

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1995

notice need not be given to the Secretary of State for publication in the consolidated newspaper notice of agency rulemaking. In addition to the preceding notice requirements, a quasi-municipal corporation or district must publish notice in a newspaper of general circulation in the service area of the corporation or district at least 17 days, but not more than 24 days, in advance of a meeting at which a regulation will be adopted or a program expanded or created.

See title page for effective date.

CHAPTER 656

H.P. 1343 - L.D. 1838

An Act to Remove Statutory References to the Maine Waste Management Agency

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

PART A

Sec. A-1. 5 MRSA §3305, sub-§1, ¶L, as enacted by PL 1995, c. 465, Pt. B, §3 and affected by Pt. C, §2, is amended by amending subparagraph (2) to read:

(2) Preparing a solid waste management and recycling plan to be submitted to the Governor and the Legislature by January 1, 1998 and every 2 1/2 years thereafter; and

Sec. A-2. 10 MRSA §1023-G, sub-§3, ¶D, as enacted by PL 1989, c. 878, Pt. A, §26, is amended to read:

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~~ State Planning Office 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.

Sec. A-3. 10 MRSA §1041, sub-§18, as enacted by PL 1989, c. 585, Pt. C, §11, is amended 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~~

State Planning Office shall provide assistance to the authority in determining consistency, technical eligibility and merit of application for recycling loans.

Sec. A-4. 10 MRSA §1063, sub-§2, ¶I-1, as enacted by PL 1989, c. 585, Pt. C, §14, is amended to read:

I-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~~ State Planning Office shall provide assistance to the authority in determining consistency, technical eligibility and merit of applications for assistance under this subchapter.

Sec. A-5. 32 MRSA §1723, sub-§2, as amended by PL 1995, c. 465, Pt. A, §7 and affected by Pt. C, §2, is repealed.

Sec. A-6. 32 MRSA §1726, as amended by PL 1995, c. 465, Pt. A, §8 and affected by Pt. C, §2, is repealed and the following enacted in its place:

§1726. Enforcement

A person who labels a plastic container in violation of this chapter commits a violation of the Maine Unfair Trade Practices Act.

Sec. A-7. 32 MRSA §1732, sub-§1, as amended by PL 1995, c. 465, Pt. A, §9 and affected by Pt. C, §2, is repealed.

Sec. A-8. 32 MRSA §1732, sub-§1-A is enacted to read:

1-A. Department. "Department" means the Department of Environmental Protection.

Sec. A-9. 32 MRSA §1734, sub-§2, as amended by PL 1995, c. 184, §3, is further amended to read:

2. Health and safety requirements; feasibility; post-consumer materials. The manufacturer, supplier or distributor petitions the ~~agency~~ department for an exemption for a particular package or packaging component and the ~~agency~~ department grants an exemption for one or more of the following reasons.

A. The package or packaging component contains lead, cadmium, mercury or hexavalent chromium added in the manufacturing, forming, printing or distribution process in order to comply with health or safety requirements of state or federal law.

B. There is no feasible alternative to the use of lead, cadmium, mercury or hexavalent chromium in the package or packaging component. For the purposes of this section, "no feasible alternative" means a use in which the regulated substance is essential to the protection, safe handling or function of the package's contents.

C. The addition of post-consumer materials causes the package or packaging component to exceed the maximum concentration levels set forth in section 1733, subsection 3.

For packages or packaging components exempted under paragraph A or B, a 2-year exemption may be granted and that exemption may be renewed for an additional 2 years. An exemption granted under paragraph C is valid for 6 years;

Sec. A-10. 32 MRSA §1735, sub-§2, as amended by PL 1993, c. 310, Pt. A, §2, is further amended to read:

2. Presentation of certificates. Each manufacturer shall furnish the ~~agency department~~, at the ~~agency's department's~~ request, with a copy of any certificate of compliance and each manufacturer or supplier shall furnish, at the ~~agency's department's~~ request, copies of a certificate of compliance for distribution to the public.

Sec. A-11. 32 MRSA §1736, sub-§1, as enacted by PL 1989, c. 849, §1, is amended to read:

1. Enforcement. The ~~Department of Agriculture, Food and Rural Resources~~ department shall enforce the provisions of this chapter and may inspect, with the consent of the owner or agent, any property or building to accomplish the objectives of this chapter.

Sec. A-12. 32 MRSA §1737, as enacted by PL 1989, c. 849, §1, is amended to read:

§1737. Rules

The ~~agency department~~ shall adopt rules implementing the provisions of this chapter in consultation with the Department of Agriculture, Food and Rural Resources. Rules must be adopted in accordance with the Maine Administrative Procedure Act. No rule adopted pursuant to this chapter may add or remove prohibitions on packaging or packaging components.

