

MAINE STATE LEGISLATURE

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Date: 6/8/07

L.D. 1431
(Filing No. H-493)

NATURAL RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1005, L.D. 1431, Bill, "An Act To Provide for the Protection of Communities That Host a Solid Waste Disposal Facility or Incineration Facility"

Amend the bill by striking out the title and substituting the following:

'An Act To Provide for the Protection of Communities That Host a Solid Waste Disposal Facility'

Amend the bill by striking out everything after the title and before the summary and inserting the following:

'Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 38 MRSA §1303-C, sub-§15-B is enacted to read:

15-B. Host community. "Host community" means any town, township or city that is the geographic site of a solid waste disposal facility or any immediately contiguous town, township or city if such town, township or city can demonstrate to the department that it incurs a direct financial impact related to any necessary development or maintenance of infrastructure or to any necessary provision of services as a result of the location or operation of that solid waste disposal facility.

Sec. 2. 38 MRSA §1310-N, sub-§9, as enacted by PL 1995, c. 465, Pt. A, §16 and affected by Pt. C, §2, is amended to read:

9. Host community agreements. The following provisions apply to ~~an application for a license for a commercial solid waste disposal facility~~ a solid waste disposal facility,

COMMITTEE AMENDMENT

1005

1 except that this subsection does not apply to a facility owned by the State or to a facility
2 described in section 1303-C, subsection 6, paragraphs E or F.

3 A. The department may not issue a license for a ~~commercial solid waste disposal~~
4 ~~facility unless the applicant has demonstrated that it has:~~ solid waste disposal facility
5 unless a host community agreement is in place as described in this subsection.

- 6 (1) ~~Complied with municipal ordinances requiring host community benefits;~~
- 7 (2) ~~Negotiated in good faith with the municipality in which the facility is~~
8 ~~proposed to be located to formulate a host community agreement;~~
- 9 (3) ~~Developed and will implement a host community agreement; or~~
- 10 (4) ~~Renegotiated, if appropriate, the terms of an existing host community~~
11 ~~agreement.~~

12 A-1. A solid waste disposal facility must have in place a host community agreement
13 with all applicable host communities during the development and operation and
14 through closure of that facility, except that a solid waste disposal facility owned by a
15 municipality that meets the provisions of section 1303-C, subsection 6, paragraph B
16 is not required to have in place a host community agreement with the host community
17 that is the geographic site of the facility. A host community agreement for the
18 purposes of this section must, when applicable, include the provisions set forth in
19 paragraph B, except that a host community agreement in effect prior to the effective
20 date of this paragraph is not required to include the provisions set forth in paragraph
21 B.

22 B. Based upon the nature, size and projected impacts of the proposed facility, host
23 community agreements must, when applicable, include provisions regarding:

- 24 (1) Improvement, maintenance and repair of local roads directly affected by
25 traffic to and from the facility and of other infrastructural elements directly
26 affected by the facility;
- 27 (2) Development and maintenance of adequate local emergency response
28 capacity to accommodate the facility;
- 29 (3) Financial support for personnel or other means to provide technical
30 assistance to the municipality in interpreting data and to advise the municipality
31 on other technical issues concerning the facility; and
- 32 (4) Other issues determined on a case-specific basis by the applicant and
33 municipality to be appropriate given the nature of the proposed facility.

34 The department shall adopt rules concerning the expenditure of funds made available
35 to a municipality under the provisions of subparagraph (3) to ensure that funds are
36 used to provide direct technical support to the municipality necessary for the conduct
37 of municipal planning and decision making.

38 C. In the event that the parties to a host community agreement required under this
39 subsection cannot agree on the terms of agreement, the parties shall submit the
40 dispute for resolution in accordance with this paragraph.

2008

1 (1) The parties shall submit the dispute for mediation. The commissioner shall
2 present to the parties a list of 5 experienced and qualified mediators. Each party
3 may strike 2 names from the list. After each party has been afforded 2
4 opportunities to strike, either the sole remaining person or the first unchallenged
5 person on the list must be appointed by the commissioner as the mediator
6 assigned to mediate the dispute. In assembling the list of proposed mediators, the
7 commissioner may consider the panel of mediators offered by the Office of Court
8 Alternative Dispute Resolution Service created in Title 4, section 18-B.

9 (2) If mediation fails to result in an agreement between the parties, the parties
10 shall submit the dispute for arbitration. The commissioner shall present to the
11 parties a list of 5 experienced and qualified arbitrators. Each party may strike 2
12 names from the list. After each party has been afforded 2 opportunities to strike,
13 either the sole remaining person or the first unchallenged person on the list must
14 be appointed by the commissioner as the arbitrator assigned to determine the
15 dispute. In assembling the list of proposed arbitrators, the commissioner may
16 consider the panels of arbitrators offered by the Office of Court Alternative
17 Dispute Resolution Service created in Title 4, section 18-B or by the American
18 Arbitration Association or a successor organization.

19 (a) Both the facility and the host community will be bound by the decision of
20 the arbitrator.

21 (b) Unless otherwise provided for in this subparagraph, the arbitration must
22 be conducted in accordance with the rules of the American Arbitration
23 Association or a successor organization for the conduct of commercial
24 arbitration proceedings.

25 (c) Costs associated with the arbitration must be shared equally between the
26 parties.

27 (d) The arbitrator shall submit the decision to the commissioner.

28 (e) Either party may appeal the decision of the arbitrator to the Superior
29 Court.

30 **Sec. 3. 38 MRS §2170-A is enacted to read:**

31 **§2170-A. Host community agreements**

32 The provisions of this section apply to a solid waste disposal facility owned or
33 operated by the office.

34 **1. Issuance of license.** The department may not issue a license for a solid waste
35 disposal facility unless a host community agreement is in place in accordance with this
36 section.

37 **2. Agreement required.** A solid waste disposal facility must have in place a host
38 community agreement with all applicable host communities during the development and
39 operation and through closure of that facility. A host community agreement for the
40 purposes of this section must, when applicable, include provisions relating to the impact
41 payments set forth in section 2176.

2008

1 **Sec. 4. 38 MRSA §2172**, as amended by PL 1995, c. 656, Pt. A, §52, is repealed
2 and the following enacted in its place:

3 **§2172. Dispute resolution**

4 In the event that the office and a host community cannot agree on the terms of a host
5 community agreement pursuant to section 2170-A, the parties shall submit the dispute for
6 resolution in accordance with this section.

7 **1. Mediation.** The parties shall submit the dispute for mediation. The commissioner
8 shall present to the parties a list of 5 experienced and qualified mediators. Each party
9 may strike 2 names from the list. After each party has been afforded 2 opportunities to
10 strike, either the sole remaining person or the first unchallenged person on the list must be
11 appointed by the commissioner as the mediator assigned to mediate the dispute. In
12 assembling the list of proposed mediators, the commissioner may consider the panel of
13 mediators offered by the Office of Court Alternative Dispute Resolution Service created
14 in Title 4, section 18-B.

15 **2. Arbitration.** If mediation fails to result in an agreement between the parties, the
16 parties shall submit the dispute for arbitration. The commissioner shall present to the
17 parties a list of 5 experienced and qualified arbitrators. Each party may strike 2 names
18 from the list. After each party has been afforded 2 opportunities to strike, either the sole
19 remaining person or the first unchallenged person on the list must be appointed by the
20 commissioner as the arbitrator assigned to determine the dispute. In assembling the list
21 of proposed arbitrators, the commissioner may consider the panels of arbitrators offered
22 by the Office of Court Alternative Dispute Resolution Service created in Title 4, section
23 18-B or by the American Arbitration Association or its successor organization.

24 **A.** Both the office and the host community will be bound by the decision of the
25 arbitrator.

26 **B.** Unless otherwise provided for in this subsection, the arbitration must be
27 conducted in accordance with the rules of the American Arbitration Association or its
28 successor organization for the conduct of commercial arbitration proceedings.

29 **C.** Costs associated with the arbitration must be shared equally between the parties.

30 **D.** The arbitrator shall submit the decision to the commissioner.

31 **E.** Either party may appeal the decision of the arbitrator to the Superior Court.

32 **Sec. 5. 38 MRSA §2176, sub-§2**, as enacted by PL 1989, c. 585, Pt. A, §7, is
33 amended to read:

34 **2. Emergency response.** Development and maintenance of adequate local
35 emergency response capacity; and

36 **Sec. 6. 38 MRSA §2176, sub-§3**, as enacted by PL 1989, c. 585, Pt. A, §7, is
37 amended to read:

38 **3. Monitoring.** Financial support for on-site, municipally employed personnel or for
39 other means determined necessary to enable the municipality to monitor the facility's
40 compliance with state and local requirements; and



123rd MAINE LEGISLATURE

LD 1431

LR 866(02)

An Act To Provide for the Protection of Communities That Host a Solid Waste Disposal Facility or Incineration Facility

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Natural Resources

Fiscal Note Required: Yes

Fiscal Note

State Mandate - Exempted

State Mandates

Required Activity

This bill requires all solid waste disposal facilities have host community agreements with contiguous municipalities. The additional costs of this state mandate are expected to be significant. Pursuant to the Mandate Preamble, the two-thirds vote of all members elected to each House exempts the State from the constitutional requirement to fund 90% of the additional local costs.

Unit Affected

Municipality

Costs

Significant

Fiscal Detail and Notes

The additional costs to the Department of Environmental Protection can be absorbed utilizing existing budgeted resources.