

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

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
1997

are passed through the State for distribution; and

(3) The rate of reimbursement for travel does not exceed the standard mileage rate for that year, as established by the United States Department of Treasury.

See title page for effective date.

CHAPTER 602

H.P. 1439 - L.D. 2003

An Act to Clarify and Enhance Certain Municipal Powers Regarding Solid Waste Disposal

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

Whereas, in order to better effect the purposes of the electric rate stabilization laws as recently modified by the passage of Public Law 1997, chapter 492; and

Whereas, in some instances, the participation of large numbers of municipalities is necessary to assist financially challenged electric utilities in the State to mitigate the adverse effects of pricing in power purchase contracts with solid waste disposal facilities that dispose of municipal solid waste; and

Whereas, the powers of municipalities to participate in assisting in mitigation need clarification; 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 §1303-C, sub-§24, ¶B, as enacted by PL 1989, c. 869, Pt. A, §5, is amended to read:

B. Creation of a nonprofit corporation that consists exclusively of municipalities and is organized under Title 13, chapter 81 or Title 13-B, for the purpose, among other permissible purposes, of owning, constructing or operating a solid waste disposal facility, including a public waste disposal corporation under section 1304-B, or whose members contract for the disposal of

solid waste with a solid waste disposal facility, including, but not limited to, a qualifying facility as defined in Title 35-A, section 3303;

Sec. 2. 38 MRSA §1304-B, sub-§5-A is enacted to read:

5-A. Other regional associations. Notwithstanding any law, charter, ordinance provision or limitation to the contrary, any 2 or more municipalities, counties, refuse disposal districts, public waste disposal corporations or other quasi-municipal corporations may organize or cause to be organized or may acquire membership in one or more regional associations for the purpose, among other permissible purposes, of facilitating the disposal of domestic and commercial solid waste generated within the geographic boundaries of each member of the regional association. In accordance with this subsection, a regional association may conduct business without an interlocal agreement.

A. The articles of incorporation or bylaws of the regional association must provide that:

(1) The regional association must be organized and continuously operated as a non-profit corporation, no part of the net earnings of which may inure to the benefit of any member, director, officer or other private person; the receipt, directing and application of money in accordance with paragraph E may not be considered to be part of the net earnings, income or profit of the regional association;

(2) The directors of the regional association must be elected by the municipal officers, the trustees or the directors, as applicable, of the members of the regional association; and

(3) Upon dissolution or liquidation of the corporation, title to all of its property vests in one or more of the municipalities participating in the regional association.

B. Each member must enter into at least one solid waste disposal agreement with the owners of at least one solid waste disposal facility, including, but not limited to, a solid waste disposal facility that is a qualifying facility as defined in Title 35-A, section 3303.

C. Each member must be in good standing with the regional association and abide by the bylaws of the regional association.

D. Notwithstanding any limitation imposed by Title 30-A, chapter 223, subchapter III-A, or any other limitation on investments imposed on a

member pursuant to state law, each member may invest its funds in and participate in the ownership of:

- (1) One or more solid waste disposal facilities;
- (2) An entity that owns one or more solid waste disposal facilities;
- (3) An electric utility or transmission and distribution utility that has a power purchase agreement with the owners of a solid waste disposal facility that, in turn, has a solid waste disposal contract with the member;
- (4) An electric power generation company established by a public utility whether or not it is regulated by the Public Utilities Commission or a successor state agency; and
- (5) A subsidiary entity formed by an electric utility.

E. To the extent provided in its bylaws, a regional association may perform the following functions, among others, on behalf of its members:

- (1) Receive and direct distributions of cash from and ownership interests in the entities described in paragraph D as well as other revenues from activities authorized under this subsection, including, but not limited to:
 - (a) Distribution on behalf of members based on a minimum tonnage guaranteed to be delivered or actually delivered to solid waste disposal facilities; and
 - (b) Earnings and other distributions from the members' investments in and participation in the entities described in paragraph D in the form of capital stock, limited partnership interest, warrants for equity interest or other equity positions in entities;
- (2) Manage assets of its members that are related to the functions of the regional association, including, but not limited to, functions related to the entities described in paragraph D;
- (3) Manage money or other value received on account of members from any source;

(4) Determine the use and application of assets on behalf of and for the benefit of its members, including investment and reinvestment in the entities described in paragraph D;

(5) Purchase, sell and otherwise deal with ownership interests, including the authority to exercise warrants for the purpose of making any purchase, in the entities described in paragraph D; and

(6) Administer the solid waste disposal agreement described in paragraph B and act as agent for its members under and pursuant to and to the extent provided by the solid waste disposal agreement, including the authority to bind its members through arbitration proceedings.

F. A regional association may receive, direct and apply money as described in paragraph E without the need for further action by any member by appropriation or otherwise and, unless otherwise provided by a member in connection with its participation in a regional association, that money may not be taken into account for purposes of calculating any limitation on the member's annual expenditures or appropriations.

