

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act Regarding the Transfer of Licenses for Energy Recovery Facilities**

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

**Whereas,** this legislation prohibits the transfer of a solid waste license upon the change in ownership of a facility that incinerates solid waste, and requires that the new owners of the facility apply for a new license; and

**Whereas,** it is essential that this legislation become law immediately in order to ensure that the host communities of certain solid waste facilities retain certain rights upon the change of ownership of those facilities; 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-Q,** as amended by PL 2005, c. 612, §3, is further amended to read:

### **§ 1310-Q. Transfer of license**

**1. Transfer.** ~~No~~A person may not transfer a license issued pursuant to this Title without the transfer of the license being approved by the department prior to transfer of the ownership of the property, facility or structure that constitutes or is part of the solid waste disposal facility. ~~The~~Except as provided in subsection 2, the department, at its discretion, may require that the proposed new owner of the facility apply for a new license or may approve the transfer of the existing license upon a satisfactory showing that the new owner can abide its terms and conditions and will be able to comply with the provisions of this Title, except that the department may not approve the transfer of an existing license of a municipal solid waste disposal facility to a private entity. The department shall consider the extent to which the disposal facility was sited and developed and is currently operated to meet the capacity needs of municipalities within a specific geographic region. The department shall approve the transfer of license when, in addition to all other requirements of this Title, the applicant has demonstrated that:

- A. The facility will continue to be operated to meet the municipal disposal capacity needs for which the facility was sited and developed and for which it is currently operated;
- B. The applicant has made substantially equivalent, alternative provisions to satisfy these disposal capacity needs; or
- C. These disposal capacity needs no longer exist.

**2. Transfers of solid waste license for a facility that incinerates solid waste.** During the stated term of any waste handling contract between a solid waste facility that incinerates solid waste and its host community, the department may not approve the transfer of a solid waste facility license from the solid waste facility and shall require that the proposed new owner of the solid waste facility apply for a new license. For purposes of this section, any change of owner or operator of the solid waste facility, whether accomplished through sale, merger, lease, assignment or otherwise, is subject to the license requirement set forth in this section.

The department may not grant a license for a proposed new owner of a solid waste facility prior to:

- A. The expiration of a due diligence review period for the host community, which must conclude within 180 days of the date of filing of the application for the new license;
- B. The receipt of written consent of the host community; and
- C. A public hearing and review conducted by the board after completion of the due diligence review conducted in accordance with paragraph A.

**Sec. 2. Retroactivity.** This Act applies retroactively to April 1, 2009.

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

## SUMMARY

This bill prohibits the Department of Environmental Protection from approving the transfer of a solid waste facility license during the stated term of a waste handling contract between a solid waste facility that incinerates solid waste and its host community. Under this bill, the department may not grant a new license to the new owner of a solid waste facility until the expiration of a due diligence review period for the host community, the receipt of written consent of the host community and a public hearing and review conducted by the Board of Environmental Protection.