

MAINE STATE LEGISLATURE

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PL 825

L.D. 1799

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UTILITIES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1336, L.D. 1799, Bill, "An Act to Create the Great Salt Bay Utility District"

Amend the bill by striking out the title and substituting the following:

'An Act to Expand the Powers of the Great Salt Bay Sanitary District'

Further amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

'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, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

Whereas, the residents of the Great Salt Bay Sanitary District are in immediate need of having a quasi-municipal entity established to supply them with potable water; 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,

COMMITTEE AMENDMENT

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

4 **Sec. 1. Great Salt Bay Sanitary District; additional purposes;**
5 **expanded powers.** The Great Salt Bay Sanitary District, formed
6 under the Maine Revised Statutes, Title 38, chapter 11 and
7 referred to in this Act as "the district," is granted additional
8 powers, rights, privileges and obligations as provided in this
9 Act for the purpose of allowing the district to supply the towns
10 and inhabitants and others within the territory of the district
11 with potable water for domestic, sanitary, commercial,
12 industrial, agricultural and municipal purposes.

14 **Sec. 2. Powers of district.** The district, for the purposes
15 specified in section 1, may take, collect, store, flow, use,
16 divert, distribute and convey to the district, or any part of the
17 district, water from any source approved by the Department of
18 Human Services, natural or artificial, within the district and
19 from any other source from which the Maine Water Company,
20 Damariscotta and Newcastle Division, may take water on the
21 effective date of this Act. It may also locate, construct and
22 maintain aqueducts, pipes, conduits, dams, wells, reservoirs,
23 standpipes, hydrants, pumping stations and other necessary
24 structures and equipment therefor, and do anything necessary to
25 furnish water for public purposes and for the public health,
26 comfort and convenience of the inhabitants and others of the
27 district, or to contract to do any and all of the foregoing
28 things.

30 All incidental powers, rights and privileges necessary to
31 the accomplishment of the objectives set forth in this Act are
32 granted to the district.

34 Notwithstanding section 1 and other provisions of this
35 section, the district may not provide service to any person or
36 business within the territory served by the Maine Water Company,
37 Damariscotta and Newcastle Division unless the district acquires,
38 pursuant to section 13 of this Act, the plants, properties,
39 franchises, rights and privileges owned by the Maine Water
40 Company, Damariscotta and Newcastle Division or unless the
41 provision of service is approved by the Public Utilities
42 Commission pursuant to the Maine Revised Statutes, Title 35-A,
43 section 2102.

44
46 **Sec. 3. Authorized to lay mains, pipes, conduits and other water**
47 **conveyances through public ways and across private lands.** The district
48 may lay in, along, under and through the streets, roads, ways,
49 highways, bridges, tidal waters, lakes, ponds, rivers and water
50 courses in the territory of the district and across private lands
in the territory of the district and

maintain, repair and replace pipes, mains, conduits, aqueducts and fixtures and appurtenances as necessary and convenient for the purposes specified in section 1 and, whenever the district lays any pipes, mains, conduits, aqueducts and fixtures or appurtenances in any street, road, way or highway, it shall cause the same to be done with as little obstruction as practicable to the public travel and at the district's own expense, without necessary delay, shall cause the earth and pavement removed by the district to be replaced in proper condition.

Sec. 4. Authorized to erect dams and reservoirs; to cross navigable waters; to supply water to utilities. The district, for the purposes specified in section 1, may erect and maintain all dams, reservoirs and structures necessary and convenient for those purposes. The district may lay, construct and maintain its pipes and fixtures in, over and under navigable waters and build and maintain structures for the pipes and fixtures, subject to the laws of the United States. The district may supply water to any public utility now supplying water in Lincoln County, subject to the consent of the Public Utilities Commission.

Sec. 5. Procedure if public utility must be crossed. In case of crossing of any public utility, unless consent is given by the company owning and operating the public utility as to place, manner and conditions of the crossing within 30 days after consent is requested by the district, the Public Utilities Commission, upon petition by the district, shall determine the place, manner and conditions of the crossing, and all work on the property of the public utility must be done under the supervision and to the satisfaction of the public utility or as prescribed by the Public Utilities Commission, but at the expense of the district.

