# LAWS

OF THE

# STATE OF MAINE

AS PASSED BY THE

## ONE HUNDRED AND TWELFTH LEGISLATURE

**FIRST REGULAR SESSION**
December 5, 1984 to June 20, 1985
Chapters 1-384

PUBLISHED BY THE REVISOR OF STATUTES IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED, TITLE 3, SECTION 163-A, SUBSECTION 4.

---

J.S. McCarthy Co., Inc.
Augusta, Maine
1986

# PUBLIC LAWS

OF THE

# STATE OF MAINE

AS PASSED AT THE

FIRST REGULAR SESSION

of the

ONE HUNDRED AND TWELFTH LEGISLATURE

1985

Act, give notice of cancellation as provided in subsection 4 until 10 days after a notice of the consumer's right to cure, as provided in section 5-110, is given. For purposes of this section, goods that are collateral shall include any right of setoff that the creditor may have. Until expiration of the minimum applicable period after the notice is given, the consumer may cure all defaults consisting of a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges. Cure restores the consumer to his rights under the agreement as though the defaults had not occurred.

**Sec. 12. 9-A MRSA §5-111, sub-§2,** as repealed and replaced by PL 1975, c. 429, §2, is amended to read:

2. With respect to defaults on the same obligation other than an obligation subject to the Insurance Premium Finance Company Act and subject to subsection 1, after a creditor has once given a notice of consumer's right to cure, as provided in section 5-110, this section gives the consumer no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or goods that are collateral with respect to a default that occurs within 12 months after an earlier default as to which a creditor has given a notice of consumer's right to cure, as provided in section 5-110. For the purpose of this section, in open-end credit, the obligation is the unpaid balance of the account ~~and there is no right to cure and no limitation on the creditor's rights with respect to a default that occurs within 12 months after an earlier default as to which a creditor has given a notice of consumer's right to cure, as provided in section 5-110.~~

Effective September 19, 1985.

---

# CHAPTER 337

S.P. 498 - L.D. 1359

AN ACT to Encourage the Development of Solid Waste Energy Recovery Facilities in the State of Maine.

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

Whereas, the State requires each municipality to provide for the disposal of solid waste generated within the municipality; and

Whereas, solid waste contains valuable recoverable resources, including energy, and many municipalities have found that energy recovery reduces the cost of solid waste disposal; and

Whereas, solid waste energy recovery technology is complex and most solid waste energy recovery facilities have high capital costs and long payback periods; and

Whereas, to make the solid waste energy recovery facilities financially feasible, the developers of these facilities need to be assured of a steady source of revenues to repay the loans used to finance the construction of the facilities; and

Whereas, the steady stream of revenues needed to pay for these facilities are often provided by municipal service contracts, whereby municipalities agree to pay costs associated with providing such a facility, whether or not this facility is operational; and

Whereas, there are Maine municipalities which have already entered into or now desire to enter into agreements in order to provide at the earliest possible date for the disposal of their solid waste at the energy recovery facilities in the State; and

Whereas, municipalities have the power, alone and by joint action, to enter into service contracts or make other arrangements for solid waste disposal pursuant to their Home Rule power; and

Whereas, the Legislature has clarified the power of municipalities to enter into service contracts for solid waste disposal; and

Whereas, financial institutions that would underwrite solid waste disposal facilities require further clarification with respect to the power of Maine municipalities to enter into service contracts for solid waste disposal and to jointly undertake the financial obligations entailed thereby; and

Whereas, the power of municipalities to enter into service contracts for solid waste disposal may be limited by charter or ordinance provisions; and

Whereas, there is a need to permit municipalities to enter into service contracts for solid waste disposal despite inconsistent charter or ordinance provisions; and

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

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

Sec. 1. 30 MRSA §5062, first ¶, as amended by PL 1981, c. 698, §144, is further amended to read:

The limitations on municipal debt in section 5061 shall not be construed as applying to any funds received in trust by any municipality, any loan which has been funded or refunded, notes issued in anticipation of federal or state aid or revenue sharing money, tax anticipation loans, notes maturing in the current municipal year, indebtedness of entities other than municipalities, indebtedness of any municipality to the Maine School Building Authority, debt issued under chapter 235 and Title 10, chapter 110, subchapter IV, obligations payable from revenues of the current municipal year or from other revenues previously appropriated by or committed to the municipality, and the state reimbursable portion of school debt. The limitations on municipal debt set forth in section 5061 do not apply to obligations incurred by one or more municipalities pursuant to Title 38, section 1304-B, with respect to solid waste facilities, which obligations are regulated in the manner set forth in Title 38, section 1304-B.

