

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION
October 1, 1992 to October 6, 1992

FOURTH SPECIAL SESSION
October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1992 to July 14, 1993

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
OCTOBER 13, 1993

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
1993

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND SIXTEENTH LEGISLATURE

1993

port or alimony contained in the order and consistent with this section. The clerk, upon application, shall issue the order of income withholding.

See title page for effective date.

CHAPTER 191

H.P. 191 - L.D. 254

An Act to Clarify Criteria for Allowing Unlicensed Municipal Solid Waste Landfills to Accept Waste After December 31, 1992

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

Whereas, municipalities are experiencing financial stress associated with landfill closure programs, the remediation of existing landfills and the development of alternative solid waste disposal arrangements; and

Whereas, municipalities need additional time to plan and implement landfill closure programs and establish substitute solid waste disposal arrangements; and

Whereas, sufficient state resources do not exist to reimburse municipalities for the costs of landfill closure and remediation; and

Whereas, municipal budgets are stressed from low tax revenue growth, reductions in state revenue sharing, reductions in state educational aid and federal mandates; and

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

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

Sec. 1. 38 MRSA §1310-N, sub-§§6-B and 6-C are enacted to read:

6-B. Unlicensed landfills operating after December 31, 1992. Notwithstanding subsection 6, the commissioner shall enter into an agreement with a municipality allowing that municipality to operate an unlicensed municipal solid waste landfill after December 31, 1992 if the commissioner determines that the municipality has:

A. Selected an alternative solid waste handling or disposal option that is licensed or capable of being licensed;

B. Proposed to the department a reasonable and mutually acceptable schedule for implementing that option; and

C. Agreed to cease accepting waste at the unlicensed landfill on a date certain.

An agreement under this subsection between a municipality and the department may not include any provision that prevents the municipality from using its unlicensed landfill for the disposal of municipal solid waste during the term of the agreement. Notwithstanding any provision of an agreement entered into under this subsection, the commissioner shall order an unlicensed landfill to cease operating if the commissioner finds that continued operation of the landfill poses an immediate hazard to the public health or the environment, including without limitation a threat to a public or private water supply.

6-C. Summary of federal regulations. The commissioner shall provide a summary of the criteria for municipal solid waste landfills set forth in 40 Code of Federal Regulations, Part 258 (1992) to each municipality operating a licensed or unlicensed municipal solid waste landfill on the effective date of this subsection. The summary must describe the operational and, where possible, the economic implications under federal and state rules of accepting waste at a municipal solid waste landfill after October 8, 1993.

Sec. 2. PL 1991, c. 759, §3 is repealed.

Sec. 3. Consolidation plans voided. Any provision in an agreement between a municipality and the Department of Environmental Protection that is in effect on the effective date of this Act and that requires a municipality to enter into a solid waste consolidation management plan as a condition for continued operation of an unlicensed landfill after December 31, 1992 is void.

Sec. 4. Retroactivity. This Act applies retroactively to January 1, 1993.

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

Effective June 2, 1993.

CHAPTER 192

H.P. 476 - L.D. 613

An Act to Shorten the Appeal Procedure for the State Bidding Process and to Provide Consistent Administration of Appeal Hearings

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

Sec. 1. 5 MRSA §1825-E, sub-§§1 to 3, as amended by PL 1991, c. 780, Pt. Y, §71, are further amended to read:

1. Stay. Persons aggrieved by a contract award decision may request a stay of a contract award decision. Such a request must be made to the Director of the Bureau of General Services in writing within ~~30~~ 10 days of notification of the contract award and must state the nature of the grievance.

The Director of the Bureau of General Services shall issue a stay of a contract award decision, pending appeal, upon a showing of irreparable injury to the petitioner, a reasonable likelihood of success on the merits, and no substantial harm to adverse parties or to the general public.

The Director of the Bureau of General Services shall notify the petitioner in writing of the director's decision regarding the issuance of a stay within ~~40~~ 7 days of receipt of the request.

Failure of the petitioner to obtain a stay does not affect the petitioner's right to a hearing of appeal under this subchapter.

2. Request for hearing of appeal. Persons aggrieved by an agency contract award decision under this subchapter may request a hearing of appeal. Such a request must be made to the Director of the Bureau of General Services in writing within ~~30~~ 15 days of notification of the contract award. The Director of the Bureau of General Services shall grant a hearing of appeal unless:

A. The Director of the Bureau of General Services determines that:

- (1) The petitioner is not an aggrieved person;
- (2) A prior request by same petitioner relating to the same contract award has been granted;
- (3) The request was made more than ~~30~~ 15 days after notice of contract award; or
- (4) The request is capricious, frivolous or without merit; or

B. No contract award was granted.

The Director of the Bureau of General Services shall notify the petitioner in writing of the director's decision regarding a request for a hearing of appeal within ~~30~~ 15 days of receipt of the request. If a request for a hearing

is granted, notification must be made at least ~~45~~ 10 days before the hearing date and must include the date and location of the hearing and the names of the appeal committee members.

3. Appeal committee. A committee of 3 members shall hear a petitioner's appeal within 60 days of receipt of the request for an appeal. The Commissioner of Administrative and Financial Services shall appoint ~~the 2~~ members of an appeal committee, except that persons who have any direct or indirect personal, professional or financial conflict of interest in the appeal or employees of any department affected by the contract may not serve on the appeal committee. The 3rd member is the Director of the Bureau of General Services or the director's designee.

Members of an appeal committee appointed under this section shall meet at the appointed time and place in the presence of the petitioner and such individuals as the petitioner determines necessary for a full and fair hearing. The petitioner may present to the appeal committee any materials the petitioner considers relevant to the appeal.

The appeal committee shall keep a written record of each hearing and shall submit its decision and the reasons for its decision to the Director of the Bureau of General Services in writing no later than 15 days following the hearing of appeal.

Subject to the requirements of rules adopted under this section and evidence presented during a hearing of appeal, the appeal committee may decide either to:

- A. Validate the contract award decision under appeal; or
- B. Invalidate the contract award decision under appeal.

Except as provided in paragraph B, an appeal committee may not modify the contract award under appeal, or make a new contract award. Contracts found invalid by an appeal committee under this subchapter become immediately void and of no legal effect.

Sec. 2. 5 MRSA §1825-F, first ¶, as enacted by PL 1989, c. 785, §2, is amended to read:

Decisions made by an appeal committee under section 1825-E, subsection 3; constitute final agency action on the petitioner's appeal for the purposes of judicial review under chapter 375, subchapter VII. The State Purchasing Agent shall notify a petitioner of a final agency action made under this subchapter in writing within ~~40~~ 7 days of the final agency action. Notification of final agency action must include:

See title page for effective date.