



127th MAINE LEGISLATURE

SECOND REGULAR SESSION-2016

Legislative Document

No. 1578

S.P. 626

In Senate, January 28, 2016

An Act To Update Maine's Solid Waste Management Laws

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator SAVIELLO of Franklin.
Cosponsored by Representative CAMPBELL of Orrington and
Senator: BREEN of Cumberland, Representatives: DUCHESNE of Hudson, WELSH of
Rockport.

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

2 **Sec. 1. 38 MRSA §1611** is enacted to read:

3 **§1611. Stewardship program for small batteries**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 **A. "Approved product" means:**

7 (1) A covered battery or a covered battery-containing product for which its
8 producer, individually or through a covered battery stewardship organization, has
9 submitted a covered battery stewardship plan approved by the commissioner and
10 the plan has been implemented to collect and recycle covered batteries or covered
11 battery-containing products in accordance with the plan; or

12 (2) A covered battery-containing product that has been listed in accordance with
13 subsection 8 as the product of a participant in a covered battery stewardship
14 program.

15 **B. "Brand" means a trademark, including both a registered and an unregistered**
16 **trademark, a logo, a name, a symbol, a word, an identifier or a traceable mark that**
17 **identifies a covered battery or covered battery-containing product and identifies as**
18 **the producer of the battery or product the owner or licensee of the brand.**

19 **C. "Covered battery" means a new or unused primary battery or a small rechargeable**
20 **battery.**

21 **D. "Covered battery-containing product" means a new or unused primary battery-**
22 **containing product or a rechargeable battery-containing product.**

23 **E. "Covered battery stewardship organization" or "organization" means an**
24 **organization appointed by more than one producer to design, submit a plan for,**
25 **implement and administer a covered battery stewardship program in accordance with**
26 **this section and that has accepted that appointment.**

27 **F. "Covered battery stewardship plan" or "plan" means a plan submitted to the**
28 **commissioner in accordance with subsection 3 by a producer or a covered battery**
29 **stewardship organization.**

30 **G. "Covered battery stewardship program" or "program" means a system**
31 **implemented for the collection, transportation, recycling and disposal of covered**
32 **batteries in accordance with a covered battery stewardship plan approved under**
33 **subsection 4.**

34 **H. "Discarded covered battery" means a covered battery that a user discarded,**
35 **abandoned or sent for recycling or intended to discard, abandon or send for recycling.**

36 **I. "Operator" means a producer or covered battery stewardship organization that**
37 **implements and administers a covered battery stewardship program.**

38 **J. "Participant" means a producer that establishes or participates in a covered battery**
39 **stewardship program individually or by appointing and having that appointment**

1 accepted by a covered battery stewardship organization to operate the program on the
2 producer's behalf.

3 K. "Primary battery" means a nonrechargeable battery that weighs 2 kilograms or
4 less, including, but not limited to, nonrechargeable alkaline, carbon-zinc and lithium
5 metal batteries.

6 L. "Primary battery-containing product" means a product that contains or is
7 packaged with a primary battery. "Primary battery-containing product" does not
8 include:

9 (1) A product from which a primary battery is not easily removed or is not
10 intended or designed to be removed from the product other than by the
11 manufacturer; or

12 (2) A medical device, as described in the Federal Food, Drug and Cosmetic Act,
13 21 United States Code, Section 360(c) (2012), if, when the device or battery
14 within the device is discarded, it must be treated as biomedical waste or if
15 changing the supplier of the battery contained in the medical device would
16 change the registration status of the device with the United States Food and Drug
17 Administration pursuant to the Federal Food, Drug and Cosmetic Act, 21 United
18 States Code, Section 360 (2012).

19 M. "Producer" means, with respect to a covered battery or covered battery-
20 containing product that is sold, offered for sale or distributed for sale in the State, the
21 following:

22 (1) The person that manufactures the covered battery or covered battery-
23 containing product and sells or offers for sale in the State that battery or product
24 under the person's own brand;

25 (2) If there is no person to which subparagraph (1) applies, the owner or licensee
26 of a brand under which the covered battery or covered battery-containing product
27 is sold or distributed in the State; or

28 (3) If there is no person to which subparagraph (1) or (2) applies, a person,
29 including, but not limited to, a wholesaler or retailer, that imports the covered
30 battery or covered battery-containing product into the United States for sale or
31 distribution in the State.

32 N. "Rechargeable battery-containing product" means a product that contains or is
33 packaged with a small rechargeable battery. "Rechargeable battery-containing
34 product" does not include:

35 (1) A product from which a rechargeable battery is not easily removed or is not
36 intended or designed to be removed from the product other than by the
37 manufacturer; or

38 (2) A medical device, as described in the Federal Food, Drug and Cosmetic Act,
39 21 United States Code, Section 360c (2012), if, when the device or battery within
40 the device is discarded, it must be treated as biomedical waste.

41 O. "Recycling" means any process through which a discarded covered battery or its
42 components or by-products is transformed from its original identity or form into new

1 usable or marketable material. "Recycling" does not include the incineration of a
2 discarded covered battery or its components or by-products for energy recovery.

3 P. "Retailer" means a person that sells or offers a covered battery or covered battery-
4 containing product for retail sale, as defined in Title 36, section 1752, subsection 11,
5 in the State, including through a remote offering for sale, such as a sales outlet or
6 sales catalog or via the Internet.

7 Q. "Small rechargeable battery" means a battery that contains one or more voltaic or
8 galvanic cells, electrically connected to produce electric energy, that weighs less than
9 5 kilograms and that is designed to be recharged and to provide less than 40 volts
10 direct current. "Small rechargeable battery" does not include:

11 (1) A battery that is not easily removed or is not intended or designed to be
12 removed from a covered battery-containing product other than by the
13 manufacturer;

14 (2) A battery that contains electrolyte as a free liquid; or

15 (3) A battery or battery pack that employs lead-acid technology, unless the
16 battery or battery pack is sealed, contains no liquid electrolyte and is intended by
17 its manufacturer to power a handheld device or to provide uninterrupted backup
18 electrical power protection for stationary consumer covered battery-containing
19 products or stationary office equipment.