Sec. 2. 35 MRSA §2329 is enacted to read:

§2329. Energy and capacity purchases from small power producer and cogenerator facilities

1. Establishment of a purchase price for energy or energy and capacity delivered to a trustee or reorganized utility. If a public utility which has entered into a power purchase contract with a small power producer or cogenerator facility for the purchase of energy, or energy and capacity pursuant to section 2325, subsection 1, or section 2326, files for bankruptcy or for reorganization under the bankruptcy laws of the United States, and if the trustee

in bankruptcy or debtor, receiver, examiner or any other party in possession and control of the assets of the public utility rejects that power purchase contract pursuant to the United States Bankruptcy Code or any similar power or law the trustee, debtor, receiver, examiner or other party in possession and control of the assets of the public utility shall be obligated to continue to purchase without interruption from the small power producer or cogenerator facility whose contract was rejected any energy or energy and capacity which the small power producer or cogenerator facility makes available to it. If the power purchase contract is rejected, the avoided cost for the energy or energy and capacity from the small power producer or cogenerator facility for the time period commencing on the date of the rejection and ending on the original expiration date of the rejected contract shall be the avoided cost determined for the period as if the determination were being made on the date on which the public utility and small power producer or cogenerator facility entered into the rejected contract.

2. Nature of capacity contract. If a small power producer or cogenerator facility contracts to provide a public utility with electric generating capacity, that portion of the power purchase contract which requires the delivery of the capacity, shall not be executory in nature under the laws of the State once the small power producer or cogenerator facility has first made available to the public utility the electric generating capacity. This section shall not be interpreted to mean that any other sections of such a contract are executory in nature.

3. Commission approval of rates of reorganized utility. At any time that the Public Utilities Commission is requested or required to approve rates for a public utility which has rejected a power purchase contract with a small power producer or cogenerator facility as a result of a bankruptcy or reorganization proceeding, or to approve rates of a person controlling and in possession of the assets of a public utility which was a party to such a rejected contract, it shall not grant any such rate approval unless the public utility or person seeking the rates includes within the rates provision for payment of all energy and energy and capacity made available by a small power producer or cogenerator facility, either at the original contract rate or at the rate specified in subsection 1.

Any person who is obligated to comply with this section shall not be permitted to operate as a public

utility in the State, unless it is in full compliance with this section.

Sec. 3. 38 MRSA §1304-B, sub-§4, as enacted by PL 1983, c. 380, §1, is repealed and the following enacted in its place:

4. Contracts. In order to encourage and facilitate the financing and development of solid waste facilities, including, but not limited to, facilities for resource recovery, municipalities shall have the following powers, notwithstanding any law, charter, ordinance provision or limitation to the contrary:

A. To contract with any person, including, but not limited to, the owner or operator of any waste facility, for the collection, transportation, storage, processing, salvaging or disposal of waste. Any such contract may be for such term of years and may contain such other provisions as the municipality may approve. Any such contract may provide that, in consideration for the obligation of the facility owner or operator to handle all or any portion of the solid waste generated in the municipality, the municipality shall pay to the facility owner or operator such fees, assessments and other payments as shall be established in accordance with the contract.

B. Without limiting the generality of the powers conferred in paragraph A, to agree in such a contract to pay fees, assessments or other payments in such amounts as may be reasonably necessary to pay:

(1) Costs associated with financing, developing, constructing, repairing, maintaining and operating all or any one or more of the waste facilities owned or operated by the facility owner or operator, including the payment of debt service and the maintenance of reasonable reserves or sinking funds in connection with the financing or operation of any such waste facilities;

(2) Any other costs incurred by the facility owner or operator in connection with the handling of solid waste, whether performed at any waste facility referred to in subparagraph (1) or at another such facility differently owned and operated; and

(3) Any deficiencies arising by virtue of the failure of any other municipality to

meet its obligations to pay the costs set forth in subparagraphs (1) and (2) in accordance with any similar agreement with the same facility owner; and

C. To pledge the full faith and credit of the municipality for the payment of fees, assessments and other payments, as provided in paragraphs A and B, and to levy upon and raise from taxable estates within the municipality by general taxes the amounts required to pay these fees, assessments and payments or to raise those amounts by means of any fee, user charge or other cost-sharing or assessment mechanism duly adopted and authorized by the municipality or to borrow those amounts by issuance of general obligation bonds or notes.