Sec. A-13. 32 MRSA §1738, as enacted by PL 1989, c. 849, §1, is amended to read:

§1738. Public access

A citizen of the State may request in writing from the ~~agency department~~ a copy of the certificate

of compliance for a package or packaging component found in use or for sale in the State.

Sec. A-14. 36 MRSA §2526, sub-§3, as amended by PL 1993, c. 433, §1, is further amended to read:

3. Eligible equipment. Equipment eligible for the credit allowed under this section includes waste reduction, reuse or recycling equipment used to reduce, reuse or recycle solid waste, at least 90% of which is generated within the State. A certificate that the equipment qualifies for the credit provided for in this section from the ~~Maine Waste Management Agency State Planning Office~~ is required before the tax credit may be taken. Equipment associated with the separation of wastes prior to incineration is eligible when the ~~Maine Waste Management Agency State Planning Office~~ certifies that the separated wastes are being recycled.

Sec. A-15. 36 MRSA §2526, sub-§4, as amended by PL 1993, c. 433, §1, is further amended to read:

4. Limitation; carry-over. The amount of the credit that may be used by a taxpayer for a taxable year may not exceed 50% of the amount of tax otherwise due under this Part for that year. A credit may not be used to reduce taxes in any tax year starting before January 1, 1993. Any unused credit may be carried over to the following year or years ~~for a period not to exceed 15 years~~ but must be used by the tax year ending not later than June 30, 1998.

Sec. A-16. 36 MRSA §5219-D, sub-§3, as amended by PL 1993, c. 433, §2, is further amended to read:

3. Eligible equipment. Equipment eligible for the credit allowed under this section includes waste reduction, reuse or recycling equipment used to reduce, reuse or recycle solid waste, at least 90% of which is generated within the State. A certificate that the equipment qualifies for the credit provided for in this section from the ~~Maine Waste Management Agency State Planning Office~~ is required before the tax credit may be taken. Equipment associated with the separation of wastes prior to incineration is eligible when the ~~Maine Waste Management Agency State Planning Office~~ certifies that the separated wastes are being recycled.

Sec. A-17. 36 MRSA §5219-D, sub-§4, as amended by PL 1993, c. 433, §2, is further amended to read:

4. Limitation; carry-over. The amount of the credit that may be used by a taxpayer for a taxable year may not exceed 50% of the amount of tax otherwise due under this Part for that year. A credit

may not be used to reduce taxes in any tax year starting before January 1, 1993. Any unused credit may be carried over to the following year or years ~~for a period not to exceed 15 years~~ but must be used by the tax year ending not later than June 30, 1998.

Sec. A-18. 38 MRSA §343-D, sub-§1, as amended by PL 1995, c. 465, Pt. A, §11 and affected by Pt. C, §2, is further amended to read:

1. Appointment; composition. The committee consists of 16 voting members.

A. The Governor shall appoint 2 representatives from the business community, 2 elected or appointed municipal officials who are not owners or representatives of owners of small business stationary sources, and 2 representatives of organized labor.

B. The President of the Senate shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an owner or represents an owner of a small business stationary source.

C. The Speaker of the House of Representatives shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an owner or represents an owner of a small business stationary source.

D. The commissioner shall appoint a designee to represent the department.

E. The Senate Minority Leader and the House Minority Leader shall each appoint one member who is an owner or represents an owner of a small business stationary source.

F. The Director of the Bureau of Air Quality Control shall appoint a designee to represent the bureau.

The Commissioner of Labor, and the Director of the Maine Emergency Management Agency ~~and the Director of the State Planning Office~~ serve as ex officio members and do not vote on committee matters.

As used in this subsection, unless the context otherwise indicates, a "small business stationary source" means a source that meets the eligibility requirements of 42 United States Code Annotated, Section 7661f.

Sec. A-19. 38 MRSA §1303-C, sub-§1, as enacted by PL 1989, c. 585, Pt. E, §4, is repealed.

Sec. A-20. 38 MRSA §1303-C, sub-§7, ¶D, as amended by PL 1991, c. 220, §6, is further amended to read:

D. The ~~agency office~~ under chapter 24;

Sec. A-21. 38 MRSA §1303-C, sub-§19-C is enacted to read:

19-C. Office. "Office" means the State Planning Office.

Sec. A-22. 38 MRSA §1304, sub-§4, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §227, is further amended to read:

4. Technical assistance. The commissioner 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 commissioner shall cooperate with the ~~agency office~~ in the design and delivery of this assistance.

