

MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
SEPTEMBER 30, 1989

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

J.S. McCarthy Company
Augusta, Maine
1989

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION
of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE
1989

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

Sec. 1. 12 MRSA §682, sub-§2, as amended by PL 1987, c. 885, §1, is further amended to read:

2. Subdivision. "Subdivision" means a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, or by sale of the land by metes and bounds or by leasing. A division accomplished by gift to a person related to the donor by blood, marriage or adoption, unless the intent of that gift is to avoid the objectives of this chapter, does not create a lot or lots for purposes of this definition.

The term "subdivision" shall also include the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this paragraph.

~~The creation of a lot or parcel more than 500 acres in size shall not be counted as a lot for the purpose of this subsection.~~

The creation of a lot or parcel of at least 40 ~~but not more than 500~~ acres in size shall not be counted as a lot for the purpose of this subsection except when the lot or the parcel from which it was divided is located wholly or partly within the shoreland area as defined in Title 38, section 435 and except as provided in paragraph A, or when the lot or parcel from which it was divided has been subdivided into more than 10 lots in 5 years.

A. When ~~3 or more~~ to 10 lots containing at least 40 ~~but not more than 500~~ acres are created within a 5-year period from a parcel which is located wholly outside the shoreland area as defined in Title 38, section 435, a plan showing the division of the original parcel must be filed by the person creating the 3rd lot with the registry of deeds, the commission and the State Tax Assessor within 60 days of the creation of that lot. Any subsequent division of a lot created from the original parcel within 10 years of the filing of the plan in the registry of deeds shall be considered a subdivision. Failure to file the plan required by this paragraph is a violation of this chapter subject to the penalties provided in section 685-C, subsection 8.

B. The commission shall submit a report by March 15th, annually, to the joint standing committee of the Legislature having jurisdiction over energy and natural resources. The report shall indicate the number and location of lots for which a plan was filed under paragraph A and the number and location of subsequent divisions requiring review by the commission.

Sec. 2. 12 MRSA §685-B, sub-§2-B is enacted to read:

2-B. Determination deadline. The commission shall render its determination on any application for subdivision approval within 60 days after the commission receives that application.

Sec. 3. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1990-91

CONSERVATION, DEPARTMENT OF

Maine Land Use Regulation Commission

All Other \$2,000

Provides funds for increased mailings and public hearings.

See title page for effective date.

CHAPTER 585

H.P. 1025 - L.D. 1431

An Act to Promote Reduction, Recycling and Integrated Management of Solid Waste and Sound Environmental Regulation

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

PART A

Sec. 1. 2 MRSA §6, sub-§2, as repealed and replaced by PL 1981, c. 705, Pt. L, §§1 to 3, is amended to read:

2. Range 90. The salaries of the following state officials and employees shall be within salary range 90:

Superintendent of Banking;

Bureau of Consumer Credit Protection Superintendent;

State Tax Assessor; ~~and~~

Superintendent of Insurance; ~~and~~

Executive Director, Maine Waste Management Agency.

Sec. 2. 2 MRSA §6, sub-§4, as amended by PL 1987, c. 715, §2, and c. 787, §1, is repealed and the following enacted in its place:

4. Range 88. The salaries of the following state officials and employees shall be within salary range 88:

- State Purchasing Agent;
- Director, Arts and Humanities Bureau;
- Director, State Museum Bureau;
- Director of the Bureau of Parks and Recreation;
- State Director of Alcoholic Beverages;
- Director of Public Lands;
- State Librarian;
- Director of Employee Relations;
- Director, Bureau of Air Quality Control;
- Director, Bureau of Land Quality Control;
- Director, Bureau of Water Quality Control;
- Director, Bureau of Oil and Hazardous Materials Control;
- Director, Bureau of Solid Waste Management;
- Director, Bureau of Administration;
- Director, Office of Planning;
- Director, Office of Waste Reduction and Recycling;
and
- Director, Office of Siting and Disposal Operations.

Sec. 3. 3 MRSA §507, sub-§8-A, ¶B, as amended by PL 1987, c. 735, §1, is further amended to read:

B. The evaluations and analyses of the justification reports for the programs of the following Group E-2 independent agencies shall be reviewed by the Legislature no later than June 30, 1988:

- (1) Board of Trustees of the University of Maine System;
- (2) Board of Trustees of the Maine Maritime Academy;
- (3) State Government Internship Advisory Committee;
- (6) Electricians' Examining Board;
- (7) Arborist Examining Board;

(8) Maine Occupational Information Coordinating Committee;

(9) Maine Conservation School;

(10) Advisory Committee on Maine Public Broadcasting;

(11) Board of Examiners of Psychologists;

(12) Board of Commissioners of the Profession of Pharmacy;

(13) Alcohol and Drug Abuse Planning Committee; and

(14) State Board of Social Worker Licensure; and

(15) Maine Waste Management Agency.

Sec. 4. 5 MRSA §953-A is enacted to read:

§953-A. Maine Waste Management Agency

1. Major policy-influencing positions. The following are major policy-influencing positions within the Maine Waste Management Agency. Notwithstanding any other law, these positions and their successors are subject to this chapter:

A. Director, Office of Planning;

B. Director, Office of Waste Reduction and Recycling; and

C. Director, Office of Siting and Disposal Operations.

Sec. 5. 5 MRSA §12004-D, sub-§4 is enacted to read:

<u>Board</u>	<u>4. Facility Siting</u>	<u>\$100 per day plus expenses</u>	<u>38 MRSA §2152</u>
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Sec. 6. 5 MRSA §12004-I, sub-§22, as enacted by PL 1987, c. 786, §5, is repealed and the following enacted in its place:

<u>22. Envi- ronment: Natural Resources</u>	<u>Waste Management Advisory Council</u>	<u>Legislative Per Diem</u>	<u>38 MRSA §2104</u>
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Sec. 7. 38 MRSA c. 24 is enacted to read:

CHAPTER 24

MAINE WASTE MANAGEMENT AGENCY

SUBCHAPTER I

MAINE WASTE MANAGEMENT AGENCY
GOALS AND ESTABLISHMENT

§2101. Solid waste management hierarchy

1. Priorities. It is the policy of the State to plan for and implement an integrated approach to solid waste management, which shall be based on the following order of priority:

A. Reduction of waste generated at the source, including both amount and toxicity of the waste;

B. Reuse of waste;

C. Recycling of waste;

D. Composting of biodegradable waste;

E. Waste processing which reduces the volume of waste needing land disposal, including incineration; and

F. Land disposal of waste.

§2102. Establishment of the Maine Waste Management Agency

1. Establishment of agency. The Maine Waste Management Agency, referred to in this chapter as the "agency," is created as an agency in the executive branch of the State. The agency is an instrumentality of the State and a body corporate and politic. The exercise by the agency of the powers conferred on it under this chapter and the implementation of its purpose and duties are essential governmental functions.

2. Organization and function of the agency. The Maine Waste Management Agency shall be comprised of 3 offices: the Office of Planning, the Office of Siting and Disposal Operations and the Office of Waste Reduction and Recycling.

3. Executive director. The Governor shall appoint the Executive Director of the Maine Waste Management Agency, referred to in this chapter as the "executive director," subject to review by the joint standing committee of the Legislature having jurisdiction over natural resource matters and to confirmation by the Legislature. The executive director shall serve at the pleasure of the Governor. The salary of the executive director is established under Title 2, section 6, subsection 2. The executive director is the chief executive officer of the agency.

§2103. Powers and duties of the agency

1. General powers. In order to accomplish the purposes of this chapter and in addition to any other powers conveyed by this chapter, the agency may exercise the following powers:

A. Promulgate in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, all rules necessary to carry out its responsibilities under this chapter, including procedural rules;

B. Acquire, hold and dispose of personal property;

C. Acquire, hold and dispose in the name of the agency by purchase, lease or otherwise, real property and interests in real property determined necessary or desirable for its purposes and use of the property;

D. Establish and collect fees, assessments and other charges and expend money received as provided in this chapter;

E. Employ such assistants, agents, economists, engineering, architectural and construction experts and inspectors, and such other employees as it deems necessary or desirable to carry out its purposes;

F. Obtain any information and conduct investigations useful or convenient for carrying out any of its purposes, powers or duties;

G. Enter, with the permission of the owner and during normal working hours, upon any lands, waters and premises in the State for the purpose of making surveys, soundings, drillings and examinations as it deems necessary for the purpose of this chapter;

H. Enter any property at reasonable hours, and enter any building with the consent of the property owner, occupant, or agent, to inspect the property or structure, to take samples and to conduct tests, as appropriate, to determine compliance with any provision of the laws administered by the agency or the terms or conditions of any order, regulation, license, permit, approval or decision of the agency;

I. Exercise any of its powers in the public domain of the United States, unless the exercise of those powers is not permitted by the laws of the United States;

J. Take all other lawful actions necessary and incidental to these powers in carrying out the requirements of this chapter;

K. Direct solid wastes from one public or private waste facility to another facility when an emergency is determined to exist by rule or by the Governor. The agency shall negotiate to provide to the receiving facility fair compensation for the disposal or processing of waste at that facility during the period of emergency. The agency shall consult with the department in the exercise of this power;

L. Control solid waste collection, transportation or delivery to a specific facility owned by the agency when the purpose and effect of this action is to gain management control over solid waste;

M. Make agreements pertaining to the purchase, sale and use of products, including recyclable materials, and the generation, transmission and sale of energy in connection with the purposes of the agency;

N. Enter into contracts, including, but not limited to, the power to:

(1) Contract with architects, engineers, financial and legal consultants and other experts for services;

(2) Contract with persons, firms, corporations, limited partnerships, partnerships, associations, authorities and agencies for the operation of waste facilities and for services relating to the recycling and disposal of solid waste;

(3) Contract for the handling of solid waste on the basis of guaranteed amounts, whether delivered for disposal and accepted for disposal or not, with payments based on the guaranteed amounts, whether actually disposed of or not. The payments may be variable and may be determined by formulas expressed in those contracts;

(4) Contract with another state agency, the United States or any subdivision or agency thereof for services; and

(5) Contract with any municipality for the services of that municipality or its facilities; and

O. Use a negotiated or competitive bid process or any other process which may be advantageous to the agency.

2. Duties. The agency shall undertake the following duties:

A. Develop and adopt the state waste management and recycling plan pursuant to the provisions of this chapter;

B. Assist in regional and municipal waste recycling and waste reduction programs and provide technical assistance to regional associations, municipalities, state agencies and private entities to assist their implementation of this chapter;

C. Promote and emphasize recycling and waste reduction in the State;

D. Develop generic siting criteria and select sites for use by the agency;

E. Review applications for new or expanded solid waste disposal facilities for consistency with state siting criteria and recommendations and the state plan;

F. Enter into contracts for services to plan, design, construct and operate waste facilities;

G. Initiate, conduct and support research, demonstration projects and investigations and coordinate all state agency research programs pertaining to waste management and recycling;

H. Institute, in a court of competent jurisdiction, proceedings against any person to compel compliance with the provisions of this chapter, any regulation promulgated pursuant thereto, or any order of the agency;

I. Cooperate with appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out its duties under this chapter;

J. Work with other state agencies, regional associations, municipalities, regional planning agencies and other community, private sector and environmental organizations to manage the State's solid waste; and

K. Solicit public comment from all regions of the State.

§2104. Waste Management Advisory Council

There is established the Waste Management Advisory Council, referred to as the "council" in this section, to assist the agency in developing the state plan and in facility siting and evaluation activities.

1. Membership; terms. The Governor shall appoint 12 members as follows:

A. Three members from the general public;

B. Two members from each of the following:

(1) Municipal governments;

(2) Statewide and local environmental organizations;

(3) The recycling industry; and

(4) The waste disposal industry; and

C. One member representing industrial waste generators.

The Commissioner of Environmental Protection shall serve as an ex officio member. All members, except the commissioner, shall be appointed for staggered terms of 3 years. A vacancy shall be filled by the Governor for the unexpired portion of the term. The council shall annually elect a chair from its membership.

2. Compensation. Members shall be compensated according to Title 5, section 12004-I, subsection 22.

3. Quorum; actions. A quorum shall be a majority of the members of the council. An affirmative vote of the majority of the members present at a meeting shall be re-

quired for any action. No action may be considered unless a quorum is present.

4. Meetings. The council shall meet at least 4 times per year and at any time upon the call of the chair or upon written request to the chair by 4 of the members.

5. Annual report. The council shall report annually to the Governor and to the Legislature on the status of the State's planning and facility siting effort.

6. Staff support. The agency shall provide the council with all necessary staff support.

§2105. Payment in lieu of taxes

The agency shall annually pay a municipality an amount in lieu of taxes equal to the amount of property taxes on a solid waste disposal facility not paid to that municipality during the previous calendar year due to the statutory property tax exemption provided in this section. In the case of an unorganized territory, the agency shall annually pay the amount to the State Tax Assessor who shall deposit that amount in the Unorganized Territory Education and Services Fund established in Title 36, chapter 115. If the agency disagrees with the amount determined to be due in lieu of taxes under this subsection, it may appeal to the State Board of Property Tax Review as provided in Title 36, section 271.

§2106. Annual audit

Each year an audit shall be made of the accounts of the agency. For this purpose, authorized agents of a certified public accounting firm appointed by the agency shall have access to all necessary papers, books and records. Upon the completion of each audit, a copy shall be sent to the Governor and the Legislature.

§2107. Staff employees; conflict of interest

1. Agency staff. The executive director may hire, on a temporary or permanent basis, such staff as necessary, including financial experts.

2. Civil Service Law. Professional employees of the agency shall be unclassified and may be removed only for cause. Employees are members of bargaining units subject to Title 26, chapter 9-B.

3. Conflict of interest. Notwithstanding Title 5, section 18, subsection 1, each member of the agency and each employee, contractor, agent or other representative of the agency is deemed an "executive employee" solely for purposes of Title 5, section 18. In addition, Title 17, section 3104, shall be applicable, in accordance with its provisions, to all such representatives of the agency.

§2108. Indemnification

The agency shall defend and indemnify any employee of the agency, including the executive director, and any member of the Facility Siting Board established in section 2152 against expenses actually and necessarily incurred by

the person in connection with the defense of any action or proceeding in which the person is made a party by reason of past or present association with the agency.

§2109. Sunset

For purposes of the Maine Sunset Act, Title 3, chapter 23, the agency has its first justification report in accordance with Title 3, section 504, due no later than October 31, 1998, and the evaluation and analysis in accordance with Title 3, section 505, by the joint standing committee of the Legislature having jurisdiction over audit and program review due no later than December 31, 1999, but notwithstanding Title 3, sections 506 and 507, the agency shall not terminate.

§2110. Confidential information

Except as provided in section 1310-B, subsections 2 and 3, information obtained by the agency under this chapter shall be a public record as provided by Title 1, chapter 13, subchapter I.

SUBCHAPTER II

OFFICE OF PLANNING

§2121. Office of Planning

The Office of Planning, referred to as the "office" in this subchapter, is established to carry out the purposes of this subchapter. The Director of the Office of Planning shall administer the office in accordance with the policies of the agency and consistent with the state waste management and recycling plan.

§2122. Recycling and management plan; schedule coordination

The office shall prepare and adopt, by rule, an analysis of, and plan for, the management, reduction and recycling of solid waste for the State by March 1, 1990. The plan shall be based on the priorities and recycling goals established in sections 2101 and 2132. The plan shall provide guidance and direction to the agency and municipalities in planning and implementing waste management and recycling programs at the state, regional and local level. To the extent that commercial entities continue to have a role in developing waste management and recycling facilities in the State, the plan shall provide guidance to those entities.

1. Consultation. In developing the plan, the office shall consult with the Bureau of Solid Waste Management in the Department of Environmental Protection, the Office of Siting and Disposal Operations and the Office of Waste Reduction and Recycling, and shall submit its draft plan to these offices for review and written comment before the agency publishes the plan as a proposed rule. The office shall solicit public input and shall hold hearings in different regions of the State. The office shall also seek comment and advice on its draft plan from the Waste Management Advisory Council established under section 2104.

2. Revisions. The office shall revise the analysis at least every 2 years to incorporate changes in the waste generation trends, changes in waste recycling and disposal technologies, the development of new waste generating activities and other factors affecting solid waste management as the office finds appropriate. If the agency finds that rapidly changing conditions necessitate more timely revisions of the analysis, it may make those revisions pursuant to the rule-making provisions of Title 5, chapter 375, subchapter II, including emergency rulemaking, if necessary.

§2123. Plan contents

The state plan includes the following elements.

1. Data collection. The office shall develop and maintain a comprehensive data base on solid waste generated or disposed of in the State. Data collected shall include, but not be limited to:

A. The amount of waste currently generated, handled or transported within the State;

B. The source of the waste;

C. The type of waste;

D. The costs and types of management technologies currently employed, including, without limitation, recycling, composting, landspreading, incineration or landfilling;

E. The costs of collecting and transporting solid waste to waste facilities; and

F. Assessment of the level of competition in the solid waste disposal and recycling industry.

2. Determination of existing and potential disposal capacity. The office shall identify existing solid waste disposal and management capacity within the State, and the potential for expansion of that capacity. The analysis shall include, but not be limited to:

A. The capacity of existing licensed solid waste management and disposal facilities receiving waste generated within the State. This assessment shall identify the regional availability of capacity, including consideration of transportation costs;

B. The capacity of existing licensed solid waste management and disposal facilities that is being utilized to dispose of waste generated outside the State;

C. The rate at which existing capacity is being used and is expected to be used;

D. A survey of the solid waste generators and the recycling and disposal facilities they utilize;

E. Identification of projected facility closures with a projected timetable for the closures and an estimate of the amount of capacity these facilities represent;

F. The extent to which the State relies on solid waste disposal capacity outside its jurisdiction; and

G. Additional disposal capacity anticipated to become available within the next 2 to 5 years.

3. Waste reduction and recycling assessment. The plan shall include investigation and assessment of the extent to which waste generation could be reduced at the source, and the potential for recycling to replace or reduce the need for traditional disposal capacity. The assessment shall include the following elements:

A. The current level of public and business recycling efforts, including the quantities and categories of waste currently recycled;

B. The current market structure of the recycling industry in the State and in those areas receiving recycled materials from the State. This element shall include identification of the existing private and public recycling operations and recycling capacity;

C. The current and projected capacity of existing markets to absorb materials generated by recycling programs in the State;

D. Market conditions that inhibit or affect demand for materials generated by recycling programs;

E. Identification of solid wastes by type which are capable of being reused or recycled in an environmentally sound manner and the types and costs of the technologies which may be utilized;

F. The potential for recycling in various regions of the State, including estimates of the types and quantities of waste available for recycling and an analysis of the economic and institutional obstacles to increased recycling;

G. The potential for reducing waste quantities and toxicity by reduction at the source, and the amount and type of traditional disposal capacity that could be made available by implementing waste reduction measures;

H. A description of various mechanisms that could be utilized to stimulate and enhance waste reduction, including their advantages and disadvantages. The mechanisms to be analyzed shall include, without limitation, incentives for prolonging product life, methods of ensuring product recyclability, taxes for excessive packaging, tax incentives, prohibitions on the use of certain products, and performance standards for products; and

I. The impact of consumer packaging on waste generation, and the potential for waste reduction measures to reduce this impact.

