

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1990 to July 10, 1991

Chapters 1 - 590

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PUBLIC LAWS
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to each client upon entering the program a clear written and oral explanation of the client's rights and responsibilities under the program including the availability of a special license after completion of the education and assessment components. All first offender clients are required to complete the education and assessment component unless otherwise provided by this chapter. The following evaluation and treatment components may be required if necessary:

A. The education component, consisting of at least 9 hours of information utilizing films, lectures and discussion and designed to educate the client about the effects of alcohol and other drugs on his behavior, especially behavior involving the operation of a motor vehicle;

B. The assessment component, utilizing an assessment instrument, the client's driving record for the 6-year period prior to and ending with the most recent alcohol-related motor vehicle incident and an interview designed to make a preliminary assessment regarding the extent of a client's alcohol or other drug use or abuse or potential for abuse. A client may be referred for further evaluation based on the results of the preliminary assessment;

C. The evaluation component, designed to identify abusers of alcohol and other drugs. If the evaluation indicates that treatment for alcohol or other drug abuse is needed, the client will be referred to the appropriate alcohol or other drug treatment service; and

D. The treatment component, provided by a community-based service provider, designed to address the client's specific problem with or abuse of alcohol or other drugs.

Sec. 2. 29 MRSA §1312-D, sub-§§2-A and 2-B are enacted to read:

2-A. Special licenses for driver education evaluation program participants. Following the expiration of the total period of suspension imposed on a first time offender pursuant to subsections 1 and 1-A, section 1312-B, former section 1312-B, subsection 2 or Title 15, section 3314, the Secretary of State shall issue a special license or permit to the person if the Secretary of State receives written notice that the person has completed the education and assessment components of the alcohol and other drug program as set out in Title 22, chapter 1602. A special license or permit is conditioned on the person's satisfactory completion of all of the components of the program. A special license or permit may not be issued under this section to 2nd and subsequent offenders.

2-B. Suspension of special licenses for driver education evaluation program participants. If the person refuses or fails to complete the alcohol and other drug program set out in Title 22, chapter 1062, within 6 months after receiving a special license, the Secretary of State, following notice of such refusal or failure may suspend the

special license until the person completes the program. The suspension must continue until the Secretary of State receives written notification from the driver education evaluation program that the person has satisfactorily completed all components of that program. The Secretary of State shall provide notice of suspension and opportunity for hearing pursuant to Title 5, chapter 375, subchapter IV. The sole issue at the hearing is whether the person has written notification from the driver education evaluation program establishing that the person has satisfactorily completed all components of that program as set out in Title 22, chapter 1602.

Sec. 3. Application. This Act applies to persons who violate the Maine Revised Statutes, Title 29, section 1312-B or Title 15, section 3103, subsection 1, paragraph F after the effective date of this Act.

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

Effective June 25, 1991.

CHAPTER 517

H.P. 1296 - L.D. 1873

An Act to Correct Errors and Clarify Provisions in the Solid Waste Laws

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

Whereas, the tax filing deadline will occur before the expiration of the 90-day period; and

Whereas, this legislation pertains to that tax filing period; and

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

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

PART A

Sec. A-1. 38 MRSA §1303-C, sub-§§25-A and 39-A are enacted to read:

25-A. Responsible party. For the purposes of subchapter II-A only, "responsible party" means any or all of the following persons:

A. The owner or operator of an uncontrolled tire stockpile; and

B. Any person who owned or operated an uncontrolled tire stockpile from the time any tire arrived at that stockpile.

39-A. Uncontrolled tire stockpile. "Uncontrolled tire stockpile" means an area or location, whether or not licensed, where used motor vehicle tires are or were handled, stored or disposed of in such a manner as to present a significant fire hazard or a threat to public health or to the quality of a classified body of surface water or a significant sand and gravel aquifer or fractured bedrock aquifer as defined in section 1310-N, subsection 2-A.