20 R. "Wholesaler" means a person that offers for sale or sells in the State a covered
21 battery or covered battery-containing product in a sale that is not a retail sale, as
22 defined in Title 36, section 1752, subsection 11, with the intention that the battery or
23 product be resold in a subsequent retail sale.

24 **2. Product labeling.** By January 1, 2017, a producer that sells, offers for sale or
25 distributes for sale in the State a covered battery, either as a replacement battery or
26 packaged with or contained in a covered battery-containing product, shall, to the extent
27 feasible, ensure that the covered battery is labeled in a manner identifying the chemistry
28 employed in storing energy in the battery to facilitate sorting of discarded batteries by
29 recyclers.

30 **3. Submission of plan.** No later than 6 months after the effective date of this
31 section, except as specified in subsection 6 or 9, each producer of a covered battery or
32 covered battery-containing product, individually or through a covered battery stewardship
33 organization that has agreed to act on the producer's behalf, shall submit a plan for the
34 establishment of a covered battery stewardship program to the commissioner for
35 approval. The plan must include, at a minimum and where applicable:

36 A. If the plan is submitted by an organization, a list of the producers participating in
37 the organization and a list of each producer's brands of covered batteries and covered
38 battery-containing products;

39 B. A description of the outreach procedures that will be used to provide notice of the
40 program to businesses, local agencies, retailers, wholesalers and waste transportation
41 services;

1 C. A description of the methods that will be used to responsibly manage discarded
2 covered batteries to ensure that the components of the discarded batteries, to the
3 extent economically and technically feasible, are recycled or otherwise responsibly
4 managed;

5 D. A description of the manner by which the program will use covered battery
6 collection points that are established through other battery collection programs;

7 E. A description of educational activities planned by the producer or organization;

8 F. If the plan is submitted by an organization or by a producer that does not operate
9 physical retail locations in the State, a description of how the program will provide
10 convenient, free statewide collection opportunities for discarded batteries; and

11 G. If the plan is submitted by an organization, a description of the financing method
12 through which implementation of the plan will be funded. The financing method
13 must:

14 (1) Allocate to producers of primary batteries and primary battery-containing
15 products costs that are directly attributable to the recycling of primary batteries,
16 such as reclamation costs;

17 (2) Allocate to producers of small rechargeable batteries and rechargeable
18 battery-containing products costs that are directly attributable to the recycling of
19 rechargeable batteries, such as reclamation costs; and

20 (3) Allocate all other costs on the basis of the weights of types of batteries
21 collected or some other nondiscriminatory basis acceptable to participating
22 producers of primary batteries, small rechargeable batteries, primary battery-
23 containing products and rechargeable battery-containing products.

24 **4. Approval of plan.** The commissioner shall review a plan submitted under
25 subsection 3 and make a determination of whether to approve the plan within 90 days of
26 receipt of the plan. In conducting a review of a submitted plan, the commissioner may
27 consult with producers, associations representing producers, covered battery stewardship
28 organizations, retailers and recyclers.

29 A. If the commissioner determines that a submitted plan fails to meet all applicable
30 requirements of subsection 3, the commissioner shall provide to the producer or
31 organization that submitted the plan a written notice of determination describing the
32 reasons for rejecting the plan. No later than 45 days after receiving a written notice
33 of determination from the commissioner rejecting a submitted plan, the producer or
34 organization may amend the plan and resubmit the plan to the commissioner for
35 reconsideration. The commissioner shall review an amended plan, make a
36 determination of whether to approve the amended plan and provide a written notice
37 of determination notifying the producer or organization of the commissioner's decision
38 within 45 days of receipt of the amended plan. A producer or organization whose
39 amended plan is rejected by the commissioner may appeal the commissioner's
40 decision in accordance with section 346.

41 B. If the commissioner approves a submitted plan, the commissioner shall provide to
42 the producer or organization that submitted the plan a written notice of determination
43 of the plan's approval. No later than 30 days after receiving a written notice of

1 determination from the commissioner approving a submitted plan, the producer or
2 organization shall make the approved plan available on its publicly accessible
3 website, but is not required to make available any information contained in the
4 approved plan protected under the Uniform Trade Secrets Act.

5 C. No later than 45 days after the commissioner's approval of a submitted plan, the
6 department shall make available on its publicly accessible website a list of
7 participants in and brands of covered batteries and covered battery-containing
8 products included under the approved plan or provide instructions on how to obtain
9 such information as provided by the producer or organization that submitted the
10 approved plan.

11 **5. Implementation of plan.** A producer or organization that submitted a plan
12 approved by the commissioner under subsection 4 shall implement the plan no later than
13 the first day of the next calendar quarter after the date the plan is approved by the
14 commissioner, except that if the period of time between the date the plan is approved and
15 the first day of the next calendar quarter is less than 60 days, the producer or organization
16 shall implement the plan within 60 days after the date the plan is approved.

17 **6. Amendment of plan and termination of program.** This subsection governs
18 amendment of a plan approved under subsection 4 and termination of a program
19 established under an approved plan.

20 A. An approved plan under subsection 4 may be amended at the discretion of the
21 producer or organization that submitted the plan without approval from the
22 commissioner if the proposed amendments do not significantly alter the likelihood
23 that the plan will result in the successful collection and recycling of discarded
24 batteries. If proposed amendments to an approved plan would significantly alter the
25 likelihood that the plan will result in the successful collection and recycling of
26 discarded batteries, including, but not limited to, amendments eliminating a
27 substantial number of retail collection locations, adding or deleting battery
28 chemistries to be collected, addressing threats to the financial viability of the
29 organization or addressing disruption in transportation or service affecting the ability
30 of the producer or organization or any service providers to collect or process covered
31 batteries or covered battery-containing products, the producer or organization shall
32 submit to the commissioner a revised plan describing the proposed amendments. The
33 commissioner shall review the revised plan and make a determination of whether to
34 approve the proposed amendments within 90 days of receipt of the revised plan. If
35 the commissioner determines that the revised plan fails to meet all applicable
36 requirements of subsection 3, the commissioner shall provide to the producer or
37 organization a written notice of determination describing the reasons for rejecting the
38 revised plan. No later than 45 days after receiving a written notice of determination
39 from the commissioner rejecting a revised plan, the producer or organization may
40 amend and resubmit the revised plan to the commissioner for reconsideration. The
41 commissioner shall review an amended revised plan, make a determination of
42 whether to approve the amended revised plan and provide a written notice of
43 determination notifying the producer or organization of the commissioner's decision
44 within 45 days of receipt of the amended revised plan. The commissioner may not
45 reject an amended revised plan submitted for reconsideration without providing the

1 producer or organization with notice and opportunity for a hearing. A producer or
2 organization whose amended revised plan is rejected by the commissioner may
3 appeal the commissioner's decision in accordance with section 346.

