

# MAINE STATE LEGISLATURE

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**STATE OF MAINE  
117TH LEGISLATURE**

**NONPARTISAN STAFF  
STUDY**

**STANDARD WATER DISTRICT  
ENABLING LEGISLATION**

**FEBRUARY, 1996**

**Prepared for the Legislative Council  
at the request of the  
Joint Standing Committee on Utilities and Energy**

**By Jon Clark, Legislative Counsel**

**Legislative Advisor:**

**Sen. John J. Cleveland**

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## EXECUTIVE SUMMARY

On June 30 1995, the Joint Standing Committee on Utilities and Energy requested the Legislative Council approve a study by its nonpartisan staff to develop "boiler plate water district charter language which could be enacted into general law and which would thereby standardize water district creation" (see Appendix A). The Council approved the study on August 2, 1995 (see Appendix B).

As directed by the study request, the author worked in consultation with Senator John Cleveland of the Utilities and Energy Committee to develop and draft water district charter enabling legislation; the draft is attached as Appendix C. The text of this report briefly explains how the draft is structured and how various provisions relate to certain existing provisions of law. The report highlights provisions of the draft which vary from standard charter language. Attached as Appendix D is a sample charter which provides a model of what new charters would look like if the draft enabling legislation were enacted.

On November 29, a first draft of the enabling legislation was distributed for comment to the following individuals, who volunteered to provide comments and whom the author wishes to thank for their assistance:

Steven Levy, Executive Director, Maine Rural Water Association  
David Michiewicz, President, Maine Water Utilities Association  
Brian Cornwall, staff, Public Utilities Commission  
Carol MacLennon, staff, Public Utilities Commission  
Ray Hammond, staff, Public Utilities Commission  
Grant Siwinski, staff, Public Utilities Commission

On December 11, suggested modifications to the draft offered by Senator Cleveland were distributed to these individuals. Useful comments were received from all reviewers on the draft and Senator Cleveland's proposed modifications. Suggested changes of a non-substantive nature which improved clarity have been incorporated in the draft; no particular discussion of these changes is included in this report. All substantive comments are discussed in the report.

On January 2, a draft of this report was distributed to the same individuals. Several additional useful editorial comments on the enabling legislation were received in time to be incorporated into the draft. The author notes, however, that Mr. Levy and Mr. Michiewicz provided further comments on the enabling legislation on the afternoon of the day before this document was scheduled to be sent to print (February 2). Due to lack of time, the author was not able to discuss these comments in this report.

## **1. BACKGROUND**

Proposed legislation relating to water district charters constitutes a significant portion of the bills coming before the Utilities and Energy Committee.<sup>1</sup> Some of the bills are proposals for new charters, others are proposed amendments to existing charters. In each case, the committee is faced with individual review of often lengthy, relatively arcane and in some cases rather archaic language.<sup>2</sup>

This presents both a significant work load burden for the committee and an opportunity, over time, for significant inconsistency among charters. In some cases, there are clear justifications for unique provisions in charters. In other cases, singular provisions represent historical accidents or contemporary uncertainty concerning precedent set by other charters.

New charters are often based on existing charters and, depending upon which charter is chosen as the model, may contain idiosyncrasies of more or less relevance to the needs of the new district. On the other hand, all charters contain a series of common elements which permit a water district to conduct business. These provisions are generally referred to as "boiler plate"; while the actual language which appears in various charters is different (depending when the language was written, what model it was based upon and what special circumstances may have been present at the time) the fundamental substantive elements are, for the most part, identical.

In light of these facts, the chairs of the Utilities and Energy Committee, at the end of the 1st Regular Session of the 117th Legislature, requested this study to develop enabling legislation in order to help standardize, streamline and simplify the creation of water district charters. Draft enabling legislation developed by this study is attached as Appendix C.

## **2) DISCUSSION**

The draft enabling legislation (see Appendix C) is designed to permit the creation of water districts with as little individual charter language as possible. The draft defines the core powers and duties which water districts are typically given; under the draft, when a new district is created, the charter would need only to incorporate by reference rather than recreate this lengthy "boiler plate".

In developing the draft, a recently enacted district charter was used as the primary reference document (see Appendix H); all provisions of the charter not unique to the

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<sup>1</sup> Approximately one third of the bills referred to the committee in 1995 related to water district charters.

<sup>2</sup> Some charters have language nearly a century old.

district have been recreated in some form in the draft. The language of certain provisions has been edited to ensure clarity by removing some arcane terminology and redrafting certain awkward constructions.

In order to improve clarity and to consolidate related provisions of law, the draft attempts to marry certain provisions of general law related to water district charters (Title 35-A, chapter 63) with the new enabling language.<sup>3</sup> Without special terminology, some confusion might be created by this marriage. Thus, “standard district” is defined in the draft as a district created pursuant to the enabling legislation. “Water district” is defined and used in the draft as the more generic term for all chartered water districts. When a more inclusive application (i.e., including, but not limited to, standard districts) is intended, “water district” is used. Provisions which apply only to standard districts use that term.

#### **A. Trustee selection**

The draft provides the option for the election or appointment of trustees (section 6410, subsections 1 and 2). In the case of election, the draft provides all the necessary language to ensure an orderly process. The draft specifies as the default that trustees are elected at large to ensure that the constitutional Equal Protection requirement of “one person one vote” is met. A charter could provide for exemption from this default and specify voting districts (e.g. Town X elects 2 trustees and Town Y elects 1 trustee). The draft mentions this option and provides a reminder of the need to satisfy the constitutional principle (see section 6403, subsection 2 of draft).

#### **B. Trustee compensation**

The method of setting trustee compensation is currently established in Title 35-A, section 6303, subsection 4. That provision requires municipal officers to approve compensation suggested by trustees. The Maine Rural Water Association (“MRWA”) suggested to the Utilities and Energy Committee last session that this sort of municipal oversight of a quasi-municipal district seems inappropriate. The committee asked the author to review the language and develop language for the committee’s consideration which would address the concern.

The draft provides that trustee compensation is set by the trustees in their bylaws (section 6410, subsection 7). This approach removes the municipal oversight, avoids having the Legislature set compensation in each charter and

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<sup>3</sup> In the draft, most of chapter 63 is repealed and its provisions moved to and combined with the new enabling language in new chapter 64. A technical analysis of how each provision of chapter 63 is treated may be found in section 3 of the report.



provides for a formal and public process by which the trustees can control their own compensation.

Mr. Levy points out that most districts don't have bylaws and those that do, use them for procedural and not substantive matters. These facts suggest that the proposed modification to existing law would require a shift in approach by all districts (existing law applies to all districts; the proposed modification in the draft would also apply to all districts). The Legislature has the authority to impose this change. This is not to suggest, however, that districts would find the change an improvement over the existing law.

Public Utilities Commission ("PUC") staff has some concern about the removal of municipal oversight over trustee compensation and indicated this change could require the PUC more closely to review trustee compensation to ensure reasonableness.

The proposed modification is presented for committee consideration but is in no way central to the concept of the draft; if the modification is not found to be desirable, one option would be simply to strike the language of section 6410, subsection 7 in the draft and insert in its place the language of current law (section 6303, subsection 4). This would preserve the *status quo* and have no effect on the rest of the draft.

### **C. District debt**

Most water districts have debt limits in their charters. When a district foresees the need to incur debt above its limit, it must seek a debt limit increase by means of a legislative amendment to its charter. While the Utilities and Energy Committee generally approves requested debt limit increases, it has a long-standing policy of requiring a debt limit increase to be put to local referendum to allow those affected by the proposed increase to approve or disapprove it.

The draft allows a district to have its debt limit set by charter (section 6403, subsection 2).<sup>4</sup> However, the draft establishes as the standard and as the default a requirement that debt limits be proposed by trustees and approved directly by local referendum (section 6413). This approach is proposed by Senator Cleveland as a means of ensuring local accountability while avoiding the need for legislative involvement in the issue through charter amendments.

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<sup>4</sup> Any provision of the enabling legislation, if enacted, could be overridden by subsequent legislative enactment. Thus, the legislature could set a district's debt limit in its charter, regardless of language in the enabling legislation specifically allowing this option. The purpose of mentioning the option in the enabling legislation is merely to highlight the option, not to create it.

Current law (Title 35-A, section 6304) requires a special process for districts formed since 1982 whenever trustees propose issuing debt at one time in excess of the amount specified in the law. The process includes the opportunity for persons to force a vote on the proposal. In the draft, this provision is preserved, though, for drafting reasons, is moved to a new section (section 6310). In the draft, standard districts are exempt from its requirements. This change is proposed by Senator Cleveland on the theory that if the debt limit is set by referendum, there is no need for an individual issuance of debt to be subject to a vote.

Mr. Levy has some concern about the current application of Title 35-A, section 6304 (to all districts formed after January 1, 1982) and the manner in which the section is worded. PUC staff also suggests a change in the language of this section; their suggestion is to add a requirement that public notice of the proposed borrowing include a description of the procedure available for contesting the proposed borrowing.

The language is not amended in the draft other than by the addition of the exemption of standard districts from its application. The language of the section might be improved by editing; insofar as its application continues to be to all districts formed after 1982, any modification should be undertaken with care to ensure that there is no retroactive application which affects any bonds already issued in conformity with the requirements of the current language.

Common charter language concerning trustee voting specifies that decisions of the board of trustees are by a majority of those present and voting. In the draft, this is modified to provide that when trustees vote to incur debt which will not be repaid within 1 year, the vote must be by a majority of the entire elected board (section 6410, subsection 6). This is proposed by Senator Cleveland on the theory that such decisions ought not to be made by a minority of the full board.

#### **D. Capital improvement plans**

The draft contains a requirement, not currently found in charters or general law, that standard districts develop annual budgets and capital improvement plans (section 6410, subsection 5). The draft requires that these plans be shared with affected municipalities and, to the extent practical, trustees and municipal officials attempt to coordinate district capital improvement projects with municipal public works projects.

This is proposed by Senator Cleveland in the hope that it will encourage cooperation between districts and municipalities and save both entities the time, effort and expense which may arise from poor coordination in these matters.

The Mr. Levy and Mr. Michiewicz both have some concern about imposing new requirements on any districts.

#### **E. Tax exemption**

The tax exempt status of districts vary. In 1994 the author provided to the Utilities Committee a legal opinion regarding certain constitutional issues surrounding an unusual tax exemption in an existing charter (see Appendix E). The committee also received an opinion from the Attorney General on that charter (see Appendix F).

In order to avoid the creation of future constitutional issues, the draft provides that the tax exemption provided in Title 36, section 651 applies to all standard districts (section 6415). The draft does not affect any existing charters; modification of existing tax exemptions raises a number of issues including potentially significant financial issues for affected districts and towns.

#### **F. Conflict of interest; freedom of access**

Current law (Title 30-A, section 2605) establishes conflict of interest standards for officials of quasi-municipal entities such as water districts. The draft references these existing provisions (section 6410, subsection 5).

The Freedom of Access law (Title 1, section 402, et seq.) applies to the conduct of business by quasi-municipal entities. The draft references that law (section 6410, subsection 6).

Senator Cleveland proposes these additions in the hope that the references will help trustees be aware of the duties and responsibilities imposed upon them by those laws.

#### **G. Eminent domain**

The draft (section 6408) references existing law on eminent domain (Title 35-A, chapters 65 and 67) and specifies, using (somewhat edited) common charter language, the purposes for which a district may use its eminent domain power (section 6408, subsection 2).

Mr. Levy has some concern about referencing the Title 35-A eminent domain procedures. Mr. Levy suggests that the procedures might be improved. The draft, however, includes no changes in the existing law governing district eminent domain procedures.

Mr. Levy also suggests a substantive modification to the language listing the purposes for which a district may use its eminent domain power: adding a

catch-all provision allowing eminent domain to be used for any purpose necessary for the conduct of its business. This modification is not included in the draft. The existing list of purposes seems fairly inclusive and is the list which commonly appears in water district charters.

Mr. Michiewicz suggested that the listed purpose of “preserving the purity of the water and watershed” be modified to read “preserving and enhancing the purity of the water and related watershed”. This appears to be a change which clarifies the provision and is included in the draft.

## **H. Rates**

Section 6414 of the draft, concerning rates set by the district, is language commonly used in charters. This language includes the following:

The rate must be sufficient to provide revenue to the standard district to carry out the purposes of its incorporation, without the need for any financial assistance from any municipality, other than the normal payment of water charges for services rendered and any loan or loans provided to the district for initial funds...

PUC staff has a concern that this language might be read to prohibit a town from volunteering to pay a larger share of water utility revenues. The author reads the language as a requirement that rates not be set in a manner that requires financial assistance from a town. The author does not believe the language prohibits a town from volunteering to provide financial assistance or a district from accepting these contributions. The language has not been amended in the draft.

## **3. REPEAL OF CHAPTER 63; TECHNICAL ANALYSIS**

As mentioned earlier, the draft attempts to marry the provisions of Title 35-A, chapter 63 with the new standard district enabling legislation. This is accomplished by the repeal of chapter 63 and the recreation of most of its provisions in the new chapter 64 created in the draft. This section provides a technical analysis of how the provisions of chapter 63 are dealt with in the draft. The reader will find a copy of chapter 63 in Appendix G.

Chapter 63 purports to apply to all new charters; certain provisions apply to past charters as well. Several provisions of chapter 63 are problematic; several provisions attempt unsuccessfully to bind future legislatures. These provisions are unsuccessful since at any time the Legislature may repeal or override any of the provisions of chapter 63.

The draft attempts to work through the problems in chapter 63, recreate the important substantive provisions, eliminate or recast non-binding language and coordinate the new enabling language with what is preserved from chapter 63.

### **Section 6301.**

This purpose statement is non-binding and appears to be of limited usefulness; it may be repealed without significant legal effect. In the draft it is entirely repealed. A new purpose statement is provided in the draft in section 6401.

### **Section 6302**

This section requires a referendum on the creation of new charters. It does not bind future legislatures, but it does reflect a long-standing policy of the Utilities and Energy Committee. The concept is preserved as one of the listed “mandatory provisions” in the new draft (section 6403, subsection 1). This new provision does not bind future legislatures, but it preserves the policy concept for consideration by future legislatures.

### **Section 6303**

This section has several provisions related to trustees:

**Subsection 1** purports to bind future legislatures in matters related to the election, term and minimum number of trustees of districts; it is non-binding.<sup>5</sup> In the draft, the policy of districts having at least 3 trustees and the policy of trustee terms being no longer than 3 years are incorporated in the “mandatory provisions” in the draft (section 6403, subsection 1). These are still non-binding, but they preserve the policies for consideration by future legislatures. In the draft, the issue of whether trustees are selected by election or appointment is left for legislative determination in each case; the default (if the individual charter fails to specify) is election (section 6403, subsection 1 and section 6410).

**Subsection 2** specifies procedures for election of trustees. This is recreated in the draft as section 6410, subsection 1, except that the reference in current law to county commissioners in the unorganized territories is dropped. The modern trend is to have the trustees, not municipal officers or county commissioners, conduct the elections. The

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<sup>5</sup> The Legislature, in each charter it enacts, specifies these matters and those specific provisions may override these “subsection 1” provisions.

draft follows the modern trend and so eliminates the unnecessary reference to county commissioners.

**Subsection 3** specifies certain matters related to board organization and is reproduced in its entirety (though it is divided into two sections) in the draft in portions of section 6410 subsections 4 and 5.

**Subsection 4** concerns trustee compensation. The issues surrounding this provision are discussed in section 2 of this report. The modified version of this provision appears in the draft in section 6410, subsection 7.

**Subsection 5** concerns trustee retirement and is reproduced, with slight editing, in the draft in section 6410, subsection 8.

#### **Section 6304**

This section establishes special procedures for districts formed after January 1, 1982 when their trustees propose issuing more than a certain amount of debt at one time. Issues raised by this section are discussed in section 2 of this report. The provision is recreated verbatim in the draft in section 6310, with the exception that standard districts are exempted from its requirements.

#### **Section 6305**

This section attempts to prohibit future legislatures from placing in charters certain language regarding liens for nonpayment of district assessments. The section is non-binding. The draft does not include any of the prohibited language; the draft does not, however, reenact the non-binding prohibition.

#### **Section 6306**

This section specifies the application of the various provisions of the chapter. To the extent that substantive and legally significant (binding) provisions of Chapter 63 are recreated in the draft, their application has been preserved in the draft (see section 6401, subsection 2).

#### **Section 6307**

This section requires the Utilities and Energy Committee to obtain written comments from affected municipalities before acting upon any proposal to create or amend a water charter. This is recreated in the draft in section 6419.

**Section 6308**

This section permits the PUC to establish reasonable conditions upon which districts extinguish their long-term debt. This section is recreated without substantive change in section 6401, subsection 3.

**Section 6309**

This section permits districts to invest district funds in shares of certain investment companies. This section is recreated without substantive change in section 6416 of the draft.

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## **APPENDIX A**

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SENATE

DAVID L. CARPENTER, DISTRICT 33, CHAIR  
PHILIP E. HARRIMAN, DISTRICT 23  
JOHN J. CLEVELAND, DISTRICT 22

JON CLARK, LEGISLATIVE ANALYST  
PAULA B. THOMAS, COMMITTEE CLERK



STATE OF MAINE

HOUSE

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ONE HUNDRED AND SEVENTEENTH LEGISLATURE

COMMITTEE ON UTILITIES AND ENERGY

June 30, 1995

Senator Jane Amero, Chair  
Legislative Council  
117th Maine Legislature


Dear Senator Amero:

We are writing to request a staff study on issues related to water district charters. This committee deals regularly with water district charters and a great deal of committee time is spent dealing with issues which could be avoided if a more streamlined process were in place. We would like staff to develop for our consideration next session boiler plate water district charter language which could be enacted into general law and which would thereby standardize water district creation.

We would request that staff work with committee member Senator John Cleveland to develop the appropriate language.

Thank you for your consideration of this request, if you have any questions, please let us know.

Sincerely,

  
David L. Carpenter  
Senate Chair

  
Carol A. Kontos  
House Chair

cc: Members, Legislative Council  
Members, Joint Standing Committee on Utilities and  
Energy

7454NRG



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## **APPENDIX B**

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SEN. JANE A. AMERO  
CHAIR

REP. ELIZABETH H. MITCHELL  
VICE-CHAIR



*Handwritten:* The Senate  
August 2, 1995

*Handwritten:* Jon C.  
FYI

SEN. JEFFREY H. BUTLAND  
SEN. R. LEO KIEFFER  
SEN. MARK W. LAWRENCE  
SEN. BEVERLY MINER BUSTIN  
REP. DAN A. GWADOSKY  
REP. PAUL F. JACQUES  
REP. WALTER E. WHITCOMB  
REP. JOSEPH G. CARLETON, JR.  
  
SARAH C. TUBBESING  
EXECUTIVE DIRECTOR

117th MAINE STATE LEGISLATURE  
LEGISLATIVE COUNCIL

August 2, 1995

Honorable David L. Carpenter, Senate Chair  
Honorable Carol A. Kontos, House Chair  
Jt. Standing Committee on Utilities and Energy  
117th Maine Legislature

Dear Senator Carpenter & Representative Kontos:

The Legislative Council considered two requests from you at its July meeting regarding issues related to your Committee's interim study work, and I am writing to report the Council's action on those requests.

**Request for Staff Study on Issues Related to Water District Charters**

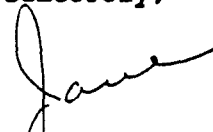
The Council unanimously approved this request. We understand your interest in having Jon Clark, whom David Boulter has assigned to this project, work with Senator Cleveland. However, since this has been approved as a staff study, we want to clarify that there is no budget associated with this study.

**Request for Clerical Assistance for Utility Restructuring Study**

The Council voted unanimously to deny this request for two reasons. First, clerical support for studies staffed through the Legislative Council is traditionally provided by the Office with the primary staffing role. In this case, the Office of Policy and Legal Analysis will provide clerical support, which will be coordinated through Jon Clark, who has been assigned the lead staffing role on this study. Second, the \$2,600 appropriation for this study was designed to cover the per diem and expenses for the members appointed to the Work Group and the expenses involved in conducting the 4 public hearings required by the Resolve creating the study. No funds were budgeted for clerical support. ) X

On behalf of the entire Legislative Council, I would like to express our appreciation of your efforts to organize your interim work so that you can use the interm to its full advantage. I would be happy to answer any questions you may have about the Council's actions on your two requests.

Sincerely,



Jane A. Amero  
Chair

cc: Members of the Legislative Council  
David Boulter, Director, OPLA

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## **APPENDIX C**

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WATER DISTRICT  
ENABLING LEGISLATION

NOTE: A "\*" in the margin indicates text from repealed §§6301-6309 appears in the section, subsection or paragraph indicated.

AN ACT TO STANDARIZE THE CREATION OF WATER DISTRICTS

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

Sec. 1. 35-A MRSA §§ 6301-6309 are repealed.

Sec. 2. 35-A MRSA §6310 is enacted to read:

• §6310. Water districts; individual financing. In the event that the trustees of a water district vote to authorize bonds or notes, the estimated cost of which, singly or in the aggregate included in any one financing, is \$150,000 or more adjusted, relative to 1981 as the base year according to the annual Consumer Price Index, as defined in Title 5, section 17001, subsection 9, the trustees shall provide notice to the general public of the proposed bond or note issue and the purposes for which the debt is being issued. The notice shall be published at least once in a newspaper having general circulation in the water district. The trustees shall give notice to each ratepayer by mail. Notice of a rate change under section 6104, which contains the notice required by this section satisfies the notice requirements of this section. The debt may not be incurred under the vote of the trustees until the expiration of 7 full days following the date on which the notice was first published and mailed. Prior to the expiration of the period, the trustees shall call a special district meeting for the purpose of permitting the collection of testimony from the public concerning the amount of debt so authorized. Except for indebtedness to fund projects specifically mandated by the State Government and Federal Government, for debts in excess of the amount specified in this paragraph, if requested by petition of not less than 50 voters of the district or 5% of the voters, whichever is greater, filed with the clerk of the water district on or before the date of the meeting, a vote of those attending the meeting must be called to approve or disapprove the amount of debt so authorized. If a majority of voters present and voting disapprove of the amount of debt authorized by the trustees, the debt may not be incurred and the vote of the trustees authorizing it is void.

50 This section applies to water districts formed on or after  
51 January 1, 1982, except that this section does not apply to any  
52 standard district created pursuant to chapter 64 whose debt  
53 limit is subject to voter approval as provided in section 6413.

54 **Sec. 3. 35-A MRSA ch 64 is enacted to read:**

56 **Chapter 64**  
57 **Water Districts**  
58

60 **§ 6401. Purpose; scope and application; commission authority.**

62 **1. Purposes.** The purpose of this chapter, which may be  
63 cited as the Standard Water District Enabling Act, is to  
64 standardize the creation of water districts and to promote  
65 consistency among the powers and authorities of water districts  
66 in this state. It is the intent of the Legislature that  
67 districts chartered after January 1, 1997 be chartered in  
68 accordance with this chapter. It is also the intent of the  
69 Legislature that future legislative amendments to charters be  
70 consistent with this chapter and, whenever practicable,  
71 existing charter provisions be repealed and in their stead  
72 appropriate references to this chapter be inserted.

74 **2. Scope and application.** The provisions of this chapter  
75 apply as follows:

76 **A.** The following provisions apply to all water districts  
77 regardless of when chartered and any portion of any water  
78 district charter which is contrary to these provisions is  
79 void and of no effect:

82 **i.** Section 6410, subsection 7; and

84 **ii.** Section 6410, subsection 8.

86 **B.** The following provisions apply to all water district  
87 formed on or after January 1, 1982:

88 **i.** Section 6410, subsection 5;

90 **ii.** Section 6416; and

92 **iii.** Subsection 3 of this section.

94 **C.** Except as provided in paragraphs A and B or in  
95 subsection 3 or by charter or other provision of law, the  
96 provisions of this chapter do not apply to districts formed  
97 prior to January 1, 1997.

100 • 3. Water districts; commission authority. Notwithstanding  
102 any terms, conditions or limitations, either expressed or  
104 implied, in the special Act of the Legislature under which a  
106 district was organized or in any special Act of the Legislature  
108 under which it is franchised, the commission may establish  
reasonable terms upon which water districts shall extinguish  
their long-term indebtedness. Nothing in this paragraph gives  
the commission the authority to alter the terms of any existing  
obligations of a water district.

110 §6402. Definitions.

112 As used in this chapter, unless the context otherwise  
114 indicates, the following terms have the following meanings:

116 1. Charter. "Charter" means a Private and Special Law or  
118 series of Private and Special Laws which establish a water  
district and define its responsibilities and authority.

120 2. Standard district. "Standard district" means a water  
district formed and chartered pursuant to this chapter.

122 3. Water district. "Water district" has the same meaning  
124 as the term defined in section 6101 and includes but is not  
limited to standard districts.

126 §6403. Procedures; legal effect.

128 1. Mandatory provisions. A standard district charter must  
130 specify the following, which are not specified in this chapter:

132 A. The corporate name of the standard district;

134 B. The territorial limits of the standard district;

136 • C. The number of trustees of the standard district, which  
may not be less than 3;

138 D. The appointing authority responsible for appointing or  
140 the method of electing the first board of trustees;

142 • E. The terms of the trustees who are elected or appointed  
subsequent to the first board; terms may not be longer than  
144 3 years; terms of the first board are determined pursuant  
to section 6410, subsection 4;

146 F. Whether the trustees, subsequent to the first board, are  
148 appointed or elected; reference must be made to the  
appropriate subsections of section 6410; and

150 • G. The procedures for a local referendum on whether the  
standard district should be created;

152

154 2. Optional provisions. A standard district charter may  
include provisions relating to the following:

156 A. Special qualifications of trustees;

158 B. Election of trustees by other than at-large elections as  
160 provided in section 6410, subsection 1. Any provision for  
election of trustees by other than at-large elections must  
162 establish voting districts in conformance with the judicial  
principal of one person one vote;

164 C. Additional purposes and powers of the standard district,  
166 such as authority to buy out an existing water company or  
to provide sewerage or other utility services;

168 D. Areas outside the standard district's territory in which  
170 the standard district is authorized to take water;

172 E. Notwithstanding section 6413, a specific debt limit;

174 F. Areas outside the standard district's territory in which  
the district is authorized to locate facilities;

176 G. Towns with which the standard district is authorized to  
178 contract to supply water; and

180 H. Any other powers or duties necessary to the  
accomplishment of Legislative purposes for creating the  
182 standard district.

184 3. Guidelines for modified standard charters. As  
determined appropriate by the Legislature, a standard district  
186 charter may provide for special exceptions to the provisions of  
this chapter.

188 4. Legal effect. A standard district is a quasi-municipal  
190 corporation constituted for the purpose of supplying persons of  
the standard district with potable water for domestic,  
192 sanitary, commercial, industrial, agricultural and municipal  
purposes.

194 §6404. Standard districts; powers.

196 Except as otherwise provided by law, for the purposes of  
198 its incorporation, a standard district may take water from any  
source within the territory of the district. A standard  
200 district may also, for the purposes of its incorporation,  
locate, construct and maintain pipes, dams, wells, reservoirs,

202 pumping stations, treatment plants and other necessary  
203 structures and equipment and do anything necessary to furnish  
204 water for those purposes and for the public health, comfort and  
205 convenience of the inhabitants and others of the district. A  
206 standard district may contract to do any and all of the  
foregoing things.

208 All incidental powers, rights and privileges necessary to  
209 the accomplishment of the objectives set forth in this chapter  
210 are granted to a standard district.

212 **§6405. Standard districts; authorized to lay mains, pipes,**  
213 **conduits and other water conveyances through public ways and**  
214 **across private lands.**

216 Except as may otherwise be provided by law and to the  
217 extent necessary for the purposes of its incorporation, a  
218 standard district may lay, maintain, repair and replace pipes,  
219 mains and other fixtures and appurtenances in, along and  
220 through the streets, roads, ways, highways, and bridges, tidal  
221 waters, lakes, ponds, rivers and water courses in the district  
222 and across private lands in the district. Whenever a standard  
223 district lays, maintains, repairs or replaces any fixtures or  
224 appurtenances in any street, road, way or highway, it shall do  
225 so with as little obstruction as practicable to the public  
226 travel. At its own expense and without unnecessary delay, a  
227 standard district shall replace in proper condition the earth  
228 and pavement removed by it.

230 **§6406. Standard districts; authorized to erect dams and**  
231 **reservoirs; to cross navigable waters; to supply water to**  
232 **utilities.**

234 A standard district, for the purposes of its incorporation,  
235 may erect and maintain dams, reservoirs and structures. In  
236 accordance with applicable state and federal law, a standard  
237 district may lay, construct and maintain its pipes and fixtures  
238 in, over and under navigable waters and build and maintain  
239 structures for the pipes and fixtures. Subject to the consent  
240 of the Public Utilities Commission, a standard district may  
241 supply water to any other public utility.

242 **§6407. Standard districts; procedure if public utility must be**  
243 **crossed.**

246 If a standard district, in constructing, maintaining or  
247 replacing any of its facilities, must cross any property of  
248 another public utility, the standard district must obtain the  
249 consent of the other public utility and must undertake the work  
250 in accordance with conditions established by agreement. If,  
251 within 30 days after requesting consent, the standard district  
252 fails to reach an agreement with the public utility, the

district may petition the Public Utilities Commission to  
254 determine the time, place and manner of the crossing. All work  
256 done 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. All work  
258 must be done at the expense of the standard district.

260 **§6408. Standard districts; authority to acquire property;**  
**rights of eminent domain.**

262  
264 To the extent necessary for the purposes of its  
incorporation, a standard district may take and hold any  
266 interest in real estate and personal estate.

268 1. Purchase or lease. A standard district may take and  
hold an interest in real estate or personal estate by purchase,  
270 lease or other lawful means.

272 2. Eminent domain. A standard district may also exercise  
the right of eminent domain as provided in chapters 65 and 67  
274 to acquire any interest in land or water rights to the extent  
necessary for the purposes of its incorporation

276 A. For erecting and maintaining dams, plants and works,  
278 for flowage, power, pumping and supplying water through its  
mains;

280 B. For reservoirs, and for preserving and enhancing the  
282 purity of the water and related watershed;

284 C. For laying and maintaining aqueducts and other  
structures;

286 D. For taking, distributing, discharging and disposing of  
288 water; and

290 E. For rights-of-way or roadways to its sources of supply,  
292 dams, power stations, reservoirs, mains, aqueducts,  
structures and lands.

294 Except as otherwise expressly provided by law, a standard  
district may not take by right of eminent domain any property  
296 or facilities of any other public utility used, or acquired for  
future use, in the performance of a public duty.

298 **§6409. Standard districts; procedures in exercising eminent**  
**domain.**

300  
302 Except as otherwise expressly provided by law, a standard  
district may exercise the right of eminent domain granted under  
304 section 6408 only in accordance with this chapter and chapters  
65 and 67.

306 §6410. Standard districts and water districts; trustees.

308 All of the affairs of a standard district must be managed  
310 by a board of trustees all of whom must be residents of the  
312 district. The number of trustees must be specified in the  
314 standard district's charter. After selection of the first  
316 board, each trustee is nominated and elected or appointed as  
318 provided in the charter creating the standard district and in  
320 accordance with subsection 1 or 2, as applicable. If the  
322 charter is silent on whether trustees are appointed or elected,  
324 the trustees, after the selection of the first board, shall be  
326 elected in accordance with subsection 1.

328 • 1. Standard districts; nominations and elections;  
330 vacancies. Nominations and elections of trustees are conducted  
332 in accordance with the laws relating to municipal elections.

334 Whenever the term of office of a trustee expires, the  
336 trustee's successor is elected at large by a plurality vote by  
338 the voters of the standard district. For the purpose of  
340 election, a special election must be called and held on the  
342 date established by the trustees. The election must be called  
344 by the trustees of the standard district in the same manner as  
346 town meetings are called and for this purpose the trustees are  
348 vested with the powers of municipal officers of towns. A  
350 vacancy is filled in the same manner for the unexpired term by  
352 a special election called by the trustees of the standard  
354 district.

356 The trustees shall appoint a registrar of voters for the  
358 standard district, who may also be the registrar of voters for  
360 any town within the standard district, and fix the registrar's  
362 salary. It is the registrar's duty to make and keep a complete  
364 list of all the eligible voters of the standard district. The  
366 list prepared by the registrar governs the eligibility of any  
368 voter. Voters who are resident outside the territorial limits  
370 of the standard district, as defined in its charter, are not  
372 eligible voters and the registrar of voters shall exclude these  
374 voters from the registrar's lists. All warrants issued for  
376 elections by the trustees must show that only the voters  
378 resident within the territorial limits of the standard district  
380 are entitled to vote.

382 2. Standard districts; appointments. If the charter  
384 creating a standard district specifies that the trustees are  
386 appointed, the appointments shall be made as provided in the  
388 charter.



354 3. Standard districts; eligibility requirements. When any  
356 trustee ceases to be a resident of a standard district, the  
trustee shall vacate the office of trustee and the vacancy is  
filled as provided in subsection 1 or 2, as applicable. All  
358 trustees are eligible for reelection or reappointment, but a  
person who is a municipal officer of any town located in whole  
360 or in part within the standard district is not eligible for  
appointment, nomination or election as trustee.

362  
364 4. Standard districts; first board. The first board shall  
be appointed or elected as provided in the charter creating the  
standard district. At the first meeting the initial trustees  
366 shall determine by agreement, or failing to agree they shall  
determine by lot, the term of office of each trustee. Terms  
368 shall be determined in accordance with the following table:

TERM				
Total number of Trustees	1 year	2 years	3 years	
3	1	1	1	
4	1	1	2	
5	1	2	2	
6	2	2	2	
7	2	2	3	
8	2	3	3	
9	3	3	3	
10	3	3	4	
11	3	4	4	
12	4	4	4	
13	4	4	5	
14	4	5	5	
15	5	5	5	

388 The trustees shall enter on their records the determination so  
390 made. Vacancies are filled pursuant to subsection 1 or 2, as  
applicable.