4. Projected demand for capacity. The office shall identify the need in the State for current and future solid

waste disposal capacity by type of solid waste. The analysis shall include, but not be limited to:

A. Estimation of waste generation by region and waste type over the next 5-year, 10-year and 20-year periods based on the best available forecasts of population growth, economic activity within the State, tourism, estimates provided by solid waste generators and other available information;

B. Estimation of the reduction in the waste stream needing disposal capacity as a result of public and private recycling efforts identified in subsection 3;

C. Comparison of the projected waste generation levels with existing and potential capacity as identified in subsection 2; and

D. Identification of regional differences in available disposal capacity and recycling facilities. The office shall identify regions which are underserved with regard to recycling, management or disposal capacity or which have capacity in excess of regional needs. In determining regional needs, the office may consider economic criteria, including disposal and transportation costs, population densities, regional differences in current industrial mix and potential for economic growth, the level of competition in the solid waste disposal industry and any other factors the office considers relevant.

5. State management strategies. Based on the provisions of section 2101 and the information and analysis developed in subsections 1 to 4, the office shall examine various waste management options for dealing with the projected waste stream, available or anticipated disposal capacity and waste reduction and recycling activities. The agency shall establish:

A. Strategies that promote, throughout the State, the maximum reduction of waste, the maximum feasible recycling of waste and the environmentally sound and cost-effective management and disposal of those wastes that remain. Management and disposal alternatives shall be preferred which do not foreclose the future ability of the State to reduce, reuse and recycle waste; and

B. Strategies to promote waste reduction and utilization research and initiatives, innovative pilot recycling or utilization programs, development of recycling-related businesses and public understanding and participation in recycling.

6. Facility needs. The plan shall identify the number, size and type of solid waste facilities required to meet the capacity needs for which the agency has assumed responsibility as described in the plan. The agency shall include a time schedule and program for planning, design, siting, construction, operation, and closure of each proposed facility.

7. Transition. Insofar as the state capacity needs analysis and state recycling plan developed under former sections 1310-K and 1310-O are consistent with the waste reduction and recycling goals and waste management hierarchy adopted herein, the office shall incorporate the data, analysis and recommendations of these documents into the management plan.

§2124. Reports

The agency shall submit the adopted plan and subsequent revisions to the Governor, the department and the joint standing committee of the Legislature having jurisdiction over natural resource matters.

SUBCHAPTER III

OFFICE OF WASTE REDUCTION AND RECYCLING

§2131. Office of Waste Reduction and Recycling; established

The Office of Waste Reduction and Recycling, referred to in this subchapter as the "office," is established to carry out the purposes of this subchapter. The director of the office shall administer the office in accordance with the policies of the agency and consistent with the state waste management and recycling plan.

§2132. State goals

1. State recycling goal; interim goal. It is the policy of the State to recycle, by January 1, 1994, 50% of the municipal solid waste generated each year. The Legislature establishes an interim goal of recycling, by January 1, 1992, 25% of the municipal solid waste generated each year.

2. Goal revision. The office shall recommend revisions, if appropriate, to the state recycling goal and shall establish a waste reduction goal. The office shall submit its recommendations and any implementing legislation to the joint standing committee of the Legislature having jurisdiction over natural resource matters by January 1, 1993.

§2133. Municipal recycling

1. Technical and financial assistance program. The office shall develop a program of technical and financial support to assist municipalities in achieving the recycling goal of section 2132. The office shall develop a priority system for use in allocating available financial and technical resources available under this section to municipalities and regions. The priority system shall address the following:

A. The type and number of materials to be recycled and composted, and the resulting reduction of the municipal waste stream;

B. Measures, including ordinances and incentives, to insure source separation and local participation in the recycling program;

C. The existence of an established recycling program;

D. The planning for logistical, administrative and financial management;

E. Marketing agreements or the identification of markets for materials to be recycled;

F. Utilization of any regional economies of scale;

G. Coordination of the recycling program with overall waste management; and

H. Consistency with the state plan, when adopted.

2. Recycling feasibility studies. The office shall provide professional technical assistance to municipalities or regional associations in the planning and design of recycling programs. The office may contract with regional councils, individual municipalities and regional associations to provide services under this subsection. Assistance shall include:

A. The assessment of economically feasible recycling potential including the supply of materials that can be recycled, probable markets for these materials and the avoided costs of solid waste disposal;

B. The planning for the logistical, administrative and financial management requirements of a recycling program;

C. The design of any flow-control or other ordinances necessary for the implementation of a recycling program;

D. The coordination of the proposed recycling program with overall solid waste management; and

E. The assessment of the advantages of participation in a regional recycling effort versus a local recycling program.

3. Recycling capital investment grants. The office may make grants to eligible municipalities and regional associations for the construction of public recycling facilities and the purchase of recycling equipment. The office may establish requirements for local cost sharing of up to 25% of the total grant amount. The office shall give preference to recycling programs that require the participation of the waste generators served.

4. Recycling incentives. The office shall develop and implement a program of incentives to encourage public recycling programs to reach maximum feasible levels of recycling and to meet the recycling goal of section 2132.

A. The office shall adopt, by rule, municipal waste stream assessment models to assist municipalities in estimating the volume or weight of municipal solid waste being generated and disposed, and the levels of reduction resulting from public recycling programs, including programs that deny access to waste dis-

posal facilities for any category of recyclable materials. The models shall make use of best available information, including without limitation, data from state reports, municipalities, and public and private operators of waste handling services, and shall consider geographical and population differences, including seasonal population variations, in waste composition and amount. The models may be modified on a case-by-case basis when actual waste data is documented by a municipality. The models shall provide the basis for determining levels of reduction achieved.

B. The incentive program shall include bonus grants to municipalities which by January 1, 1992 meet or exceed the interim recycling goal of section 2132 to the extent that such funding is not required pursuant to subsections 2 and 3. After January 1, 1995, incentive grants shall be awarded only if funds are available after the requirements of subsections 2 and 3 are met.

5. Access to state waste disposal services; additional fees. Municipal access to agency-owned facilities shall be limited under this subsection.

A. Any municipality that fails to provide recycling opportunities to residents is prohibited from delivering municipal solid waste, including residual waste, to a state-owned solid waste disposal facility.

B. Any municipality that fails to make reasonable progress, as determined by the office, toward achieving the recycling goal of section 2132 shall pay an additional fee per ton on any municipal solid waste delivered to a state-owned solid waste disposal facility. "Reasonable progress" includes, without limitation, the achievement of the interim recycling goal of section 2132.

§2134. Market development and assistance

The office shall design and implement a market development strategy, consistent with the recycling component of the state plan, which shall include, without limitation, the following elements:

1. Collection. Methods of collecting and marketing recyclable materials that achieve necessary economies of scale and product quality specifications. The strategy shall include a model plan for source separation of materials to be recycled at the household, municipal, regional or state level, as appropriate;

2. Incentive program. An incentive program to encourage end users of materials to be recycled to locate or expand their operations within the State. The office shall consult with the Finance Authority of Maine and the Department of Economic and Community Development in developing this element;

3. Information clearinghouse. An information clearinghouse on recycling markets to improve the market-

ing of materials to be recycled. The office shall maintain a current list of recycling programs, together with a description of the recyclable materials available through the programs. The office shall also maintain listings of brokers, handlers, processors, transporters and other persons providing services and potential markets for recyclable materials. The office shall actively promote the services of the clearinghouse and shall seek to match programs with appropriate recycling businesses. The office shall make its information on recycling services available to private solid waste generators seeking markets or services for recyclable materials. The office shall make its technical reports and planning documents available to municipalities and regional associations on a timely basis;

4. Brokering service. Direct marketing and brokering services for materials included in the state marketing plan when municipal and regional association efforts to market the material and the information clearinghouse are inadequate;

5. Marketing development plan. Based on the state plan, a market development and marketing plan by January 1, 1990, which includes:

A. Potential opportunities to increase demand for and use of materials generated by recycling programs;

B. Market opportunities in Canada and other export markets;

C. Recommendations for specific actions to increase and stabilize the demand for materials generated by recycling programs, including, but not limited to, proposed legislation, if necessary; and

D. Specific recommendations on markets for recycled materials from the various areas of the State; and

6. Reuse of waste. Assisting industries in promoting the reuse of industrial wastes that are suitable raw materials for other processes. The office shall coordinate those efforts with waste exchanges in the northeastern United States.

§2135. Special services

The office shall develop a program to provide municipalities, regional associations and regional councils grants to identify, design and develop tire and white goods recycling and disposal facilities, including pickup of these items, and stump and demolition debris disposal facilities.

§2136. Scrap metal transportation cost subsidy

The office may enter into annual agreements with a municipality or regional association to reimburse a portion of the direct costs of transporting material to a recycling facility for intermediate processing or final use. The office shall base grants on the value of the scrap metal, the distance to acceptable scrap metal recycling facilities and the availability of funding. The office shall adopt rules, in consultation

with the Waste Management Advisory Council, necessary for the implementation of this section.

§2137. State Government recycling and waste reduction

The office, in cooperation with the Department of Administration, shall assess the status of recycling efforts undertaken directly by the State for its own solid waste and shall evaluate existing programs and develop necessary new programs for recycling to reduce the generation of solid waste by the State. The programs shall include, without limitation, recycling of office papers, cardboard, used motor oil, yard waste and other materials produced by the State for which recycling markets exist or may be developed.

1. Waste reduction and recycling plan. Each state agency shall prepare a waste reduction and recycling plan addressing the requirements of subsections 3 and 4. The plan shall be submitted to the Office of Waste Reduction and Recycling on or before July 1, 1990, for approval as consistent with the goals and guidelines of this section and with the state waste management and recycling plan. The plan shall be updated on a biennial basis to increase the amount of material recycled by taking advantage of any changed circumstances. Each department shall complete an analysis of additional materials to determine recycling potential, and shall incorporate these materials into plan updates. Updated plans shall be submitted to the office for approval prior to adoption.

2. Capitol complex recycling program. The State House and the State Office Building shall constitute the Capitol complex recycling demonstration area. The House of Representatives, the Senate, the office of the Governor, and each department that occupies space in the State House or the State Office Building shall, by July 1, 1990, institute a recycling program for its respective offices in these buildings. The program shall include, at a minimum, office paper, corrugated cardboard and containers subject to the returnable container law, Title 32, chapter 28, which are sold in the Capitol complex. The program shall include procedures for collecting and storing recyclable materials, bins or containers for storing materials, and contractual and other arrangements with buyers.

3. Recycling. By January 1, 1991, each state agency outside the Capitol complex shall establish and implement a source separation and collection program for recyclable materials produced as a result of agency operations, including, at a minimum, high grade paper and corrugated paper. The source separation and collection program shall include, at a minimum, procedures for collecting and storing recyclable materials, bins or containers for storing materials, and contractual and other arrangements with buyers. Each agency shall appoint a recycling coordinator for every 50 employees at a minimum and shall conduct educational programs for its employees on the recycling program.

4. Waste reduction. By January 1, 1991, each state agency shall establish and implement a waste reduction program for materials used in the course of agency operations. The program shall be designed and implemented to

achieve the maximum feasible reduction of waste generated as a result of agency operations.

5. University of Maine System. The following provisions shall apply to the University of Maine System.

A. Each campus of the University of Maine System shall prepare a waste reduction, recycling and composting plan addressing the requirements of paragraphs B to D. The plan shall be submitted to the Office of Waste Reduction and Recycling on or before July 1, 1990, for approval as consistent with the goals and guidelines of this chapter and with the state waste management and recycling plan. Each campus shall complete an analysis of additional materials to determine recycling potential, and shall incorporate these materials into annual plan updates.

Updated plans shall be submitted to the office for approval prior to adoption.

B. By January 1, 1991, each campus of the University of Maine System shall establish and implement a source separation and collection program for recyclable materials, including at a minimum, high grade paper, corrugated paper and glass. The source separation and collection program shall include procedures for collecting and storing recyclable materials, bins or containers for storing materials and contractual and other arrangements with buyers. Each campus shall appoint a recycling coordinator and shall conduct educational programs for students and employees on the recycling program.

C. By January 1, 1991, each campus of the University of Maine System shall establish and implement a waste reduction program for materials used in the course of its operations. The program shall be designed and implemented to achieve the maximum feasible reduction of waste.

D. By January 1, 1991, each campus of the University of Maine System shall establish a leaf composting program.

§2138. Business recycling and waste reduction program

1. Office paper recycling mandated. Any person employing 15 or more people at a site within the State shall implement an office paper and corrugated cardboard recycling program according to the following schedule:

A. By July 1, 1991, when employing 200 or more persons at a site;

B. By July 1, 1992, when employing 50 or more persons at a site; and

C. By July 1, 1993, when employing 15 or more persons at a site.

The office shall provide technical and market development assistance and direction to entities within the State to assist

in meeting this schedule. Municipalities and regional associations may assist employers in attaining the objectives of this section.

2. Office paper. For the purposes of this section, "office paper" includes, but is not limited to, ledger, computer and bond paper.

3. Certification of tax credit. The office, in cooperation with the State Tax Assessor, shall assist in the administration of tax credits for the purchase of machinery and equipment used by businesses in new or expanded waste reduction, reuse or recycling programs pursuant to Title 36, section 5219-C by certifying that the machinery and equipment are eligible for the credit.

4. Technical and financial assistance programs. The office shall administer other financial assistance programs for projects that reduce the waste stream or increase recycling that the agency determines appropriate, including technology transfer to businesses and assisting the Finance Authority of Maine in determining eligible projects for low-interest loans.

5. Industrial waste reduction. The office shall consult with the Maine Sludge and Residuals Utilization Research Foundation and the private sector to identify and examine solutions to the problems of reducing the volume and toxicity of industrial waste.

§2139. Public education

The office shall design a program of public education in support of the state recycling goals to promote waste reduction, source separation and recycling efforts at the individual, local, regional and state levels.

1. Media campaign. The office shall develop and disseminate educational material designed to establish broad public understanding and compliance with the State's recycling and waste reduction goals.

2. Kindergarten to grade 12 curriculum. In cooperation with the Department of Educational and Cultural Services, the office shall develop a curriculum suitable for use in programs from kindergarten through high school.

§2140. Interstate and national initiatives

The office shall participate in interstate and national initiatives to adopt uniform state laws when practicable, and to enter compacts between the State and other states for the improved management, recycling and reduction of solid waste.

SUBCHAPTER IV

**OFFICE OF SITING
AND DISPOSAL OPERATIONS**

§2151. Office of Siting and Disposal Operations

The Office of Siting and Disposal Operations, referred to as the "office" in this subchapter, is established to carry out the purposes of this subchapter. The director of the office shall administer the office in accordance with the policies of the agency and consistent with the state waste management and recycling plan.

§2152. Facility Siting Board

1. Board established. The Facility Siting Board, as established in Title 5, section 12004-D, subsection 4, is created to conduct a site screening and selection process for disposal facilities owned, operated or controlled by the agency. The board shall undertake this process in a manner consistent with the state waste management and recycling plan and provisions of section 2154 and shall make all final decisions on the choice of specific sites for solid waste disposal facilities under the jurisdiction of the agency. The office shall provide staff support to the Facility Siting Board.

2. Membership. The board consists of 5 members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over natural resources and to confirmation by the Legislature.

A. One of the members shall initially be appointed to a term of 3 years, 2 members to terms of 4 years and 2 members to terms of 5 years. The successor of each appointed member shall be appointed for a term of 5 years, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of that term. Each board member shall serve until the appointment and qualification of a successor.

B. No appointed board member may be an officer or employee of the United States Government or this State. All members of the board shall be residents of the State. Appointed members may be removed from the board by the Governor for cause.

C. The Commissioner of Environmental Protection and the Director of the Maine Geological Survey shall serve as technical advisors to the board.

3. Qualifications. The Governor shall select the membership of the board to include members of the general public and persons with expertise in engineering, hydrogeology, public health and government. The Governor shall also select the membership of the board to include broad geographic representation from all areas of the State.

4. Selection of officers; quorum. Annually, the board shall elect one of its appointed members as the chair of the board. Three members of the board shall constitute a quorum and the affirmative vote by 3 members shall be necessary for any action taken by vote of the board.

5. Compensation. The appointed board members shall be compensated as provided in Title 5, section 12004-D.

6. Meeting schedule. The board shall meet at least 4 times annually and at any time upon the call of its chair or upon the request in writing to the chair of 3 board members.

§2153. Siting criteria

1. Siting criteria. By May 1, 1990, the Facility Siting Board shall adopt by rule siting criteria for solid waste disposal facilities based on the following factors.

A. To the extent possible, a site shall be located in proximity to the entities that generate the wastes placed at the site.

B. To the extent possible, a site shall be located in proximity to the transportation systems that are used to convey waste to the site or to convey residuals and materials to be recycled from the site.

C. The capacity or size of a site must be consistent with the projected demand as determined in the state plan.

D. A site and its considered use must be consistent with, and actively support, other waste management objectives, including waste reduction and recycling.

E. The projected price for site development, construction and operation must be fair and reasonable.

F. A site must meet preliminary environmental standards developed jointly by the department and the Maine Land Use Regulation Commission, including ground water and geological standards.

G. Existing uses on adjacent properties shall not be in significant conflict with or significantly jeopardized by the use of a site.

§2154. Site selection

1. Initial site screening. The Facility Siting Board shall complete a site screening and selection process on or before July 1, 1991, to identify solid waste disposal capacity sufficient to meet the projected needs through the year 1995 identified in the analysis conducted under former section 1310-O and the needs that have been identified in the state planning process under subchapter II. The Facility Siting Board shall consider the need for geographic distribution of facilities to adequately serve all regions of the State. The Facility Siting Board also shall consider in its site selection process the need for landfill capacity to dispose of incinerator ash resulting from the combustion of domestic and commercial solid waste generated within its jurisdiction. Prior to recommending a site, the Facility Siting Board shall hold a public hearing in every municipality or plantation identified in the screening process as a potential site. For potential sites within an unincorporated township, the Faci-

ity Siting Board shall hold a public hearing within the vicinity of the proposed site.

2. Siting; general. Subsequent to the siting process under subsection 1, the Facility Siting Board shall identify additional sites as requested by the office and as capacity needs are identified in the state plan. The Facility Siting Board shall employ the same criteria and considerations employed under subsection 1. The Facility Siting Board shall hold a public hearing in each municipality within which the agency may recommend the location of any solid waste disposal or refuse-derived fuel processing facility.

§2155. Notification

The office shall notify the municipal officers of any municipality within which a waste disposal facility site is recommended under this subchapter of that recommendation. The office shall notify the municipal officers by certified mail within 30 days of making the recommendation. If the proposed site is located within the jurisdiction of the Maine Land Use Regulation Commission, the office shall notify the Maine Land Use Regulation Commission and the county commissioners in lieu of the municipal officers.

§2156. Facility development

1. Initial state facility required. On or before July 1, 1994, the office shall develop facilities sufficient to meet the projected needs identified in the analysis conducted under former section 1310-O and the state plan and to serve all geographic areas of the State.

2. Subsequent facility development. Subsequent to any facility development under subsection 1, the office shall initiate the development of solid waste disposal facilities as it determines is necessary to meet the capacity needs identified in the state plan. The office shall provide for solid waste disposal facilities by contracting with private vendors for facility design, construction or operation or, if necessary, undertaking facility development itself.

3. Agency ownership. The agency shall maintain ownership of any solid waste disposal facility it develops and shall maintain full control over the use of the facility or facilities.