4 B. A producer or organization that submitted a plan approved under subsection 4
5 may terminate the program implementing that plan no earlier than 90 days after
6 providing notice to the commissioner and to program participants of the program's
7 termination. Prior to the termination of a program, each producer included in the
8 program shall, individually or through a covered battery stewardship organization
9 that has agreed to act on the producer's behalf, submit a plan for the establishment of
10 a covered battery stewardship program to the commissioner for approval consistent
11 with subsection 3 or join an existing organization.

12 C. A plan approved under subsection 4 remains in effect until a revised plan is
13 adopted in accordance with paragraph A or the program implementing that plan is
14 terminated in accordance with paragraph B by the producer or organization that
15 submitted the plan.

16 **7. Sales prohibition.** This subsection governs the sale of covered batteries and
17 covered battery-containing products in the State.

18 A. Beginning July 1, 2017, a manufacturer, distributor, wholesaler or retailer may
19 not sell, offer for sale, distribute for sale or offer for promotional purposes in the
20 State a covered battery or covered battery-containing product unless the producer of
21 the battery or product has joined an existing covered battery stewardship organization
22 or submitted a plan for the establishment of a covered battery stewardship program
23 that has been approved by the commissioner.

24 B. Notwithstanding paragraph A, a manufacturer, distributor, wholesaler or retailer
25 may continue to sell, distribute for sale, offer for sale or offer for promotional
26 purposes in the State a covered battery or covered battery-containing product
27 manufactured prior to July 1, 2017, but shall:

28 (1) By October 1, 2017, sell or otherwise divest or dispose of its remaining stock
29 of covered batteries manufactured prior to July 1, 2017 by a producer that has not
30 joined an existing covered battery stewardship organization or submitted a plan
31 for the establishment of a covered battery stewardship program that has been
32 approved by the commissioner; and

33 (2) By October 1, 2018, sell or otherwise divest or dispose of its remaining stock
34 of covered battery-containing products manufactured prior to July 1, 2017 by a
35 producer that has not joined an existing covered battery stewardship organization
36 or submitted a plan for the establishment of a covered battery stewardship
37 program that has been approved by the commissioner.

38 C. Notwithstanding paragraphs A and B, a manufacturer, distributor, wholesaler or
39 retailer of medical devices, as described in the Federal Food, Drug and Cosmetic Act,
40 21 United States Code, Section 360c (2012), may continue to sell its existing
41 inventory of medical devices containing batteries not included in a plan approved
42 under subsection 4 until July 1, 2027, except that new medical devices entering a

1 manufacturer's, distributor's, wholesaler's or retailer's inventory on or after July 1,
2 2017 must be included in an approved plan no later than July 1, 2022.

3 D. Notwithstanding paragraphs A and B, a hospital or other health care provider may
4 continue to sell or otherwise exhaust its existing inventory of medical devices
5 containing batteries not included in a plan approved under subsection 4 until July 1,
6 2027, except that new medical devices entering the hospital's or health care provider's
7 inventory on or after July 1, 2017 must be included in an approved plan no later than
8 July 1, 2022.

9 **8. Producer exclusions.** Notwithstanding subsection 1, paragraph M, a person that
10 manufactures, sells, offers for sale or imports for sale in the State a primary battery-
11 containing product is not considered a producer under this section if, no later than 45 days
12 after receiving a request from the commissioner or an operator, the person verifies to the
13 commissioner or the operator that the product contains only primary batteries supplied by
14 a producer participating in a covered battery stewardship program in the State. An
15 operator of a covered battery stewardship program that includes the primary battery
16 contained in the person's primary battery-containing product shall list the person as a
17 participant in and the product as covered under the operator's program.

18 **9. New producers.** A producer who seeks to sell, offer for sale or distribute for
19 promotional purposes in the State a covered battery or covered battery-containing product
20 not sold or offered for sale in the State prior to July 1, 2017 must notify the commissioner
21 prior to the sale, offer for sale or distribution of the covered battery or covered battery-
22 containing product in the State.

23 A. Upon receiving notification under this subsection from a new producer, the
24 commissioner shall list the producer as a new producer on the department's publicly
25 accessible website.

26 B. No later than 90 days following a new producer's notification to the
27 commissioner, the producer shall submit a plan to the commissioner in accordance
28 with subsection 3 or join an existing organization operating under a plan approved
29 under subsection 4.

30 C. If a new producer fails to submit a plan or join an existing organization within the
31 90-day period under paragraph B, the producer may not sell a covered battery or
32 covered battery-containing product in the State after the expiration of the 90-day
33 period and a retailer may not sell that producer's battery or product in the State after
34 120 days following the expiration of the 90-day period.

35 D. Notwithstanding paragraph C, if a new producer submits a plan within the 90-day
36 period under paragraph B and that plan is ultimately rejected by the commissioner
37 under subsection 4 after the expiration of the 90-day period, the producer may not sell
38 the covered battery or covered battery-containing product in the State after 45 days
39 following the commissioner's final determination rejecting the submitted plan and a
40 retailer may not sell the producer's battery or product in the State after 120 days
41 following the commissioner's final determination rejecting the submitted plan.

42 A new producer that fails to submit a plan that is approved by the commissioner under
43 subsection 4 or to join an existing organization within the time limits described in this

1 subsection may not sell, offer for sale or distribute for promotional purposes a covered
2 battery or covered battery-containing product not sold or offered for sale in the State prior
3 to July 1, 2017 until the producer submits a plan for approval consistent with subsection 3
4 that is subsequently approved by the commissioner or joins an existing organization.

5 **10. Return of noncompliant products.** If a plan approved under subsection 4 is
6 subsequently determined by the commissioner not to be in compliance with this section, a
7 producer who sells, offers for sale or distributes for sale in the State a covered battery or
8 covered battery-containing product included in that plan shall, upon request by a retailer,
9 designate a location to which the retailer may ship the battery or product for further
10 handling and shall reimburse the retailer for costs incurred in shipping the battery or
11 product to the designated location.

12 **11. Safe collection.** A retailer, wholesaler, bulk collector, organization or curbside
13 program operator that collects covered batteries or covered battery-containing products in
14 the State, has a physical presence in the State and is operating under or in cooperation
15 with a covered battery stewardship program shall ensure that all discarded covered
16 batteries and covered battery-containing products placed in its collection containers are
17 protected from short-circuiting in accordance with applicable regulations of the federal
18 Department of Transportation, 49 Code of Federal Regulations, Subtitle B (2015) and
19 other applicable laws or regulations and take reasonable steps to prevent the placement of
20 materials other than properly protected discarded covered batteries and covered battery-
21 containing products into its collection containers.

22 **12. Costs of participation.** A retailer or wholesaler may not require a producer or
23 covered battery stewardship organization to reimburse the retailer or wholesaler for costs
24 associated with its participation in a covered battery stewardship program.

25 **13. Reporting.** On or before May 1st of each year, beginning 2 years after the date a
26 covered battery stewardship plan is approved by the commissioner, the producer or
27 organization administering the program implementing the approved plan shall submit to
28 the commissioner a report describing activities carried out by the program pursuant to the
29 plan during the previous calendar year. The report must include, at a minimum, the
30 following information:

31 A. The weight of covered batteries collected by the program in the previous calendar
32 year;

33 B. The location of and contact information for each collection point established
34 under the program;

35 C. A description of the manner in which collected covered batteries and covered
36 battery-containing products were sorted, consolidated and processed by the program;

37 D. A description of the educational materials developed and used by the program,
38 including examples of such materials; and

39 E. If the report is filed by a covered battery stewardship organization, a summary
40 financial statement documenting the financing of the program consistent with the
41 requirements of subsection 3, paragraph G. If an organization operates a similar
42 program in another state, the organization may meet the requirements of this

1 paragraph by submitting a summary financial statement that consolidates information
2 for all states in which it operates covered battery stewardship programs without
3 providing financial information specific to its program in this State.

4 **14. Administration and enforcement.** The department shall enforce this section
5 and may adopt rules consistent with this section as necessary for the purpose of
6 implementing, administering and enforcing this section. Rules adopted pursuant to this
7 subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

8 A. The commissioner may not initiate an enforcement action under this section
9 against a manufacturer, distributor, wholesaler or retailer:

10 (1) Concerning the sale of covered batteries or covered battery-containing
11 products that are not approved products if the sale occurred prior to October 1,
12 2017;

13 (2) Concerning the sale of covered batteries manufactured prior to the effective
14 date of this section if the sale occurred prior to October 1, 2017; or

15 (3) Concerning the sale of covered battery-containing products manufactured
16 prior to the effective date of this section if the sale occurred prior to October 1,
17 2018.

18 B. The commissioner may not initiate an enforcement action under this section
19 against a manufacturer, distributor, wholesaler or retailer:

20 (1) For selling or offering for sale a covered battery or covered battery-
21 containing product if that entity, within 90 days of discovering that the battery or
22 product is not in compliance with this section, removes the battery or product
23 from sale; or

24 (2) For purchasing a covered battery or covered battery-containing product after
25 the effective date of this section that is verified to be an approved product at the
26 time of purchase but that is no longer an approved product at the time it is sold by
27 that entity.

28 **15. Limited private right of action by authorized organization.** An authorized
29 organization may maintain a civil action in Superior Court against a noncompliant
30 producer to recover damages and additional sums and costs as set forth in this subsection.

31 A. As used in this subsection, unless the context otherwise indicates, the following
32 terms have the following meanings.

33 (1) "Allocated share" means:

34 (a) In the case of a noncompliant producer, a plaintiff's choice of either the
35 percentage of batteries by weight identified in data of sufficient reliability
36 that are employed by a compliant producer to estimate market shares in the
37 normal course of business or the percentage of discarded batteries by weight
38 for which a defendant is identifiable as the producer, as identified through a
39 plaintiff's one-time sort of no less than 500 pounds of discarded covered
40 batteries randomly collected in the State by the plaintiff; or

1 (b) In the case of an alternatively complying producer, the percentage of
2 discarded batteries by weight identified as the responsibility of the producer
3 in data generated from a set of qualifying discarded battery sorts.

4 (2) "Alternatively complying producer" means a producer participating in a
5 program not operated by an authorized organization during the time an
6 authorized organization incurred damages recoverable under this subsection.

7 (3) "Authorized organization" means a covered battery stewardship organization
8 established under the law of any state or territory of the United States that
9 authorizes establishment of nonprofit entities or recognized by the United States
10 Internal Revenue Service as exempt from taxation under Section 501 of the
11 United States Internal Revenue Code, as amended, that, pursuant to a plan
12 approved under subsection 4, spent more than \$250,000 collecting and recycling
13 covered batteries discarded in the State in the previous calendar year.

14 (4) "Data generated from a set of qualifying discarded battery sorts" means the
15 total data collected by a plaintiff from sorting 500 pounds of covered batteries
16 collected at each of 3 or more collection sites in the State reasonably believed by
17 the plaintiff to be representative of the population of the State. These sorts may
18 be undertaken at any time after a plan is approved by the commissioner under
19 subsection 4, but must all be collected within a 5-year period. Data generated
20 from these sorts must include the brands of collected batteries, the weight of each
21 brand collected and the percentage shares of the total collected weight
22 attributable to each identifiable brand and to all batteries not identifiable by
23 brand.

24 (5) "Estimated total weight of batteries sold in the State" means an estimate of
25 the total weight of batteries sold in the State as individual units or as components
26 or packaged with covered battery-containing products, using methods of
27 sufficient reliability that are employed by a producer to estimate market shares in
28 the normal course of business.

29 (6) "Noncompliant producer" means a producer not participating in any plan
30 approved by the commissioner in accordance with subsection 4 during the time
31 an authorized organization incurred damages recoverable under this subsection.