Sec. A-23. 38 MRSA §1304, sub-§13, as amended by PL 1991, c. 72, §3, is further 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, municipal waste water treatment plant sludges and the composting of yard wastes. The ~~agency office~~ shall first determine that the proposed innovative disposal and waste management programs are consistent with the state plan. The commissioner 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. A-24. 38 MRSA §1304-B, sub-§4-A, ¶D, as enacted by PL 1989, c. 585, Pt. E, §15, is amended to read:

D. A municipality ~~which~~ that 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 office to intercede. The agency office 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 an anticipated shortfall is reached, the terms of the original contract ~~shall~~ prevail, except as otherwise provided in this chapter.

Sec. A-25. 38 MRSA §1310-S, sub-§1, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §249, is further amended to read:

1. Notification. A person applying for a license under this article or giving notice to the commissioner pursuant to section 485-A, shall give, at the same time, written notice to the agency office 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. A-26. 38 MRSA §1310-U, first ¶, as repealed and replaced by PL 1989, c. 585, Pt. E, §33, is amended to read:

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 office or a regional association.

Sec. A-27. 38 MRSA §1705, sub-§1-A, as enacted by PL 1989, c. 869, Pt. B, §1, is repealed.

Sec. A-28. 38 MRSA §1705, sub-§9-B is enacted to read:

9-B. Office. "Office" means the State Planning Office.

Sec. A-29. 38 MRSA §1721, as amended by PL 1991, c. 66, Pt. B, §8, is further amended to read:

§1721. Formation

The formation of a disposal district ~~shall be~~ is accomplished as follows.

1. Application by municipal officers. The municipal officers of the municipality or municipalities that desire to form a disposal district shall file an application with the agency office, after notice and hearing in each municipality, on a form or forms prepared by the agency office, setting forth the name or names of the municipality or municipalities and furnishing such other data as the agency office determines necessary and proper. The application must contain, but is not limited to, a description of the territory of the proposed district, the name proposed for the district that includes the words "disposal district," a statement showing the existence in that territory of the conditions requisite for the creation of a disposal district as prescribed in section 1702, and other documents and materials required by the agency office. The agency office may adopt rules under this chapter.

2. Public hearing. Upon receipt of the application, the agency office shall hold a public hearing on the application within 60 days of the date of receipt of the application, at some convenient place within the boundaries of the proposed district. At least 14 days prior to the date of the hearing, the agency office shall publish notice of the hearing at least once in a newspaper of general circulation in the area encompassed by the proposed district.

3. Approval of application. After the public hearing, on consideration of the evidence received, the agency office shall, in accordance with section 1702 and rules adopted by the agency office, make findings of fact and a determination of record whether or not the conditions requisite for the creation of a disposal district exist in the territory described in the application. If the agency office finds that the conditions do exist, it shall issue an order approving the proposed district as conforming to the requirements of this chapter and designating the name of the proposed district. The agency office shall give notice to the municipal officers within the municipality or municipalities involved of a date, time and place of a meeting of the representative of the municipality or municipalities involved. The municipal officers shall elect a representative to attend the meeting who may represent the municipality in all matters relating to the formation of the district. A return receipt properly endorsed is evidence of the receipt of notice. The notice must be mailed at least 10 days prior to the date set for the meeting.

4. Denial of application. If the agency office determines that the creation of a disposal district in the territory described in the application is not warranted for any reason, it shall make findings of fact and enter an order denying its approval. The agency office shall give notice of the denial by mailing certified copies of the decision and order to the municipal officers of the municipality or municipalities involved. An applica-

tion for the creation of a disposal district, consisting of exactly the same territory, may not be entertained within one year after the date of the issuance of an order denying approval of the formation of that disposal district, but this provision does not preclude action on an application for the creation of a disposal district embracing all or part of the territory described in the original application, provided that another municipality or fewer municipalities are involved.

