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Public Law
123rd Legislature
First Regular Session

Chapter 406
H.P. 1005 - L.D. 1431

**An Act To Provide for the Protection of Communities
That Host a Solid Waste Disposal Facility**

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 38 MRSA §1303-C, sub-§15-B is enacted to read:

15-B. Host community. "Host community" means any town, township or city that is the geographic site of a solid waste disposal facility or any immediately contiguous town, township or city if such town, township or city can demonstrate to the department that it incurs a direct financial impact related to any necessary development or maintenance of infrastructure or to any necessary provision of services as a result of the location or operation of that solid waste disposal facility.

Sec. 2. 38 MRSA §1310-N, sub-§9, as enacted by PL 1995, c. 465, Pt. A, §16 and affected by Pt. C, §2, is amended to read:

9. Host community agreements. The following provisions apply to ~~an application for a license for a commercial solid waste disposal facility~~ a solid waste disposal facility, except that this subsection does not apply to a facility owned by the State or to a facility described in section 1303-C, subsection 6, paragraphs E or F.

A. ~~The department may not issue a license for a commercial solid waste disposal facility unless the applicant has demonstrated that it has~~ solid waste disposal facility unless a host community agreement is in place as described in this subsection.

~~(1) Complied with municipal ordinances requiring host community benefits;~~

~~(2) Negotiated in good faith with the municipality in which the facility is proposed to be located to formulate a host community agreement;~~

~~(3) Developed and will implement a host community agreement; or~~

~~(4) Renegotiated, if appropriate, the terms of an existing host community agreement.~~

A-1. A solid waste disposal facility must have in place a host community agreement with all applicable host communities during the development and operation and through closure of that facility, except that a solid waste disposal facility owned by a municipality that meets the provisions of section 1303-C, subsection 6, paragraph B is not required to have in place a host community agreement with the host community that is the geographic site of the facility. A host community agreement for the purposes of this section must, when applicable, include the provisions set forth in paragraph B, except that a host community agreement in effect prior to the effective date of this paragraph is not required to include the provisions set forth in paragraph B.

B. Based upon the nature, size and projected impacts of the proposed facility, host community agreements must, when applicable, include provisions regarding:

(1) Improvement, maintenance and repair of local roads directly affected by traffic to and from the facility and of other infrastructural elements directly affected by the facility;

(2) Development and maintenance of adequate local emergency response capacity to accommodate the facility;

(3) Financial support for personnel or other means to provide technical assistance to the municipality in interpreting data and to advise the municipality on other technical issues concerning the facility; and

(4) Other issues determined on a case-specific basis by the applicant and municipality to be appropriate given the nature of the proposed facility.

The department shall adopt rules concerning the expenditure of funds made available to a municipality under the provisions of subparagraph (3) to ensure that funds are used to provide direct technical support to the municipality necessary for the conduct of municipal planning and decision making.

C. In the event that the parties to a host community agreement required under this subsection cannot agree on the terms of agreement, the parties shall submit the dispute for resolution in accordance with this paragraph.

(1) The parties shall submit the dispute for mediation. The commissioner shall present to the parties a list of 5 experienced and qualified mediators. Each party may strike 2 names from the list. After each party has been afforded 2 opportunities to strike, either the sole remaining person or the first unchallenged person on the list must be appointed by the commissioner as

the mediator assigned to mediate the dispute. In assembling the list of proposed mediators, the commissioner may consider the panel of mediators offered by the Office of Court Alternative Dispute Resolution Service created in Title 4, section 18-B.

(2) If mediation fails to result in an agreement between the parties, the parties shall submit the dispute for arbitration. The commissioner shall present to the parties a list of 5 experienced and qualified arbitrators. Each party may strike 2 names from the list. After each party has been afforded 2 opportunities to strike, either the sole remaining person or the first unchallenged person on the list must be appointed by the commissioner as the arbitrator assigned to determine the dispute. In assembling the list of proposed arbitrators, the commissioner may consider the panels of arbitrators offered by the Office of Court Alternative Dispute Resolution Service created in Title 4, section 18-B or by the American Arbitration Association or a successor organization.

(a) Both the facility and the host community will be bound by the decision of the arbitrator.

(b) Unless otherwise provided for in this subparagraph, the arbitration must be conducted in accordance with the rules of the American Arbitration Association or a successor organization for the conduct of commercial arbitration proceedings.

(c) Costs associated with the arbitration must be shared equally between the parties.

(d) The arbitrator shall submit the decision to the commissioner.

(e) Either party may appeal the decision of the arbitrator to the Superior Court.

Sec. 3. 38 MRSA §2170-A is enacted to read:

§ 2170-A. Host community agreements

The provisions of this section apply to a solid waste disposal facility owned or operated by the office.

1. Issuance of license. The department may not issue a license for a solid waste disposal facility unless a host community agreement is in place in accordance with this section.

2. Agreement required. A solid waste disposal facility must have in place a host community agreement with all applicable host communities during the development and operation and through closure of that facility. A host community agreement for the purposes of this section must, when applicable, include provisions relating to the impact payments set forth in section 2176.

Sec. 4. 38 MRSA §2172, as amended by PL 1995, c. 656, Pt. A, §52, is repealed and the following enacted in its place:

§ 2172. Dispute resolution

In the event that the office and a host community cannot agree on the terms of a host community agreement pursuant to section 2170-A, the parties shall submit the dispute for resolution in accordance with this section.

1. Mediation. The parties shall submit the dispute for mediation. The commissioner shall present to the parties a list of 5 experienced and qualified mediators. Each party may strike 2 names from the list. After each party has been afforded 2 opportunities to strike, either the sole remaining person or the first unchallenged person on the list must be appointed by the commissioner as the mediator assigned to mediate the dispute. In assembling the list of proposed mediators, the commissioner may consider the panel of mediators offered by the Office of Court Alternative Dispute Resolution Service created in Title 4, section 18-B.

2. Arbitration. If mediation fails to result in an agreement between the parties, the parties shall submit the dispute for arbitration. The commissioner shall present to the parties a list of 5 experienced and qualified arbitrators. Each party may strike 2 names from the list. After each party has been afforded 2 opportunities to strike, either the sole remaining person or the first unchallenged person on the list must be appointed by the commissioner as the arbitrator assigned to determine the dispute. In assembling the list of proposed arbitrators, the commissioner may consider the panels of arbitrators offered by the Office of Court Alternative Dispute Resolution Service created in Title 4, section 18-B or by the American Arbitration Association or its successor organization.

- A. Both the office and the host community will be bound by the decision of the arbitrator.
- B. Unless otherwise provided for in this subsection, the arbitration must be conducted in accordance with the rules of the American Arbitration Association or its successor organization for the conduct of commercial arbitration proceedings.
- C. Costs associated with the arbitration must be shared equally between the parties.
- D. The arbitrator shall submit the decision to the commissioner.
- E. Either party may appeal the decision of the arbitrator to the Superior Court.

Sec. 5. 38 MRSA §2176, sub-§2, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

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

Sec. 6. 38 MRSA §2176, sub-§3, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

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

Sec. 7. 38 MRSA §2176, sub-§4 is enacted to read:

4. Other issues. Other issues determined on a case-specific basis by the applicant and office to be appropriate given the nature of the proposed facility.

Effective September 20, 2007