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Date: (Filing No. H-)

ENVIRONMENT AND NATURAL RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 646, L.D. 879, Bill, “An Act To Ensure Adequate Landfill Capacity in the State for Solid Waste”

Amend the bill in section 1 in subsection 3 in the first blocked paragraph in the 2nd line (page 1, line 22 in L.D.) by striking out the following: “: before March 1, 2011.”

Amend the bill in section 1 in subsection 3 in the first blocked paragraph in the 5th line (page 1, line 25 in L.D.) by striking out the following: “facility.” and inserting the following: ‘facility’

Amend the bill by adding after section 1 the following:

‘Sec. 2. 38 MRSA §1310-AA, sub-§1-A, ¶D, as enacted by PL 2007, c. 338, §3 and affected by §5, is amended to read:

D. For purposes of this subsection, “waste that is generated within the State” includes residue and bypass generated by incineration, processing and recycling facilities within the State; waste whether generated within the State or outside of the State used for daily cover, frost protection or stability in accordance with all applicable rules and licenses; and waste generated within 30 miles of the solid waste disposal facility.

Sec. 3. 38 MRSA §1310-AA, sub-§2, as amended by PL 2007, c. 338, §3 and affected by §5, is further amended to read:

2. Process. Determinations by the commissioner under this section are not subject to Title 5, chapter 375, subchapter 4. The ~~commissioner~~ applicant shall provide public notice of the filing of an application under this section ~~and in accordance with department rules.~~ The department shall accept written public comment on during the course of processing the application for 20 days after the date of the notice. In making the determination of whether the facility under subsection 1 or the acceptance of waste that is not generated within the State under subsection 1-A provides a substantial public benefit, the commissioner shall consider the state plan, written information submitted in support of the application and any other written information the commissioner considers relevant. The commissioner ~~may~~ shall hold a public meeting in the vicinity of the proposed facility under subsection 1 or the solid waste landfill under subsection 1-A to take public

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1 comments and shall consider those comments in making the determination. The
2 commissioner shall issue a decision on the matter within 60 days of receipt of the
3 application. The commissioner's decisions under this section may be appealed to the
4 board, but the board is not authorized to assume jurisdiction of a decision under this
5 section.

6 **Sec. 4. 38 MRSA §1310-AA, sub-§3, ¶A**, as enacted by PL 1995, c. 465, Pt. A,
7 §22 and affected by Pt. C, §2, is amended to read:

8 A. Meets immediate, short-term or long-term capacity needs of the State. For
9 purposes of this paragraph, "immediate" means within the next 3 years, "short-term"
10 means within the next 5 years and "long-term" means within the next 10 years. When
11 evaluating whether a proposed facility meets the capacity needs of the State, the
12 commissioner shall consider relevant local and regional needs as appropriate and the
13 regional nature of the development and use of disposal capacity due to transportation
14 distances and other factors;

15 **Sec. 5. 38 MRSA §1310-AA, sub-§3, ¶B**, as amended by PL 2007, c. 338, §3
16 and affected by §5, is further amended to read:

17 B. Except for expansion of a commercial solid waste disposal facility that accepts
18 only special waste for landfilling, is consistent with the state waste management and
19 recycling plan and promotes the solid waste management hierarchy as set out in
20 section 2101;

21 **Sec. 6. 38 MRSA §1310-AA, sub-§5**, as enacted by PL 2007, c. 414, §5, is
22 amended to read:

23 **5. Modifications.** Public benefit determinations may be revised by the department if
24 the department finds that a material change in the underlying facts or circumstances upon
25 which a public benefit determination was based has occurred or is proposed, including,
26 but not limited to, a change related to disposal capacity or a change of the owner or
27 operator of a facility. The department may require the holder of a public benefit
28 determination to submit an application for modification of that determination if the
29 department finds that a change in the underlying facts or circumstances has occurred or is
30 proposed.

31 **Sec. 7. 38 MRSA §1310-AA, sub-§7** is enacted to read:

32 **7. Decision making.** When making a decision on an application for a determination
33 of public benefit, the commissioner:

34 A. May issue a full or partial approval of an application, with or without conditions;
35 and

36 B. For an application related to a state-owned solid waste disposal facility, shall
37 conduct a review that is in accordance with the provisions of this section and is
38 independent of any other contract or agreement between the State and the facility
39 operator or any other party concerning the operation or development of the facility.'

SUMMARY

1
2 This amendment is the majority report of the committee. The amendment amends the
3 bill, which allows commercial landfill expansion, to strike an outdated reference relating
4 to prohibiting expansion of a commercial landfill facility before March 1, 2011. The
5 amendment incorporates provisions that amend the laws governing public benefit
6 determinations by:

7 1. Clarifying that waste used for daily cover, frost protection or stability must be
8 used in accordance with all applicable rules and licenses;

9 2. Requiring the applicant instead of the Commissioner of Environmental Protection
10 to provide public notice of the filing of an application for public benefit determination
11 and requiring the Department of Environmental Protection to accept written public
12 comment during the course of processing the application;

13 3. Requiring the commissioner to hold a public meeting on an application for a
14 public benefit determination. Currently, the commissioner is authorized to hold a public
15 meeting;

16 4. Defining "immediate," "short-term" and "long-term" for the purpose of
17 determining whether the capacity needs of the State are met. It requires the
18 commissioner, when evaluating whether proposed facilities meet capacity needs of the
19 State, to consider relevant local and regional needs as appropriate and the regional nature
20 of the development and use of disposal capacity due to transportation distances and other
21 factors;

22 5. Adding as a standard for determining whether the facility will provide a
23 substantial public benefit that the facility or expansion must promote the solid waste
24 management hierarchy;

25 6. Specifically authorizing the commissioner to issue a full or partial approval of an
26 application, with or without conditions;

27 7. Clarifying that the public benefit determination review of a state-owned facility is
28 a review that is independent of other contracts that may have been entered into between
29 the State and the facility operator or any other party; and

30 8. Specifying that the modification of a public benefit determination is authorized if
31 there has been a change in facility ownership or of the operator.