5. Joint meeting. The persons selected by the municipal officers, to whom the notice described in subsection 3 is directed, shall meet at the time and place appointed. When more than one municipality is involved, they shall organize by electing a chair and a secretary. An action may not be taken at any such meeting unless, at the time of convening, there are present at least a majority of the total number of municipal representatives eligible to attend and participate at the meeting, other than to report to the agency office that a quorum was not present and to request the agency office to issue a new notice for another meeting. A quorum is a simple majority of representatives eligible to attend the meeting. The purpose of the meeting is to determine the number of directors, subject to section 1724, to be appointed by and to represent each participating municipality and to determine the duration of terms to be served by the initial directors so that, in ensuing years, 1/3 of the directors and their alternates are appointed or reappointed each year, to serve until their respective successors are duly appointed and qualified. Subject to section 1724, the number of directors to represent each municipality is subject for negotiation among the municipal representatives. When a decision has been reached on the number of directors and the number to represent each municipality and the initial terms of the directors, subject to the limitations provided, this decision must be reduced to writing by the secretary and must be approved by a 2/3 vote of those present. The vote so reduced to writing and the record of the meeting must be signed by the chair, attested by the secretary and filed with the agency office. Any agreements among the municipal representatives that are considered essential prerequisites to the formation of the district, whether concerning payments in lieu of taxes to a municipality in which a waste facility is to be located, or any other matter, must be in writing and included in the record filed with the agency office. Subsequent to district formation, the board of directors of the district shall execute all documents necessary to give full effect to the agreements reached by the municipal representatives and filed with the agency office. When a single municipality is involved, a copy of the vote of the municipal officers, duly attested by the clerk of the municipality, must be filed with the agency office.

6. Submission. When the record of the municipality, or the record of the joint meeting, when

municipalities are involved, is received by the agency office and found to be in order, the agency office shall order the question of the formation of the proposed disposal district and other questions relating to the formation to be submitted to the legal voters residing within the municipalities, except as provided in subsection 7, in which case the municipal officers may determine the questions. The order must be directed to the municipal officers of the municipality or municipalities that propose to form the disposal district, directing them to call, within 60 days of the date of the order, town meetings or city elections for the purpose of voting in favor of or in opposition to each of the following articles or questions, as applicable, in substantially the following form:

A. Whether the town (or city) of (name of town or city) will vote to incorporate as a disposal district to be called (name) Disposal District;

B. Whether the residents of (name of town or city) will vote to join with the residents of the (name of town or city) to incorporate as a disposal district to be called (name) Disposal District: (legal description of the bounds of the proposed disposal district). At a minimum, the district must consist of (names of essential municipalities); and

C. Whether the residents of (name of town or city) will vote to approve the total number of directors and the allocation of representation among the municipalities on the board of directors, as determined by the municipal officers and listed as follows: Total number of directors is (number of directors) and the residents of (town or city) are entitled to () directors. (The number of directors to which each municipality is entitled must be listed.)

Directors must be chosen to represent municipalities in the manner provided in section 1725.

7. Determination by municipal officers. In the event that the charters of the respective municipalities, or any one of them, consistent with such state laws as may otherwise be applicable, permit the municipal officers of the municipality or municipalities ~~which~~ that propose to form the disposal district to vote to join such a district, the municipal officers may determine the question of the formation of the proposed disposal district and other questions relating to the formation without submission to the legal voters residing within the municipality.

Sec. A-30. 38 MRSA §1722, as repealed and replaced by PL 1991, c. 66, Pt. B, §9, is amended to read:

§1722. Approval and organization

When the residents of the municipality, or each municipality when more than one is involved, or the municipal officers, as the case may be, have voted upon the formation of a proposed disposal district and all of the other questions submitted, the clerk of each of the municipalities shall make a return to the agency office in such form as the agency office may determine. If the agency office finds from the returns that each of the municipalities involved, voting on each of the articles and questions submitted to them, has voted in the affirmative, and that the municipalities have appointed the necessary directors and listed the names of the directors to represent each municipality, and that all other steps in the formation of the proposed disposal district are in order and in conformity with law, the agency office shall make a finding to that effect and record the finding upon its records. When 3 or more municipalities are concerned in the voting, and at least 2 have voted to approve each of the articles and questions submitted, appointed the necessary directors and listed the names of the directors to represent each municipality, rejection of the proposed disposal district by one or more does not defeat the creation of a district composed of the municipalities voting affirmatively on the question, if the agency office determines and issues an order stating that it is feasible or practical to constitute the district as a geographic unit composed of the municipalities voting affirmatively, unless the vote submitted to the municipalities provided that specific participants or a minimum number of participants must approve the formation of the district.

The ~~agency shall~~ office, immediately after making its findings, shall issue a certificate of organization in the name of the disposal district in such form as the agency office determines. The original certificate must be delivered to the directors on the day that they are directed to organize and a copy of the certificate duly attested by the executive director of the agency office must be filed and recorded in the office of the Secretary of State. The issuance of the certificate by the agency office is conclusive evidence of the lawful organization of the disposal district. The disposal district is not operative until the date set by the directors under section 1726.

