

MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

SECOND REGULAR SESSION
January 8, 1986 to April 16, 1986

SECOND SPECIAL SESSION
May 28, 1986 to May 30, 1986

AND AT THE

THIRD SPECIAL SESSION
October 17, 1986

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

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

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

If, within 180 days from the date the completed application for registration is submitted, the Board of Pesticides Control fails to act upon an application for registration of a pesticide which has been certified by the United States Environmental Protection Agency the pesticide shall be deemed registered under this chapter, unless the Board of Pesticides Control issues a written statement containing the reasons for the failure to act upon the application. The statement of the Board of Pesticides Control shall be considered a refusal to register pursuant to section 609.

This paragraph does not apply if the registrant fails to provide any information required to be submitted under this chapter or does not provide other information requested by the Board of Pesticides Control in order to determine whether the pesticide should be registered.

The preceding paragraph does not affect the rights of the Board of Pesticides Control to make further inquiry regarding the registration of a pesticide or to refuse reregistration, suspend or revoke registration or otherwise restrict or condition the use of pesticides in order to protect public health and the environment.

Effective July 16, 1986.

CHAPTER 593

S.P. 837 - L.D. 2126

AN ACT Relating to the Issuance of Taxable Bonds and the Refunding of Certain Bonds.

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, a number of municipalities in the State have serious problems in disposing municipal solid waste in an environmentally safe manner and are subject to orders of the Department of Environmental

Protection to close landfills or to find alternative methods of disposal for solid waste; and

Whereas, the public health, safety and welfare are seriously endangered by the current methods of solid waste disposal and require immediate municipal action; and

Whereas, a number of municipalities desire to develop and finance facilities for the disposal of solid waste, which facilities cannot be financed in whole or in part currently with bonds the interest on which is tax exempt under the United States Internal Revenue Code in view of existing tax law and certain tax legislation pending in Congress and approved by the United States House of Representatives; and

Whereas, tax laws and tax legislation also may impair the ability of municipalities to finance with tax exempt bonds other essential public projects affected thereby; and

Whereas, financial institutions that would underwrite solid waste disposal facilities require clarification with respect to the powers of municipalities to issue bonds, the interest on which is taxable; and

Whereas, Public Law 1985, chapter 337, was adopted as an emergency measure to facilitate the issuance of bonds for solid waste projects under the Maine Revised Statutes, Title 10, chapter 110, subchapter IV, and it is desirable to add language in that subchapter to clarify and declare the effect of Public Law 1985, chapter 337 as now in force; and

Whereas, the timely completion and financial feasibility of municipal solid waste disposal projects will be adversely affected unless legislation to clarify the power to finance the projects is enacted prior to the effective date of any nonemergency legislation; 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. 10 MRSA §1041, sub-§4, as enacted by PL 1981, c. 476, §2, is amended to read:

4. Refunding securities. Issue revenue refunding obligation securities as provided to refund any outstanding revenue obligation securities issued under this subchapter or under subchapter IV or to refund any obligations or securities of any municipality;

Sec. 2. 10 MRSA §1048, as amended by PL 1985, c. 344, §76, is further amended to read:

§1048. Revenue refunding securities

The authority may provide for the issuance of revenue refunding securities of the authority to refund any outstanding revenue securities issued under this subchapter or under subchapter IV or to refund any obligations or securities of any municipality, including the payment of any redemption premiums and any interest accrued or to accrue to the date of redemption, and, if deemed advisable by the authority, to construct or enable the construction of improvements, extensions, enlargements or additions of the original project. The authority may provide for the issuance of revenue obligation securities of the authority for the combined purpose of refunding any outstanding revenue obligation securities or revenue refunding securities issued under this subchapter or under subchapter IV or to refund any obligations or securities of any municipality, including the payment of redemption premiums and interest accrued or to accrue and paying all or any part of the cost of acquiring or constructing or enabling the acquisition or construction of any additional project or part or any improvements, extensions, enlargements or additions of any project. The issuance of the securities, the maturities and other details, the rights and remedies of the holders and the rights, powers, privileges, duties and obligations of the authority shall be governed by the provisions of this subchapter insofar as they are applicable.