Sec. 6. Authority to acquire property; rights of eminent domain. The district, for the purposes specified in section 1, may take and hold, for public uses, real estate and personal estate and any interest in real estate and personal estate necessary or convenient for those purposes, by purchase, lease or otherwise and may exercise the right of eminent domain as provided in this Act, to acquire for those purposes any land or interest in land or water rights necessary for erecting and maintaining dams, plants and works, for flowage, power, pumping, supplying water through its mains; for reservoirs, preserving the purity of the water and watershed; for laying and maintaining aqueducts and other structures; for taking, distributing, discharging and disposing of water; and for rights-of-way or roadways to its sources of supply, dams, power stations, reservoirs, mains, aqueducts, structures and lands.

This section may not be construed as authorizing the district to take by right of eminent domain any of the property or facilities of any other public utility used, or acquired for future use by the owner of that property or those facilities, in the performance of a public duty, unless expressly authorized to do so by this section or by subsequent act of the Legislature or as provided in section 5 or section 13.

Sec. 7. Procedure in exercising of eminent domain. Except as specifically provided in section 13, the district may exercise the right of eminent domain granted under section 6 in accordance with this section. The district, in exercising, from time to time, any right of eminent domain in the taking of land, interests in the land or water rights, shall file in the office of the county commissioners of Lincoln County and record in the Lincoln County Registry of Deeds plans of the location of all such property to be taken, with an appropriate description and the names of the owners, if known. Notice of the filing must be sent by mail to the owners at the address appearing on the tax records of the municipality in which the land is located. When for any reason the district fails to acquire the property it is authorized to take, and which is described in that location, or if the location recorded is defective or uncertain, it may, at any time, correct and perfect that location and file a new description, and in such case the district is liable for damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the district is not liable for any acts that would have been justified if the original taking had been lawful. Entry may not be made on any private lands, except to make surveys, until the expiration of 10 days from that filing, at which time possession may be had of all lands, interests in the lands or water rights so taken, but title does not vest in the district until payment has been made.

Sec. 8. Adjustment of damages; procedure as in laying out of highways. If any person sustaining damages by any taking pursuant to the right of eminent domain does not agree with the district upon the sum to be paid for the taking, either party, upon petition to the county commissioners of Lincoln County, may have the damages assessed by them. The procedure and all subsequent proceedings and right of appeal are under the same restrictions, conditions and limitations as are or may be by law prescribed in the case of damages by the laying out of highways.

Sec. 9. Annual report. The trustees of the district shall make and publish an annual report concerning the operations of the district pursuant to this Act, including a report of the treasurer.

2 **Sec. 10. District and towns authorized to make and assume**
3 **contracts.** The district, through its trustees, in order to carry
4 out the objectives set forth in this Act, may contract with
5 persons, districts, municipalities, utilities or corporations.
6 The district may contract with the Town of Newcastle, the Town of
7 Nobleboro and the Town of Damariscotta and those towns may
8 contract with the district for the supply of water for municipal
9 purposes.

10 **Sec. 11. Authorized to receive government aid; borrow money; issue**
11 **bonds and notes.** For accomplishing the purposes of this Act, the
12 district, through its trustees, without vote of the inhabitants,
13 may receive state and federal aid or grants, borrow money
14 temporarily and issue for the money its negotiable notes for the
15 purpose of renewing and refunding the indebtedness so created,
16 for paying any necessary expenses and liabilities incurred under
17 this Act, whether incurred by the district or by the Town of
18 Nobleboro, the Town of Newcastle or the Town of Damariscotta, the
19 district being authorized to reimburse the towns for any such
20 expense incurred by the towns and in acquiring properties, paying
21 damages, laying pipes, mains, aqueducts and conduits,
22 constructing, maintaining and operating a water plant or system
23 and making renewals, additions, extensions and improvements to
24 the water plant or system and to cover associated interest
25 payments. The district, through its trustees, may also issue,
26 from time to time, in accordance with the Maine Revised Statutes,
27 Title 35-A, chapter 63, bonds, notes or other evidences of
28 indebtedness of the district in an amount not to exceed 3% of the
29 total state valuation of the Town of Nobleboro, the Town of
30 Damariscotta and the Town of Newcastle, bearing interest at such
31 rate or rates, selling at par or at a discount or a premium, to
32 be sold in such manner, at public or private sale, and having
33 such other terms and provisions as the trustees determine, except
34 that loans running for one year or less do not require the
35 approval of the Public Utilities Commission.