Sec. A-31. 38 MRSA §1725, first ¶, as repealed and replaced by PL 1991, c. 66, Pt. B, §10, is amended to read:

Directors are appointed by the municipal officers of the municipality they represent. Alternate directors may be appointed by the municipal officers to act in the absence of a director. To the extent possible, the board of directors must include a mix of individuals with sufficient managerial, technical, financial or business experience to execute their duties efficiently

and effectively. Appointments must be by vote of the municipal officers, attested to by the municipal clerk and presented to the clerk of the district. The municipal officers, by majority vote, may remove their appointed representatives during their term for stated reasons, but directors may not be removed except for neglect of duty, misconduct or other acts that indicate an unfitness to serve. Upon receipt of the names of all the directors, the agency office shall set a time, place and date for the first meeting of the directors, notice of the meeting to be given to the directors by certified or registered mail, return receipt requested and mailed at least 10 days prior to the date set for the meeting.

Sec. A-32. 38 MRSA §1726-A, sub-§4, ¶A, as amended by PL 1993, c. 11, §2, is further amended to read:

A. When the question is submitted prior to the issuance of any indebtedness by the district, the directors may decide that approval of such an assessment article by the voters of a municipality is a condition of each municipality's continuance as a member of the district, in which case the ballots must include a statement that municipalities that fail to vote in favor of the proposed assessment article are no longer members of the district if the board determines that it is feasible or practical to constitute a district as a geographic unit made up of the municipalities voting in favor of the proposed assessment article. The ballots must also state the method to be used to allocate assessments among the member municipalities if the article is approved. The ballot may not contain a specific fractional share of the assessment to be borne by each member municipality. The votes must be counted in each municipality and the affirmative vote of a simple majority of votes cast in each municipality is required to grant the district assessment powers over all of the municipalities in the district. When 3 or more municipalities are involved in the voting and at least 2 have voted to approve the assessment article submitted to them, rejection of the proposed assessment article by one or more municipalities does not defeat the assessment power with respect to the municipalities voting in favor of it if the board determines that it is feasible or practical to constitute a district made up of the municipalities voting in favor of the article as a geographic unit. In that event, the board ~~shall~~, immediately after making its findings, shall issue an amended certificate of organization in the name of the district for a district composed only of the municipalities voting in favor of the assessment article. Upon the issuance of a certificate the municipalities not approving the assessment article are no longer members of the district. The original of the amended certificate must be

delivered to the directors of the district and a copy of the certificate attested by the ~~Executive Director of the Waste Management Agency State Planning Office~~ must be filed and recorded in the office of the Secretary of State. The issuance of the certificate by the board is conclusive evidence of the lawful reorganization of the district. If the board determines that it is not feasible or practical to constitute the district as a geographic unit composed of the municipalities voting affirmatively on the article, the district continues to exist with no assessment power and the municipalities that did not approve the assessment article remain members of the district.

Sec. A-33. 38 MRSA §1727, as repealed and replaced by PL 1991, c. 66, Pt. B, §11, is amended to read:

§1727. Admission of new member municipalities

The board of directors may authorize the inclusion of additional member municipalities in the district upon the terms and conditions as the board, in its sole discretion, determines to be fair, reasonable and in the best interest of the district, except that on proper application any municipality that is host to a waste facility of the district ~~shall~~ must be admitted on equal terms with existing members, provided that the new member municipality assumes or becomes responsible for a proportionate share of liabilities of the district in a manner similar to that of existing municipalities. The legislative body of any nonmember municipality that desires to be admitted to the district shall make application for admission to the board of directors of the district. The directors shall determine the effects and impacts that are likely to occur if the municipality is admitted and shall either grant or deny authority for admission of the petitioning municipality. If the directors grant the authority, they shall also specify any terms and conditions, including, but not limited to, financial obligations upon which the admission is predicated. The petitioning municipality shall comply with the voting procedures specified in section 1721. The vote, if in the affirmative, must be certified by the clerk of that municipality to the board of directors and to the ~~agency office~~. Upon satisfactory performance of the terms and conditions of admission, the municipality ~~shall~~ becomes and thereafter ~~be~~ is a member municipality of the district. The clerk of the district shall promptly certify to the agency and the Secretary of State that the municipality has become a member of the district. The certification is conclusive evidence that the municipality is a lawful member of the district. Upon admission of a municipality to a district, the provisions of section 1724 determine the number of votes to be cast by the director or directors representing that municipality.

Sec. A-34. 38 MRSA §2101-A, sub-§1, as enacted by PL 1995, c. 465, Pt. A, §28 and affected by Pt. C, §2, is repealed.

Sec. A-35. 38 MRSA §2125, as amended by PL 1995, c. 465, Pt. A, §38 and affected by Pt. C, §2, is repealed.