A regional association may not pledge the full faith and credit of its members but it has all other powers necessary and incidental to carry out the purposes of this chapter. Notwithstanding any contrary provision in Title 13-B, a regional association may have more than one class of members as prescribed or established in its bylaws.

Sec. 3. Retroactivity; application. This Act applies retroactively to February 1, 1997.

Any corporation organized in a manner that satisfies the requirements of the Maine Revised Statutes, Title 38, section 1304-B, subsection 5-A, whether organized prior to or after the effective date of Title 38, section 1304-B, subsection 5-A, is deemed for all purposes to have been organized pursuant to Title 38, section 1304-B, subsection 5-A. Any vote by the governing body of a member authorizing and otherwise delegating functions and powers to any corporation organized in accordance with Title 38, section 1304-B, subsection 5-A is deemed for all purposes to be valid whether the authorization was granted prior to or after the effective date of Title 38, section 1304-B, subsection 5-A.

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

Effective March 17, 1998.

CHAPTER 603

H.P. 1493 - L.D. 2092

An Act to Clarify Certain Laws Pertaining to the Department of Environmental Protection, Bureau of Land and Water Quality

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

Sec. 1. 38 MRSA §480-B, sub-§1, as enacted by PL 1987, c. 809, §2, is amended to read:

1. Coastal sand dune systems. "Coastal sand dune systems" means sand and gravel deposits within a marine beach system, including, but not limited to, beach berms, frontal dunes, dune ridges, back dunes and other sand and gravel areas deposited by wave or wind action. Coastal sand ~~dunes~~ dune systems may extend into the coastal wetlands.

Sec. 2. 38 MRSA §482, sub-§5, as amended by PL 1995, c. 704, Pt. A, §5 and affected by Pt. C, §2, is further amended by amending the first paragraph to read:

5. Subdivision. A "subdivision" is the division of a parcel of land into 5 or more lots, ~~other than lots for single family, detached, residential housing, common areas or open space,~~ to be offered for sale or lease to the general public during any 5-year period, if the aggregate land area includes more than 20 acres; ~~or the division of a parcel of land into 15 or more lots except that when all lots are for single-family, detached, residential housing, common areas or open space;~~ a "subdivision" is the division of a parcel of land into 15 or more lots to be offered for sale or lease to the general public within any 5-year period, if the aggregate land area includes more than 30 acres. The aggregate land area includes lots to be offered together with the roads, common areas, easement areas and all portions of the parcel of land in which rights or interests, whether express or implied, are to be offered. This definition of "subdivision" is subject to the following exceptions:

Sec. 3. 38 MRSA §488, sub-§18, ¶E, as enacted by PL 1995, c. 493, §7, is amended to read:

E. For purposes of this subsection only, "roundwood" means logs, bolts and other round

sections of wood as they are cut from the tree and split firewood.

Sec. 4. 38 MRSA §488, sub-§19, as amended by PL 1997, c. 485, §1, is further amended by amending the first paragraph to read:

19. Municipal capacity. A structure, as defined in section 482, subsection 6, that is from 3 acres up to and including 7 acres or a subdivision, as defined in section 482, subsection 5, that is made up of 15 or more lots for single-family, detached, residential housing, common areas or open space with an aggregate area of from 30 acres up to and including 100 acres is exempt from review under this article if located wholly within a municipality or municipalities ~~having delegated review pursuant to section 489-A or~~ meeting the criteria in paragraphs A to D as determined by the department. The planning board of the municipality in which the development is located or an adjacent municipality may petition the commissioner to review such a structure or subdivision if it has regional environmental impacts. This petition must be filed within 20 days of the receipt of the application by the municipality. State jurisdiction must be exerted, if at all, within 30 days of receipt of the completed project application by the commissioner from the municipality or within 30 days of receipt of any modification to that application from the municipality. Review by the department is limited to the identified regional environmental impacts. The criteria are as follows:

Sec. 5. 38 MRSA §489-A, sub-§4, as amended by PL 1993, c. 383, §27 and affected by §42, is further amended to read:

4. Suspension of registration. If the commissioner finds that a municipality no longer meets the criteria set forth under subsection 2 or 2-A, or is not adequately implementing those requirements, the commissioner may suspend the registration and shall notify the municipality accordingly. The notice must contain findings of fact and conclusions of law. If registration is suspended, the commissioner shall recommend actions for the municipality to come into compliance with this section. The commissioner may waive the suspension for new projects that have received at least one substantive municipal review prior to the suspension of registration. If the department determines that a municipality meets the criteria specified in section 488, subsection 19, the department shall suspend the registration for the type of development exempt from review in that municipality pursuant to section 488, subsection 19.

Sec. 6. 38 MRSA §490-D, sub-§3-A, as amended by PL 1995, c. 700, §24, is further amended to read: