

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1367

H.P. 1002

House of Representatives, March 18, 2003

An Act To Amend the Laws Regarding Junkyards, Automobile Graveyards and Automobile Recycling Businesses

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative HUTTON of Bowdoinham.
Cosponsored by Senator TURNER of Cumberland and
Representatives: BUNKER of Kossuth Township, COWGER of Hallowell, PINEAU of Jay,
TOBIN of Windham, TWOMEY of Biddeford, Senators: EDMONDS of Cumberland,
SAWYER of Penobscot, STANLEY of Penobscot.

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

4 **Sec. 1. 29-A MRSA §1106-A** is enacted to read:

6 **§1106-A. Municipal notification**

8 The Secretary of State shall provide written notice of all
10 license decisions under section 1106 to the code enforcement
12 officer or municipal designee of the municipality in which the
14 applicant for a recycler license proposed its facilities to be
located. If any proposed location is not within an organized
municipality, the Secretary of State shall provide written notice
to the county commissioners for that location.

16 **Sec. 2. 30-A MRSA §3751**, as amended by PL 1993, c. 173, §1,
is further amended by adding at the end a new paragraph to read:

18 Junkyards, automobile graveyards and automobile recycling
20 businesses pose potential risks to the environment, particularly
22 to groundwater and surface water quality if gasoline, oil or
24 other fluids are not managed and disposed of properly. Proper
26 location and operation of these facilities are critical to ensure
28 protection of groundwater and surface water quality, other
30 natural resources and the health and welfare of Maine citizens.
These facilities may create nuisance conditions potentially
affecting abutting landowners and others if not located and
operated properly. For these reasons, it is declared that these
facilities are appropriately subject to certain environmental and
operational standards and to appropriate municipal and state
regulation.

32 **Sec. 3. 30-A MRSA §3752, sub-§1**, as amended by PL 1995, c. 65,
Pt. A, §130 and affected by §153 and Pt. C, §15, is repealed and
34 the following enacted in its place:

36 **1. Automobile graveyard.** "Automobile graveyard" means a
38 yard, field or other outdoor area used to store 3 or more
40 unregistered or uninspected motor vehicles, as defined in Title
29-A, section 101, subsection 42, or parts of the vehicles.
"Automobile graveyard" includes an area used for automobile
dismantling, salvage and recycling operations.

42 **A. "Automobile graveyard" does not include:**

44 (1) An area used for temporary storage by an
46 establishment or place of business that is primarily
48 engaged in doing auto body repair work to make repairs
to render a motor vehicle serviceable. In order for a
vehicle's storage to be considered temporary, it must

2 be removed from the site within 180 calendar days of
3 receipt;

4 (2) An area used to store, organize, restore or
5 display a motor vehicle or parts of vehicles that are
6 collected by an automobile hobbyist and that are
7 antique autos, antique motorcycles, classic vehicles,
8 horseless carriages, reconstructed vehicles, street
9 rods or parts of these vehicles as these vehicles are
10 defined in Title 29-A, section 101 as long as the
11 hobbyist's activities comply with all applicable
12 federal and state statutes and rules and municipal
13 ordinances. For the purposes of this subparagraph, an
14 automobile hobbyist is a person who is not primarily
15 engaged in the business of selling any of the above
16 vehicle or parts from those vehicles;

17 (3) An area used for the parking or temporary storage
18 of vehicles or equipment by a municipality,
19 quasi-municipal entity or state or federal agency or by
20 a dealer, equipment dealer, trailer dealer or vehicle
21 auction business as defined in Title 29-A, section 851;
22 or

23 (4) An area used for the temporary storage of
24 operational farm tractors and related farm equipment,
25 log skidders, logging tractors or other vehicles
26 exempted from registration under Title 29-A, chapter 5.

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29 **Sec. 4. 30-A MRSA §3752, sub-§1-A,** as enacted by PL 1993, c.
30 173, §2, is amended to read:

31
32 **1-A. Automobile recycling business.** "Automobile recycling
33 business" means the business premises of a person dealer or a
34 recycler licensed under Title 29-A, sections 851 to 1112 who
35 purchases or acquires salvage vehicles for the purpose of
36 reselling the vehicles or component parts of the vehicles or
37 rebuilding or repairing salvage vehicles for the purpose of
38 resale or for selling the basic materials in the salvage
39 vehicles, ~~provided that~~ as long as 80% of the business premises
40 specified in the site plan in section 3755-A, subsection 1,
41 paragraph C is used for automobile recycling operations.

42
43 **Sec. 5. 30-A MRSA §3752, sub-§4,** as enacted by PL 1987, c.
44 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6, c.
45 9, §2 and c. 104, Pt. C, §§8 and 10, is further amended to read:

46
47 **4. Junkyard.** "Junkyard" means a yard, field or other
48 outside area used to store, dismantle or otherwise handle:

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2 A. Discarded, worn-out or junked plumbing, heating
supplies, electronic or industrial equipment, household
appliances and or furniture;

4 B. Discarded, scrap and junked lumber; and

6 C. Old or scrap copper, brass, rope, rags, batteries, paper
8 trash, rubber debris, waste and all scrap iron, steel and
other scrap ferrous or nonferrous material, ~~and.~~

10 D. ~~Garbage dumps, waste dumps and sanitary fills.~~

12 **Sec. 6. 30-A MRSA §3752, sub-§6**, as enacted by PL 1993, c.
14 173, §3, is repealed.

16 **Sec. 7. 30-A MRSA §3754**, as amended by PL 1999, c. 761, §5,
18 is further amended to read:

20 **§3754. Hearings**

22 Municipal officers or county commissioners, as provided for
in section 3753, shall hold a public hearing before granting a
24 permit to establish, ~~operate or maintain an~~ a new automobile
graveyard, automobile recycling business or junkyard and may hold
26 public hearings annually regarding the relicensing of these
facilities. They---shall Municipal officers or county
28 commissioners shall require an applicant to provide proof of
mailing the notice to abutting property owners of an
30 application. Municipal officers or county commissioners shall
also post a notice of the hearing at least 7 and not more than 14
32 days before the hearing in at least 2 public places in the
municipality or unorganized territory and publish a notice in one
34 newspaper having general circulation in the municipality or
unorganized territory in which the automobile graveyard,
36 automobile recycling business or junkyard is to be located. The
municipal officers or county commissioners shall give written
notice of the application to ~~the Department of Transportation~~
38 establish a new automobile graveyard or automobile recycling
business to the automobile dealer licensing section of the
40 Department of the Secretary of State, Bureau of Motor Vehicles by
mailing a copy of the application at least 7 and not more than 14
42 days before the hearing. The municipal officers or county
commissioners shall give written notice of the application to a
44 public water supplier for any automobile graveyard, automobile
recycling business or junkyard located within its source water
46 supply area. The notice may be given by mailing a copy of the
application at least 7 and not more than 14 days before the
48 hearing.

50 **Sec. 8. 30-A MRSA §3754-A** is enacted to read:

2 **§3754-A. Limitations on graveyard, automobile**
4 **recycling business and junkyard permits**

6 **1. Highways; Interstate System and Primary System.** A
8 **permit may not be granted for an automobile graveyard or junkyard**
10 **within 1,000 feet of the right-of-way of any highway incorporated**
12 **in both the Interstate System and Primary System or within 600**
14 **feet of the right-of-way of any other highway, except for:**

16 **A. Those automobile graveyards or junkyards that are kept**
18 **entirely screened from ordinary view from the highway at all**
20 **times by natural objects, plantings or fences. Screening**
22 **required by this paragraph must be:**

24 **(1) At a height, density and depth sufficient to**
26 **accomplish complete screening from ordinary view;**

28 **(2) Well constructed and properly maintained at a**
30 **minimum height of 6 feet;**

32 **(3) Placed outside of the highway right-of-way; and**

34 **(4) Acceptable to the municipal officers or county**
36 **commissioners; and**

38 **B. Those automobile graveyards or junkyards located within**
40 **areas that have been zoned for industrial use and located**
42 **more than 600 feet but less than 1,000 feet from the**
44 **right-of-way of any highway incorporated in both the**
46 **Interstate System and Primary System.**

48 **2. Limitation on new permits.** A permit may not be granted
50 **for an automobile graveyard or junkyard established after October**
3, 1973 and located within 100 feet of any highway.

3. Public facilities. A new permit may not be granted for
an automobile graveyard or junkyard that is:

A. Located within 300 feet of a public facility, including,
but not limited to, a public park, public playground, public
bathing beach, school, church or cemetery; and

B. Within ordinary view from a public facility under
paragraph A.

4. Public and private water supplies. A permit may not be
granted for an automobile graveyard, junkyard or automobile
recycling business that handles junk, scrap metal, vehicles or
other solid waste within 300 feet of a well that serves as a

2 public or private water supply. This prohibition does not
4 include a private well that serves only the automobile graveyard,
6 junkyard, automobile recycling business or the owner's or
8 operator's abutting residence. This prohibition does not apply
10 to wells installed after an automobile graveyard, junkyard or
12 automobile recycling business has already received a permit under
14 section 3753.

16 Automobile graveyards, junkyards and automobile recycling
18 businesses operating under the terms of permits issued prior to
20 the effective date of this subsection and handling junk, scrap
22 metal, vehicles or other solid waste within 300 feet of wells
24 that serve as public or private water supplies may continue to
26 operate in those locations under the terms of those permits.
28 Municipal officers or county commissioners may renew a permit
30 allowing the continued handling of junk, scrap metal, vehicles or
32 other solid waste within 300 feet of a well serving as a public
34 or private water supply as long as no further encroachment toward
36 the well occurs and there is no evidence of contamination of the
38 well.

40 5. Operating standards. All automobile graveyards and
42 junkyards permitted pursuant to section 3753 are required to
44 comply with the following standards:

46 A. All fluids, including, but not limited to, engine
48 lubricant, transmission fluid, brake fluid, battery acid,
50 engine coolant, gasoline and oil, must be properly handled
52 in such a manner that they do not leak, flow or discharge
54 into or onto the ground or into a body of water;

56 B. A vehicle containing fluids may not be stored or
58 dismantled:

60 (1) Within 100 feet of any body of water or freshwater
62 wetland, as defined by Title 38, section 436-A,
64 subsection 5;

66 (2) Within the 100-year floodplain; or

68 (3) Over a mapped sand and gravel aquifer;

70 C. Junk, scrap metal, vehicles or other solid wastes may
72 not be placed or deposited, directly or indirectly, into the
74 inland waters or tidal waters of the State or on the ice of
76 inland waters or tidal waters or on the banks of inland
78 waters or tidal waters in such a manner that they may fall
80 or be washed into these waters; and

2 D. Junkyard and automobile graveyard owners must
3 demonstrate at the time of licensing that the facility or
4 facilities for which they seek permits are, or are part of,
5 a viable business entity engaged in the business of
6 salvaging, recycling, dismantling, processing, repairing or
7 rebuilding junk or vehicles for the purpose of sale, trade
8 or personal use.

9
10 6. Rules. A permit, other than a limited-term permit as
11 described in this section, may not be granted for an automobile
12 graveyard or automobile recycling business that is not in
13 compliance with all applicable provisions of the automobile
14 dealer or recycler licensing provisions of Title 29-A, chapter
15 9. Municipal officers or county commissioners may award a
16 limited-term permit conditioned upon an automobile graveyard's or
17 automobile recycling business's demonstrating compliance with the
18 provisions of Title 29-A, chapter 9 within 90 calendar days of
19 the issuance of the municipal or county limited-term permit.

20 7. Local ordinances. This subchapter may not be construed
21 to limit a municipality's home rule authority to enact ordinances
22 with respect to automobile graveyards, automobile recycling
23 businesses and junkyards that the municipality determines
24 reasonable, including, but not limited to, ordinances concerning:

25 A. Compliance with state and federal solid waste and
26 hazardous waste regulations;

27 B. Fire and traffic safety;

28 C. Levels of noise that can be heard outside the premises;

29 D. Distance from existing residential or institutional uses;

30 E. The effect on groundwater and surface water, as long as
31 municipal ordinances on groundwater are no less stringent
32 than or inconsistent with rules adopted by the Department of
33 Environmental Protection; and

34 F. Best management practices for automobile graveyards,
35 junkyards and automobile recycling businesses developed by
36 the Department of Environmental Protection.

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43 Municipal officers or county commissioners shall consider
44 compliance with these local ordinances in deciding whether to
45 grant or deny a permit for any automobile graveyard, automobile
46 recycling business or junkyard and in attaching conditions of
47 approval to a permit.
48

2 8. Applicability. Municipalities may apply local
ordinances adopted previously under subsection 7 pertaining to
4 automobile graveyards and junkyards to an automobile recycling
business without amending those ordinances to include automobile
6 recycling businesses. A municipality must provide notice of its
intent to apply these ordinances at the time an application for
an automobile recycling business permit is filed.

8
9. Right of entry. Municipal officers or their designees
10 may, to carry out the provisions of this subchapter or to
determine compliance with any laws, ordinances, license or permit
12 approvals, decisions or conditions:

14 A. Enter any automobile graveyard, junkyard or automobile
recycling business property and inspect all outside areas,
16 equipment and activities at reasonable hours for compliance
with the laws or ordinances set forth in accordance with
18 this subchapter; and

20 B. Enter any building on the property with the consent of
the owner, occupant or agent to inspect the building and
22 activities within the building for compliance with the laws
or ordinances set forth in accordance with this subchapter.

24
A municipal officer's or designee's entry onto property under
26 this subsection is not a trespass.

28 Sec. 9. 30-A MRSA §3755, as amended by PL 1993, c. 173, §5,
is repealed.

30 Sec. 10. 30-A MRSA §3755-A, sub-§3, ¶¶A, B and F, as enacted by
32 PL 1993, c. 173, §6, are amended to read:

34 A. The site of the yard must be enclosed by a visual screen
at least 6 feet high and built in accordance with rules
36 adopted by the Department of Transportation pursuant to that
complies with the screening requirements of section 3759
38 3754-A.

40 B. A vehicle with an intact engine or motor containing
fluids may not be stored within 100 feet of any body of
42 water or freshwater wetland, as defined by Title 38, section
436-A, subsection 5.

44 F. -A- Except as provided in subsection 3754-A, subsection
46 4, a vehicle may not be dismantled or stored within 100 300
feet of a well that serves as a public or private water
48 supply, excluding a private well that serves only the
automobile recycling business or the owner or operator's
50 abutting residence.

2 **Sec. 11. 30-A MRSA §3756**, as amended by PL 1993, c. 173, §7,
is further amended to read:

4 **§3756. Permit fees**

6 The municipal officers or county commissioners shall
8 collect, in advance from the applicant for a permit, a fee in
accordance with the following schedule:

10 **1. Graveyard or junkyard.** Fifty dollars for each permit
12 application for an automobile graveyard or junkyard ~~located more~~
~~than 100 feet from any highway, plus the cost of posting and~~
14 ~~publishing the notice under section 3754;~~

16 ~~**2. Graveyard or junkyard within 100 feet from highway.** Two~~
~~hundred dollars for each permit for an automobile graveyard or~~
18 ~~junkyard located within 100 feet from any highway, plus the cost~~
~~of posting and publishing the notice under section 3754; and~~

20 **3. Recycling business.** Two hundred fifty dollars for a
22 5-year permit for an automobile recycling business plus the cost
of posting and publishing the notice under section 3754; or

24 **4. Fee.** A fee as otherwise established by municipal
26 ordinance or rule.