Sec. A-2. 38 MRSA c. 13, sub-c. II-A is enacted to read:

SUBCHAPTER II-A

TIRE STOCKPILE ABATEMENT

§1316. Prohibition

A person may not handle used motor vehicle tires at an uncontrolled tire stockpile in violation of an order issued under this subchapter.

§1316-A. Investigation and enforcement

Upon investigation, if the commissioner finds that an uncontrolled tire stockpile exists, the commissioner may issue notice to the responsible party or parties and conduct an enforcement hearing in accordance with section 347-A, subsection 2 and issue an order directing the responsible party or parties to mitigate or eliminate the threatening or hazardous conditions posed by the uncontrolled tire stockpile.

Upon investigation, if the commissioner finds that an uncontrolled tire stockpile is creating or is likely to create a substantial and immediate danger to public health or safety or to the environment, the commissioner may issue an emergency order in accordance with section 347-A, subsection 3 directing the responsible party or parties to take immediate action necessary to reduce or alleviate the danger.

§1316-B. Abatement; cleanup; mitigation

If a responsible party does not comply immediately with all conditions of an order issued pursuant to sections 347-A, subsection 3 and section 1316-A, the commissioner may act to abate, clean up or mitigate the threat or hazard posed by an uncontrolled tire stockpile. The commissioner may:

1. Assistance. Employ private consultants and other persons to evaluate, design or conduct tire removal or site remediation activities;

2. Process and remove. In consultation with the agency, cause the processing or removal of all stockpiled tires;

3. Secure. Have barriers constructed and sufficient security measures implemented to prohibit the access of unauthorized persons to the site, including the responsible party;

4. Equipment. Have fire-fighting or pollution abatement equipment purchased and stored either at or away from the tire stockpile;

5. Alter. Have the physical characteristics of the stockpile site altered, including the construction of fire lanes, fire or pollution barriers or other necessary site remediation activity; or

6. Close. Permanently close the stockpile and prohibit the use of the site for the storage or disposal of used motor vehicle tires.

§1316-C. Liability; recovery by State

Each responsible party is jointly and severally liable for all costs incurred by the State, including court costs and attorney's fees, for the abatement, cleanup or mitigation of the threat or hazard posed by an uncontrolled tire stockpile and for damages to destruction of or loss of natural resources of the State resulting from the uncontrolled tire stockpile. The commissioner shall demand prompt reimbursement of all costs incurred under sections 1316-A and 1316-B. If payment is not received by the State within 30 days of demand, the Attorney General may file suit in the Superior Court and may seek reimbursement of other costs and any other relief provided by law. Notwithstanding the time limits stated in this section, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability.

The commissioner may not demand from responsible parties that are municipalities reimbursement of more than 10% of all costs incurred by the State under sections 1316-A and 1316-B.

In any suit filed under this section, the State need not prove negligence in any form or matter by a defendant. The State need only prove that a defendant is a responsible party and the site poses or posed or potentially poses or posed a threat or hazard to the health, safety or welfare of any citizen of the State or the environment of the State, to which the acts or omissions of the defendant are or were causally related. Punitive damages may be awarded by the court upon a finding that a responsible party acted in willful violation of law, rule or order in creating, increasing or maintaining an uncontrolled tire stockpile.

Funds recovered under this section must be deposited into the Maine Solid Waste Management Fund.

§1316-D. Immunity

Notwithstanding Title 14, chapter 741, the State, its agencies or its employees are not liable for the death or

injury of any person or for any property damage that results from abatement activities pursuant to this subchapter. This section does not affect the right of any person to receive workers' compensation or other applicable benefits.

§1316-E. Lien established

1. Establishment. All costs incurred by the State, including court costs and attorney's fees, for the abatement, cleanup or mitigation of an uncontrolled tire stockpile and all related interest and penalties constitute a lien against the real estate of the responsible party or parties.

2. Priority. The priority of a lien filed pursuant to this section is governed by the following.

A. Any lien filed pursuant to this section on real estate where an uncontrolled tire stockpile is located has precedence over all encumbrances on the real estate recorded after the effective date of this section. For the purposes of this paragraph, the term "real estate" includes all real estate of a responsible party that has been included in the property description of the real estate on which the stockpile is located within the 3-year period preceding the date of the filing of the lien or the period between the effective date of this section and the date on which the lien is filed, whichever period is shorter.