36
37 Bonds, notes and evidences of indebtedness of the district
38 issued under this Act may be issued to mature serially or made to
39 run for a term of years as the trustees determine. These bonds,
40 notes or evidences of indebtedness may be issued with or without
41 provisions for calling the bonds, notes or evidences of
42 indebtedness prior to maturity and, if callable, may be made
43 callable at par or at such premium as the trustees determine.
44 All bonds, notes or other evidences of indebtedness issued under
45 this Act must have inscribed upon their face the words "Great
46 Salt Bay Sanitary District" and be signed by the treasurer and
47 countersigned by the chair of the board of trustees of the
48 district. If coupon bonds are issued, the interest coupon
49 attached to the coupon bonds must bear the facsimile signature of
50 the treasurer.

2 All bonds, notes and evidences of indebtedness so issued by
the district, which is a quasi-municipal corporation, are legal
4 obligations of the district within the meaning of the Maine
Revised Statutes, Title 30-A, section 5701.

6
8 The district may refund and reissue, from time to time, in
one or in separate series, its bonds, notes and other evidences
of indebtedness, and each authorized issue constitutes a separate
10 loan. All bonds, notes and evidences of indebtedness issued
under this Act by the district are legal investments for savings
12 banks in the State and are exempt from Maine income tax.

14 **Sec. 12. Rates.** The rates established pursuant to this
section must be sufficient to provide revenue for the purposes of
16 this Act, without the need for any financial assistance from the
Town of Nobleboro, the Town of Newcastle or the Town of
18 Damariscotta, other than the normal payment of water charges for
services rendered and the loan or loans for initial funds as set
20 forth in section 11. Individuals, firms and corporations,
whether private, public or municipal, shall pay to the treasurer
22 or other designated officer of the district the rates established
by the board of trustees for the water used by them. The rates
24 must be established in accordance with the Maine Revised
Statutes, Title 35-A, chapter 61, to provide for the purposes set
26 forth therein.

28 **Sec. 13. Authorized to acquire property and franchises of the Maine
Water Company, Damariscotta and Newcastle Division.** The district,
30 through its trustees, may acquire by purchase all or part of the
plant, properties, franchises, rights and privileges owned by the
32 Maine Water Company, Damariscotta and Newcastle Division, located
within the territory of the district, including all lands,
34 waters, water rights, reservoirs, pipes, machinery, fixtures,
hydrants, tools and all apparatus and appliances used or usable
36 in supplying water in the area of the district. The district may
also acquire by the exercise of the right of eminent domain, a
38 right expressly delegated to the district for that purpose, all
or part of the plant, properties, franchises, rights and
40 privileges except cash assets and accounts receivable, owned by
the Maine Water Company, Damariscotta and Newcastle Division,
42 including all lands, waters, water rights, dam structures,
reservoirs, pipes, machinery, fixtures, hydrants, tools and all
44 apparatus and appliances used or usable in supplying water in the
area of the district, and if and when so acquired, the district,
46 in addition to the powers conferred by this Act, may exercise all
rights, privileges and franchises of the Maine Water Company,
48 Damariscotta and Newcastle Division.

2 In exercising the right of eminent domain under this
3 section, the trustees shall file with the district clerk a
4 condemnation order that includes a detailed description of the
5 property interests to be taken, the name or names of the owner or
6 owners of record so far as they can be reasonably determined and
7 the amount of damages determined by the trustees to be just
8 compensation for the property or interest therein taken. The
9 trustees shall then serve upon the owner or owners of record a
10 copy of the condemnation order and a check in the amount of the
11 damages awarded and record a certified copy of the condemnation
12 order in the Lincoln County Registry of Deeds. In the event of
13 multiple ownership, the check may be served on any one of the
14 owners. Title passes to the district upon service of the order
15 of condemnation and check or upon recordation in accordance with
16 this Act, whichever occurs first. Acceptance and negotiation of
17 the check do not bar an appeal under this Act.