32 (7) "Program sort goal" means the sum of discarded covered batteries by weight
33 identified as the responsibility of all producers participating in an authorized
34 organization in data generated from a set of qualifying discarded battery sorts,
35 multiplied by 10% during the first 3 years this section is in effect, by 15% in the
36 next 3 years and by 20% in the 6th and subsequent years this section is in effect.

37 (8) "Unaccounted-for amount" means the costs incurred by a plaintiff multiplied
38 by the percentage of batteries by weight collected through the plaintiff's one-time
39 sort of no less than 500 pounds of randomly collected discarded covered batteries
40 for which a producer cannot be identified.

41 B. Except as provided in paragraph C, damages recoverable under this subsection are
42 an amount equal to the total sum of a defendant's allocated share multiplied by a
43 plaintiff's total costs of collecting and recycling discarded covered batteries in the
44 State during the time period of noncompliance alleged plus a defendant's allocated

1 share of the unaccounted-for amount for the same time period. Except as provided in
2 paragraph C, if a plaintiff prevails in an action brought pursuant to this subsection,
3 the plaintiff is entitled to an award of reasonable attorney's fees and court costs,
4 including expert witness fees, as well as a punitive sum of 3 times the damages
5 award.

6 C. An authorized organization that collected in the previous calendar year a weight
7 of discarded covered batteries in excess of its program sort goal may maintain a civil
8 action in Superior Court against an alternatively complying producer to recover
9 damages and additional sums and costs as set in this paragraph. Damages
10 recoverable under this paragraph are an amount equal to the total sum of a
11 defendant's allocated share of the excess multiplied by a plaintiff's total costs of
12 collecting and recycling covered batteries discarded in the State during the time
13 period alleged. A court may, in the interests of justice, award to a plaintiff who
14 prevails in an action brought pursuant to this paragraph reasonable attorney's fees and
15 court costs, including expert witness fees.

16 D. An action may not be commenced under this subsection until 60 days after a
17 plaintiff provides to all potential defendants a written notice of the claim setting forth
18 the amount of the claim and the basis for the calculation of that amount.

19 E. An authorized organization may initiate a single civil action in Superior Court
20 against one or more producers.

21 **16. Preemption.** The State intends to occupy and preempt the entire field of
22 legislation concerning the regulation of the stewardship of covered batteries and covered
23 battery-containing products. Any existing or future order, ordinance, rule or regulation in
24 this field of any political subdivision of the State is void.

25 **17. Antitrust exclusions.** A producer, a group of producers and a covered battery
26 stewardship organization, and an agent, officer, director and employee of such entities,
27 preparing, submitting a plan for, implementing or administering a covered battery
28 stewardship program in accordance with this section, and a wholesaler and retailer that
29 engages in conduct authorized by this section, are granted immunity, individually and
30 jointly, from all applicable antitrust laws of the State for the limited purpose of
31 establishing, implementing and administering a covered battery stewardship program and
32 otherwise complying with the requirements of this section, and any activity undertaken
33 by these entities in accordance with and authorized under this section is not an unlawful
34 restraint of trade, a conspiracy or other violation of any provision of any applicable
35 antitrust law of the State.

36 An action taken by a producer, a group of producers or an organization to increase the
37 recycling of covered batteries in accordance with this section that affects the types or
38 quantities of batteries recycled or the cost and structure of any covered battery
39 stewardship program is not a violation of any provision of Title 10, chapter 201, except
40 when such action constitutes an agreement establishing or affecting the price of covered
41 batteries or the output or production of covered batteries or restricting the geographic area
42 in which covered batteries will be sold or the customers to whom covered batteries will
43 be sold.

1 **18. Repeal.** This section is repealed 9 years after the date on which a covered
2 battery stewardship plan is first approved by the commissioner under subsection 4, except
3 that an authorized organization, as defined in subsection 15, paragraph A, subparagraph
4 (3), may, in accordance with subsection 15, recover after the repeal of this section costs
5 incurred prior to the repeal of this section in collecting and recycling covered batteries
6 discarded in the State. The commissioner shall notify the Revisor of Statutes when a
7 covered battery stewardship plan is first approved by the commissioner under subsection
8 4.

9 **Sec. 2. 38 MRSA §2132, sub-§1,** as amended by PL 2011, c. 655, Pt. GG, §32
10 and affected by §70, is further amended to read:

11 **1. State recycling goal.** It is the goal of the State to recycle or compost, by January
12 1, ~~2014~~ 2021, 50% of the municipal solid waste tonnage generated each year within the
13 State.

14 **Sec. 3. 38 MRSA §2145** is enacted to read:

15 **§2145. Commercial food waste composting requirement**

16 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
17 following terms have the following meanings.

18 A. "Composting facility" means a solid waste processing facility, as defined in
19 section 1303-C, subsection 32-A, where organic materials are processed using a
20 method of accelerated biological decomposition of organic material under controlled
21 aerobic or anaerobic conditions.

22 B. "Food waste" means food material produced from human or animal food
23 production, preparation and consumption activities that consists of, but is not limited
24 to, fruits, vegetables and other vegetative material, grains and fish and animal
25 products and by-products. "Food waste" does not include biomedical waste,
26 hazardous waste or septage, as defined in section 1303-C, subsections 1-A, 15 and
27 27, respectively.

28 C. "Large quantity commercial food waste generator" means a commercial entity
29 that generates one ton or more of food waste per week, including, but not limited to, a
30 food wholesaler or distributor, a food manufacturer or processor, a restaurant, a
31 hospital, a university or other educational institution, a grocery store, a resort or a
32 conference center.

33 **2. Composting requirement.** Except as provided in this section, beginning January
34 1, 2020, a large quantity commercial food waste generator that is located within 20 miles
35 of a composting facility with available capacity to accept the food waste produced by the
36 generator shall deliver all food waste produced by the generator to a composting facility
37 for processing.

38 A. For the purposes of this section, a composting facility located outside of the State
39 must be considered in determining whether a large quantity commercial food waste
40 generator is located within 20 miles of a composting facility with available capacity.

1 B. A large quantity commercial food waste generator subject to this section may
2 elect to deliver the food waste produced by the generator to a composting facility
3 with available capacity located more than 20 miles from the generator.

4 C. A large quantity commercial food waste generator is deemed in compliance with
5 this section if it performs composting of its generated food waste on site or otherwise
6 treats its generated food waste using an on-site organic treatment method approved
7 by the department.

8 **3. Waiver.** The department may provide a waiver from the requirements of this
9 section for a large quantity commercial food waste generator that demonstrates to the
10 department's satisfaction that compliance with the requirements of this section would
11 result in substantial financial hardship for the generator.

12 A. The department may award a grant or low-interest loan under section 2201-B to a
13 large quantity commercial food waste generator to assist the generator in meeting the
14 requirements of this section through implementation of a food waste composting
15 program. The department may not approve a waiver under this subsection unless the
16 generator seeking the waiver has applied for a grant or low-interest loan under section
17 2201-B.

18 B. The department shall adopt rules consistent with subsection 4 setting forth the
19 criteria for approval of a waiver under this subsection.

20 **4. Rules.** The department shall adopt rules to implement the provisions of this
21 section. Rules adopted pursuant to this subsection are routine technical rules as defined
22 in Title 5, chapter 375, subchapter 2-A.

23 **Sec. 4. 38 MRSA §2201, 3rd ¶**, as amended by PL 2011, c. 655, Pt. GG, §64 and
24 affected by §70, is further amended to read:

25 Funds related to administration may be expended only in accordance with allocations
26 approved by the Legislature for administrative expenses directly related to the bureau's
27 and the department's programs, including actions by the department necessary to abate
28 threats to public health, safety and welfare posed by the disposal of solid waste. Funds
29 related to fees imposed on the disposal of construction and demolition debris and residue
30 from the processing of construction and demolition debris may be expended only for the
31 state cost share to municipalities under the closure and remediation cost-sharing program
32 for solid waste landfills established in section 1310-F. Funds related to fees imposed
33 under section 2204 may be expended only in accordance with the Maine Composting and
34 Recycling Grant and Low-interest Loan Program established in section 2201-B. Funds
35 related to operations may be expended only in accordance with allocations approved by
36 the Legislature and solely for the development and operation of publicly owned facilities
37 owned or approved by the bureau and for the repayment of any obligations of the bureau
38 incurred under article 3. These allocations must be based on estimates of the actual costs
39 necessary for the bureau and the department to administer their programs, to provide
40 financial assistance to regional associations and to provide other financial assistance
41 necessary to accomplish the purposes of this chapter. Beginning in the fiscal year ending
42 on June 30, 1991 and thereafter, the fund must annually transfer to the General Fund an
43 amount necessary to reimburse the costs of the Bureau of Revenue Services incurred in

1 the administration of Title 36, chapter 719. Allowable expenditures include "Personal
2 Services," "All Other" and "Capital Expenditures" associated with all bureau activities
3 other than those included in the operations account.

4 **Sec. 5. 38 MRSA §2201-B** is enacted to read:

5 **§2201-B. Maine Composting and Recycling Grant and Low-interest Loan Program**

6 **1. Establishment.** The Maine Composting and Recycling Grant and Low-interest
7 Loan Program, referred to in this section as "the program," is established to provide
8 grants and low-interest loans to public and private entities to assist in the development,
9 implementation or improvement of programs, projects, initiatives and activities designed
10 to increase composting and recycling rates within the State.

11 **2. Administration.** The department shall administer the program and dispense
12 revenue from the Maine Solid Waste Management Fund established under section 2201
13 for the purposes of the program based on approved grant and loan requests from public
14 and private applicants. The department may provide grants and loans for the documented
15 costs of application proposals in accordance with the priorities in subsection 5. Costs
16 incurred by the department in the development and administration of the program may be
17 paid from the revenue dedicated to the program under section 2201, except that the
18 department may expend for administrative purposes under this subsection no more than
19 25% of annual revenue dispensed to the program under section 2201 in any calendar year.

20 **3. Audit.** Revenue from the Maine Solid Waste Management Fund established
21 under section 2201 disbursed by the program is subject to audit, and the recipient of any
22 such funding must agree to be subject to audit and to cooperate with the auditor as a
23 condition of receiving funding.

24 **4. Eligibility criteria.** The department may disburse grants and loans under the
25 program to any public or private entity demonstrating that a proposed program, project,
26 initiative or activity is, in the department's determination, likely to increase composting or
27 recycling rates within a particular community, municipality or region or the State,
28 including, but not limited to, municipal or regional composting or recycling programs,
29 including the establishment of such programs or the purchase of infrastructure, equipment
30 or other items necessary to implement such programs or improve existing programs;
31 programs designed to provide equipment for or otherwise support residential composting;
32 programs or business models designed to collect, transport for processing or process
33 compostable or recyclable materials, including the implementation of composting
34 programs designed to meet the requirements of section 2145; pilot programs designed to
35 evaluate the feasibility of targeted composting, recycling or other waste management
36 programs or initiatives; and initiatives or programs designed to educate certain categories
37 of individuals or the general public about composting or recycling or to otherwise
38 improve individual or community waste management practices.

39 **5. Priorities.** The department shall give highest priority in the awarding of funds
40 under this section to programs, projects, initiatives or activities proposed by municipal
41 applicants that otherwise meet the department's eligibility criteria. The department shall
42 also give priority to applicants proposing programs, projects, initiatives or activities that

1 are likely to increase the removal and recycling of organic materials from municipal
2 waste streams. The awarding of funds under this section must be consistent with the solid
3 waste management hierarchy established under section 2101.

4 **6. Funding requests.** The department shall solicit applications by grant-eligible and
5 loan-eligible stakeholders, including, but not limited to, municipalities, licensed
6 redemption centers and nonprofit and for-profit composters and recyclers. The
7 department shall prioritize approval of funding requests under this section to support
8 areas where funding will provide the most benefit to the State in terms of increasing
9 composting and recycling rates within the State.

10 **7. Grants and loans for recycling of construction and demolition debris.** The
11 department may award funds under this section to commercial programs, projects,
12 initiatives or activities that propose to recycle construction and demolition debris
13 generated in the State consistent with the department's eligibility criteria under this
14 section. For the purposes of this subsection, the use of construction and demolition debris
15 as fuel in industrial boilers or waste-to-energy facilities for the generation of heat, steam
16 or electricity constitutes recycling.

17 **8. Repeal.** This section is repealed December 31, 2026.

18 **9. Rules.** The department may adopt rules to implement this section. Rules adopted
19 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
20 subchapter 2-A.

21 **Sec. 6. 38 MRSA §2202, sub-§3,** as enacted by PL 1993, c. 310, Pt. C, §2, is
22 amended to read:

23 **3. Payment.** A person who delivers solid waste to a solid waste disposal facility,
24 solid waste processing facility, incineration facility or solid waste landfill shall pay all
25 fees established under this article to the operator of the ~~solid waste disposal facility~~ or
26 landfill.

27 **Sec. 7. 38 MRSA §2203-A, sub-§1,** as amended by PL 2011, c. 544, §3, is
28 further amended to read:

29 **1. Fees.** Fees are imposed in the following amounts to be levied for solid waste that
30 is disposed of at commercial, municipal, state-owned and regional association landfills.

31		
32	Asbestos	\$5 per cubic yard
33		
34	Oil-contaminated soil, gravel, brick,	\$25 per ton
35	concrete and other aggregate	
36		
37	Waste water facility sludge	\$5 per ton
38		
39	Ash, coal and oil	\$5 per ton

1		
2	Paper mill sludge	\$5 per ton
3		
4	Industrial waste	\$5 per ton
5		
6	Sandblast grit	\$5 per ton
7		
8	All other special waste	\$5 per ton
9		
10	Municipal solid waste ash	\$1 per ton
11		
12	Front end process residue (FEPR)	\$1 per ton
13		
14	Beginning January 1, 2013 and ending	\$1 per ton
15	December 31, 2013, construction and	
16	demolition debris and residue from the	
17	processing of construction and demolition	
18	debris	
19		
20	Beginning January 1, 2014, construction	\$2 per ton
21	and demolition debris and residue from the	
22	processing of construction and demolition	
23	debris	

24 **Sec. 8. 38 MRSA §2204, first ¶**, as amended by PL 1999, c. 385, §8, is further
25 amended to read:

26 The department shall impose a fee of ~~\$2~~ \$1 per ton on any municipal solid waste
27 disposed of ~~at a commercial, municipal or regional association landfill, except that there~~
28 ~~is no fee on municipal solid waste generated by a municipality that owns the landfill~~
29 ~~accepting it or that has entered into a contract with a term longer than 9 months for~~
30 ~~disposal of municipal solid waste in that landfill facility or received for processing,~~
31 composting or other treatment at a commercial, municipal, regional association or state-
32 owned solid waste disposal facility, solid waste processing facility, incineration facility or
33 solid waste landfill.

34 **Sec. 9. 38 MRSA §2205, first ¶**, as amended by PL 1995, c. 465, Pt. A, §77 and
35 affected by Pt. C, §2, is further amended to read:

36 Each operator of a solid waste disposal facility, solid waste processing facility,
37 incineration facility or solid waste landfill that has collected a fee under this article shall
38 make the fee payment quarterly. The fee must be paid to the department on or before the
39 20th day of April, July, October and January for the 3 months ending the last day of
40 March, June, September and December.

41 **Sec. 10. 38 MRSA §2205, sub-§§1 and 8**, as amended by PL 1995, c. 465, Pt.
42 A, §77 and affected by Pt. C, §2, are further amended to read:

1 **1. Quarterly reports.** Each fee payment must be accompanied by a form prepared
2 and furnished by the department and completed by the operator. The form must state the
3 total weight or volume of solid waste disposed of or received at the facility or landfill
4 during the payment period and provide any other aggregate information determined
5 necessary by the department to carry out the purposes of this chapter. The form must be
6 signed by the operator.

7 **8. Assessment notice.** If the department determines that any operator has not made
8 a timely payment of the fee, the department shall send the operator a written notice of the
9 amount of the deficiency, within 30 days of determining the deficiency. When the
10 operator has not provided a complete and accurate statement of the weight or volume of
11 waste received at the facility or landfill for the payment period, the department may
12 estimate the weight or volume in the notice.

13 The operator charged with the deficiency has 30 days to pay the deficiency in full or, if
14 the operator wishes to contest the deficiency, forward the amount of the deficiency to the
15 department for placement in an escrow account with the Treasurer of State or any bank in
16 the State, or post an appeal bond in the amount of the deficiency. The bond must be
17 executed by a surety licensed to do business in the State and be satisfactory to the
18 department. Failure to forward the money or appeal bond to the department within 30
19 days results in a waiver of all legal rights to contest the deficiency.

20 If, through the administrative or judicial review of the deficiency, it is determined that the
21 amount of deficiency must be reduced, the department shall within 30 days remit the
22 appropriate amount to the operator, with any interest accumulated by the escrow deposit.

23 The amount determined after administrative hearing or after waiver of administrative
24 hearing is payable to the department and is collectible.

25 If any amount due under this subsection remains unpaid 30 days after receipt of notice of
26 the deficiency, the department may order the operator of the facility or landfill to cease
27 receiving any solid waste until the amount of the deficiency is completely paid.

28 **Sec. 11. Department of Environmental Protection; returnable beverage**
29 **container rules.** Pursuant to the authority granted in Public Law 2015, chapter 166,
30 section 15, the Department of Environmental Protection shall, as soon as practicable,
31 amend its existing rules or adopt new rules regarding the responsibilities of
32 manufacturers, distributors, dealers, initiators of deposit, contracted agents and
33 redemption centers under the returnable beverage container law, the Maine Revised
34 Statutes, Title 38, chapter 33, to require a deposit and refund value on beverage
35 containers containing Maine-produced apple cider and Maine-produced blueberry juice.

36 **Sec. 12. Department of Environmental Protection; beneficial use rules.**
37 As soon as practicable, the Department of Environmental Protection shall amend fuel
38 quality standards for construction and demolition debris wood fuel under its existing Rule
39 Chapter 418: Beneficial Use of Solid Wastes to increase the allowance for chromated
40 copper arsenate treated wood from less than 1.5% to less than 2.0% and to increase the
41 allowance for #4 minus fines for sources other than publicly owned sources from 10% to
42 15%.

1 **Sec. 13. Department of Environmental Protection; food waste**
2 **composting pilot program.** The Department of Environmental Protection shall
3 develop, implement and administer a food waste composting pilot program as described
4 in this section.

5 1. The department shall invite municipalities to participate in the pilot program and
6 shall select as participants at least one municipality from each of the 3 following groups
7 of counties:

8 A. Androscoggin, Cumberland, Lincoln, Sagadahoc and York;

9 B. Franklin, Kennebec, Knox, Oxford and Waldo; and

10 C. Aroostook, Hancock, Penobscot, Piscataquis, Somerset and Washington.

11 2. The department shall invite educational institutions to participate in the pilot
12 program and shall select as participants at least one educational institution from each of
13 the 3 following categories:

14 A. A public or private educational institution providing kindergarten to grade 12
15 education with an enrollment of 500 students or less, as measured during the 2014-
16 2015 school year;

17 B. A public or private educational institution providing kindergarten to grade 12
18 education with an enrollment of more than 500 students, as measured during the
19 2014-2015 school year; and

20 C. A public or private educational institution providing undergraduate and graduate
21 education.

22 3. The department shall invite and shall select as additional participants in the pilot
23 program at least one entity from each of the 3 following categories:

24 A. A correctional facility;

25 B. A hospital; and

26 C. A commercial restaurant that generates, on average, 1/2 ton or more of food waste
27 per week.

28 4. The department shall invite the Legislative Council to participate in the pilot
29 program with respect to the State House facilities. The department shall invite the
30 Department of Administrative and Financial Services, Bureau of General Services to
31 participate in the pilot program with respect to the Burton M. Cross State Office Building
32 facilities.

33 5. The department shall provide technical assistance, and may provide financial
34 assistance consistent with the Maine Composting and Recycling Grant and Low-interest
35 Loan Program established under the Maine Revised Statutes, Title 38, section 2201-B, to
36 each participating entity to develop and implement a food waste composting program. A
37 food waste composting program implemented under this section may involve the
38 establishment of a traditional aerobic composting system or an anaerobic digestion
39 system or implementation of another food waste processing technology approved by the

1 department. A participating entity shall collect data on the amount of food waste diverted
2 from the waste stream by the program, the related cost savings realized by the
3 participating entity and any problems encountered in implementing the program. A
4 participating entity shall compile this information into a report and transmit the report to
5 the department on or before a date determined by the department.

6 6. The department shall analyze the reports submitted by the participating entities
7 and, by January 15, 2018, shall submit a report to the joint standing committee of the
8 Legislature having jurisdiction over environmental and natural resources matters detailing
9 the data collected by each participating entity and any additional findings and including
10 any recommendations for legislation to implement permanent food waste composting
11 programs or requirements at the state, regional, municipal or local level or to otherwise
12 increase recycling rates for organic materials in the State. After receiving the report, the
13 joint standing committee may report out a bill relating to the report to the Second Regular
14 Session of the 128th Legislature.

15 SUMMARY

16 This bill amends the State's solid waste management laws as follows.

17 1. It establishes a product stewardship program for small batteries.

18 2. It updates the State's recycling goal. Current statute sets a goal of recycling or
19 composting 50% of the municipal solid waste tonnage generated each year within the
20 State by January 1, 2014. This bill extends that goal deadline to January 1, 2021.

21 3. It implements a commercial food waste composting requirement under which a
22 large quantity commercial food waste generator that is located within 20 miles of a
23 composting facility with available capacity to accept the food waste produced by the
24 generator is required to deliver all food waste produced to a composting facility for
25 processing. A large quantity commercial food waste generator is a commercial entity that
26 generates one ton or more of food waste per week. This bill authorizes the Department of
27 Environmental Protection to provide a large quantity commercial food waste generator a
28 waiver from the composting requirement if compliance would result in substantial
29 financial hardship for the generator.

30 4. It eliminates the current statutory waste handling fee of \$1 per ton on the disposal
31 at a commercial, municipal, state-owned or regional association landfill of municipal
32 solid waste ash and front end process residue.

33 5. It expands the assessment of a statutory municipal solid waste surcharge. Current
34 statute requires the assessment of a \$2 per ton surcharge on the disposal of municipal
35 solid waste at a commercial, municipal or regional association landfill. This bill reduces
36 that surcharge to \$1 per ton but assesses the surcharge on municipal solid waste disposed
37 of or received for processing, composting or other treatment at a commercial, municipal,
38 regional association or state-owned solid waste disposal facility, solid waste processing
39 facility, incineration facility or solid waste landfill.

1 6. It directs revenues collected through the assessment of the municipal solid waste
2 surcharge to the Maine Composting and Recycling Grant and Low-interest Loan
3 Program, which is established by this bill. This program provides grants and low-interest
4 loans to public and private entities to assist in the development, implementation or
5 improvement of programs, projects, initiatives and activities designed to increase
6 composting and recycling rates within the State. Under the program, priority in the
7 awarding of grants or loans is given to municipal applicants and to applicants seeking to
8 establish programs, projects, initiatives or activities likely to increase composting rates.

9 7. It directs the Department of Environmental Protection to amend existing rules or
10 adopt new rules regarding the returnable beverage container law to require a deposit and
11 refund value on beverage containers containing Maine-produced apple cider and Maine-
12 produced blueberry juice. Under the existing statutory and regulatory framework, both of
13 these products are exempt from the returnable beverage container law.

14 8. It directs the Department of Environmental Protection to amend existing rules
15 regarding the beneficial use of solid wastes to amend fuel quality standards for
16 construction and demolition debris wood fuel to increase allowances for chromated
17 copper arsenate treated wood and for #4 minus fines.

18 9. It directs the Department of Environmental Protection to develop, implement and
19 administer a food waste composting pilot program. The department is required to collect
20 data from participating entities and by January 15, 2018 submit a report to the joint
21 standing committee of the Legislature having jurisdiction over environmental and natural
22 resources matters detailing the data collected by each participating entity and any
23 additional findings and including any recommendations for legislation to implement
24 permanent food waste composting programs or requirements at the state, regional,
25 municipal or local level or to otherwise increase recycling rates for organic materials in
26 the State. After receiving the report, the committee may report out a bill relating to the
27 report to the Second Regular Session of the 128th Legislature.