

William J. Schneider
ATTORNEY GENERAL



REGIONAL OFFICES:
84 HARLOW ST., 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

415 CONGRESS ST., STE. 301
PORTLAND, MAINE 04101
TEL: (207) 822-0260
FAX: (207) 822-0259

TEL: (207) 626-8800
TTY: 1-800-577-6690

STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

14 ACCESS HIGHWAY, STE. 1
CARIBOU, MAINE, 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

June 16, 2011

Senator Cynthia Dill
3 State House Station
Augusta, Maine 04333

Senator Elizabeth Schneider
3 State House State Station
Augusta, Maine 0433

Dear Senators Dill and Schneider:

This is in response to your request for an opinion of the Attorney General with respect to LD 1567, "Resolve, To Authorize the State to Acquire a Landfill in the Town of East Millinocket." Specifically, you have asked whether LD 1567 triggers the provisions of Article IX, Section 14 of the Constitution of Maine. Because of the urgency of your request and the imminent end of the legislative session, I am providing you with a brief analysis that the available time has allowed us to undertake.¹

LD 1567 authorizes the State Planning Office to acquire, own and cause to be operated the existing solid waste disposal facility in the Town of East Millinocket known as the Dolby Landfill. According to the terms of Senate Amendment "A" to Committee Amendment "A" (in the second amending clause following the emergency preamble):

The office may only acquire real estate associated with the disposal facility by donation and may establish the terms and conditions of acquisition by donation and execute and deliver, in the name of and on behalf of the State, all contracts the office determines are necessary or appropriate to effect the acquisition and operation of the disposal facility.

Article IX, Section 14 of the Constitution establishes a state debt limit, which cannot be exceeded except by issuance of bonds authorized by the Legislature and approved by the voters. The language relevant to the debt limit provides:

¹ The version of LD 1567 that we have reviewed is that comprised of Senate Amendment "A" to Committee Amendment "A" to LD 1567; a copy of these documents is attached. We refer to these legislative documents collectively as "LD 1567" in this letter.

The Legislature shall not create any debt or debts, liability or liabilities, on behalf of the State, which shall singly, or in the aggregate, with previous debts and liabilities hereafter incurred at any one time, exceed \$2,000,000... excepting ... that whenever 2/3 of both Houses shall deem it necessary, by proper enactment ratified by a majority of the electors voting thereon at a general or special election, the Legislature may authorize the issuance of bonds on behalf of the State..."

Me. Const. art. IX, § 14.

In your letter, you indicate that it is your understanding that the costs associated with acquisition and operation of the landfill would be well in excess of the \$2 million threshold set forth in Article IX, Section 14 of the Maine Constitution. These costs may include those associated with operation of the landfill, addressing on-going violations of state and federal environmental laws, and closure of the landfill.

Based on our review, we have concluded that the acquisition of the landfill alone does not trigger the debt limit provisions of Article IX, Section 14. LD 1567 does not commit the State to the assumption of any particular debts or liabilities associated with the landfill.² Should the State acquire title to the landfill, the extent to which it does or does not assume debts or liabilities associated with the landfill will be established by the terms of any agreement that the State may enter into for the future use or closure of the landfill and the acceptance of these obligations by the parties to the agreement. While the terms of Article IX, § 14 will be relevant to the terms of that agreement, the acquisition alone does not create a debt or liability that would trigger the debt limit provisions.

Sincerely,



William J. Schneider
Attorney General

² It should be noted here that our office has recommended that LD 1567 include a provision that the current owner of the disposal facility is responsible for environmental liability associated with the operation of the disposal facility prior to acquisition by the State; and that the operator of the disposal facility be required to indemnify the State for all liabilities and costs associated with development and operation of the disposal facility.