§2157. Review of proposed waste facilities

Subsequent to the adoption of the state plan, the Board of Environmental Protection shall not approve an application of a new or expanded solid waste disposal facility requiring review under this section until the agency has approved the proposed facility under this section.

1. Requirement. After the adoption of the state plan, no permit for a new or expanded solid waste disposal facility may be issued unless the applicant demonstrates to the agency that the proposed facility:

A. Will meet capacity needs identified in the state plan in addition to capacity that is under development by the office under section 2156 or by any other

party approved by the office at the time of the application;

B. Will be consistent with the state plan; and

C. Meets the following requirements:

(1) The proposed facility is consistent with local, regional or state waste collection, storage, transportation, processing or disposal; and

(2) After the adoption of the siting criteria, the proposed facility meets the criteria in section 2153.

Proceedings under this subsection are subject to the provisions of Title 5, chapter 375, subchapter IV.

§2158. Future commercial solid waste disposal facilities

After the adoption of the state plan, the agency shall not approve an application for a new commercial solid waste disposal facility. The agency may approve expansions of a commercial solid waste disposal facility after adoption of the state plan, if:

1. Previously licensed facility. The facility had been previously licensed by the Board of Environmental Protection prior to the adoption of the state plan; and

2. Determination of compliance. The agency determines that the provisions of section 2157 are met.

§2159. Real and personal property; right of eminent domain

The agency may acquire and hold real and personal property which it deems necessary for its purposes, is granted the right of eminent domain and, for those purposes, may take and hold, either by exercising its right of eminent domain or by purchase, lease or otherwise, for public use, any land, real estate, easements or interest therein, necessary for constructing, establishing, maintaining, operating and the closure of solid waste disposal facilities.

§2160. Procedure in exercise of right of eminent domain

The right of eminent domain granted in section 2159 may only be exercised after complying with the following procedures.

1. Notice to owner. The agency shall provide to the owner or owners of record notice of the following:

A. The determination of the agency that it proposes to exercise the right of eminent domain;

B. A description and scale map of the land or easement to be taken;

C. The final amount offered for the land or easement to be taken, based on the fair value as estimated by the agency; and

D. Notice of the time and place of the hearing provided in subsection 4.

Notice may be made by personal service in hand by an officer duly qualified to serve civil process in this State or by certified mail, return receipt requested, to the last known address of the owner or owners. If the owner or owners are not known or cannot be notified by personal service or certified mail, notice may be given by publication in the manner provided in subsection 4.

2. Notice to tenant. Notice shall be given to any tenant in the same manner notice is given to the owner of the property.

3. Notice to the affected municipality. Notice shall be given to the municipality in which the property to be acquired is located in the same manner notice is given to the owner of the property and shall be addressed to the municipal officers.

4. Hearing. The agency shall hold a public hearing on the advisability of its proposed exercise of the right of eminent domain. Notice of the hearing shall be made by publication in a newspaper of general circulation in the area of the taking and shall be given once a week for 2 successive weeks, the last publication to be at least 2 weeks before the time appointed in the hearing. The hearing notice shall include:

A. The time and place of the hearing;

B. A description of the land or easement to be taken; and

C. The name of the owners, if known.

§2161. Condemnation proceedings

At the time it sends the notice in section 2160, the agency shall file in the office of the county commissioners of the county in which the property to be taken is located and cause to be recorded in the registry of deeds in the county plans of the location of all lands, real estate, easements or interest therein, with an appropriate description and the names of the owners thereof, if known. When for any reason the agency fails to acquire property which it is authorized to take and which is described in that location, or if the location so recorded is defective and uncertain, it may, at any time, correct and perfect the location and file a new description. In that case, the agency is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the agency is not liable for any acts which would have been justified if the original taking had been lawful. No entry may be made on any private lands, except to make surveys, until the expiration of 10 days from the filing, whereupon, possession may be had of all the lands, real estate, easements or inter-

ests therein and other property and rights as aforesaid to be taken, but title shall not vest in the agency until payment for the property is made.

§2162. Office assistance in regional association siting

Upon request by a regional association, the office may provide technical assistance to a regional association in the establishment of approved waste facilities, including assistance in planning, location, acquisition, development and operation of the site. The regional association shall describe fully the need and justification for the request. The office may request information from the regional association necessary to provide assistance.

§2163. Exempt facilities

The following types of solid waste disposal facilities are exempt from the provisions of this subchapter:

1. Inert fill. Solid waste disposal facilities less than 6 acres in size that accept only inert fill, construction and demolition debris, debris from land clearing and wood wastes; and

2. Generator-owned facilities. Solid waste disposal facilities used exclusively for the disposal of waste generated by the owner of the facility except that the facility may accept, on a nonprofit basis, no more than 15% of all solid waste accepted on an annual average which is not generated by the owner. Notwithstanding this section, a solid waste disposal facility receiving ash resulting from the combustion of municipal solid waste or fuel derived from municipal solid waste is not exempt unless a completed application for the facility has been accepted by the department prior to July 1, 1989.

§2164. Household and small generator hazardous waste

The office shall develop and implement by July 1, 1991, a statewide system for the collection and disposal of hazardous waste generated by households, public and private nonprofit institutions and small quantity generators.

SUBCHAPTER V

HOST COMMUNITY BENEFITS

§2171. Citizen advisory committee

The municipal officers of each municipality identified by the Facility Siting Board as a proposed site for a waste disposal facility or a facility which produces refuse-derived fuel under this chapter and each contiguous municipality which may be affected by the construction or operation of that facility shall jointly establish a single citizen advisory committee within 60 days of notification pursuant to section 2155.

1. Membership. The committee shall be comprised of citizens from each affected municipality, including, but not limited to: a municipal health officer; a municipal officer; and at least 3 additional residents of the municipality,

including abutting property owners and residents potentially affected by pollution from the proposed facility. In addition, each committee may include members representing any of the following interests: environmental and community groups; labor groups; professionals with expertise relating to landfills or incinerators; experts in the areas of chemistry, epidemiology, hydrogeology and biology; and legal experts.

2. Meetings. The committee shall meet as soon as practical following appointment of its members and shall select a chair from among its members. The committee shall establish procedures for the conduct of meetings.

3. Responsibilities. Each committee established under this section shall have the authority to:

A. Review proposed contracts, site analyses, applications and other documents relating to the location, construction, permitting and operation of the proposed facility;

B. Hold periodic public meetings to solicit the opinions of residents concerning the proposed facility and any permit applications, contracts or other provisions relating to the facility and the regional plan;

C. Provide the agency and department with any alternative contract provisions, permit conditions, plans or procedures it deems appropriate; and

D. Serve as a liaison between the community and the agency, project developer or the department to facilitate communications during the development and operation of the facility, and provide residents with updated information about the project, including providing explanations of any technical terms.

4. Unincorporated townships and plantations. For the purposes of this subchapter, county commissioners shall act as municipal officers for unincorporated townships and assessors of plantations shall act as municipal officers for plantations.

§2172. Dispute resolution

A host municipality may establish a process, including, but not limited to, negotiation, mediation and arbitration to resolve disputes and to negotiate additional rights and benefits relating to the siting and operation of a waste disposal or refuse-derived fuel processing facility within the municipality. The citizen advisory committee shall be consulted and shall assist in the development and implementation of any process established under this section. At the option of the municipality, the Chair of the Board of Environmental Protection may appoint a neutral mediator to resolve disputes. The municipality shall be eligible for grants from the agency to fund dispute resolution programs under this section.

§2173. Municipal jurisdiction over agency and regional association disposal facilities

A municipality may adopt a local ordinance authorizing the municipal officers to issue a local permit containing the same findings, conclusions and conditions contained in the license issued by the department for a solid waste disposal facility owned by the agency or a regional association and located within the municipality's jurisdiction. The municipal officers may also attach to the permit additional conditions for the operation of the solid waste disposal facility on any issues not specifically addressed in any condition of the department's license. These conditions may not unreasonably restrict the operation of the facility and must be attached to the local permit by the municipal officers within 90 days of issuance of the department's license or within 30 days of a final decision by the department to relicense the facility.

An enforcement action brought by the municipality to enforce local permit conditions shall not preclude the State from bringing an action to enforce the conditions of any license issued by the State or any other provision of law. In addition, the State shall have a right to intervene in any enforcement action brought by a municipality under this section. A municipality that has adopted local permit conditions described in this section shall employ an inspector certified under section 2174 to enforce permit conditions.

§2174. Local inspection and enforcement

1. Certification. The department shall establish and conduct a training program to certify host municipality inspectors. This program shall be made available to persons who have been designated by the municipality. The department shall offer training programs at least twice a year and shall pay for the host inspection training program. The department may certify and decertify host municipality inspectors pursuant to rules promulgated by the Board of Environmental Protection.

2. Information. The host municipality of a solid waste disposal facility owned by the agency or a regional association shall have a right to all information from the department and the solid waste disposal facility operator, pursuant to Title 1, chapter 13, subchapter I. All information provided under this subsection shall be made available to the citizen advisory committee and the public by the host municipality.

A. The department shall provide all of the following information to the municipal officers of the host municipality:

(1) Copies of any inspection report of the facility within 5 working days of the preparation of the report;

(2) Prompt notification of all enforcement or emergency orders for those facilities, including, but not limited to, abatement orders, cessation orders, final civil penalty assess-

ments, consent orders and decrees and notices of violation;

(3) Copies of all air, soil and water quality monitoring data collected by the department at such facilities, including leachate and ash testing results, within 5 working days after complete laboratory analysis becomes available to the department; and

(4) Copies of all departmental analyses of the data under subparagraph (3).

B. The operator of the facility shall provide the host municipality copies of all air, soil and water quality monitoring data, including leachate and ash testing results, conducted by or on behalf of the operator, within 5 days after that information becomes available to the operator.

C. The municipality shall provide all of the following information to the department:

(1) Copies of any inspection report of the facility within 5 working days of the preparation of the report;

(2) Prompt notification of all enforcement or emergency orders for those facilities, including, but not limited to, abatement orders, cessation orders, final civil penalty assessments, consent orders and decrees and notices of violation;

(3) Copies of all air, soil and water quality monitoring data collected by the municipality at such facilities, including leachate and ash testing results, within 5 working days after complete laboratory analysis becomes available to the municipality; and

(4) Copies of all analyses of the data under subparagraph (3).

3. Inspection; emergency orders. A certified inspector is authorized to enter property of the agency or any regional association within the inspector's jurisdiction, inspect records required by the department, take samples and conduct inspections in accordance with departmental regulations applicable to employees of the department. A certified inspector may order the operator of the facility to cease any operation or activity at the facility that constitutes an immediate threat to public health or safety or to the environment. The inspector shall notify the department and the municipal officers of the host municipality within 2 hours of issuing such an order.

4. Department inspections. Whenever any host municipality notifies the department of an order issued pursuant to a local permit requirement under section 2173 and gives the department reason to believe that any solid waste disposal facility owned by the agency or regional association is in violation of any law or regulation administered

by the department, or any order or the condition of any permit issued pursuant thereto, the department shall promptly conduct an inspection of the facility.

If the department finds that there is insufficient information to believe that there is a violation, the department shall, within 10 working days of a municipality's request for an inspection, provide to the municipality a written explanation of its decision not to conduct an inspection.

§2175. Property value offset

Owners of property contiguous to an agency-owned, operated or approved facility licensed under chapter 13 are eligible for reimbursement for loss in property value directly attributable to the construction and operation of the facility. The agency shall issue rules to establish a formula and process for reimbursement, including, without limitation, definition of the impact area, a process for establishing baseline real estate values, a time frame within which the property value support program will be in effect, determination of the percentage of property value to be reimbursed, an accounting of real estate trends in the area and a determination of the reimbursement mechanism.

§2176. Impact payments

In addition to payment in lieu of taxes provided in section 2105, the agency shall make impact payments to a municipality in which an agency-owned solid waste landfill facility is located or, in the case of an unorganized territory, to the State Tax Assessor upon request by the community involved or by the State Tax Assessor. The agency shall base its impact payments on measurable criteria including, without limitation:

1. Roads. Improvement, maintenance and repair of local roads directly affected by traffic to and from an agency-owned landfill facility;

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

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

§2177. Water supply monitoring and protection

Upon written request from persons owning land contiguous to a waste landfill approved under subchapter IV, the operator of the landfill shall have quarterly samplings and analyses conducted of private water supplies used by the requestors for drinking water. The sampling and analysis shall be conducted in a manner specified by and shall meet criteria developed by the department.

Any person owning or operating a waste landfill that adversely affects a public or private water supply by pollution, degradation, diminution or other means that result in a violation of the state drinking water standards as determined by the department shall restore the affected supply at

no cost to the owner or replace the affected supply with an alternative source of water that is of like quantity and quality to the original supply at no cost to the owner.

1. Extent of analysis. Water supplies shall be analyzed for all parameters or chemical constituents determined by the department to be indicative of typical contamination from solid waste landfills. The laboratory performing the sampling and analysis shall provide written copies of sample results to the landfill owner, the landowner and to the department.

2. Additional sampling required. If the analysis indicates possible contamination from a solid waste landfill, the department shall conduct, or require the landfill operator to have the laboratory conduct, additional sampling and analysis to determine more precisely the nature, extent and source of contamination. The department shall, if necessary, require this sampling beyond the boundaries of the contiguous property.

3. Written notice of rights. On or before December 1, 1989, for permits issued under this chapter prior to October 1, 1989, and at or before the time of permit issuance for permits issued under this chapter after October 1, 1989, the operator of each waste landfill shall provide owners of contiguous land with written notice of their rights under this section on a form prepared by the department.

SUBCHAPTER VI

LIABILITY AND LIMITATIONS

§2181. Effect on tort claims

Nothing in this chapter may be construed or understood as in any way increasing any liability that may otherwise arise or be limited under Title 14, chapter 741.

§2182. Ability to indemnify

Nothing in this subchapter may be construed to prevent any host municipality, regional association or the State from obtaining or giving such indemnities as may be appropriate in connection with the ownership, operation or control of a municipal solid waste facility.

§2183. Effect on existing contracts and facilities

Except as otherwise provided, nothing in this chapter may be construed to impair any contract in force upon the effective date of this chapter.

§2184. Municipal contracts

A municipality may contract with any person to carry out its duties for the recycling, transportation, collection and storage of municipal waste and source-separated materials to be recycled, if the recycling, transportation, collection or storage activity or facility is conducted or operated in a manner that is consistent with the provisions of this chapter, the state plan and the rules promulgated pursuant to this chapter.

1. Existing contracts. Except as otherwise provided in this chapter, nothing in this chapter may be construed to interfere with, or in any way modify, the provisions of any contract for municipal waste disposal, processing or collection with any regional association or municipality in force upon the effective date of this chapter or prior to the adoption of the state plan.

2. Renewals. No renewal of any existing contract upon the expiration or termination of the original term of the contract, and no new contract for municipal waste disposal, processing or collection may be entered into after the effective date of this chapter, if the renewal or new contract fails to conform to the applicable provisions of this chapter or interferes with the implementation of the state plan.

SUBCHAPTER VII

FINANCE, FEES AND CONTRACTS

Article 1. Fees and Contracts

§2191. Fees

The agency shall establish reasonable fees for waste disposal services provided by the agency.

§2192. Purposes of the fees

The fees charged to users of agency-owned facilities and established by the agency under this article, by rule, shall provide revenue for the following purposes:

1. Current expenses. To pay the current expenses, either incurred directly or through contractual agreements with another party or parties, for operating and maintaining a facility or delivering a service and to provide for normal maintenance and replacement of equipment. Current expenses also include costs incurred under subchapter V;

2. Interest. To provide for the payment of interest on the indebtedness created or assumed by the agency;

3. Indebtedness. To provide an annual sum equal to not less than 2% nor more than 10% of the term indebtedness represented by the issuance of bonds created or assumed by the agency, which sum shall be turned into a sinking fund and there maintained to provide for the extinguishment of term indebtedness. The money set aside in this sinking fund shall be devoted to the retirement of the term obligations of the agency and may be invested in such securities as savings banks in the State are allowed to hold;

4. Principal payments. To provide for annual principal payments on serial indebtedness created or assumed by the agency;

5. Contingency reserve fund allowance. To provide for a contingency reserve fund allowance by providing rates to reflect up to a 5% addition to yearly revenues over that required to operate the facility;

6. Closing reserve fund. To provide for a closing and monitoring reserve fund by providing rates which, over the expected life span of the facility including the post-closure monitoring period, will generate the amount determined to be necessary by the department in its licensing process under chapter 13; and

7. Compliance costs. To provide for the costs associated with licensing, compliance and enforcement efforts of the department.

§2193. Host municipality fees

The agency may set fees under this article for the host municipality at a level lower than the fees charged to other municipalities or users, provided that such lower fees are set in a manner consistent with the rules promulgated by the agency.

Article 2. Maine Solid Waste Management Fund

§2201. Maine Solid Waste Management Fund established

The Maine Solid Waste Management Fund, referred to in this section as the "fund," is established as a nonlapsing fund to support programs administered by the Maine Waste Management Agency and the Department of Environmental Protection. The fund shall be segregated into 2 accounts. The first account, which shall be called the operations account, shall receive all fees established and received under article 1 and shall be used solely for the development and operation of publicly owned facilities owned or approved by the agency and for the repayment of any obligations of the agency incurred under article 3. The 2nd account, which shall be called the administrative account, shall receive all fees established under this article and under Title 36, chapter 719. All administrative expenses directly related to the agency's and the department's programs shall be charged to this account.

Money in the fund not currently needed to meet the obligations of the agency shall be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest on these investments shall be credited to the fund.

Money in the administrative account may only be expended in accordance with allocations approved by the Legislature. These allocations shall be based on estimates of the actual costs necessary for the agency and the department to administer their programs, to provide financial assistance to regional associations and to provide other financial assistance necessary to accomplish the purposes of this chapter. Beginning in the fiscal year ending on June 30, 1991 and thereafter, the fund shall annually transfer to the General Fund an amount necessary to reimburse the costs of the Bureau of Taxation incurred in the administration of Title 36, section 5219-C and Title 36, chapter 719 and an amount equal to the General Fund revenues lost as the result of Title 36, section 5219-C. Allowable expenditures include "Personal Services," "All Other" and "Capital Expenditures" associated with all agency activities other than those included in the operations account.

§2202. Fees

1. Fees established. The agency shall establish procedures to charge fees specified in this article and pursuant to the requirements of this article. All fees collected by the agency shall be deposited into the Maine Solid Waste Management Fund.

2. Application. Fees established under this article become effective upon the effective date of this chapter, with the first payment due on January 20, 1990.

§2203. Fee on special waste

There are imposed fees in the following amounts to be levied for special waste that is disposed of at commercial, municipal, regional association or agency landfills.

<u>Asbestos</u>	<u>\$6 per cubic yard</u>
<u>Oil spill debris</u>	<u>\$6 per ton</u>
<u>Waste water facility sludge</u>	<u>\$2 per ton</u>
<u>Ash, coal and oil</u>	<u>\$6 per ton</u>
<u>Paper mill sludge</u>	<u>\$6 per ton</u>
<u>Industrial waste</u>	<u>\$6 per ton</u>
<u>Sandblast grit</u>	<u>\$6 per ton</u>
<u>Miscellaneous special waste</u>	<u>\$6 per ton</u>
<u>Municipal solid waste ash</u>	<u>\$2 per ton</u>

§2204. Municipal disposal surcharge

The agency shall impose a disposal surcharge of \$4 per ton on any municipal solid waste delivered to a commercial landfill facility or solid waste landfill owned by the agency or a regional association. The agency shall impose an additional \$1.50 per ton on any solid waste delivered to a commercial solid waste disposal facility or solid waste disposal facility owned by the agency or a regional association from a municipality that does not meet the requirements of section 2133, subsection 5, paragraph B.