Sec. A-36. 38 MRSA §2133, sub-§2-A, as enacted by PL 1995, c. 465, Pt. A, §46 and affected by Pt. C, §2, is amended to read:

2-A. Technical and financial assistance program. A program of technical and financial assistance for waste reduction and recycling is established in the office to assist municipalities with managing solid waste. The director shall administer the program in accordance with the waste management hierarchy in section 2101. Preference in allocating resources under this section must be given to municipalities that take advantage of regional economies of scale.

Sec. A-37. 38 MRSA §2133, sub-§3, as amended by PL 1995, c. 465, Pt. A, §47 and affected by Pt. C, §2, is further amended to read:

3. Recycling capital investment grants. The office may make grants to eligible municipalities, regional associations, sanitary districts and sewer districts for the construction of public recycling and composting facilities and the purchase of recycling and composting equipment. The office may establish requirements for local cost sharing of up to ~~25%~~ 50% of the total grant amount.

Sec. A-38. 38 MRSA §2133, sub-§7 is enacted to read:

7. Recycling progress reports. Municipalities shall report annually, on forms provided by the office, on their solid waste management and recycling practices. The annual report must include how much of each type of solid waste is generated and how that solid waste is managed. The office shall assist municipal reporting by developing a municipal waste stream assessment model. The model must rely on actual waste data whenever possible, but incorporate default generation estimates when needed. Default generation estimates must incorporate factors such as commercial activity, geographical differences and municipal population.

Sec. A-39. 38 MRSA §2134, as amended by PL 1995, c. 465, Pt. A, §51 and affected by Pt. C, §2, is further amended to read:

§2134. Marketing assistance

The office shall ~~implement market development and provide marketing assistance programs, consistent~~

with the recycling component of the state plan, which ~~must~~ may include, ~~without limitation,~~ the following elements:

3. Information clearinghouse. An information clearinghouse on recycling markets to improve the marketing of materials to be recycled. The office shall maintain a current list of municipal 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 public and 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; and

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

~~**6. Reuse of waste.** Assistance to industries in promoting the reuse of industrial and commercial wastes that are suitable raw materials for other processes.~~

Sec. A-40. 38 MRSA §2137, first ¶, as amended by PL 1995, c. 465, Pt. A, §55 and affected by Pt. C, §2, is further amended to read:

The office, ~~in cooperation with the~~ Department of Administrative and Financial Services, 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.

Sec. A-41. 38 MRSA §2138, sub-§1, as amended by PL 1995, c. 465, Pt. A, §56 and affected by Pt. C, §2, is further amended to read:

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.

The office ~~shall~~ may provide technical and marketing assistance and direction to entities within the State to assist with meeting this requirement. Municipalities and regional associations may assist employers in attaining the objectives of this section.

Sec. A-42. 38 MRSA §2139, as amended by PL 1995, c. 465, Pt. A, §57 and affected by Pt. C, §2, is repealed.

Sec. A-43. 38 MRSA §2140, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

§2140. Interstate and national initiatives

The office ~~shall~~ may 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.

Sec. A-44. 38 MRSA §2154, sub-§2, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

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~~ office may recommend the location of any solid waste disposal or refuse-derived fuel processing facility.

Sec. A-45. 38 MRSA §2154, sub-§3, as enacted by PL 1991, c. 794, §4 and affected by §9, is amended to read:

3. Municipal reimbursement. At the conclusion of proceedings before the Facility Siting Board conducted pursuant to subsection 1, the ~~agency~~ office shall reimburse a municipality for eligible expenses incurred as a result of that municipality's direct, substantive participation in proceedings before the Facility Siting Board. The amount reimbursed under this subsection may not exceed \$50,000 for any municipality. For the purposes of this subsection, "eligible expenses" has the same meaning as "expenses eligible for reimbursement" under section 1310-S, subsection 4, and any rules adopted by the Board of Environmental Protection pursuant to that section.

Sec. A-46. 38 MRSA §2159, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

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

The ~~agency~~ office may acquire and hold real and personal property ~~which that it deems~~ considers 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.

Sec. A-47. 38 MRSA §2160, sub-§§1 and 4, as enacted by PL 1989, c. 585, Pt. A, §7, are amended to read:

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

- A. The determination of the agency office 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 office; 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~~ can not be notified by personal service or certified mail, notice may be given by publication in the manner provided in subsection 4.

4. Hearing. The agency office shall hold a public hearing on the advisability of its proposed exercise of the right of eminent domain. Notice of the hearing ~~shall~~ must be made by publication in a newspaper of general circulation in the area of the taking and ~~shall be given~~ published 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~~ must 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.