28 **Sec. 12. 30-A MRSA §3758**, as amended by PL 1993, c. 173, §8,
is repealed.

30 **Sec. 13. 30-A MRSA §3758-A** is enacted to read:

32 **§3758-A. Violations**

34 **1. Enforcement.** All state, county and local law
36 enforcement officers shall enforce the provisions of this
subchapter.

38 **2. Municipal authority.** Municipal officers or their
40 designees may enforce the provisions of this subchapter pursuant
to:

42 A. The enforcement of land use laws and ordinances under
44 section 4452;

46 B. The litter control provisions of Title 17, chapter 80; or

48 C. The abatement of nuisance provisions of Title 17,
50 chapter 91.

2 3. Penalties. Violations of this subchapter are subject to
3 the penalty provisions of section 4452; Title 17, sections 2264-A
4 and 2264-B; or Title 17, chapter 91. Each day that the violation
5 continues constitutes a separate offense.

6 4. Abatement. If the municipality is the prevailing party
7 in an action taken pursuant to the provisions of this Title or
8 Title 17 as outlined in subsection 2 and the violator does not
9 complete any ordered correction or abatement in accordance with
10 the ordered schedule, the municipal officers or designated agent
11 may enter the property and may act to abate the site in
12 compliance with the order. To recover any actual and direct
13 expenses incurred by the municipality in the abatement of the
14 nuisance, the municipality may:

15 A. File a civil action against the owner to recover the
16 cost of abatement, including the expense of court costs and
17 reasonable attorney's fees necessary to file and conduct the
18 action;

19 B. File a lien on real estate where the junkyard,
20 automobile graveyard or automobile recycling business is
21 located; or

22 C. Assess a special tax on real estate where the junkyard,
23 automobile graveyard or automobile recycling business is
24 located. This amount must be included in the next annual
25 warrant to the tax collector of the municipality, for
26 collection in the same manner as other state, county and
27 municipal taxes are collected. Interest as determined by
28 the municipality pursuant to Title 36, section 505 in the
29 year in which the special tax is assessed accrues on all
30 unpaid balances of the special tax beginning on the 60th day
31 after the day of commitment of the special tax to the
32 collector. The interest must be added to and becomes a part
33 of the tax.

34 5. Revocation or suspension of permit. Violation of any
35 condition, restriction or limitation inserted in a permit by the
36 municipal officers or county commissioners is cause for
37 revocation or suspension of the permit by the same authority that
38 issued the permit. A permit may not be revoked or suspended
39 without a hearing and notice to the owner or the operator of the
40 automobile graveyard, automobile recycling business or junkyard.
41 Notice of hearing must be sent to the owner or operator by
42 registered mail at least 7 but not more than 14 days before the
43 hearing. The notice must state the time and the place of hearing
44 and contain a statement describing the alleged violation of any
45 conditions, restrictions or limitations inserted in the permit.

2 creates a 100-foot setback from bodies of water for the placement
of junked automobiles that contain fluids and increases from 100
4 feet to 300 feet the setback of newly licensed facilities from
public or private drinking water supplies.

6 The bill also establishes a process to notify abutters of
the public hearing held prior to the issuance of any new
8 junkyard's, automobile graveyard's or automobile recycling
business's first license and incorporates into statute fencing
10 and screening standards previously located in the Department of
Transportation regulations.

12 The bill also clarifies the ability of municipalities to
14 enforce the provisions of the State's junkyard law and effect the
abatement of junkyard nuisances. The bill specifies that a
16 municipality has 3 available methods to recover the costs of
prosecuting a junkyard violation: a civil action, a lien on the
18 real estate or a special tax assessment as municipalities are
currently authorized to recover the costs of abating a failed
20 septic system.