§2205. Fee payments

Each operator of a solid waste disposal facility shall make the fee payment quarterly. The fee shall be paid to the agency on or before the 20th day of April, July, October and January for the 3 months ending the last day of March, June, September and December.

1. Quarterly reports. Each fee payment shall be accompanied by a form prepared and furnished by the agency and completed by the operator. The form shall state the total weight or volume of solid waste disposed of at the facility during the payment period and provide any other aggregate

information deemed necessary by the agency to carry out the purposes of this chapter. The form shall be signed by the operator.

2. Timeliness of payment. The operator shall be deemed to have made a timely payment of the fee if the operator complies with all of the following:

A. The enclosed payment is for the full amount owed pursuant to this section and no further agency action is required for collection;

B. The payment is accompanied by the required form and the form is complete and accurate; and

C. The letter transmitting the payment that is received by the agency is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received.

3. Discount. Any operator that makes a timely payment of the fee as provided in this section shall be entitled to apply against the fee payable a discount of 1% of the amount of the fee collected.

4. Refunds. Any operator who believes the fee was overpaid by the operator may file a petition for refund to the agency. If the agency determines that the operator has overpaid the fee, the agency shall refund to the operator the amount due the operator, together with interest at a rate established by the agency.

5. Alternative proof of payment. For purposes of this section, presentation of a receipt indicating that the payment was mailed by registered or certified mail on or before the due date shall be evidence of timely payment.

6. Interest. If an operator fails to make a timely payment of the fee, the operator shall pay interest on the unpaid amount due at the rate established by the agency, from the last day for timely payment to the date paid.

7. Additional penalty. In addition to the interest provided in subsection 6, if an operator fails to make timely payment of the fee, 5% of the amount of the fee shall be added to the amount actually due if the failure to file a timely payment is for not more than one month, with an additional 5% for each additional month, or fraction of a month, during which the failure continues, not exceeding 25% in the aggregate.

8. Assessment notice. If the agency determines that any operator has not made a timely payment of the fee, the agency will send the operator a written notice of the amount of the deficiency, within 30 days of determining the deficiency. When the operator has not provided a complete and accurate statement of the weight or volume of waste received at the facility for the payment period, the agency may estimate the weight or volume in the notice.

The operator charged with the deficiency shall have 30 days to pay the deficiency in full or, if the operator wishes to contest the deficiency, forward the amount of the deficiency

to the agency for placement in an escrow account with the Treasurer of State or any bank in the State, or post an appeal bond in the amount of the deficiency. The bond shall be executed by a surety licensed to do business in the State and be satisfactory to the agency. Failure to forward the money or appeal bond to the agency within 30 days shall result in a waiver of all legal rights to contest the deficiency.

If, through the administrative or judicial review of the deficiency, it is determined that the amount of deficiency shall be reduced, the agency shall within 30 days remit the appropriate amount to the operator, with any interest accumulated by the escrow deposit.

The amount determined after administrative hearing or after waiver of administrative hearing shall be payable to the agency and shall be collectible.

If any amount due under this subsection remains unpaid 30 days after receipt of notice of the deficiency, the agency may order the operator of the facility to cease receiving any solid waste until the amount of the deficiency is completely paid.

9. Filing of appeals. Notwithstanding any other provision of law, all appeals of final agency actions concerning the fee shall be filed with the agency pursuant to section 2206.

§2206. Hearings and appeals

The agency shall establish rules governing procedures for hearings and appeals under this article consistent with Title 5, chapter 375.

Article 3. Revenue obligation securities and mortgage loans

§2211. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. Bond. "Bond" means revenue obligation security.

2. Cost of project. "Cost of project" means the cost or value of land, buildings, real estate improvements, labor, materials, machinery and equipment, property rights, easements, franchises, financing charges, interest, engineering and legal services, plans, specifications, surveys, cost estimates, studies and other expenses as may be necessary or incidental to the development, construction, acquisition, financing and placing in operation of an eligible project. In addition to these costs, reserves for payment of future debt on any revenue obligation securities may be included as part of the cost of the project.

Any obligation or expenses incurred by the State, the agency, a regional association, a municipality or any private person in connection with any of the items of cost specified in this subsection related to revenue obligation securities may be included as part of the cost and reimbursed to the State, the agency, regional association, municipality or person out of the proceeds of the securities issued.

3. Eligible collateral. "Eligible collateral" means an eligible project.

4. Eligible project. "Eligible project" means any waste facility or the capital costs of any waste disposal service including, but not limited to, real property, personal property, machinery and equipment and related expenses.

5. Facility. "Facility" means an eligible project or eligible collateral.

6. Financial document. "Financial document" means a lease, installment sale agreement, conditional sale agreement, note, mortgage, loan agreement or other instrument pertaining to an extension of financial assistance.

7. Financing assistance. "Financing assistance" or "financial assistance" means guarantees, leases, insurance, financing credits, loans or the purchase or discounts thereof, letters of credit, financing assistance payments, grants or other financial aid.

8. Financing institution. "Financing institution" or "financial institution" means any bank, trust company, national banking association, savings bank, savings and loan association, federal savings and loan association, industrial bank, mortgage company, insurance company, credit union, local development corporation or any other institution or entity authorized to do business in this State, or any state or federal agency that customarily provides financing assistance.

9. Lease. "Lease" means a contract providing for the use of a project or portions of a project for a term of years for a designated or determinable rent. A lease may include an installment sale contract. A lease may include other terms as the agency may permit or require.

10. Lessee. "Lessee" means a tenant under a lease and may include an installment purchaser.

11. Loan. "Loan" or "mortgage loan" means an extension of credit made in consideration of a written promise of repayment or any other conditions which may be established by the agency, performance of which may be secured by a mortgage.

12. Maturity date. "Maturity date" means the date on which final payment is due as provided in a note, revenue obligation security or other financial document.

13. Mortgage. "Mortgage" means an agreement granting a lien on, or a security interest in, eligible collateral with certain conditions and includes, but is not limited to, a mortgage of real estate, an assignment of rents, a pledge or a security agreement.

14. Mortgagee. "Mortgagee" means a grantee or obligee under, or a transferee or successor of a grantee or obligee under, a mortgage.

15. Mortgage payments. "Mortgage payments" means payments required by or received on account of a

mortgage or any other financial document, including, but not limited to, payments covering interest, installments of principal, taxes, assessments, loan insurance premiums and hazard insurance premiums.

16. Mortgagor. "Mortgagor" means the grantor or party giving rights to eligible collateral pursuant to a mortgage and includes the successors or assigns of a mortgagor.

17. Note. "Note" means an evidence of indebtedness and includes a revenue obligation security.

18. Rent or rental. "Rent or rental" means payments under a lease.

19. Revenue obligation security. "Revenue obligation security" or "security" means a note, bond, interim certificate, debenture or other evidence of indebtedness, payment of which is secured by a pledge of revenues, as provided in this article or by assignment or pledge of other eligible collateral.

§2212. General powers

The agency may, in addition to its other powers and in furtherance of the purposes of this chapter, assist itself or applicants, who shall be limited to municipalities and regional associations, in the financing of eligible projects by issuing revenue obligation securities; by issuing or providing securities for mortgage loans; drafting financial documents, trust agreements and other contracts; and arranging the financing and negotiating for the sale of the securities. The agency may contract with the Finance Authority of Maine to administer the provisions of this article.

The agency may also:

1. Kinds of projects. Acquire, construct, reconstruct, maintain, renew, replace or provide financing assistance for eligible waste facilities, waste disposal services or recycling projects;

2. Securities for projects. Issue revenue obligation securities to pay the cost of or to provide financial assistance for acquisition, construction, reconstruction, renewal or replacement of eligible projects. Any single issue of securities may provide for the cost of, or for financial assistance for, acquisition, construction, reconstruction, renewal or replacement of any one or more eligible projects which may be separate, unconnected and distinct. Any issue, the proceeds of any issue, or any revenue obligation securities shall, except as specifically authorized by the Legislature, meet the requirements of the Internal Revenue Code of 1986, as amended, relating to exempt facility bonds;

3. Acquire securities. Issue revenue obligation securities to acquire one or more issues of revenue obligation securities issued by municipalities or to acquire any other bond not eligible for purchase pursuant to Title 30-A, chapter 225. Any single issue of securities may provide funds for the acquisition of revenue obligation securities of one or more municipalities or of bonds for one or more eligible projects which may be separate, unconnected and distinct;

4. Refunding securities. Issue revenue refunding obligation securities as provided to refund any outstanding revenue obligation securities issued under this article;

5. Serve as broker or agent. Serve as a broker, agent or other financial intermediary for the secondary marketing of obligations issued or incurred in connection with the financing of eligible projects and for the encouragement of the flow of private funds for capital investment;

6. Facilities. Plan, carry out, acquire, lease and operate facilities and provide for the construction, reconstruction, improvement, alteration or repair of any facility or any part of a facility;

7. Acquisition and disposal of property. Acquire or enable a user to acquire, upon reasonable terms from funds provided under this article, the lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands, including lands under water and riparian rights, which are located within the State and considered necessary or convenient for the construction or operation of any eligible waste project, and dispose of them;

8. Contracts. Make and enter into all financial documents and other contracts and trust agreements securing revenue obligation securities issued under this article, provided all expenses are payable solely from funds made available under this article;

9. Consent to modification of contracts, lease or agreement. To the extent not forbidden under its contract with the holders of bonds, consent to any modification of any contract, lease or agreement of any kind to which the agency is a party;

10. Employment of specialists. Employ consulting and other engineers, attorneys, accountants, construction and financial experts, superintendents, managers and other necessary employees and agents and fix their compensation, provided all expenses are payable solely from funds made available under this subchapter;

11. Government contracts. Enter into contracts with regional associations, municipalities, the State or a federal agency relating to any eligible solid waste project;

12. Government aid. Accept loans or grants for the planning, construction or acquisition of any eligible solid waste project from a municipality, an authorized agency of the State or a federal agency and enter into agreements with the agency respecting the loans or grants. In the case of all loans, grants or other aid involving pollution-control facilities, the consent of the Board of Environmental Protection must first be obtained, notwithstanding section 362;

13. Private aid. Receive and accept aid and contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which these loans, grants and contributions may be made;

14. Applicability. Provide financial assistance by means of leases that are not subject to Title 14, section 6010. Leases made under this section may provide that obligations of the lessees are unconditional; and

15. Application. Provide financial assistance by means of revenue obligation securities which are not subject to Title 32, chapter 105, relating to dealers in securities.

§2213. Issuance of revenue obligation securities

1. Notice of intent to issue bonds; actions to contest validity. The agency may provide, at one time or from time to time, for the issuance of revenue obligation securities of the agency for the purposes authorized in this chapter. No revenue obligation securities of the agency may be issued until:

A. The project has been determined to be consistent with the state plan pursuant to section 2157 and the necessary permits have been obtained from the department;

B. A notice of the intent of the agency to issue the securities is published at least once in a newspaper of general circulation in the region in which the project is to be located:

(1) No later than 14 days after the date on which the certification is issued;

(2) Describing the general purpose or purposes for which the securities are to be issued;

(3) Stating the maximum principal amount of the proposed securities; and

(4) Including a statement as to the time within which any petition to contest the issuance of the securities must be commenced.

Any action or proceeding in any court to contest the issuance of the securities must be started within 30 days after the date of the publication required by paragraph B and otherwise shall be governed by Title 5, chapter 375, subchapter VII. For the purposes of this subchapter and the Maine Administrative Procedure Act, Title 5, chapter 375, the later date of newspaper publication required by paragraph B shall constitute the final agency action with respect to the issuance of the securities. After the expiration of the 30-day period of limitation, no right of action or defense founded upon the invalidity of the issuance of the securities may be opened to question in any court upon any grounds.

2. Treasurer of State as agent. The Treasurer of State shall, at the direction of the agency, act as the agency's agent for the sale and delivery of revenue obligation securities and anticipatory notes. The Treasurer of State shall assist the agency in the preparation, issuance, negotiation and sale of the securities and notes and provide reasonable advice and management assistance. The agency may employ further counsel or assistants or act in its own behalf, provided

that the sale and delivery of revenue obligation securities and anticipatory notes shall be carried out at the agency's direction with and through the Treasurer of State.

3. Conclusive authorization. All revenue obligation securities of the agency shall be conclusively presumed to be fully authorized and issued under the laws of the State, and any person or governmental unit shall be estopped from questioning their authorization, sale, issuance, execution or delivery by the agency.

4. Maturity; interest. The securities of each issue of revenue obligation securities shall be dated, mature at a time or times not exceeding 20 years from the date of the securities and bear interest at a rate or rates determined by the agency. At the option of the agency, the securities may be made redeemable before maturity at a price or prices and under terms and conditions fixed prior to issuance.

5. Form. The agency shall determine the form of the securities, including any attached interest coupons, the manner of execution of the securities, the denomination or denominations of the securities and the place or places for payment of principal and interest, which may be at any financial institution within or without the State. Revenue obligation securities shall be executed in the name of the agency by the manual or facsimile signature of the authorized official or officials. Any attached coupons shall be executed with the manual or facsimile signature of the authorized official or officials. Signatures and facsimiles of signatures on securities and coupons are valid for all purposes even if the authorized official ceases to hold office before delivery of the securities. The securities may be issued in coupon or registered form or both as the agency may determine. Provision may be made for the registration of any coupon securities to principal alone and to both principal and interest, and for the reconversion into coupon securities of any securities registered to both principal and interest. In addition to this subsection, the agency may provide for transfer of registration of the agency's registered revenue obligation securities by book entry on the records of the entity designated for that purpose and may enter into such contractual arrangements as may be necessary to accomplish these purposes. In the event a book entry method of transfer is used, principal of and interest on those registered securities shall be payable to the registered owner shown in the book entry, the owner's legal representatives, successors or transferees.

6. Sale. The agency may sell the securities at a public or private sale, in a manner and at a price the agency determines to be in the best interest of the agency. The agency shall not sell the securities to any firm, partnership, corporation or association, including an affiliate or subsidiary, which is a party to any contract pertaining to the financed project or which is to rent, purchase, lease or otherwise occupy premises constituting part of the project. The agency may sell the securities to a seller of the project if the project is to be used and operated by a 3rd party.

7. Proceeds. The proceeds of each issue shall be used solely for the authorized purposes and shall be disbursed as provided in the securing trust agreement or other

document. Administration costs incurred by the agency under this program may be drawn from those proceeds. If the proceeds are less than the cost of the project, by error in the estimate or otherwise, additional securities may be issued in a like manner to provide the amount of the deficit and, unless otherwise provided in the securing trust agreement or other document, the additional securities are deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the securities first issued for the same purpose. The agency may place limits or restrictions on the issuance of additional revenue obligation securities through the securing trust agreement or other document. The agency may provide for the replacement of mutilated, destroyed or lost securities. Revenue obligation securities may be issued under this subchapter without obtaining the consent of any department, division, commission, board, bureau or agency of the State and without any other proceedings or the occurrence of any conditions or things other than those proceedings, conditions or things which are specifically required by this subchapter. Notwithstanding any of the other provisions of this subchapter, or of any recitals in any securities issued under this subchapter, all such securities are deemed to be negotiable instruments issued under the laws of this State.

8. Credit not pledged. Except as provided in this subsection, securities issued under this subchapter shall not constitute any debt or liability of the State or of any municipality in the State or any political subdivision of the State, or of the agency or a pledge of the faith and credit of the State or of any such municipality or political subdivision, but shall be payable solely from the revenues of the project or projects for which the securities are issued or from other eligible collateral or the revenues or proceeds of other eligible collateral pledged to the payment of the revenue obligation securities and all such securities shall contain on the securities' face a statement to that effect. The issuance of securities under this subchapter shall not directly or indirectly or contingently obligate the State or any municipality or political subdivision to levy or to pledge any form of taxation whatever or to make any appropriation for payment.

9. Anticipatory borrowing. In anticipation of the sale of securities under this article, the agency may issue temporary notes and renewal notes, the total face amount of which does not exceed at any one time outstanding the authorized amount of the securities. The period of anticipatory borrowing shall not exceed 3 years and the time within which the securities are to become due shall not be extended by the anticipatory borrowing beyond the term permitted by law.

10. Environmental protection. Revenue obligation securities of the agency shall not be issued for a project until the department has certified to the agency that all licenses required by the department with respect to the project have been issued or that none are required. Any subsequent enlargement or addition to the project for which approval is sought from the agency requires certification by the department.

§2214. Trust agreements or other documents

1. Trust agreements or other documents. At the discretion of the agency, revenue obligation securities may be issued under this subchapter pursuant to a trust agreement or other document. The trust agreement or other document may:

A. Pledge or assign the revenues or proceeds of the project or projects or other eligible collateral;

B. Set forth the rights and remedies of the security holders and other persons and contain any reasonable and legal provisions for protecting the rights and remedies of the security holders;

C. Restrict the individual right of action by security holders; and

D. Include covenants setting forth the duties of the agency and user in relation to:

(1) Acquisition of property or eligible collateral;

(2) Construction, reconstruction, renewal, replacement and insurance of the project or eligible collateral;

(3) Rents to be charged or other payments to be made for use;

(4) Payment for the project or eligible collateral; and

(5) Custody, safeguarding and application of all money.

Any financial institution may furnish indemnifying bonds or pledge the securities as may be required by the agency.

2. Mortgages. To further secure the payment of the revenue obligation securities, the trust agreement or other document may mortgage or assign the mortgage of the project, or any part of the project, and create a lien on or security interest in any or all of the project. In the event of a default with respect to the revenue obligation securities, the trustee, mortgagee or other person may be authorized by the trust agreement or other document containing a mortgage or assignment of a mortgage to take possession of, hold, manage and operate all or any part of the mortgaged property and, with or without taking possession, to sell or from time to time lease the property in accordance with law. Any security interest granted by the authority under this chapter may be created and perfected in accordance with the Uniform Commercial Code, Title 11, Article 9, notwithstanding Title 11, section 9-104, subsection 5.

3. Additional provisions. Any trust agreement or other document may contain provisions which shall be a part of the contract with holders of revenue obligation securities as to:

A. Pledging any specified revenues or assets of the agency to secure the payment of the securities, subject to agreements with existing holders of securities;

B. Pledging all or any part of the unencumbered revenues or assets of the agency to secure the payment of securities, subject to agreements with existing holders of securities;

C. Setting aside, regulating and disposing of reserves or sinking funds;

D. Limitations on the purpose to which the proceeds of sale of securities may be applied and the pledge of the proceeds to secure the payment of the securities or of any issue of securities;

E. Limitations on the issuance of additional securities;

F. The terms on which additional securities may be issued and secured and the refunding of outstanding or other securities;

G. The procedure, if any, by which the terms of any contract with holders of securities may be amended or abrogated, including the proportion of the holders which must consent and the manner in which the consent may be given;

H. Limitations on the amount of money to be expended by the agency for operating expenses of the agency;

I. Vesting in a trustee or trustees such property, rights, powers and duties in trust as the agency may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the holders of the securities under this subchapter, and limiting or abrogating the right of the holders of the securities to appoint a trustee under this chapter or limiting the rights, powers and duties of the trustee;

J. Defining the acts or omissions to act which will constitute a default in the obligations and duties of the agency to the holders of the securities and providing for the rights and remedies of the holders of the securities in the event of default, including, as a matter of right, the appointment of a receiver, but only if the rights and remedies are not inconsistent with the laws of the State and other provisions of this subchapter; and

K. Any other matters, of like or different character, which in any way affect the security or protection of the holders of the securities.

4. Expenses; pledges. All expenses incurred in carrying out a trust agreement or financial document may be treated as a part of the cost of the operation of the project. All pledges of revenue or eligible collateral under this subchapter shall be valid and binding from the time when the

pledge is made. All the revenues or eligible collateral pledged and later received by the agency shall immediately be subject to the lien of the pledges without any physical delivery or further action under the Uniform Commercial Code or otherwise. The lien of the pledges shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise, against the agency, irrespective of whether the parties have notice thereof.

5. Other provisions. A trust agreement or financial document may contain other provisions the agency deems reasonable and proper for the security of the security holders.

§2215. Rentals and revenues

1. Provisions. Before issuing revenue obligation securities, the agency shall determine that there shall at all times be revenues and funds sufficient to:

A. Pay the principal and interest of the securities as they become due and payable and, in its discretion, to create and maintain reserves for that purpose; and

B. Pay the cost of maintaining and, where applicable, repairing the project unless provision is made in the financial document or other contract for maintenance and, where applicable, repair.

2. Sinking fund. All project rentals and other revenues, except those required in subsection 1, paragraph B or to provide reserves for maintenance and, where applicable, repair, may be set aside at regular intervals as provided in the trust agreement or other document and deposited to the credit of a sinking fund charged with payment of the interest and principal of the securities as they fall due, any necessary charges of paying agents for paying principal and interest and the redemption price or the purchase price of securities retired by call or purchase. Use of money deposited to the credit of the sinking fund shall be subject to regulations prescribed in the trust agreement or other document. Except as may otherwise be provided in the trust agreement or other document, the sinking fund shall be a fund for the benefit of all securities issued for the project or projects without distinction or priority of one over another.

3. Trust funds. All money received under this subchapter shall be deemed trust funds, to be held and applied solely as provided in this subchapter. Any officer to whom, or any bank, trust company or other fiscal agency or trustee to which, the money shall be paid shall act as trustees of the money and shall hold and apply it for the purposes of this subchapter, subject to the requirements of this subchapter, the trust agreement or other applicable document.

§2216. Remedies

Any holder of revenue obligation securities or coupons issued under this subchapter and the trustee under any trust agreement, except as restricted by the trust agreement or applicable document, may, by appropriate legal action, protect and enforce any and all rights under the laws of this State or granted under this subchapter, the trust agreement

or other document, including the appointment of a receiver, and may enforce and compel the performance of all duties required by this subchapter, the trust agreement or other document to be performed by the agency, including the collecting of rates, fees and charges for the use of the project. Any proceeding shall be brought for the benefit of all holders of the securities and any coupons.

§2217. Revenue refunding securities

The agency may provide for the issuance of revenue refunding securities of the agency to refund any outstanding revenue securities issued under this subchapter 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 for the agency, to construct or enable the construction of improvements, extensions, enlargements or additions of the original project. The agency may provide for the issuance of revenue obligation securities of the agency for the combined purpose of refunding any outstanding revenue obligation securities or revenue refunding securities issued under this subchapter 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 of 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 agency shall be governed by the provisions of this subchapter insofar as they are applicable.

§2218. Tax exemption

Revenue obligation securities issued under this article shall constitute a proper public purpose and the securities, their transfer and the income from them, including any profits made on their sale, shall at all times be exempt from taxation within the State, whether or not those securities, their transfer or the income from them, including any profits on their sale, are subject to taxation under the United States Internal Revenue Code.

§2219. Leasehold or other interests of lessee taxable

The interest of the user of any project is subject to taxation in the manner provided for similar interests in Title 36, section 551, subject to Title 36, sections 655 and 656.

§2220. Bonds as legal investments

The revenue obligation securities of the agency and any loan or extension of credit issued under this article shall be legal investments in which all public officers and public bodies of the State, its political subdivisions, all regional associations and municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking associations, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other

persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries and all other persons who are now or may later be authorized to invest bonds or other obligations of the State, may properly and legally invest funds, including capital, in their control or belonging to them. The revenue obligation securities and any loan or extension of credit which is issued under this subchapter are also made securities, which may properly and legally be deposited with all public officers and bodies of the State or any agency or political subdivisions and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the State is now or may later be authorized by law.

§2221. Capital reserve funds; obligation of State

1. Capital reserve fund. The agency may create and establish one or more capital reserve funds and may pay into any such capital reserve fund any money appropriated and made available by the State for the purposes of any such fund, any proceeds of sale by the agency of revenue obligation securities to the extent determined by the agency and any other money available to the agency. For purposes of this section, the amount of any letter of credit, insurance contract, surety bond, indemnification agreement or similar financial undertaking available to be drawn on and applied to obligations to which money in any such fund may be applied shall be deemed to be and counted as money in the capital reserve fund.

2. Application. Money in any capital reserve fund created pursuant to subsection 1, except as provided in this section, shall be used solely with respect to revenue obligation securities or mortgage loans, repayment of which is secured by any such fund and solely for the payment of principal, accrued interest and costs and expenses chargeable to the mortgage loan or securities, the purchase or redemption of the securities, including any fees or premiums or the payment of interest on the securities. Money in excess of the reserve requirement set forth in subsection 3 may be transferred to other funds and accounts of the agency.

3. Reserve requirement. The agency may provide that money in any such fund shall not be withdrawn at any time in an amount which would reduce the amount of any such fund to less than the maximum amount of principal and interest becoming due and payable under any applicable trust agreement or other agreement in the next succeeding 12-month period, the amount being referred to as the capital reserve requirement, except for the purpose of paying the amount due and payable with respect to revenue obligation securities or mortgage loans, repayment of which is secured by any such fund.

4. Issuance limit. The agency may provide that it shall not issue revenue obligation securities if the capital reserve requirement with respect to securities outstanding and then to be issued and secured by any such fund will exceed the amount of any such fund, including the amount available to be drawn on any letter of credit given to secure the capital reserve requirement, at the time of issuance, unless the agency, at the time of issuance of the securities, shall deposit in any such fund from proceeds of the securities

to be issued, or from other sources, an amount which, together with the amounts then in any such fund and amounts available to be drawn under any letter of credit, will not be less than the capital reserve requirement.

5. Security for mortgage loans. With respect to any mortgage loans which may be secured under this article, the agency may provide that such mortgage loans shall be secured by one or more capital reserve funds established pursuant to subsection 1. Any commitment with respect to a mortgage loan executed and delivered pursuant to this section shall be conclusive evidence of the eligibility of the mortgage loan for capital reserve fund security and the validity of any such commitment or contract shall be incontestable in the hands of a mortgage lender except for fraud or misrepresentation on the part of the mortgage lender. Mortgages secured by capital reserve funds under this section are made legal investments for all insurance companies, trust companies, banks, investment companies, savings banks, savings and loan associations, executors, trustees and other fiduciaries, public and private pension or retirement funds and other persons.

6. Appropriation. On or before December 1st, annually, the agency shall certify to the Governor the amount, if any, necessary to restore the amount in any capital reserve fund, to which this subsection is stated in any written agreement, the trust agreement or other document to apply, to the capital reserve requirement. The Governor shall pay directly from the State Contingent Account to any such fund as much of the amount as is available in that account, as determined by the Governor, and shall transmit directly to the Legislature certification and a statement of the amount, if any, remaining to be paid. The certified amount shall be appropriated and paid to the agency during the current state fiscal year.

7. Obligations and securities outstanding. The agency shall not have at any one time outstanding obligations or revenue obligation securities to which subsection 6 is stated in any agreement or the trust agreement or other document to apply in principal amount exceeding an amount equal to \$50,000,000. This subsection constitutes specific legislative approval to issue up to \$50,000,000 in tax-exempt revenue securities obligations. The amount of revenue obligation securities issued to refund securities previously issued shall not be taken into account in determining the principal amount of securities outstanding, provided that proceeds of the refunding securities are applied as promptly as possible to the refunding of the previously issued securities. In computing the total amount of revenue obligation securities of the agency which may at any time be outstanding for any purpose, the amount of the outstanding revenue obligation securities that have been issued as capital appreciation bonds or as similar instruments shall be valued as of any date of calculation at their then current accreted value rather than their face value.

§2222. Taxable bond option

With respect to all or any portion of any issue of any bonds or any series of bonds which the agency may issue in accordance with the limitations and restrictions of this sub-

chapter, the agency may covenant and consent that the interest on the bonds shall be includable, under the United States Internal Revenue Code of 1986, as amended, 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 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. 8. Transition; Office of Waste Reduction and Recycling. The provisions of this section shall govern the transfer of the Office of Waste Recycling and Reduction in the Department of Economic and Community Development to the Office of Waste Reduction and Recycling in the Maine Waste Management Agency.

1. Funds. Notwithstanding the Maine Revised Statutes, Title 5, sections 1585 and 1586, all accrued expenditures, assets, liabilities, balances, appropriations or allocations, transfers, revenues or other available funds in any account or subdivision of an account, and any equipment and property of the Department of Economic and Community Development, Office of Waste Recycling and Reduction shall be transferred to the Maine Waste Management Agency, Office of Waste Reduction and Recycling.

2. Personnel. Employees of the Office of Waste Recycling and Reduction shall be transferred to the Office of Waste Reduction and Recycling. Upon transfer, the position of office director shall be a major policy-influencing position. Upon transfer, incumbents in classified positions shall retain their classified status.

3. Employee benefits. Any employees of the Office of Waste Recycling and Reduction transferred to the Office of Waste Reduction and Recycling shall be transferred with their accrued rights and benefits. The accrued fringe benefits, including vacation and sick leave, health and life insurance, and retirement of those employees shall remain with those employees.

4. Contracts and agreements. All contracts and agreements currently in effect with respect to any unit or program of State Government affected by this Act shall remain in effect until rescinded, terminated or modified as provided by state law.

5. Organization and operation. Notwithstanding any other provision of law, any appointment required by this Act and preparation work may be made or may occur prior to the appropriate effective date of this Act, but shall not become binding until the appropriate effective date.

6. Financial order required. The Commissioner of Economic and Community Development shall request, by financial order through the State Budget Office, the Govern-

nor's approval of the funds, positions, equipment and property to be transferred.

Sec. 9. Transition; Waste Management Advisory Council. The existing membership of the Recycling Advisory Council appointed under the Maine Revised Statutes, Title 38, section 1310-L, as repealed in this Act, shall serve the remainder of their terms as members of the Waste Management Advisory Council created by this Act.

Sec. 10. Study on the impact of optional plastic bags. The Maine Waste Management Agency, Office of Waste Reduction and Recycling shall study any change in the relative number of plastic versus paper bags used by retail outlets as a result of the enactment of Title 38, section 1605. The office shall submit a report on their findings to the Joint Standing Committee on Natural Resources by March 1, 1991.

PART B

36 MRSA c. 719 is enacted to read:

CHAPTER 719

SOLID WASTE ADVANCE DISPOSAL FEE

§4831. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Brown good. "Brown good" means an electronic device containing printed circuit boards, capacitors, resistors or transistors that is not included in the definition of "white good" and that weighs more than 10 pounds.

2. Lead-acid battery. "Lead-acid battery" means a device designed and used for the storage of electrical energy through chemical reactions involving lead and acids.

3. Motorized vehicle. "Motorized vehicle" means any self-propelled vehicle, including motorcycles, construction and farm vehicles and other off-road vehicles, not operating exclusively on tracks.

4. Tire. "Tire" means the device made of rubber or any similar substance which is intended to be attached to a motorized vehicle or trailer and is designed to support the load of the motor vehicle or trailer.

5. Trailer. "Trailer" means any vehicle without motive power that is designed to be drawn by a motorized vehicle.

6. White good. "White good" means any appliance employing electricity, natural gas or any liquified petroleum gas to supply heat or motive power to preserve or cook food, to wash clothing, dishes, kitchen utensils, glasses or other related items or to cool or heat air or water.

§4832. Fee imposed

1. Imposition. A fee is imposed on the retail sale in this State of new tires, new lead-acid batteries, new white goods and new brown goods. The fee is in the amount of \$1 per tire or lead battery and \$15 per white good or brown good whether sold separately or incorporated with other tangible personal property. Additionally, fees in the same amounts are imposed on the storage, use or other consumption in this State of tires, lead batteries, white goods and brown goods purchased new in this State by the user or purchased out of State by the user unless either of the fees imposed by this section has been paid.

2. Exemption. Transactions which, under the laws of the United States, may not be subjected to taxation by this State and sales for immediate removal from this State are exempt from the fee imposed by subsection 1.

§4833. Administration

The fee imposed by this chapter shall be administered as provided in chapter 7 and Part 3, with the fee imposed pursuant to this chapter to be considered as imposed under Part 3 except that exclusions, exemptions and credits provided under Part 3 and any other provision inconsistent with this chapter shall not apply.

The Maine Waste Management Agency shall by rule identify in specific detail those items subject to fee under this chapter. The purpose of the rule is to assist retail sellers, consumers and fee administrators in understanding the application of the fee to specific purchases.

The revenue derived from the fee imposed by this chapter shall be deposited in the Maine Solid Waste Management Fund established under Title 38, chapter 24, which shall reimburse the General Fund for the administrative costs of the fee as certified by the Bureau of Taxation.

§4834. Effective date

This chapter shall be effective for taxable purchases made in this State on or after July 1, 1990 and for taxable items brought into this State by the user on or after July 1, 1990.

PART C

Sec. 1. 5 MRSA §1812, first ¶, as amended by PL 1985, c. 785, Pt. A, §72, is further amended to read:

The terms "services," "supplies," "materials" and "equipment" as used in this chapter, ~~shall be held to mean~~ any and all services, articles or things which shall be used by or furnished to the State or any department or agency thereof, and any and all printing, binding, publication of laws, journals and reports. Except as provided in chapters 141 to 155, any and all services, supplies, materials and equipment needed by one or more departments or agencies of the State Government shall be directly purchased or contracted for by the State Purchasing Agent, as may be determined from time to time by rules adopted pursuant to chapters 141 to 155,

which rules the Department of Administration is authorized and empowered to make. It is the intent and purpose of this chapter that the State Purchasing Agent shall purchase collectively all services, supplies, materials and equipment for the State or any department or agency thereof in a manner that will best secure the greatest possible economy consistent with the grade or quality of the services, supplies, materials and equipment best adapted for the purposes for which they are needed. Whenever supplies and materials are available for purchase which are composed in whole or in part of recycled materials and are shown by the seller, supplier or manufacturer to be equal in quality and are competitively priced, except for paper and paper products, the State Purchasing Agent shall purchase such recycled supplies and materials. For the purposes of this section and section 1812-B, ~~recycled materials~~ "recycled materials" means materials that are composed in whole or in part of elements that are reused or reclaimed.

Sec. 2. 5 MRSA §1812-A, as enacted by PL 1987, c. 517, §1, is amended to read:

§1812-A. Report on purchase of recycled products

The State Purchasing Agent shall report on or before January 1, 1988, 1st of the First Regular Session of each Legislature to the joint standing committee of the Legislature having jurisdiction over natural resources ~~and to the same committee of the First Regular Session of each subsequent Legislature on or before January 1st~~ on the State's efforts to purchase supplies and materials composed in whole or in part of recycled materials pursuant to section 1812. The State Purchasing Agent shall also report on any procurement policies, incentives, educational programs, promotional efforts or other activities undertaken by the Bureau of Purchases to encourage the purchase of those supplies and materials. The State Purchasing Agent shall include in the report any recommendations to increase or facilitate the purchase of those supplies and materials.

Sec. 3. 5 MRSA §§1812-B to 1812-D are enacted to read:

§1812-B. Purchasing of paper and paper products

1. Purchase of paper and paper products with recycled material content. Subject to subsection 3, the State Purchasing Agent shall provide that of the total dollar amount spent in each fiscal year on paper and paper products purchased by the State:

A. On or after October 1, 1989, not less than 15% shall be spent on paper and paper products with recycled material content;

B. On or after October 1, 1991, not less than 30% shall be spent on paper and paper products with recycled material content; and

C. On or after October 1, 1993, not less than 50% shall be spent on paper and paper products with recycled material content.

2. Federal guidelines and cooperative purchases.

To qualify as having recycled material content, paper or paper products must have recycled material content which meets or exceeds the standards established for that paper or paper product category in Table 1 of the Guideline for Federal Procurement of Paper and Paper Products, 40 Code of Federal Regulations, Part 250. The State Purchasing Agent shall determine whether a paper or paper product qualifies. The State Purchasing Agent may join with other states in making cooperative requests for bids to supply paper and paper products.

3. Bids; price preference.

A person who submits a bid for a contract to supply paper or paper products shall certify the percentage and nature of any recycled materials content in the product subject to bid. Bids offering paper or paper products with recycled material content that are within 10% of the lowest bid that meets all other specifications may receive up to a 10% price preference. Any bids to supply paper or paper products with recycled material content that exceed by more than 10% the low bid which meets all other specifications shall not be considered. If no bids are received on a request for bids which offer paper or paper products with recycled material content, the State Purchasing Agent may award the contract to a bidder whose paper or paper product has substandard percentages of or no recycled materials content.

§1812-C. Use of composted materials

All state agencies responsible for the maintenance of public lands in this State shall, to the maximum extent practical and consistent with sound environmental practices, give preference to the use of compost materials in all land maintenance activities which are to be paid for by public funds. The Department of Agriculture, Food and Rural Resources shall develop standards for fertilizers and soil conditioners made from different mixes of compostible wastes, that could be used by state agencies involved in land preparation and improvement work. These standards shall be adopted by rule by January 1, 1990.

§1812-D. Coordination of procurement information and policies

The Bureau of Purchases shall coordinate with the Department of Transportation, the Department of Agriculture, Food and Rural Resources, the Department of Environmental Protection and the Office of Waste Reduction and Recycling to develop a central data base of information including, but not limited to, procurement policies, market information, technical data and demonstration project results. This data shall be compiled annually and provided to local public agencies by the Office of Waste Reduction and Recycling.

Sec. 4. 10 MRSA §963-A, sub-§10, ¶J, as amended by PL 1987, c. 846, §2, is further amended to read:

J. Any underground oil storage facility replacement project; or

Sec. 5. 10 MRSA §963-A, sub-§10, ¶K, as enacted by PL 1987, c. 846, §3, is amended to read:

K. Any overboard discharge replacement project; or

Sec. 6. 10 MRSA §963-A, sub-§10, ¶L is enacted to read:

L. Any hazardous waste or solid waste recycling or reduction project.

Sec. 7. 10 MRSA §963-A, sub-§32, as enacted by PL 1985, c. 344, §7, is amended to read:

32. Manufacturing enterprise. "Manufacturing enterprise" means knowledge, skill or labor applied to giving of new shapes, new qualities or new combinations to matter as material products and includes assembling, fabricating, making, creating, working, preparing, milling, processing, recycling, manufacturing, finishing, fashioning, producing, storing, warehousing, preserving, distributing, handling or transporting in any manner goods, wares, merchandise, metals, fabrics, materials, substances, product or matter of any kind or nature including materials recovered from solid and hazardous wastes.