Sec. A-48. 38 MRSA §2161, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

§2161. Condemnation proceedings

At the time ~~it~~ the office sends the notice in section 2160, the agency office shall file in the ~~office of the county commissioners of the county~~ county commissioner's office 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 office fails to acquire property ~~which that~~ 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 office 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 office is not liable for any acts ~~which that~~ 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 interests therein and other property and rights as aforesaid to be taken, but title ~~shall~~ may not vest in the agency office until payment for the property is made.

Sec. A-49. 38 MRSA §2165, sub-§9, as enacted by PL 1991, c. 808, §2, is repealed.

Sec. A-50. 38 MRSA §2166, sub-§2, as enacted by PL 1991, c. 808, §2, is repealed.

Sec. A-51. 38 MRSA §2170, as enacted by PL 1993, c. 310, Pt. B, §2, is amended to read:

§2170. Host community benefits; application limited to facilities owned or operated by the office

This subchapter applies only to solid waste disposal facilities owned or operated by the agency office. Wherever in this subchapter the term "solid waste disposal facility" or "facility" is used, those terms may be construed only to mean a solid waste disposal facility owned or operated by the agency office.

Sec. A-52. 38 MRSA §2172, as amended by PL 1993, c. 310, Pt. B, §6, is further amended to read:

§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 related to the siting and operation of a solid waste disposal facility within the municipality. The citizen advisory committee must 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 is eligible for grants from the agency office to fund dispute resolution programs under this

section related to the siting and operation of a solid waste disposal facility.

Sec. A-53. 38 MRSA §2173, as amended by PL 1993, c. 310, Pt. B, §7, is further amended by repealing and replacing the headnote to read:

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

Sec. A-54. 38 MRSA §2174, sub-§2, as amended by PL 1993, c. 310, Pt. B, §8, is further amended by amending the first paragraph to read:

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

Sec. A-55. 38 MRSA §2175-A, as corrected by RR 1993, c. 1, §137, is amended to read:

§2175-A. Property value offset

Owners of property, the value of which has been affected by a solid waste disposal facility, are eligible for reimbursement from the agency office for loss in property value directly attributable to the construction and operation of the facility. The agency office shall adopt rules to establish the formula and procedure 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 offset program will be in effect and an accounting of real estate trends in the area.

Sec. A-56. 38 MRSA §2176, first ¶, as amended by PL 1995, c. 465, Pt. A, §71 and affected by Pt. C, §2, is further amended to read:

In addition to payment in lieu of taxes provided in section 2175-B, the office shall make impact payments to a municipality in which a solid waste disposal 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 office shall base its impact payments on measurable criteria including, without limitation:

Sec. A-57. 38 MRSA §2177, as amended by PL 1993, c. 310, Pt. B, §12, is further amended to read:

§2177. Water supply monitoring and protection

Upon written request from persons owning land contiguous to a solid waste disposal facility, the agency office 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 that meets criteria developed by the department.

If a facility 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, the agency office shall restore the affected supply at no cost to the consumer 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 consumer.

1. Extent of analysis. Water supplies must be analyzed for all parameters or chemical constituents determined by the commissioner to be indicative of typical contamination from solid waste disposal facilities. The laboratory performing the sampling and analysis shall provide written copies of sample results to the agency office, the landowner and to the commissioner.

2. Additional sampling required. If the analysis indicates possible contamination from a solid waste disposal facility, the commissioner shall conduct, or require the agency office to conduct, additional sampling and analysis to determine more precisely the nature, extent and source of contamination. The commissioner 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 agency office shall provide owners of contiguous land with written notice of their rights under this section on a form prepared by the commissioner.

Sec. A-58. 38 MRSA §2191, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

§2191. Fees

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

Sec. A-59. 38 MRSA §2192, first ¶, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

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

Sec. A-60. 38 MRSA §2192, sub-§§2 to 4, as enacted by PL 1989, c. 585, Pt. A, §7, are amended to read:

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

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 office, which sum ~~shall~~ **must** 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~~ **must** be devoted to the retirement of the term obligations of the agency office 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 office;

Sec. A-61. 38 MRSA §2193, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

§2193. Host municipality fees

The agency office 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~~ **the** lower fees are set in a manner consistent with the rules promulgated by the agency office.

Sec. A-62. 38 MRSA §2201, 2nd ¶, as repealed and replaced by PL 1991, c. 824, Pt. A, §88, is amended to read:

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

Sec. A-63. 38 MRSA §2201, 3rd ¶, as amended by PL 1995, c. 395, Pt. P, §8 and affected by §11, is further amended to read:

Funds related to administration may be expended only in accordance with allocations approved by the Legislature for administrative expenses directly related to the agency's office'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 be expended only 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 office and

for the repayment of any obligations of the agency office incurred under article 3. These allocations must be based on estimates of the actual costs necessary for the agency office 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 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 office activities other than those included in the operations account.