B. Any lien filed pursuant to this section on any other real estate of the responsible party has precedence over all transfers and encumbrances filed after the date that the lien is filed with the registry of deeds.

3. Notice. A certificate of lien signed by the commissioner must be mailed by certified mail, return receipt requested, to all persons of record holding an interest in the real estate over which the commissioner's lien is entitled to priority under subsection 2, paragraph A. A certificate may be filed for record in the office of the clerk of any municipality in which the real estate is situated.

4. Recording. Any lien filed pursuant to this section is effective when filed with the registry of deeds for the county in which the real estate is located. The lien must include a description of the real estate, the amount of the lien and the name of the owner as grantor.

5. Limitation. This section does not apply to a unit of real estate that consists primarily of real estate used or under construction as single or multifamily housing at the time the lien is recorded or to property owned by a municipality.

6. Discharge of lien. When the amount of a lien recorded under this section has been paid or reduced, the commissioner, upon request by any person of record holding interest in the real estate that is the subject of the lien, shall issue a certificate discharging or partially discharging the lien. The certificate must be recorded in the registry in

which the lien was recorded. Any foreclosure action on the lien must be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the property subject to the lien is situated.

Sec. A-3. 38 MRSA §2135-A is enacted to read:

§2135-A. Tire management program

Subject to available funding, the office shall develop a waste tire management incentive program to reduce existing tire stockpiles and to promote waste tire recycling through a financial assistance program. The program must:

1. Abatement. Be consistent with the abatement program administered by the department to remove waste tires through proper processing, disposal or recycling; and

2. Incentives. Provide financial incentives to enhance markets for waste tires and to partially reimburse businesses or municipalities for utilizing waste tires for processing, energy recovery and other end uses. The office shall adopt rules to implement the incentive programs, including, but not limited to, the types of management options eligible for reimbursement and the amount of reimbursement.

PART B

Sec. B-1. 36 MRSA c. 719, first 2 lines are repealed and the following enacted in their place:

CHAPTER 719

RECYCLING ASSISTANCE FEE

Sec. B-2. 38 MRSA §1382, first ¶, as enacted by PL 1987, c. 799, §2, is amended to read:

Members of the board of trustees ~~shall be~~ are 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. The board of trustees ~~shall consist~~ consists of 7 8 members as follows: one member from the Department of Environmental Protection; one member from the Department of Agriculture, Food and Rural Resources; one member from the Maine Waste Management Agency; one member from an environmental interest group; one member from the Maine Waste Water Control Association; one member from the Maine Municipal Association; one member representing users of sludge or residuals; and one member representing generators of sludge and residuals.

Sec. B-3. 38 MRSA §1705, sub-§9, as amended by PL 1989, c. 104, Pt. C, §§8 and 10, is further amended to read:

9. Municipal officer. "Municipal officer" means municipal officer as defined in Title 30-A, section 2001, and

includes the assessors of a plantation and county commissioners acting on behalf of the residents of any unorganized territory within their county under Title 30-A, chapter 305.

Sec. B-4. 38 MRSA §1705, sub-§9-A is enacted to read:

9-A. Municipality. "Municipality" means municipality as defined in Title 30-A, section 2001, and includes plantations and unorganized territories.

Sec. B-5. 38 MRSA §2103, sub-§1, ¶G, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

G. Enter, with the permission of the owner or subject to Title 4, section 180 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~~ determines necessary for the purpose of this chapter;

Sec. B-6. 38 MRSA §2103, sub-§1, ¶H, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

H. Enter any property at reasonable hours; and enter any building with the consent of the property owner, occupant, or agent or, if consent is not given, under a warrant issued pursuant to Title 4, section 179, 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;

Sec. B-7. 38 MRSA §2132, sub-§2, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

2. Goal revision. The ~~office~~ agency shall recommend revisions, if appropriate, to the state recycling goal and shall establish a waste reduction goal. The ~~office~~ agency 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.