Sec. 8. 10 MRSA §963-A, sub-§45-A is enacted to read:

45-A. Recycling or waste reduction project. "Recycling or waste reduction project" means any building, structure, machinery, equipment or facility which may be considered necessary for recovery, separation, remanufacture or reuse of materials contained in solid or hazardous waste or for the reduced generation of solid or hazardous waste, together with all land, property, rights, rights-of-way, franchises, easements and interests in lands necessary or convenient for the construction or operation of the project.

Sec. 9. 10 MRSA §1023-F is enacted to read:

§1023-F. Waste Reduction and Recycling Loan Fund

1. Creation. The Waste Reduction and Recycling Loan Fund, referred to in this section as the "fund," is created under the jurisdiction and control of the authority.

2. Sources of money. The fund shall consist of the following:

A. All money appropriated or allocated for inclusion in the fund;

B. Subject to any pledge, contract or other obligation, all interest, dividends or other pecuniary gains from investment of money from the fund;

C. Subject to any pledge, contract or other obligations, any money that the authority receives in repayment of advances from the fund; and

D. Any other money available to the authority and directed by the authority to be paid into the fund.

3. Application of fund. Money in the fund may be used for direct loans to finance all or part of any project when the authority determines that:

A. The project is:

(1) Designed to substantially reduce or eliminate the production in a trade or business of solid waste or hazardous waste as defined in Title 38, section 1303-C;

(2) A project devoted to resource recovery, as defined in Title 38, section 1303-C, except that the combustion of solid or hazardous waste shall not be considered resource recovery for the purposes of this section; or

(3) A project devoted to the reuse of post-consumer materials;

B. There is a reasonable likelihood that the applicant will be able to repay the loan;

C. The amount and terms of the loan are reasonable to provide an incentive to the applicant to undertake the project, which may include a below-market interest rate, and the project will not result in a net increase in solid or hazardous waste to be disposed of within the State; and

D. The project will contribute to achieving the goals identified in the state waste management and recycling plan adopted under Title 38, chapter 24 and is determined by the Maine Waste Management Agency to be consistent with that plan. Prior to adopting the state waste management and recycling plan, the fund may be used for projects that help achieve the goals identified in the state recycling plan approved under former Title 38, section 1310-M.

The authority, pursuant to Title 5, chapter 375, subchapter II, shall adopt rules for determining eligibility, feasibility, terms, conditions and security for the loans. Money in the fund not needed currently to meet the obligations of the authority as provided in this section may be invested in such a manner as permitted by law.

4. Accounts within fund. The authority may divide the fund into separate accounts as it determines necessary or convenient for carrying out this section, including, but not limited to, accounts reserved for direct loan funds.

5. Revolving fund. The fund shall be a nonlapsing, revolving fund. All money in the fund shall be continuously applied by the authority to carry out this section.

Sec. 10. 10 MRSA §1041, sub-§§16 and 17, as enacted by PL 1985, c. 344, §61, are amended to read:

16. Energy conservation. Provide financial assistance for energy conservation. The Office of Energy Resources shall provide assistance to the authority in determining technical eligibility and merit of applications for energy conservation loans. Each recipient of a loan under this section shall provide the authority, within one year, with detailed information on energy consumption before and after the completion of the energy conservation project; and

17. Electricity. Provide financial assistance for electricity generation projects. Any municipality, firm or corporation producing electricity by means of projects described in section 1044, subsection 12, or by means of a pollution-control project, recreational project, multi-level parking facility or combined project may, without the approval of and regulation by the Public Utilities Commission, generate and distribute electricity solely for its own use or the use of its tenant, but may not, without proper approval, sell electricity to other than an electric public utility corporation or cooperative authorized to make, generate, sell and distribute electricity; and

Sec. 11. 10 MRSA §1041, sub-§18 is enacted to read:

18. Recycling and waste reduction. Provide financial assistance to businesses for recycling and waste reduction projects that are consistent with the management goals and objectives outlined in the state waste management and recycling plan under Title 38, chapter 24. The Maine Waste Management Agency shall provide assistance to the authority in determining consistency, technical eligibility and merit of application for recycling loans.

Sec. 12. 10 MRSA §1043, sub-§2, ¶E-1 is enacted to read:

E-1. In the case of recycling and waste reduction projects, the proposed facility must be consistent with the state waste management and recycling plan under Title 38, chapter 24, and will reduce the amount of solid or hazardous waste requiring disposal.

Sec. 13. 10 MRSA §1063, sub-§2, ¶E, as enacted by PL 1981, c. 476, §2, is amended to read:

E. The Department of Environmental Protection has certified to the authority that all licenses required by that department with respect to the project have been issued or that none are required provided, however, that such certification need not be obtained from the Department of Environmental Protection prior to issuance of a certificate of approval for a project of a public waste disposal corporation as described in Title 38, section 1304-B, subsection 5, which as of June 9, 1989, has filed an application with the authority seeking a certificate of approval for revenue obligation security to be issued in accordance with this subchapter provided further, that nothing herein shall be deemed to allow issuance of revenue obligation securities for any such project prior to obtaining all necessary permits from the

Department of Environmental Protection. Any subsequent enlargement or addition to the project for which approval is sought from the authority shall also require certification by the department;

Sec. 14. 10 MRSA §1063, sub-§2, ¶1-1 is enacted to read:

1-1. In the case of recycling and waste reduction projects, the proposed facility is consistent with and will contribute to the management goals and objectives outlined in the state waste management and recycling plan under Title 38, chapter 24 and will reduce the amount of solid or hazardous waste requiring disposal. The Maine Waste Management Agency shall provide assistance to the authority in determining consistency, technical eligibility and merit of applications for assistance under this subchapter.

Sec. 15. 30-A MRSA §5656 is enacted to read:

§5656. Procurement of recycled goods

1. Review of standards. Each municipality shall review its procurement procedures and specifications to identify procedures and specifications that explicitly discriminate against goods, supplies, equipment, materials and printing with recycled content. Each municipality may revise its procedures and specifications to:

A. Encourage the use of goods, supplies, equipment, materials and printing with recycled content; and

B. Ensure, to the maximum extent economically feasible, that it purchases goods, supplies, equipment, materials and printing that may be recycled or reused when such goods, supplies, equipment, materials and printing are discarded.

2. Preferences for recycled goods. In revising its procurement procedures and specifications under subsection 1, each municipality may:

A. Establish a preference for paper with recycled content consistent with the standards established for state agencies under Title 5, section 1812-B; and

B. Establish specifications for bids for public contracts that require all bidders to propose that a stated minimum percentage of goods, supplies, equipment or materials to be used for the contract be made from recycled material.

3. Other laws. The options set forth in this section may be exercised, notwithstanding any other provision of law to the contrary.

4. Interlocal cooperation. The provisions of this section shall apply to agreements of interlocal cooperation established pursuant to chapter 115 and to cooperative purchasing programs administered by regional councils established pursuant to chapter 119.

Sec. 16. 32 MRSA c. 26 is enacted to read:

CHAPTER 26

CODING OF PLASTIC CONTAINERS

§1721. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Plastic bottle. "Plastic bottle" means any plastic container with a neck smaller than the container body and a capacity not less than 16 fluid ounces and not more than 5 gallons.

2. Plastic container. "Plastic container" means any bottle, can, jar, case, package or other receptacle intended to hold, carry, or enclose fluids, food items or nonfood products that is composed predominately of plastic resins, including, but not limited to, plastic resins listed in section 1723.

3. Rigid plastic container. "Rigid plastic container" means any formed or molded plastic container, except plastic bottles, with a capacity not less than 8 fluid ounces and not more than 5 gallons that retains the same shape whether full or empty.

§1722. Coding of plastic containers

On or after July 1, 1991, no person may distribute, sell or offer for sale any plastic bottle or rigid plastic container without a molded, imprinted or raised label indicating the type of plastic resin used to produce the plastic bottle or rigid plastic container.

§1723. Labels

1. Labels. The label shall appear on the bottom of the plastic bottle or rigid plastic container and be clearly visible. This label shall consist of a number with letters placed below the number. The numbers and letters shall be as follows:

A. For polyethylene terephthalate, the letters "PETE" and the number 1;

B. For high-density polyethylene, the letters "HDPE" and the number 2;

C. For vinyl, the letter "V" and the number 3;

D. For low-density polyethylene, the letters "LDPE" and the number 4;

E. For polypropylene, the letters "PP" and the number 5;

F. For polystyrene, the letters "PS" and the number 6; or

G. For any other plastic resins, including multilayer, the letters "OTHER" and the number 7.

§1724. Ancillary symbols

No label may include a chasing arrow symbol or any other configuration of arrows to indicate recyclable materials or products with recycled content.

§1725. Penalties

1. Civil violation. A violation of this chapter shall be a civil violation for which a forfeiture of not more than \$100 may be adjudged.

2. Separate violation. Each container in violation constitutes a separate offense.

§1726. Rules and enforcement

The Maine Waste Management Agency, Office of Waste Reduction and Recycling shall adopt and enforce rules implementing the provisions of this chapter including, but not limited to, criteria for labeling containers made of more than one plastic resin. In adopting rules, the office shall consult with the Waste Management Advisory Council, the Department of Agriculture, Food and Rural Resources, plastic container manufacturers and distributors, and the recycling industry. Rules shall be adopted in accordance with the provisions of Title 5, chapter 375.

Sec. 17. 36 MRSA §5219-C is enacted to read:

§5219-C. Solid waste reduction investment tax credit

1. Definitions. As used in this section, unless the contents otherwise indicates, the following terms have the following meanings.

A. "Employing unit" has the same meaning as in Title 26, section 1043.

B. "Solid waste" has the same meaning as in Title 38, section 1303-C.

C. "Waste reduction, reuse or recycling equipment" means structures, machinery or devices, singly or in combination, designed and required to separate, process, modify, convert, treat or repair solid waste generated by the employing unit so that component materials or substances or recoverable resources may be used as a raw material or for productive use and includes:

(1) Add-ons or trailers designed to modify collection vehicles and dedicated to sorting and separating of collected wastes generated by the employing unit and held for the purpose of recycling; or

(2) Containers for the source separation and temporary storage of recyclable wastes by the employing unit or its employees.

2. Credit allowed. A taxpayer constituting an employing unit who purchases waste reduction, reuse or recycling equipment, or other equipment used exclusively by that unit, in the implementation of a solid waste reduction, reuse or recycling program, shall be entitled to a credit against the tax imposed by this Part equal to 30% of the cost of the machinery or equipment.

3. Eligible machinery and equipment. Purchases eligible for the credit allowed under this section include machinery and equipment used exclusively for the purpose of reducing, reusing or recycling solid waste generated principally by the employing unit. Machinery and equipment associated with the separation of wastes prior to incineration are eligible when the Maine Waste Management Agency certifies the separated wastes are being recycled.

4. Carry-over; carry-back. The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the amount of tax otherwise due under this section. Any unused credit may be carried over to the following year or years for a period not to exceed 15 years or may be carried back for a period not to exceed 3 years.

5. Effective date. The provisions of this section apply to purchases of eligible machinery and equipment made after January 1, 1990.

Sec. 18. Department of Transportation recyclable project. The Department of Transportation shall undertake a comprehensive review to evaluate the use of recyclable materials in construction.

1. By January 1, 1991, the Department of Transportation shall report to the Joint Standing Committee on Natural Resources, the Joint Standing Committee on Transportation and the State Purchasing Agent on a comprehensive review of feasible alternatives for utilizing recyclable materials in construction. Particular attention shall be paid to ground rubber from automobile tires; recycled mixed-plastic material for guardrail posts or right-of-way fence posts; construction steel, including reinforcing rods and I-beams, manufactured from scrap materials; and recycled glass and glass aggregates. The report shall include recommendations for demonstration projects to be undertaken along with time frames and associated costs. This report shall further identify, to the extent possible, the following:

A. Life cycle costs;

B. Safety; and

C. Conformance with applicable federal and state requirements.

2. By March 1990, the department shall submit a preliminary report to the Joint Standing Committee on Natural Resources, the Joint Standing Committee on Transportation and to the State Purchasing Agent regarding the use of ground tire rubber as an additive to asphalt concrete, which would utilize waste tires. The report shall include, but shall not be limited to, the following:

A. Evaluating how effective the use of ground tire rubber has been in providing acceptable properties in asphalt concrete mix;

B. Determining effects and procedures for recycling asphalt containing ground tire rubber;

C. Determining the amount of ground tire rubber that may be used in road construction and the expected cost of that use;

D. Identifying changes needed in departmental and local government specifications and procedures to allow for the use of ground tire rubber from waste tires in asphalt concrete pavements; and

E. In conjunction with the Department of Environmental Protection and the Office of Waste Reduction and Recycling, the inventory of discarded tires in the State.

3. All state agencies shall cooperate with the Department of Transportation in carrying out this section.

Sec. 19. Conditional effective date. Title 32, section 1724, shall become effective if the Attorney General certifies, prior to January 1, 1991, that 6 of the states listed below have banned the use of ancillary symbols, described in Title 32, section 1724, in labels on rigid plastic containers. The states are: New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania and Delaware.

PART D

Sec. 1. 28-A MRSA §1651, sub-§1, ¶C is enacted to read:

C. The commission shall add any cost to the State, related to handling containers returned for refund pursuant to Title 32, section 1863, to the established price without markup.

Sec. 2. 32 MRSA §1862, sub-§1, as amended by PL 1987, c. 649, §1, is repealed and the following enacted in its place:

1. Beverage. "Beverage" means beer, ale or other drink produced by fermenting malt, spirits, wine, wine coolers, soda or noncarbonated water, and all nonalcoholic carbonated or noncarbonated drinks in liquid form and intended for internal human consumption, except for milk and dairy-derived products.

Sec. 3. 32 MRSA §1862, sub-§§12-B, 14 and 15 are enacted to read:

12-B. Spirits. "Spirits" has the same meaning as in Title 28-A, section 2.

14. Wine. "Wine" has the same meaning as in Title 28-A, section 2, except, that for the purposes of this chapter, "wine" does not include wine coolers.

15. Wine cooler. "Wine cooler" means a beverage of less than 8% alcohol content by volume consisting of wine and:

A. Plain, sparkling or carbonated water; and

B. Any one or more of the following:

(1) Fruit juices;

(2) Fruit adjuncts;

(3) Artificial or natural flavors or flavorings;

(4) Preservatives;

(5) Coloring; or

(6) Any other natural or artificial blending material.

Sec. 4. 32 MRSA §1862, sub-§2, as enacted by PL 1975, c. 739, §16, is amended to read:

2. Beverage container. "Beverage container" means a ~~glass, metal or plastic~~ bottle, can, jar or other container ~~made of glass, metal or plastic~~ which has been sealed by a manufacturer and which, at the time of sale, contains one gallon or less of a beverage.

Sec. 5. 32 MRSA §1863, as amended by PL 1979, c. 462, §3, is repealed and the following enacted in its place:

§1863. Refund value

Every beverage container sold or offered for sale to a consumer in this State shall have a refund value. The refund value shall be:

1. Refillable containers. For refillable beverage containers, except wine and spirits containers, the refund value shall be determined by the manufacturer according to the type, kind and size of the beverage container, but shall not be less than 5¢;

2. Nonrefillable containers. For nonrefillable beverage containers, except wine and spirits containers, the deposit and refund value shall be determined and initiated by the distributor according to the type, kind and size of the beverage container, but shall not be less than 5¢; and

3. Wine and spirits containers. For wine and spirits containers of greater than 50 milliliters, the refund value shall not be less than 15¢. On January 1, 1992, the department shall issue a finding on the percentages of wine containers and spirits containers returned for deposit. If the department finds the return rate of wine containers was less than 60% during 1991, then, on July 1, 1992, the refund value on wine containers shall not be less than 25¢. If the department finds the return rate of spirits containers was less than 60% during 1991, then on July 1, 1992, the refund value of spirits containers shall not be less than 25¢.

Sec. 6. 32 MRSA §1866, sub-§4, as amended by PL 1979, c. 735, is further amended to read:

4. Reimbursement by distributor. In addition to the payment of the refund value, the distributor shall reimburse the dealer or local redemption center for the cost of handling beverage containers, in an amount which equals at least ~~2¢~~ 3¢ per returned container.

Sec. 7. 32 MRSA §1867, sub-§1, as enacted by PL 1975, c. 739, §16, is amended to read:

1. Establishment. Local redemption centers may be established and operated by any person or municipality, agency or regional association as defined in Title 38, section 1310-C, subject to the approval of the commissioner, to serve local dealers and consumers, at which consumers may return empty beverage containers as provided under section 1866.

Sec. 8. 32 MRSA §1868, as amended by PL 1987, c. 373, §§4 and 5, is further amended to read:

§1868. Prohibition on certain types of containers and holders

No beverage ~~container shall~~ may be sold or offered for sale to consumers in this State:

1. Flip tops. In a metal container designed or constructed so that part of the container is detachable for the purpose of opening the container without the aid of a separate can opener; ~~and~~

~~**2. Connectors.** With containers connected to each other by plastic rings or other plastic holding device, which does not decompose by photodegradation, chemical degradation or biodegradation within a reasonable period of time upon exposure to the elements.~~

3. Plastic cans. In a container composed of one or more plastics if the basic structure of the container, exclusive of the closure device, also includes aluminum or steel; and

4. Aseptic beverage packs. In a container composed of aseptic packaging composed of aluminum, paper and plastic in combination, where those materials are for practical reasons inseparable, and commonly referred to as a "brick-pack."

Sec. 9. 32 MRSA §1872 is enacted to read:

§1872. Unlawful possession of beverage containers

A person is guilty of a violation of this section if that person possesses more than 48 beverage containers that are not labeled under section 1865. This section shall not apply to licensed waste facilities as defined in Title 38, section 1303-C.

1. Warning. Any person committing a violation of this section during the 1st year this section is in effect shall

be issued a warning that a violation of this section has occurred.

2. Penalty. Following the 1st year warning period, a violation of this section is a civil violation for which a forfeiture of \$20 per container in excess of 48 beverage containers may be adjudged.

3. Enforcement. The Maine State Police shall enforce this section and prosecute any persons found in violation.

Sec. 10. Advisory committee. The Department of Agriculture, Food and Rural Resources shall form an advisory committee consisting of representatives of the Office of Waste Reduction and Recycling, the Bureau of Alcoholic Beverages, the operator of the bailment warehouse, the certificate of approval holders for spirits and fortified wines, distributors of other affected beverages, operators of certified redemption facilities and persons representing other affected interests as the department finds necessary. The Department of Agriculture, Food and Rural Resources shall consult with the advisory committee in developing proposed rules for the implementation of sections 1 to 5. If the department determines that the implementation of these provisions will clearly impose undue hardship on farmers which cannot be ameliorated except by exempting farmers from some or all of the requirements of sections 1 to 5, the department may do so through rulemaking. The Department of Agriculture, Food and Rural Resources shall submit a report on the proposed implementation and the proposed rules for approval by the joint standing committee of the Legislature having jurisdiction over natural resource matters by January 1, 1990. The committee may introduce any legislation necessary to address the report or rules proposed by the department.

Sec. 11. Effective date. Sections 2 to 5 and section 8 of this Part shall take effect September 1, 1990, except that any provisions in those sections applicable to implementation of a refund value for spirits containers shall take effect January 1, 1990. Sections 6 and 9 of this Part shall take effect January 1, 1990. Sections 1 and 7 of this Part shall take effect 90 days after the adjournment of the First Regular Session of the 114th Legislature.

PART E

Sec. 1. 12 MRSA §685-B, sub-§1, ¶C, as amended by PL 1987, c. 769, Pt. A, §49, is further amended to read:

C. No person may commence any construction or operation of any development without a permit issued by the commission.

The commission may waive the requirement of a hearing for any person having received approval by the Board of Environmental Protection pursuant to the Site Location of Development Law, Title 38, sections 481 to 488.

Approval by the commission that the proposed development meets the requirements of subsection

4, and of the land use standards and rules adopted by the commission shall be a sufficient basis to support, but shall not require, a finding by the administering agency that the development meets the requirements of the Site Location of Development Law, Title 38, sections 481 to 488; the Minimum Lot Size Law, sections 4807 to 4807-G; the Wetlands Law, Title 38, sections ~~471 to 478~~ 480-B to 480-F and sections 480-Q and 480-R; the Great Ponds Law, Title 38, chapter 3, subchapter 1, article ~~4-A~~ 5-A; or the Stream Alteration Law, Title 38, chapter 3, subchapter 1, article ~~2-A~~ 5-A; and the rules adopted with respect to any of such statutes, as any of such statutes, rules or regulations may apply. Disapproval by the commission shall be a sufficient basis to support, but shall not require, a finding by the administering agency that the proposed development does not meet the requirements of the Site Location of Development Law, Title 38, sections 481 to 488; the Minimum Lot Size Law, sections 4807 to 4807-G; the Wetlands Law, Title 38, sections ~~471 to 478~~ 480-B to 480-F and sections 480-Q and 480-R; the Great Ponds Law, Title 38, section 422; or the Stream Alteration Law, Title 38, chapter 3, subchapter 1, article ~~2-A~~ 5-A; and the rules adopted with respect to any of such statutes, as any of such statutes, rules or regulations may apply.

The commission may establish standards within which authority may be delegated to its staff, to approve with reasonable conditions or deny applications submitted hereunder. Any person aggrieved by a decision of the staff shall have the right to a review of such decision by the commission members.

The commission shall establish coordination and assistance procedures for all land use permits issued by agencies of the State for proposed development within the unorganized townships and plantations. Such procedures shall, to the extent practicable, ensure: The availability to the public of necessary information concerning such land use permits; the provision of assistance to applicants in obtaining such permits from such agencies; the coordination of application procedures, time schedules, application forms and similar requirements so as to reduce delay and duplication of effort by applicants and the issuing agencies. Such permit issuing agencies shall cooperate with the commission in the development and effectuation of such coordination and assistance procedures.

Approval by the Board of Environmental Protection of a proposed development under Title 38, chapter 13, article 3, shall be a sufficient basis to support, but shall not require, a finding by the commission that the proposed development meets the requirements of subsection 4, and of the land use standards and rules adopted by the commission. Disapproval by the Board of Environmental Protection of a proposed development under Title 38, chapter 13, article 3, shall be a sufficient basis to support, but shall not require, a finding by the commission that the pro-

posed development does not meet the requirements of subsection 4, and of the land use standards and rules adopted by the commission.

Sec. 2. 38 MRSA §1302, as repealed and replaced by PL 1987, c. 517, §5, is repealed and the following enacted in its place:

§1302. Declaration of policy

For the purposes of this chapter and chapter 24, the Legislature finds and declares it to be the policy of the State, consistent with its duty to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent air, water and land pollution, to establish a coordinated statewide waste reduction, recycling and management program.

The Legislature finds and declares that it is the policy of the State to pursue and implement an integrated approach to hazardous and solid waste management, which shall be based on the following priorities: reduction of waste generated at the source, including both the amount and toxicity of waste; waste reuse; waste recycling; waste composting; waste processing which reduces the volume of waste needing disposal, including waste-to-energy technology; and land disposal.

The Legislature finds that it is in the best interests of the State to prefer waste management options with lower health and environmental risk and to ensure that such options are neither foreclosed nor limited by the State's commitment to disposal methods. The Legislature declares that it is in the public interest to aggressively promote waste reduction, reuse and recycling as the preferred methods of waste management.

The Legislature finds that environmentally suitable sites for waste disposal are in limited supply and represent a critical natural resource. At the same time, new technologies and industrial developments are making recycling and reuse of waste an increasingly viable and economically attractive option which carries minimal risk to the State and the environment and an option which allows the conservation of the State's limited disposal capacity.

The Legislature further finds that needed municipal waste recycling and disposal facilities have not been developed in a timely and environmentally sound manner because of diffused responsibility for municipal waste planning, processing and disposal among numerous and overlapping units of local government. The Legislature also finds that direct state action is needed to assist municipalities in separating, collecting, recycling and disposing of solid waste, and that sound environmental policy and economics of scale dictate a preference for public solid waste management planning and implementation on a regional and state level.

The Legislature finally declares that the provisions of this chapter shall be construed liberally to address the findings and accomplish the policies in this section.

Sec. 3. 38 MRSA §1303, as amended by PL 1987, c. 517, §6, is repealed.

Sec. 4. 38 MRSA §1303-C is enacted to read:

§1303-C. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Agency. "Agency" means the Maine Waste Management Agency.

2. Board. "Board" means the Board of Environmental Protection.

3. Closing reserve fund. "Closing reserve fund" means a fund created for the purpose of financing the closing and maintenance after closing of a waste facility.

4. Commercial hazardous waste facility. "Commercial hazardous waste facility" means:

A. A waste facility that handles hazardous wastes generated off the site of the facility; or

B. A facility that, in the handling of a waste generated off the site, generates hazardous waste.

5. Commercial landfill facility. "Commercial landfill facility" means a commercial solid waste facility that is used for the burial of solid waste.

6. Commercial solid waste disposal facility. "Commercial solid waste disposal facility" means a commercial waste facility which is a solid waste disposal facility.

7. Commercial waste facility. "Commercial waste facility" means a privately owned waste facility that accepts waste from another for consideration and is used for the management of waste generated by persons who do not own or operate the facility. The term does not include a waste facility owned, controlled, operated or used exclusively by:

A. A public waste disposal corporation under section 1304-B, subsection 5;

B. A municipality under section 1305;

C. A refuse disposal district under chapter 17;

D. The agency under chapter 24; or

E. The person generating the solid waste disposed of at the facility, except that the facility may accept, on a nonprofit basis, no more than 15% of all solid waste accepted on an annual average that is not generated by the owner. A waste facility receiving ash resulting from the combustion of municipal solid waste or fuel derived from municipal solid waste is not exempt from this subsection solely by operation of this paragraph.

8. Construction and demolition debris. "Construction and demolition debris" means debris resulting from construction, remodeling, repair, and demolition of structures. It excludes asbestos and other special wastes.

9. Contingency reserve fund. "Contingency reserve fund" means a fund maintained for the purpose of meeting unexpected contingencies in the operation of a waste facility.

10. Conveyance. "Conveyance" means any aircraft, watercraft, vehicle or other machine used for transportation on land, water or in the air.

11. Department. "Department" means the Department of Environmental Protection.

12. Disposal. "Disposal" means the discharge, deposit, dumping, incineration, spilling, leaking or placing of any hazardous or solid waste, refuse-derived fuel, sludge or septage into or on any land, air or water so that the hazardous or solid waste, sludge or septage or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters.

13. Generation. "Generation" means the act or process of producing hazardous or solid waste, sludge or septage.

14. Handle. "Handle" means to store, transfer, collect, separate, salvage, process, recycle, reduce, recover, incinerate, dispose of or treat.

15. Hazardous waste. "Hazardous waste" means a waste substance or material, in any physical state, designated as hazardous by the board under section 1319-O. It does not include waste resulting from normal household or agricultural activities. The fact that a hazardous waste or part or constituent may have value or other use or may be sold or exchanged does not exclude it from this definition.

16. Incineration facility. "Incineration facility" means a facility where municipal solid waste or refuse-derived fuel is disposed of through combustion, including combustion for the generation of heat, steam or electricity.

17. Inert fill. "Inert fill" means clean soil material, rocks, bricks, and cured concrete, which are not mixed with other waste, and which are not derived from an ore mining activity.

18. Land clearing debris. "Land clearing debris" means solid wastes resulting from the clearing of land and consisting solely of brush, stumps, soil material and rocks.

19. Manifest. "Manifest" means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transport.

20. Recyclable. "Recyclable" means possessing physical and economic characteristics that allow a material to be recycled.

21. Recycle. "Recycle" means to recover, separate, collect and reprocess waste materials for sale or reuse other than use as a fuel for the generation of heat, steam or electricity.

22. Recycling. "Recycling" means the collection, separation, recovery and sale or reuse of materials that would otherwise be disposed of or processed as waste or the mechanized separation and treatment of waste, other than through combustion, and the creation and recovery of reusable materials other than as a fuel for the generation of electricity.

23. Refuse-derived fuel. "Refuse-derived fuel" means municipal solid waste which has been processed prior to combustion to increase the heat input value of the waste.

24. Regional association. "Regional association" means 2 or more municipalities that have formed a refuse disposal district under chapter 17 or a public waste disposal corporation under section 1304-B or that have entered into a joint exercise of powers agreement under Title 30-A, chapter 115, in order to manage the solid waste generated within the participating municipalities and for which those municipalities are responsible.

25. Residual waste. "Residual waste" means waste resulting from the handling, processing, disposal or recycling of solid waste including, without limitation, front end waste and ash from incineration facilities.

26. Resource recovery. For the purposes of section 1304-B only, "resource recovery" means the recovery of materials or substances that still have useful physical or chemical properties after serving a specific purpose and can be reused or recycled for the same or other purposes.

27. Septage. "Septage" means waste, refuse, effluent, sludge and any other materials from septic tanks, cess-pools or any other similar facilities.

28. Site. "Site" means the same or geographically contiguous property which may be divided by a public or private right-of-way, provided that the entrance and exit between the properties is at a crossroads intersection and access is by crossing as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered site property.

29. Solid waste. "Solid waste" means useless, unwanted or discarded solid material with insufficient liquid content to be free-flowing, including, but not limited to, rubbish, garbage, refuse-derived fuel, scrap materials, junk, refuse, inert fill material and landscape refuse, but does not include septic tank sludge or agricultural wastes. The fact that a solid waste or constituent of the waste may have value or other use or may be sold or exchanged does not exclude it from this definition.

30. Solid waste disposal facility. "Solid waste disposal facility" means a waste facility for the disposal of solid waste except that the following facilities are not included:

A. A waste facility that employs controlled combustion to dispose of waste generated exclusively by an institutional, commercial or industrial establishment that owns the facility; and

B. Lime kilns; wood chip, bark and hogged fuel boilers; kraft recovery boilers and sulfite process recovery boilers, which combust solid waste generated exclusively at the facility.

31. Solid waste facility. "Solid waste facility" means a waste facility used for the handling of solid waste.

32. Solid waste landfill. "Solid waste landfill" means a waste disposal facility for the disposal of solid waste on or in land. This term does not include landspreading sites used in programs approved by the department.

33. Source separation. "Source separation" means the preparation of materials for recycling by separation from wastes at the point of generation.

34. Special waste. "Special waste" means any nonhazardous waste generated by sources other than domestic and typical commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, which may disrupt or impair effective waste management or threaten the public health, human safety or the environment and requires special handling, transportation and disposal procedures. Special waste includes, but is not limited to:

A. Oil, coal, wood and multifuel boiler and incinerator ash;

B. Industrial and industrial process waste;

C. Waste water treatment plant sludge, paper mill sludge and other sludge waste;

D. Debris and residuals from nonhazardous chemical spills and cleanup of those spills;

E. Contaminated soils and dredge spoils;

F. Asbestos and asbestos-containing waste;

G. Sand blast grit and nonliquid paint waste;

H. Medical and other biological waste not identified under section 1319-O, subsection 1, paragraph A, subparagraph (4);

I. High and low pH waste;

J. Spent filter media and residue; and

K. Other waste designated by the board, by rule.

35. State waste management and recycling plan. "State waste management and recycling plan" means the plan adopted by the agency pursuant to chapter 24, subchapter II, and may also be referred to as "state plan."

36. Storage. "Storage" means the containment of hazardous wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of the hazardous wastes.

37. Substantially expand. "Substantially expand" means the expansion of an existing licensed hazardous waste facility by more than 25%, as measured by volume of waste or affected land area, from the date of its initial licensed operation.

38. Transport. "Transport" means the movement of hazardous or solid waste, waste oil, sludge or septage from the point of generation to any intermediate points and finally to the point of ultimate disposition. Movement of hazardous waste on the site where it is generated or on the site of a licensed waste facility for hazardous waste is not "transport." Movement of waste oil on the site where it is generated or on the site of a licensed waste oil dealer's facility is not "transport."

39. Treatment. "Treatment" means any process designed to change the character or composition of any hazardous waste so as to render the waste less hazardous.

40. Waste facility. "Waste facility" means any land area, structure, location, equipment or combination of them, including dumps, used for handling hazardous or solid waste, sludge or septage. A land area or structure does not become a waste facility solely because:

A. It is used by its owner for disposing of septage from the owner's residence;

B. It is used to store for 90 days or less hazardous wastes generated on the same premises;

C. It is used by individual homeowners or lessees to open burn leaves, brush, deadwood and tree cuttings accrued from normal maintenance of their residential property, when such burning is permitted under section 599, subsection 3; or

D. It is used by its residential owner to burn highly combustible domestic, household trash such as paper, cardboard cartons or wood boxes, when such burning is permitted under section 599, subsection 3.

41. Waste management. "Waste management" means purposeful, systematic and unified control of the handling and transportation of hazardous or solid waste, sludge or septage.

42. Waste oil. "Waste oil" means a petroleum based oil which, through use or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties. Waste oil which exhibits hazardous wastes characteristics, or which has been contaminated

with hazardous wastes in excess of quantities normally occurring in waste oil, shall be subject to the provisions of this chapter dealing with hazardous wastes.

43. Waste oil dealer. "Waste oil dealer" means any person in the business of transporting or handling more than 1,000 gallons of waste oil for the purpose of resale in a calendar month. A person who collects or stores waste oil on the site of generation, whether or not for the purpose of resale, is not a waste oil dealer.

44. Waste reduction. "Waste reduction" means an action that reduces waste at the point of generation and may also be referred to as "source reduction."

45. Waste resulting from agricultural activities. "Waste resulting from agricultural activities" means wastes which result from agricultural activities defined in section 361-A, subsection 1-B, which are returned to the soils as fertilizers and includes waste pesticides when generated by a farmer in his own use, provided that he triple rinses each emptied pesticide container in accordance with departmental rules and disposes of the pesticide residues in a manner consistent with the disposal instructions on the pesticide label.

46. Wood wastes. "Wood wastes" means brush, stumps, lumber, bark, woodchips, shavings, slabs, edgings, slash and sawdust, which are not mixed with other waste.

Sec. 5. 38 MRSA §1304, sub-§1, as amended by PL 1981, c. 470, Pt. A, §171, is further amended to read:

1. Rules. Subject to the Maine Administrative Procedure Act, Title 5, chapter 375, the board may adopt, amend and enforce rules as it deems necessary to govern waste management, including the location, establishment, construction and alteration of waste facilities as the facility affects the public health and welfare or the natural resources of the State. The rules shall be designed to encourage logical utilization of recoverable resources, minimize pollution of the ~~state's~~ State's air, land and surface and ground water resources, prevent the spread of disease or other health hazards, prevent contamination of drinking water supplies and protect public health and safety. In adopting these rules, the board shall also consider economic impact, technical feasibility and such differences as are created by population, hazardous or solid waste, sludge or septage volume and geographic location.

Sec. 6. 38 MRSA §1304, sub-§3, as enacted by PL 1973, c. 387, is repealed.

Sec. 7. 38 MRSA §1304, sub-§4, as amended by PL 1987, c. 883, §1, is further amended to read:

4. Technical assistance. The department is authorized to establish guidelines for effective waste management, to provide technical assistance to persons planning, constructing or operating waste facilities, and to conduct applied research activities in the field of waste management, disposal technology and environmental effects, including methods of recycling hazardous or solid waste, sludge or septage. The

~~department shall develop a pilot program to provide grants for the identification, design and development of tire and white goods disposal facilities, including pickup of these items, and stump and demolition debris disposal facilities by municipalities, county governments and regional planning agencies. The department shall cooperate with the agency in the design and delivery of this assistance.~~

Sec. 8. 38 MRSA §1304, sub-§5, as repealed and replaced by PL 1979, c. 383, §7, is repealed.

Sec. 9. 38 MRSA §1304, sub-§11, as enacted by PL 1985, c. 157, is amended to read:

11. Imported waste report. The board shall report to the Legislature on the solid waste imported and disposed of in the State. The report shall include consideration of the following areas:

A. The categories of imported waste materials, including hazardous waste, solid waste and any other waste material designated by the board as special waste;

B. The volumes or weights, as appropriate, of imported waste;

C. The method of disposal, including, but not limited to, incineration and landfilling, the location of the disposal sites receiving the imported waste and the estimated remaining capacity of each site;

D. The states of origin of the imported waste and the regulations governing the disposal of these wastes in their respective states of origin; and

E. Any potential environmental or public health hazards posed by imported waste.

The board shall submit the report to the joint standing committee of the Legislature having jurisdiction over natural resources. The first report shall be due on or before January 1, 1986, and thereafter the report shall be made to the First Regular Session of the Legislature. Beginning with the First Regular Session of the Legislature in 1991, the report shall be developed in cooperation with the agency, shall be issued jointly by the agency and the department to the Legislature and shall be incorporated in the initial and subsequent state solid waste management plans.

The commissioner may, by rule, require any person importing or disposing of imported hazardous waste, solid waste or any other imported waste designated by the board as special waste, to report the volumes, weights and types of waste imported and report on the state of origin.

Sec. 10. 38 MRSA §1304, sub-§13, as enacted by PL 1987, c. 517, §12, is amended to read:

13. Innovative disposal and utilization. Recognizing that environmentally suitable sites for waste disposal are in limited supply and represent a critical natural resource, the commissioner may investigate and implement with the

approval of the board innovative programs for managing, utilizing and disposing of solid waste. Innovative programs may include agricultural and forest land spreading of wood-derived ash, utilization of ash resulting from combustion of municipal solid waste, paper mill sludges and municipal waste water treatment plant sludges. The agency shall first determine that the proposed innovative disposal and waste management programs are consistent with the state plan. The board shall review proposed innovative programs for each waste category and shall apply all controls necessary to ensure the protection of the environment and public health consistent with this chapter. The board may adopt application review procedures designed to review individual applications and their individual waste sources with prior approval of classes of disposal or utilization sites. The board shall adopt provisions for municipal notification prior to use of individual utilization sites.

Sec. 11. 38 MRSA §1304, sub-§§14 and 15, as enacted by PL 1987, c. 517, §12, are repealed.