Sec. A-64. 38 MRSA §2204, as amended by PL 1995, c. 465, Pt. A, §§75 and 76 and affected by Pt. C, §2, is further amended to read:

§2204. Municipal disposal surcharge; import fees

The agency department shall impose the following fees.

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

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, or the maximum fee on out-of-state waste authorized by federal law, whichever is greater, is assessed on any municipal solid waste originating outside the State and delivered to a commercial solid waste disposal facility or solid waste disposal facility owned by the office or a regional association for disposal.

Sec. A-65. 38 MRSA §2232, first ¶, as enacted by PL 1991, c. 676, §1, is amended to read:

An incineration facility shall submit an annual report to the agency office no later than 90 days after the end of the incineration facility's fiscal year. For reasonable cause shown and upon written application by an incineration facility, the agency office may grant an extension of the 90-day period. The report must be certified by an appropriate executive officer of the incineration facility as being complete and accurate. The agency office may prescribe the form of the annual report and the number of copies that must be submitted. The report must include the following information:

Sec. A-66. 38 MRSA §2232, sub-§§4 and 5, as enacted by PL 1991, c. 676, §1, are amended to read:

4. Expenditures. The total expenditures of the incineration facility during the last completed fiscal year including details of those expenditures as required by the agency office; and

5. Other information. Any other information required by the agency office.

Sec. A-67. 38 MRSA §2235, as enacted by PL 1991, c. 676, §1, is amended to read:

§2235. Use of files

The agency office shall keep on file for public inspection and use all reports submitted under this subchapter.

Sec. A-68. 38 MRSA §2236, as corrected by RR 1993, c. 1, §138, is amended to read:

§2236. Limitation

Nothing in this subchapter may be construed to create or expand any agency office authority over financial, organizational or rate regulation of incineration facilities.

Sec. A-69. PL 1993, c. 591, §§3 and 4 are repealed.

Sec. A-70. Notice of tax credit termination date. The State Planning Office shall notify each person certified as eligible for the investment tax credit provided in the Maine Revised Statutes, Title 36, section 2526 or 5219-D of the June 30, 1998 termination date for use of the credit.

PART B

Sec. B-1. Legislative intent. The Legislature intends that the repeal of the Maine Revised Statutes, Title 38, sections 2103, 2122 and 2157 in Public Law 1995, chapter 465 eliminates the statutory authority for the adoption of rules under those sections or the enforcement of any rules adopted under those sections.

See title page for effective date.

CHAPTER 657

S.P. 738 - L.D. 1846

An Act to Combine Certain Reporting Requirements for Employees

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

Sec. 1. 26 MRSA §1082, sub-§13, as amended by PL 1993, c. 312, §1, is further amended to read:

13. Filing payroll reports; penalty. The commission may prescribe rules for the filing of payroll reports for the employing units in the State. Each employing unit shall submit a quarterly payroll report on those forms the bureau prescribes and these quarterly reports are due in the office of the bureau, or of any duly constituted agent of the bureau, on or before the last day of the month following the close of the calendar quarter for which the reports relate. The failure on the part of any employing unit to file the payroll reports within ~~the time stated by rule of the commission~~ this time frame renders the employing unit liable to ~~for a penalty of \$25, unless the delay was occasioned by the illness or death of the person in charge of the records of the employing unit or by other unavoidable occurrence that excuses the employing unit from the penalty, except that an extension of time up to 30 days beyond the prescribed due date for a quarterly payroll report may be allowed for good cause upon written request made on or before the due date or 10% of the tax due, whichever is greater.~~

Provided that in the case of executive, administrative and professional employees, and outside sales representatives, as defined in Part 541 of the Rules and Regulations promulgated under the Fair Labor Standards Act of 1938, as amended as of June 30, 1971, the commissioner, upon the request of an employer of those individuals, may approve an alternative method for obtaining from that employer necessary wage information relative to those employees.

Sec. 2. 26 MRSA §1082, sub-§14, ¶¶A and B, as amended by PL 1979, c. 651, §45, are further amended to read:

A. ~~Determination.~~ The Director of Unemployment Compensation or a representative of the commissioner duly authorized by the commissioner to do so shall determine whether an employing unit is an employer and whether services performed for or in connection with the business of the employing unit constitute employment, and shall give written notice of the determination to the employing unit. Unless ~~such~~ the employing unit, within ~~45~~ 30 calendar days after notification was mailed to its last known address, files an appeal from ~~such that~~ that determination, ~~such the~~ the determination ~~shall be~~ is final.

B. ~~Redetermination.~~ After a determination has been made under paragraph A, the Director of