Any contract complying with the requirements of this subsection and subsection 6 shall be a properly authorized, legal, valid, binding and enforceable obligation of the municipality, regardless of whether the agreement was authorized, executed or delivered prior to or after the effective date of this subsection.

Sec. 4. 38 MRSA §1304-B, sub-§§5 and 6 are enacted to read:

5. Public waste disposal corporations. Notwithstanding any law, charter, ordinance provision or limitation to the contrary, pursuant to any interlocal agreement entered into in accordance with Title 30, chapter 203, any 2 or more municipalities may organize or cause to be organized or may participate in one or more corporations organized as nonprofit corporations under Title 13, chapter 81, or Title 13-B for the purpose, among other permissible purposes, of owning or operating any one or more waste facilities described in subsection 4, paragraph A, and a subscribing municipality may agree in any such interlocal agreement to pay fees, assessments or other payments as described in subsection 4, paragraph B, for such term of years and on such other terms as the interlocal agreement may provide and may pledge the full faith and credit of the municipality to the same extent provided in subsection 4, paragraph C. The applicable interlocal agreement or the articles of incorporation or bylaws of the corporation shall provide that:

A. The corporation shall be organized and continuously thereafter operated as a nonprofit corporation, no part of the net earnings of which

may inure to the benefit of any member, director, officer or other private person;

B. The directors of the corporation shall be elected by the municipal officers of the municipalities participating in the corporation; and

C. Upon dissolution or liquidation of the corporation, title to all of its property shall vest in one or more of the municipalities participating in the corporation.

Any interlocal agreement complying with the requirements of this subsection and subsection 6 shall be a properly authorized, legal, valid, binding and enforceable obligation of the municipality, regardless of whether the agreement was authorized, executed or delivered prior to or after the effective date of this subsection. Any corporation organized in a manner which satisfies the requirements set forth in this subsection and subsection 6, whether organized prior to or after the effective date of this subsection, shall be deemed for all purposes as organized pursuant to this subsection. If so provided in the applicable interlocal agreement, any such corporation shall have the power, in addition to any other powers which may be delegated under Title 30, chapter 203, to issue, on behalf of one or more of the municipalities participating in the corporation, in order to finance the facilities, revenue obligation securities issued in accordance with Title 10, chapter 110, subchapter IV, and any other bonds, notes or debt obligations which municipalities are authorized to issue by applicable law.

6. Relationship to other laws. The obligation of a municipality to pay any fees, assessments or other payments in accordance with any agreement entered into pursuant to subsection 4 or any interlocal agreement referred to in subsection 5 shall not constitute a "debt" or "indebtedness" of the municipality within the meaning of any statutory, charter or ordinance provision limiting the incurrence or the amount of municipal indebtedness nor shall the authorization or incurrence of the obligation or any municipal action to raise funds to meet the obligation by any means set forth in subsection 4, paragraph C, require or be subject to any voter referendum or approval under any law or any charter or ordinance provision. A municipality may agree to make payments in accordance with subsection 4, paragraph B, subparagraph (1), or in accordance with the provisions of any interlocal agreement referred to in subsection 5 with respect to

long-term financing obtained by the owner of one or more waste facilities, provided that the total principal balance of the long-term financing does not exceed 3% of its last full state valuation. Notwithstanding this subsection, 2 or more municipalities may separately agree with the owner of one or more waste facilities to make payments in accordance with subsection 4, paragraph B, subparagraph (1), or any interlocal agreement referred to in subsection 5 with respect to the long-term financing obtained by the owner of the facilities, provided that the total principal balance of the long-term financing does not exceed 3% of the sum of the last full state valuation of all municipalities in question.