18 Any person aggrieved by the determination of the damages
19 awarded to owners of property or interests therein under this
20 section may, within 60 days after service of the condemnation
21 order and check, appeal to the Superior Court of Lincoln County.
22 The court shall determine damages by a verdict of its jury or, if
23 all parties agree, by the court without a jury or by a referee or
24 referees, and shall render judgment for just compensation, with
25 interest when such is due, and for costs in favor of the party
26 entitled thereto. Appeal from the decision of the Superior Court
27 may be had to the Law Court, as in other civil actions.

28 **Sec. 14. Property tax exemption.** Notwithstanding the Maine
29 Revised Statutes, Title 38, section 1064, the property of the
30 district acquired pursuant to this Act and used for the purposes
31 of this Act is exempt from taxation to the extent provided in
32 Title 36, section 651.

33 **Sec. 15. Existing laws not affected; rights conferred subject to**
34 **provisions of law; preservation of powers.** Nothing contained in this
35 Act is intended to repeal, or may be construed as repealing, the
36 whole or any part of any existing law, and all the rights and
37 duties mentioned in this Act must be exercised and performed in
38 accordance with all the applicable provisions of and amendatory
39 acts to the Maine Revised Statutes, Title 35-A to the extent that
40 title and its amendments affect the operations of the district.
41 Powers granted in this Act are in addition to powers granted to
42 the district under the provisions of Title 38, chapter 11, and
43 nothing in this Act may be construed as limiting the authority of
44 the district in carrying out the purposes of the district as
45 provided in Title 38, section 1063.

46 **Sec. 16. Separability clause.** If any section or part of a
47 section of this Act is held invalid by a court of competent
48 jurisdiction, the remainder of this Act shall remain in effect.

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2 jurisdiction, the holding does not affect the remainder of this
Act, it being the intention that the remaining portions of this
4 Act stand, notwithstanding the unconstitutionality or invalidity
of any section, sentence, clause or phrase.

6 **Sec. 17. Acceptance subject to referendum.** In view of the
emergency cited in the preamble, this Act takes effect when
8 approved only for the purposes of permitting its submission to
the legal voters within the district at an election called for
10 that purpose and held by December 31, 1994. The election must be
called, advertised and conducted according to the law relating to
12 municipal elections, except that the registrars of voters are not
required to prepare or the clerks to post a new list of voters
14 and, for this purpose, the registrars of voters must be in
session the 3 secular days preceding the election, of which the
16 first 2 days must be devoted to registration of the voters and
the last day to verification of the list and completion of the
18 records of these sessions by the registrars. The subject matter
of this Act is reduced to the following question:

20 "Do you favor expanding the powers of the Great Salt Bay
22 Sanitary District to allow the district to provide water
utility services within the district?"
24

The voters shall indicate by a cross or check mark placed
26 against the words "Yes" or "No" their opinion of the same.

28 The results must be declared by the municipal officers of
the Town of Nobleboro, the Town of Newcastle and the Town of
30 Damariscotta and the due certificate of the results filed by the
clerks with the Secretary of State.
32

34 This Act takes effect for all purposes immediately upon its
acceptance by a majority of the legal voters in the district
36 voting at the special election. Failure of the approval by the
necessary majority of voters at any such election does not
38 prevent a subsequent election or elections from being held for
that purpose prior to December 31, 1994.

40 **FISCAL NOTE**

42 This bill requires the municipalities of Damariscotta,
44 Newcastle and Nobleboro to hold a certain referendum to approve
the expansion of the powers of the Great Salt Bay Sanitary
46 District. The additional costs of this state mandate are likely
to be relatively minor. Pursuant to the mandate preamble, the
48 2/3 vote of all members elected to each House exempts the State
from the constitutional requirement to fund 90% of the additional
50 local costs.

2 The Public Utilities Commission will incur some minor
4 additional costs to perform certain regulatory duties. These
6 costs can be absorbed within the commission's existing budgeted
8 resources.'

STATEMENT OF FACT

10 This amendment replaces the bill. The bill proposed to
12 create the Great Salt Bay Utility District. This amendment
14 expands the powers of the Great Salt Bay Sanitary District in
16 order to allow it to provide water utility services. This
18 amendment also amends the title to reflect the changes made to
20 the bill.

 This amendment is designed to achieve the same purposes the
18 original bill was designed to achieve. This amendment ensures
20 that appropriate legal authority is granted to the existing
sanitary district to achieve those purposes.

22 This amendment also adds a mandate preamble, an emergency
preamble, an emergency referendum provision and a fiscal note.