Sec. 3. 10 MRSA §1054, as enacted by PL 1985, c. 344, §78, is amended to read:

§1054. Taxable bond option

With respect to all or any portion of any issue of any bonds or any series of bonds which the authority may issue in accordance with the limitations and restrictions of this subchapter, the authority may covenant and consent that the interest on the bonds

shall be includable, under the United States Internal Revenue Code of 1954 or any subsequent corresponding internal revenue law of the United States, in the gross income of the holders of the bonds to the same extent and in the same manner that the interest on bills, bonds, notes or other obligations of the United States is includable in the gross income of the holders under the United States Internal Revenue Code or any subsequent law. The powers conferred by this section shall not be subject to any limitations or restrictions of any law which may limit the authority's power to so covenant and consent or to the procedures set forth in section 1043 or in section 1044, subsections 1, 11 and 12. The foregoing grant of power shall not be construed as limiting the inherent power of the State or its agencies under any other provision of law to issue debt, the interest on which is includable in the gross income of the holders of the interest under the United States Internal Revenue Code or any subsequent law.

Sec. 4. 10 MRSA §1061, sub-§3, as enacted by PL 1981, c. 476, §2, is amended to read:

3. Refunding securities. Issue revenue refunding obligation securities of the municipality to refund any outstanding revenue obligation securities issued under this subchapter or under subchapter III or to refund any other obligations or securities of the municipality;

Sec. 5. 10 MRSA §1064, sub-§6, as enacted by PL 1981, c. 476, §2, is amended to read:

6. Credit not pledged. Securities issued under this subchapter shall not constitute any debt or liability of the State, its political subdivisions or any municipality; shall not constitute a pledge of the faith and credit of the State, its political subdivisions or any municipality; shall be payable solely from the revenues of the project or projects for which they are issued; and shall contain on their face a statement to that effect. The securities issued under this subchapter shall not directly or indirectly or contingently obligate the State, its political subdivisions or any municipality to levy or to pledge any form of taxation whatever or to make any appropriation for their payment. The prohibitions or limitations of this subsection shall not be construed to restrict any rights or obligations of a municipality arising under Title 38, section 1304-B.

Sec. 6. 10 MRSA §1068, as amended by PL 1985, c. 344, §92, is further amended to read:

§1068. Revenue refunding securities

The municipal officers are authorized to provide by resolution for the issuance of revenue refunding securities of the municipality for the purpose of refunding any outstanding revenue obligation securities issued under this subchapter or under subchapter III or refunding any other obligations or securities of the municipality, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption, and, if deemed advisable by the municipal officers, to construct improvements, extensions, enlargements or additions of the original project. The municipal officers may provide by resolutions for the issuance of revenue obligation securities of the municipality for the combined purpose of refunding any outstanding revenue obligation securities or revenue refunding securities issued under this subchapter or under subchapter III or of refunding any other obligations or securities of the municipality, including the payment of any redemption premiums and any interest accrued or to accrue to the date of redemption, and paying all or any part of the cost of acquiring or constructing any additional project or part or any improvements, extensions, enlargements or additions of any project. The issuance of the securities, the maturities and other details, the rights and remedies of the holders and the rights, powers, privileges, duties and obligations of the municipality and the municipal officers shall be governed by the provisions of this subchapter insofar as applicable; provided that any action or proceeding in any court to set aside a resolution authorizing the issuance of revenue refunding securities under this subchapter or to obtain any relief on the ground the resolution was improperly adopted, was adopted for unauthorized purposes or is otherwise invalid for any reason, must be commenced within 30 days after publication by the clerk of the municipality in the state newspaper and in a newspaper of general circulation in the municipality of a notice stating that the resolution has been adopted, the principal amount of revenue refunding securities authorized to be issued and the purpose of that issuance. After the expiration of the period of limitations, no right of action or defense founded upon the invalidity of that resolution or any of its provisions shall be asserted nor shall the validity of that resolution or any of its provisions be open to question in any court upon any ground whatever.

Sec. 7. 10 MRSA §1074 is enacted to read:

§1074. Taxable bond option

With respect to all or any portion of any issue of bonds or any series of bonds which any municipality may issue in accordance with the limitations and restrictions of this subchapter, the municipality may covenant and consent that the interest on the bonds shall be includable, under the United States Internal Revenue Code of 1954 or any subsequent corresponding internal revenue law of the United States, in the gross income of the holders of the bonds to the same extent and in the same manner that the interest on bills, bonds, notes or other obligations of the United States is includable in the gross income of the holders under the United States Internal Revenue Code or any subsequent law. The powers conferred by this section shall not be subject to any limitations or restrictions of any law which may limit the municipality's power to so covenant and consent or to the procedures set forth in section 1063 or in section 1064, subsection 1. Any bonds or issue or series of bonds with respect to which the municipality covenants and consents that the interest on the bonds shall be includable, under the United State Internal Revenue Code of 1954 or any subsequent corresponding internal revenue law of the United States in the gross income of the holders of the bonds to the same extent and in the same manner that interest on bills, bonds, notes or other obligations of the United States is includable in the gross income of the holders under the United States Internal Revenue Code or any subsequent law shall be a properly authorized, legal, valid, binding and enforceable obligation of the municipality, regardless of whether the bonds were authorized, executed, delivered or issued prior to or after the effective date of this section. The foregoing grant of power shall not be construed as limiting the inherent power of municipalities under any other provision of law to issue debt, the interest on which is includable in the gross income of the holders of the interest under the United States Internal Revenue Code or any subsequent law.

Sec. 8. 38 MRSA §1304-B, sub-§4, ¶¶A and B, as enacted by PL 1985, c. 337, §3, are amended to read:

A. To contract with a corporation described in subsection 5 or a refuse disposal district organized under chapter 17 or 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, but not limited to, 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 so agreeing 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

Sec. 9. 38 MRSA §1304-B, sub-§5, as enacted by PL 1985, c. 337, §4, is amended 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 non-profit 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. For these purposes, the term "municipal officers" as used in Title 10, chapter 110, subchapter IV, means the board of directors of any

corporation described in this subsection. Title 10, section 1064, subsection 6 shall not be construed to prohibit the assignment or pledge as collateral security of any contract of a municipality authorized by this section or of any or all of the payments under this section, regardless of whether the provisions of subsection 4, paragraph C are applicable to the contract or payments.

Sec. 10. 38 MRSA §1304-B, sub-§6, as amended by PL 1985, c. 506, Pt. B, §38, is repealed and the following enacted in its place:

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. A municipality may agree to make payments in accordance with subsection 4, paragraph B, or in accordance with the provisions of any interlocal agreement referred to in subsection 5 with regard to all or any portion of debt incurred or to be incurred for the financing of one or more waste facilities, provided that no such payments shall be made with respect to debt or any portion of debt which, when incurred, would cause the total principal balance of all then outstanding debt or portions of debt to which the payments apply to exceed:

(1) Three percent of the last full state valuation of the municipality; minus

(2) The municipality's then obtaining allocable share of any debt or portions of debt described in paragraph B with regard to which it is obliged to make payments.

B. Notwithstanding paragraph A, 2 or more municipalities may agree to make payments in accordance with subsection 4, paragraph B, or in accordance with any interlocal agreement referred

to in subsection 5 with regard to all or any portion of debt incurred or to be incurred for the financing of one or more waste facilities, provided that no such payments may be made with respect to debt or any portions of debts which, when incurred, would cause the total principal balance of all then outstanding debt or portions of debt to which the payments apply to exceed:

(1) Three percent of the sum of the last full state valuation of all municipalities so agreeing; minus

(2) Any amounts of debt or portions of debt described in paragraph A in connection with which any such municipality is obliged to make payments.

The limitations set forth in paragraphs A and B shall only apply to agreements by which a municipality or group of municipalities have agreed to make payments directly based, among other things, on a facility owner's costs of debt service and other costs of financing and shall not be construed to apply to contract payments calculated on any other basis, even if the facility owner uses the payments to meet its debt service obligations.

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 may 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 may be exercised by the municipal officers as defined in Title 30, section 1901, only when authorized, 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. 11. Transition. Any contract and any interlocal agreement complying with the requirements of the Maine Revised Statutes, Title 38, section 1304-B, shall be a properly authorized, legal, binding and enforceable obligation of the municipality in question as of the date executed, regardless of whether the contract or interlocal agreement was authorized, executed or delivered prior to or after the effective date of this Act. Any resolution or other official action of the board of directors of any corporation organized in accordance with Title 38, section 1304-B, if taken in accordance with Title 38, section 1304-B, shall be a properly authorized, legal, binding and enforceable resolution or official action regardless of whether the resolution or official action was taken prior to or after the effective date of this Act.

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

Effective March 21, 1986.

CHAPTER 594

H.P. 1550 - L.D. 2189

AN ACT to Provide for the Allocation
of the State Ceiling on Bonds for
Nongovernmental Purposes.

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