Sec. 12. 38 MRSA §1304-B, sub-§1, as enacted by PL 1983, c. 380, §1, is amended to read:

1. Findings and purpose. The Legislature makes the following findings of fact. The Subject to the provisions of chapter 24, the State requires each municipality to provide for the disposal facility of services for domestic and commercial solid waste generated within the municipality. Solid waste contains valuable recoverable resources, including energy. Many municipalities have found that energy recovery reduces the cost of solid waste disposal. Energy recovery technology is complex and the equipment requires a steady supply of waste to operate efficiently. Because of the complicated technology, most energy recovery facilities have high capital costs and long payback periods. In order to remain cost effective throughout their lives, these energy recovery facilities require a guaranteed, steady supply of waste. Consequently, municipalities utilizing energy recovery facilities are usually required to enter long-term agreements to provide the facilities with specific amounts of waste. In order to make these energy recovery facilities financially feasible, and thereby simultaneously improve the environmental impacts and the economics of municipal solid waste disposal, municipalities shall have the legal authority to control the handling of solid waste generated within their borders.

The purpose of this section is to promote the recovery of resources from solid waste by creating one of the conditions which make energy recovery economically feasible, assuring municipalities the authority to guarantee a steady supply of solid waste to specific waste facilities.

Sec. 13. 38 MRSA §1304-B, sub-§2, as amended by PL 1987, c. 517, §§14 and 15, is further amended to read:

2. Flow control. Municipalities Subject to the provisions of chapter 24, municipalities are expressly authorized to enact ordinances that control solid waste collection, its transportation or its delivery to a specific facility, when the purpose and effect of such an ordinance is to gain management control over solid waste and enable the reclamation of

resources, including energy, from these wastes. This authorization includes, but is not limited to, ordinances:

- A. Requiring segregation of wastes;
- B. Requiring delivery of wastes generated within the municipality, or any portion of those wastes, to a designated disposal or reclamation facility; and
- C. Designating certain materials as recyclable and exempt from the provisions of paragraph B.

Sec. 14. 38 MRSA §1304-B, sub-§3, as amended by PL 1987, c. 517, §16, is repealed.

Sec. 15. 38 MRSA §1304-B, sub-§4-A, ¶D is enacted to read:

D. A municipality which anticipates that it will be unable to meet its contract obligation to supply a minimum BTU content level or minimum tonnage due to waste reduction or recycling programs and is unable to reach an agreement with the incinerator for the anticipated reduction may request the agency to intercede. The agency shall assist the incinerator in soliciting solid waste to mitigate any anticipated shortfall in minimum BTU content level or minimum tonnage. If no agreement on mitigation of a anticipated shortfall is reached, the terms of the original contract shall prevail, except as otherwise provided in this chapter.

Sec. 16. 38 MRSA §1304-B, sub-§7 is enacted to read:

7. Subjugation. Notwithstanding any provision of this section to the contrary, the exercise of any power or authority granted under this section is subject to the provisions of chapter 24.

Sec. 17. 38 MRSA §1305, sub-§1, as enacted by PL 1973, c. 387, is repealed and the following enacted to read:

1. Disposal services. Each municipality shall provide solid waste disposal services for domestic and commercial solid waste generated within the municipality and may provide these services for industrial wastes and sewage treatment plant sludge.

Sec. 18. 38 MRSA §1305, sub-§4, as enacted by PL 1973, c. 387, is repealed.

Sec. 19. 38 MRSA §1309, as amended by PL 1987, c. 517, §22, is further amended to read:

§1309. Interstate cooperation

The Legislature encourages cooperative activities by the department and the agency with other states for the improved management of hazardous and solid waste; for improved, and ~~so~~ as far as is practicable, uniform state laws relating to the management of hazardous and solid waste;

and compacts between this and other states for the improved management of hazardous and solid waste.

Sec. 20. 38 MRSA §1310-J, as enacted by PL 1987, c. 517, §25, is repealed.

Sec. 21. 38 MRSA §1310-K, as amended by PL 1987, c. 752, §§1 and 2, is repealed.

Sec. 22. 38 MRSA §1310-L, as amended by PL 1987, c. 769, Pt. A, §182, is repealed.

Sec. 23. 38 MRSA §1310-M, as enacted by PL 1987, c. 517, §25, is repealed.

Sec. 24. 38 MRSA §1310-N, first ¶, as enacted by PL 1987, c. 517, §25, is amended to read:

No person may locate, establish, construct, expand disposal capacity or operate any solid waste facility unless approved by the board under the site location of development laws, chapter 3, subchapter 1, article 6 and the provisions of this chapter. Where the proposed facility is located within the jurisdiction of the Maine Land Use Regulation Commission, in addition to any other requirement, the board shall require compliance with existing standards of the commission.

Sec. 25. 38 MRSA §1310-N, sub-§2, as enacted by PL 1987, c. 517, §25, is repealed.

Sec. 26. 38 MRSA §1310-N, sub-§3, as enacted by PL 1987, c. 517, §25, is repealed and the following enacted in its place:

3. Public benefit determination. The board shall determine the public benefit of a proposed facility according to the following provisions.

A. Prior to the initial adoption of the state plan, the board shall find that a proposed facility provides a substantial public benefit when the applicant demonstrates that the facility is designed, located and will be operated so that it is consistent with and meets the needs identified in the capacity needs analysis under former section 1310-O.

B. Subsequent to the initial adoption of the state plan and for those facilities not subject to chapter 24, subchapter IV, the board shall employ a rebuttable presumption of public benefit.

C. Subsequent to the adoption of the state plan and for those facilities subject to chapter 24, subchapter IV, the agency shall determine whether or not the proposed facility meets the requirements of section 2157.

Sec. 27. 38 MRSA §1310-N, sub-§4, as enacted by PL 1987, c. 517, §25, is repealed.

Sec. 28. 38 MRSA §1310-N, sub-§5, ¶B, as enacted by PL 1987, c. 517, §25, is amended to read:

B. The applicant has shown consistency with the ~~most recent state recycling plan approved by the Legislature pursuant to section 1310-M, subsection 3 recycling provisions of the state plan.~~

Sec. 29. 38 MRSA §1310-O, as enacted by PL 1987, c. 517, §25, is repealed.

Sec. 30. 38 MRSA §1310-R, sub-§§2 and 3, as enacted by PL 1987, c. 517, §25, are amended to read:

2. Recycling. The recycling requirements shall apply as follows.

A. The board shall apply the provisions of section 1310-N, subsection 5, paragraph A, when relicensing any solid waste disposal facility, except that, to the extent that waste disposal contracts in effect on the ~~effective date of this article June 29, 1987~~, are inconsistent with section 1310-N, subsection 5, paragraph A, in which case; those provisions shall apply at the expiration of the term of those contracts without consideration of any renewals or extensions of those contracts.

B. The board shall require an applicant for a new or expanded solid waste disposal facility or for a license renewal submitting a complete application prior to the ~~approval by the Legislature of the first state recycling plan pursuant to section 1310-M, subsection 3, adoption of the state plan~~ to demonstrate that the ~~applicant has considered recycling alternatives that are reasonably within the applicant's control facility furthers the purposes of section 2101 and satisfies the regulations under section 1310-N.~~

C. The provisions of section 1310-N, subsection 5, paragraph B, do not apply to the relicensing of any solid waste disposal facility licensed prior to the ~~effective date of this article June 29, 1987~~.

3. Public benefit. The public benefit requirements shall apply as follows.

~~A. The board shall require an applicant for a new or expanded solid waste disposal facility submitting a complete application prior to the initial adoption of the capacity needs analysis pursuant to section 1310-O to submit such information as the board requires to demonstrate that the proposed facility provides a substantial public benefit, including such information described in section 1310-O.~~

A-1. The board shall require an applicant for a new or expanded solid waste disposal facility submitting a complete application prior to the initial adoption of the state plan to submit such information as the board requires to demonstrate that the proposed facility provides a substantial public benefit, includ-

ing the information described in former section 1310-O.

B. The provisions of section 1310-N, subsection 1, paragraph B, and section 1310-N, subsection 3, do not apply to the relicensing of a solid waste disposal facility licensed prior to the ~~effective date of this article June 29, 1987~~.

C. The board shall apply the provisions of section 1310-N, subsection 3, paragraph A, to any application for a waste disposal facility receiving ash resulting from the combustion of municipal solid waste or from fuel derived from municipal solid waste when the application was accepted as complete by the department prior to July 1, 1989, and is still pending before the department on or after the date of the initial adoption of the state plan under chapter 24.

Sec. 31. 38 MRSA §1310-R, sub-§4 is enacted to read:

4. Incineration facilities. The board shall not license any new incineration facility prior to the adoption of the state plan and siting criteria.

Sec. 32. 38 MRSA §1310-S, sub-§1, as enacted by PL 1987, c. 517, §25, is amended to read:

1. Notification. A person applying for a license under this article or giving notice to the department pursuant to section 483, shall give, at the same time, written notice to the agency and to the municipal officers of the municipality in which the proposed facility may be located and shall publish notice of the application in a newspaper of general circulation in the area.

Sec. 33. 38 MRSA §1310-U, as enacted by PL 1987, c. 517, §25, is repealed and the following enacted in its place:

§1310-U. Municipal ordinances

Municipalities are prohibited from enacting stricter standards than those contained in this chapter and in the solid waste management rules adopted pursuant to this chapter governing the hydrogeological criteria for siting or designing solid waste disposal facilities or governing the engineering criteria related to waste handling and disposal areas of a solid waste disposal facility. Except as provided in section 2173, municipalities are further prohibited from enacting or applying ordinances that regulate solid waste disposal facilities owned by the agency or a regional association.

Under the municipal home rule authority granted by the Constitution of Maine, Article VIII, Part Second and Title 30-A, section 3001, municipalities, except as provided in this section, may enact ordinances with respect to solid waste facilities which contain such standards as the municipality finds reasonable, including, without limitation, conformance with federal and state solid waste rules; fire safety; traffic safety; levels of noise that can be heard outside the

facility; distance from existing residential, commercial or institutional uses; ground water protection; and compatibility of the solid waste facility with local zoning and land use controls, provided, however, that the standards are not more strict than those contained in this chapter and in chapter 3, articles 5-A and 6 and the rules adopted thereunder. Municipal ordinances shall use definitions consistent with those adopted by the department.

A municipality adopting an ordinance under this section shall forward a copy of the ordinance to the department within 30 days of its adoption.

Sec. 34. 38 MRSA §1310-X is enacted to read:

§1310-X. Future commercial landfills

Notwithstanding the provisions of Title 1, section 302, the board shall not approve an application for a new commercial solid waste disposal facility after the effective date of this section, including any applications pending before the board on or after the effective date of this section. The board may relicense or approve a transfer of license for commercial solid waste disposal facilities after the effective date of this section, if those facilities had been previously licensed by the board prior to the effective date of this section, and all other provisions of law have been satisfied.

The board may license expansions of commercial solid waste disposal facilities after the effective date of this section, if:

A. The board has previously licensed the facility prior to the effective date of this section;

B. The board determines that the proposed expansion is contiguous with the existing facility and is located on property owned by the licensee on the effective date of this section;

C. Prior to the adoption of the state plan and siting criteria under chapter 24, the board determines that the proposed expansion is consistent with the provisions of section 1310-R, subsection 3, paragraph A-1; or

D. After the adoption of the state plan and siting criteria under chapter 24, the agency determines that the provisions of section 2157 are met.

Sec. 35. 38 MRSA §§1604 and 1605 are enacted to read:

§1604. Connectors

After July 1, 1991, no person may sell or offer to sell products in containers connected to each other by plastic rings or other plastic holding devices.

§1605. Plastic bags

After January 1, 1990, all retailers in this State shall use paper bags to bag products at the point of retail sale unless the consumer requests a plastic bag.

Sec. 36. 38 MRSA §1706, as enacted by PL 1983, c. 820, §2, is amended to read:

§1706. Relationship to other law

This chapter provides an additional and alternative method for carrying out the purposes of this chapter and is supplemental and additional to powers conferred by other laws, including the provisions of chapter 13, pertaining to solid waste, and is not in derogation of any powers now existing. The exercise of authority under this chapter is subject to any restriction imposed under chapter 24.

Sec. 37. Application of definitions. A facility licensed or with a completed application pending before the Board of Environmental Protection prior to July 1, 1989, is not a commercial waste facility or a commercial solid waste disposal facility solely because it receives or will receive ash resulting from the combustion of municipal solid waste or fuel derived from municipal solid waste.

PART F

Sec. 1. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1989-90	1990-91
AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF		
Public Services - Agriculture		
Positions	(2.0)	(2.0)
Personal Services	\$28,170	\$40,860
All Other	6,165	8,520
Capital Expenditures	770	
Provides 2 additional staff to oversee the expansion of the returnable container law.		
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES		
TOTAL	<u>\$35,105</u>	<u>\$49,380</u>
CONSERVATION, DEPARTMENT OF		
Maine Land Use Regulation Commission		
All Other	\$3,000	\$3,000
Provides funds for the costs of hearings involved with rulemaking for siting criteria.		
DEPARTMENT OF CONSERVATION		
TOTAL	<u>\$3,000</u>	<u>\$3,000</u>

FINANCE, DEPARTMENT OF

Bureau of Taxation

Positions	(3.0)	(3.0)
Personal Services	\$72,440	\$172,023
All Other	33,000	37,050
Capital Expenditures	23,000	27,235

Provides funds for the administrative costs of collection of the advance disposal fees and the investment tax credit. These funds and the loss of General Fund revenues resulting from the investment tax credit will be reimbursed to the General Fund by an annual transfer from the Maine Solid Waste Fund.

DEPARTMENT OF FINANCE

TOTAL	<u>\$128,440</u>	<u>\$236,308</u>
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ECONOMIC AND COMMUNITY DEVELOPMENT, DEPARTMENT OF

Office of Waste Recycling and Reduction

Positions	(-4.0)	(-4.0)
Personal Services	(\$83,179)	(\$120,415)
All Other	(63,962)	(93,590)

Deappropriates funds to account for the transfer of this office to the Maine Waste Management Agency.

DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

TOTAL	<u>(\$147,141)</u>	<u>(\$214,005)</u>
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SOLID WASTE MANAGEMENT FUND

Solid Waste Management Fund

All Other	\$884,101	
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Provides funds to be transferred to the Maine Solid Waste Management Fund on the effective date of this Act. The amount shall be repaid in full by a transfer of revenues from the Maine Solid Waste Management Fund to the General Fund in fiscal year 1990-91.

SOLID WASTE MANAGEMENT FUND

TOTAL	<u>\$884,101</u>	
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TOTAL APPROPRIATIONS	<u>\$903,505</u>	<u>\$74,683</u>
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Sec. 2. Allocation. The following funds are allocated from the Maine Solid Waste Management Fund to carry out the purposes of this Act.

	1989-90	1990-91
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ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Bureau of Solid Waste Management

Positions	(25.0)	(25.0)
Personal Services	\$586,168	\$757,860

All Other	114,303	737,661
Capital Expenditures	48,000	48,960

Provides funds for 10 new positions and 15 positions which were funded by the Environmental Protection Fund. Also includes \$325,000 in fiscal year 1990-91 to be transferred to the Environmental Protection Fund.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

TOTAL	<u>\$748,471</u>	<u>\$1,544,481</u>
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FINANCE AUTHORITY OF MAINE

Waste Reduction and Recycling Loan Fund

All Other		\$400,000
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Provides funds for a revolving loan fund to assist business projects related to recycling and waste reduction.

FINANCE AUTHORITY OF MAINE

TOTAL	<u>\$0</u>	<u>\$400,000</u>
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MAINE WASTE MANAGEMENT AGENCY

Administration - Office of the Executive Director

Positions	(3.0)	(3.0)
Personal Services	\$100,230	\$141,950
All Other	86,427	97,670
Capital Expenditures	11,780	

TOTAL	<u>\$198,437</u>	<u>\$239,620</u>
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Provides funds for the salaries of the Executive Director, a Business Manager II and an Administrative Assistant; the per diem and expenses of the Waste Management Advisory Council; rental costs for the agency; and costs of services of the Department of the Attorney General.

Office of Planning

Positions	(4.0)	(4.0)
Personal Services	\$107,128	\$154,416
All Other	115,000	100,000
Capital Expenditures	50,000	

TOTAL	<u>\$272,128</u>	<u>\$254,416</u>
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Provides funds for the Office Director, 2 professional staff, a clerical position and data collection and information systems costs.

Office of Waste Reduction and Recycling

Positions	(5.0)	(5.0)
Personal Services	\$130,784	\$188,910
All Other	282,500	2,260,000
Capital Expenditures	25,000	

TOTAL	<u>\$438,284</u>	<u>\$2,448,910</u>
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Provides funds for one position in addition to the 4 positions transferred from the Department of Economic and Community Development. Funds allocated in fiscal year 1990-91 also include \$2,250,000 for transportation subsidies, feasibility grants and capital investment grants.

Office of Siting and Disposal Operations

Positions	(4.0)	(4.0)
Personal Services	\$113,770	\$164,525
All Other	12,500	517,500
Capital Expenditures	25,000	25,000
TOTAL	<u>\$151,270</u>	<u>\$707,025</u>

Provides funds for the office director, 2 professional staff, and a clerical position. Funding also includes \$500,000 in fiscal year 1990-91 for site selection consulting services.

MAINE WASTE MANAGEMENT AGENCY TOTAL	<u>\$1,060,119</u>	<u>\$3,649,971</u>
TOTAL ALLOCATIONS	<u>\$1,808,590</u>	<u>\$5,919,452</u>

Sec. 3. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

	1989-90	1990-91
ATTORNEY GENERAL, DEPARTMENT OF		
Administration - Attorney General		
Positions	(1.0)	(1.0)
Personal Services	\$25,937	\$37,770
All Other	2,500	2,500
Capital Expenditures	590	
Provides funds for an additional attorney to provide legal services to the Maine Waste Management Agency.		
DEPARTMENT OF ATTORNEY GENERAL TOTAL	<u>\$29,027</u>	<u>\$40,270</u>
TREASURER OF STATE, (OFFICE OF)		
State - Municipal Revenue Sharing		
All Other		(\$26,867)
Deallocates funds that will not be available due to the investment tax credit.		
(OFFICE OF) TREASURER OF STATE TOTAL	<u>\$0</u>	<u>(\$26,867)</u>
TOTAL ALLOCATIONS	<u>\$29,027</u>	<u>\$13,403</u>

Sec. 4. Allocation. The following funds are allocated from the Alcoholic Beverage Fund to carry out the purposes of this Act.

	1989-90	1990-91
FINANCE, DEPARTMENT OF		
Alcoholic Beverages - General Operations		
All Other	\$380,000	\$758,000
Provides additional funding for the increased cost of handling liquor bottle returns and for increased space requirements. These costs will be offset by an increase in prices of liquor statewide, except at the authorized discount stores, and from additional revenue resulting from the delay in return of liquor bottles. The additional revenue to the Alcoholic Beverage Fund will be sufficient to cover the additional cost, therefore avoiding a reduction in the amounts to be transferred to the General Fund.		

See title page for effective date, unless otherwise indicated.

CHAPTER 586

S.P. 235 - L.D. 565

An Act Concerning the Maine Railroad Excise Tax

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

Sec. 1. 36 MRSA §2621-A, sub-§3 is enacted to read:

3. Maine capital tax credit. "Maine capital tax credit" is a credit against the tax imposed by section 2624.

A. The credit allowed against the tax imposed by section 2624 shall be in an amount equal to:

(1) The credit carry-forwards carried to the taxable year;

(2) The amount of the current year credit; plus

(3) The credit carry-backs carried to the taxable year.

B. The credit shall be an amount equal to 45% of the expenditures for a taxable year related to capital investments, improvements or renovations to a railroad's operations in this State.

C. If the sum of the credit carry-forwards to the taxable year plus the amount of the current taxable