The obligation of the municipality to pay fees, assessments and other payments in accordance with subsection 4 or any interlocal agreement referred to in subsection 5 shall be binding upon and enforceable against the municipality without regard to whether all or any one or more of the waste facilities referred to in subsection 4, paragraph B, subparagraph (1), becomes operational or was or will be in operation during the period for which the fees, assessments or other payments are so charged.

No contract entered into in accordance with subsection 4 nor any ordinance adopted under the authority of subsection 2 shall be deemed a contract in restraint of trade or otherwise unlawful under Title 10, chapter 201.

Notwithstanding any law, charter or ordinance provisions to the contrary, the powers conferred upon a municipality pursuant to subsections 4 and 5 and this subsection shall be exercised, in the case of a municipality with a city or town council, by action of the council and, in the case of a municipality without such a council, by action of the town meeting. This paragraph shall apply whether or not the action of the city council, town council or town meeting was taken before or after the effective date of this subsection.

Nothing in this section may be construed to be a limitation on the Home Rule powers granted to municipalities under Title 30, section 1917, or on the ability of communities to jointly exercise their powers as is recognized in Title 30, section 1951. This section provides an additional and alternative method for carrying out this subchapter.

Sec. 5. 38 MRSA §1751, sub-§3, as enacted by PL 1983, c. 820, §2, is amended to read:

3. Maturity; interest; form; temporary bonds. The bonds issued under this chapter shall be dated, shall mature at such time or times not exceeding 40 years from their date or dates and shall bear interest at such rate or rates as may be determined by the board of directors or determined pursuant to a formula approved by the board of directors or by a 3rd party rate-setting agent selected by the board of directors, and may be made redeemable before maturity, at the option of the district, at such price or prices and under such terms and conditions as may be fixed by the board of directors prior to the issuance of the bonds. The board of directors shall determine the form of the bonds, including any interest coupons to be attached, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any financial institution having trust powers within or without the State. Bonds shall be executed in the name of the district by the manual or facsimile signature of such officer or officers as may be authorized in the resolution to execute the bonds, but at least one signature on each bond shall be a manual signature. Coupons, if any, attached to the bonds shall be executed with the facsimile signature of the officer or officers of the district designated in the resolution. In case any officer, whose signature or facsimile signature appears on any bonds or coupons, ceases to hold that office before the delivery of the bonds, the signature or its facsimile shall nevertheless be valid and sufficient for all purposes, as if he had remained in office until the delivery. Notwithstanding any of the other provisions of this chapter or any recitals in any bonds issued under this chapter, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form, or both, as the board of directors may determine, and provision may be made for the registration of any coupon bonds as to principal alone and as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board of directors may sell the bonds in the manner, either at public or private sale, and for such price as they may determine to be for the best interests of the district. The proceeds of the bonds of each issue shall be used solely for the purpose for which those bonds have been authorized and shall be disbursed in such manner and under such restrictions as the board of directors may provide in the resolution authorizing the issuance of the bonds or in the trust agreement securing the

bonds. The resolution providing for the issuance of bonds, and any trust agreement securing the bonds, may contain such limitations upon the issuance of additional bonds as the board of directors may deem proper, and these additional bonds shall be issued under such restrictions and limitations as may be prescribed by that resolution or trust agreement. Prior to the preparation of definitive bonds, the board of directors may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when those bonds are executed and are available for delivery. The board of directors may provide for the replacement of any bond which is mutilated, destroyed or lost.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 13, 1985.

---

# CHAPTER 338

H.P. 578 - L.D. 849

AN ACT to Revise the Maine Certificate of Need Act for Hospitals.

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

Sec. 1. 22 MRSA §304-A, 2nd ¶, as enacted by PL 1981, c. 705, Pt. V, §16, is amended to read:

A Except as provided in section 304-C, a certificate of need from the department shall be required for:

Sec. 2. 22 MRSA §304-C is enacted to read:

§304-C. Waiver of certificate of need review for projects for which hospital does not seek positive adjustment to financial requirements established by Maine Health Care Finance Commission

1. Categories of projects eligible for waiver. A hospital may apply for a waiver of the certificate of need review requirements otherwise imposed by this chapter with respect to the following projects: