  
48 investments in solid waste disposal facilities or  
49 the entities that own solid waste disposal  
50 facilities.

2 facilities or in utilities, generation companies  
3 and other related entities in the form of capital  
4 stock, limited partnership interests, warrants for  
5 equity interest or other equity positions in  
6 entities;

7 (2) As delegated by the members or that otherwise  
8 result from negotiations or dealings on their behalf,  
9 the authority to manage assets of its members that are  
10 related to the functions of the regional association,  
11 including, but not limited to, functions related to  
12 solid waste disposal facilities, independently owned  
13 utilities or generation companies, to manage money or  
14 other value received on account of members from any  
15 source and generally to determine the use and  
16 application of assets on behalf of and for the benefit  
17 of its members; and

18 (3) On behalf of its members, the authority to  
19 purchase and otherwise deal with ownership interests in  
20 solid waste disposal facilities.

21 A regional association may not pledge the full faith and credit  
22 of its members but it has all other powers necessary and  
23 incidental to carry out the purposes of this chapter.

24 **Sec. 3. Retroactivity; application.** This Act applies  
25 retroactively to February 1, 1997.

26 Any corporation organized in a manner that satisfies the  
27 requirements of the Maine Revised Statutes, Title 38, section  
28 1304-B, subsection 5-A, whether organized prior to or after the  
29 effective date of Title 38, section 1304-B, subsection 5-A, is  
30 deemed for all purposes to have been organized pursuant to Title  
31 38, section 1304-B, subsection 5-A. Any vote by the governing  
32 body of a member authorizing and otherwise delegating functions  
33 and powers to any corporation organized in accordance with Title  
34 38, section 1304-B, subsection 5-A is deemed for all purposes to  
35 be valid whether the authorization was granted prior to or after  
36 the effective date of Title 38, section 1304-B, subsection 5-A.

37 **Emergency clause.** In view of the emergency cited in the  
38 preamble, this Act takes effect when approved.

## 43 SUMMARY

44 This bill authorizes municipalities to:

1. Acquire ownership interests in an incinerator facility  
that serves the municipalities; and

2. Acquire ownership interests in any electric utility that  
has a power purchase arrangement with a solid waste disposal  
facility that serves the municipalities.

Communities that own shares or warrants for shares in  
electric utilities are permitted under this bill to own shares in  
generator companies that may be created through the divesture  
process required by electric industry restructuring.

This bill permits regional associations to aggregate the  
purchasing power of the members of a regional association for the  
purchase of electricity for public needs and for the citizens and  
businesses located in the member communities, including the  
electric power produced at the solid waste disposal facility at  
which the members dispose of municipal solid waste.