Sec. B-8. 38 MRSA §2133, sub-§1, ¶¶G and H, as enacted by PL 1989, c. 585, Pt. A, §7, are amended to read:

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

H. Consistency with the state plan, when adopted; and

Sec. B-9. 38 MRSA §2133, sub-§1, ¶I is enacted to read:

I. Composting of organic fractions of the municipal solid waste stream.

Sec. B-10. 38 MRSA §2133, sub-§3, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

3. Recycling capital investment grants. The office may make grants to eligible municipalities ~~and~~, regional associations, sanitary districts and sewer districts 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.

Sec. B-11. 38 MRSA §2133, sub-§5, as enacted by PL 1989, c. 585, Pt. A, §7, is repealed and the following enacted in its place:

5. Access to state waste disposal services. A municipality that fails to provide recycling opportunities to its residents may not deliver, directly or indirectly, municipal solid waste, including residual waste, to a state-owned solid waste disposal facility.

Sec. B-12. 38 MRSA §2157, first ¶, as repealed and replaced by PL 1991, c. 66, Pt. A, §41, is amended to read:

Subsequent to the adoption of the state plan, the Department of Environmental Protection may 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. An expansion of a commercial solid waste disposal facility or a solid waste disposal facility owned by a municipality or a regional association or a sanitary district created under chapter 11 or by special act of the Legislature is not subject to subsection 1, paragraph C, subparagraph (2), if the facility was licensed and in existence as of October 1, 1989, and at the time of application for the expansion.

Sec. B-13. 38 MRSA §2164, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

§2164. Household and small generator hazardous waste

The office shall develop and implement by July 1, ~~1991,~~ 1992 a statewide system for the collection and disposal of hazardous waste generated by households, public and private nonprofit institutions and small quantity generators.

Sec. B-14. 38 MRSA §2177, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §293, is further amended to read:

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

Any person owning or operating a solid 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 commissioner 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.

Sec. B-15. 38 MRSA §2201, as amended by PL 1989, c. 927, §7, is further amended to read:

§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~~ must be segregated into 2 subsidiary accounts. The first subsidiary account, which ~~shall be~~ is called operations, ~~shall receive~~ receives all fees established and received under article 1. The 2nd subsidiary account, which ~~shall be~~ is called administration, ~~shall receive~~ receives all fees established under this article and under Title 36, chapter 719 and all funds recovered by the department as reimbursement for departmental expenses incurred to abate imminent threats to public health, safety and welfare posed by the illegal disposal of solid waste.

Money in the fund not currently needed to meet the obligations of the agency ~~shall~~ must 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~~ must be credited to the fund.

Funds related to administration may only be expended in accordance with allocations approved by the Legislature for administrative expenses directly related to the agency's and the department's programs, including actions by the department necessary to abate imminent threats to public health, safety and welfare posed by the illegal disposal of solid waste. Funds related to operations may only be expended in accordance with allocations approved by the Legislature and 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. These allocations must 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~~ must 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-D and Title 36, chapter 719 and an amount equal to the General Fund revenues lost as the result of Title 36, sections 2526 and 5219-D. Allowable expenditures include "Personal Services," "All Other" and "Capital Expenditures"

associated with all agency activities other than those included in the operations account.

Sec. B-16. 38 MRSA §2203, sub-§3 is enacted to read:

3. Imported special waste. In addition to any other fee assessed under this section and to support those regulatory and administrative costs associated with imported special wastes, an administrative fee of \$2 per ton is imposed on special waste brought into the State for disposal, except that an administrative fee of \$2 per cubic yard is imposed on asbestos brought into the State for disposal. The fee must be assessed at the first point of disposal, processing or treatment within the State.

Sec. B-17. 38 MRSA §2204, as amended by PL 1989, c. 869, Pt. A, §14 and affected by §20, is repealed and the following enacted in its place:

§2204. Municipal disposal surcharge; recycling and import fees

The agency shall impose the following fees.

1. Landfill surcharge. A disposal surcharge of \$4 per ton is assessed on any municipal solid waste disposed of at a commercial landfill facility.

2. Recycling progress. Any municipality that fails to make reasonable progress, as determined by the agency, toward the state recycling goals shall pay a \$1.50 per ton fee on:

A. Any solid waste generated within its jurisdiction that is exported from the State; and

B. Any solid waste generated within its jurisdiction that is delivered to a commercial solid waste facility or to a solid waste disposal facility owned by the agency or a regional association.

3. Imported municipal solid waste. To support those regulatory and administrative costs associated with imported municipal solid wastes, an administrative fee of \$4 per ton is assessed on any municipal solid waste originating outside the State and delivered to a commercial solid waste facility or solid waste disposal facility owned by the agency or a regional association for disposal.

PART C

Sec. C-1. 38 MRSA §2123, sub-§6, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

6. Facility needs. The plan ~~shall~~ must identify the number, size and type of solid waste facilities required to meet the capacity needs for all municipal solid wastes and for those special wastes 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.

Sec. C-2. 38 MRSA §2156, as amended by PL 1991, c. 243, §2, is further amended to read:

§2156. Facility development

1. Initial state facility required. On or before January 1, 1995, the office shall develop facilities sufficient to meet the projected needs for municipal solid waste identified in the analysis conducted under former section 1310-O and the state plan and to serve all geographic areas of the State. On or before January 1, 1995, the office may develop facilities sufficient to meet the projected needs for special waste 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~~ develop municipal solid waste disposal facilities as it determines is necessary to meet the capacity needs identified in the state plan. In addition, the office may develop special 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.

This section does not preclude a municipality or regional association from developing and operating such facilities on its own initiative.

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

Effective June 28, 1991.

CHAPTER 518

H.P. 1152 - L.D. 1677

An Act to Clarify and Revise the Adult and Secondary Vocational Education Laws

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

Sec. 1. 20-A MRSA §8301, as amended by PL 1987, c. 98, §2, is repealed.

Sec. 2. 20-A MRSA §8301-A is enacted to read:

§8301-A. Definitions

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

1. Affiliated unit. "Affiliated unit" means a school administrative unit that is affiliated with another school administrative unit that operates a vocational center. An affiliated school administrative unit may have its secondary students served by a vocational center operated by a school administrative unit with which it is affiliated. An affiliated school administrative unit may also operate vocational satellite programs.

2. Budget failure. "Budget failure" means the failure of a vocational region, by August 1st of any fiscal year, to approve a budget for the vocational region that is at least equal to the sum of the total allocations for vocational education of the member school administrative units in the vocational region.

3. Center. "Center" means an administrative entity established pursuant to this chapter that provides vocational education to secondary students. Unless otherwise specifically provided for by this chapter, a vocational center is governed, operated and administered by a single school administrative unit. A vocational center shall make its programs available to serve secondary students from school administrative units with which it is affiliated. A vocational center may include within its administrative structure vocational satellite programs operated by school administrative units with which it is affiliated.

4. Municipality. "Municipality" has the same meaning as in section 15603, subsection 19.

5. Parent. "Parent" means a parent, as defined in section 1, subsection 20, with legal custody of a minor child.

6. Region. "Region" means a quasi-municipal corporation established by the Legislature to provide vocational education to secondary students that is comprised of all of the school administrative units within the geographical boundaries set forth for each vocational region in section 8451. A vocational region is governed by a cooperative board formed and operating in accordance with this chapter.

7. Residence. "Residence" means, with reference to a person's eligibility to receive vocational education, the school administrative unit in which is located the legal residence of the person's parent if the person has not reached 18 years of age, the legal residence of the person after the person reaches 18 years of age or the legal residence of the person after the person becomes an emancipated minor. A federal reservation is considered part of the school administrative unit in which it is located.

8. Satellite program. "Satellite program" means a program providing vocational education to secondary stu-