392  
394 At this original meeting, the trustees shall organize by  
electing from their own members a chairman and a clerk and  
adopting a corporate seal and electing a treasurer who may or  
396 may not be a trustee.

398 • 5. Water districts; organization; conduct of business.  
Within one week after each annual appointment or election, the  
400 trustees of a water district shall meet for the purpose of  
electing a chairman, treasurer and clerk from among them to  
402 serve for the ensuing year and until their successors are  
elected or appointed and qualified. The trustees, from time to  
404 time, may choose and employ, and fix the compensation of any

406 other necessary officers and agents who shall serve at their  
pleasure. The treasurer shall furnish bond in the sum and with  
408 sureties as approved by the trustees. The water district shall  
pay the cost of the bond.

410 The trustees may adopt and establish bylaws consistent with the  
laws of this State and necessary for their own convenience and  
412 the proper management of the affairs of the water district, and  
perform other acts within the powers delegated to them by law.

414 The trustees shall be sworn to the faithful performances of  
416 their duties, which shall include the duties of any member who  
serves as clerk or clerk pro tem. They shall make and publish  
418 an annual report, including a report of the treasurer.

420 The trustees shall develop an annual budget and include in  
that budget any anticipated capital improvement projects. The  
422 trustees shall forward plans for capital improvement projects  
to any municipality in which the projects will occur. To the  
424 extent practical, trustees and municipal officials of affected  
municipalities shall attempt to coordinate district capital  
426 improvement projects with municipal public works projects.

428 Business of the district shall be conducted in accordance  
with the applicable provisions of the Freedom of Access law,  
430 Title 1, section 402, et seq.

432 **6. Standard districts; decisions of the board.** All  
decisions of the board of trustees must be by a majority of  
434 those present and voting, except that any vote to approve the  
incurring of any debt which will not be repaid within 12 months  
436 must be approved by a majority of the entire elected board. A  
quorum of the board of trustees consists of the total number of  
438 authorized trustees divided by 2 and, if necessary to obtain a  
whole number, the resulting number rounded up to the next whole  
440 number.

442 Trustees are subject to the conflict of interest provisions  
of Title 30-A, section 2605.

444 • **7. Water districts; trustees' compensation.** The trustees of  
446 a water district receive compensation as established in the  
water district's bylaws. Compensation schedules in effect on  
448 January 1, 1982, continue in effect until changed in the  
bylaws.

450 • **8. Water districts; trustees' retirement.** Persons who have  
452 not been water district trustees prior to January 1, 1987, and  
who are not full-time employees, shall not be eligible to  
454 become members of the Maine State Retirement System as a result  
of their selection as trustees. For purposes of determining a  
456 water district trustee's eligibility to be a member of the

458 Maine State Retirement System prior to January 1, 1987, the  
460 provisions of the appropriate governing charter in effect at  
the time of the trustee's application for membership controls.

462 9. Standard districts; expenses. The trustees may procure  
an office and incur such expenses as may be necessary.

464 \$6411. Standard districts; authorized to make and assume  
466 contracts.

468 A standard district, through its trustees, in order to  
470 carry out the purposes of its incorporation, may contract with  
persons, districts, municipalities, utilities or corporations.

472 \$6412. Standard districts; authorized to receive government  
aid, borrow money, issue bonds and notes.

474 1. Definitions. For purposes of this section, the  
476 following terms have the following meaning:

478 A. "Necessary expenses and liabilities" means expenses and  
480 liabilities necessary to the operation of a standard  
district, including but not limited to:

482 i Reimbursement of any town for any organizational or  
other expenses and liabilities incurred by the town on  
484 behalf of the district;

486 ii. Organizational expenses and liabilities incurred  
by the district;

488 iii. Expenses and liabilities incurred in acquiring  
490 properties, paying damages and in laying pipes, mains,  
aqueducts and conduits;

492 iv. Expenses and liabilities incurred in  
494 constructing, maintaining and operating water plant or  
systems;

496 v. Expenses and liabilities incurred in making  
498 renewals, additions, extensions and improvements to  
water plant or system; and

500 vi. Principal and interest payments associated with  
502 any of the foregoing.

504 2. Authorization. A standard district, through its  
trustees, in order to pay any necessary expenses and  
liabilities incurred in accordance with the purposes of its

506 incorporation, may receive state and federal aid or grants and  
508 may borrow money temporarily and issue for the money its  
negotiable notes in order to renew and refund the debt  
510 created.

512 A standard district, through its trustees, may also issue, in  
514 accordance with section 6413 and chapter 9, bonds, notes or  
516 other evidences of indebtedness of the standard district. The  
518 trustees shall determine the amount or amounts of the  
520 indebtedness, the rate or rates of interest, whether the  
522 instrument will be sold at par or at a discount or a premium,  
524 the manner of the sale, including whether the sale will be  
public or private, and any other terms and provisions of the  
offering. The trustees shall also determine whether the debt  
will be issued to mature serially or made to run for a term of  
years. The standard district's debt instruments may be issued  
with or without provisions for calling the debt prior to  
maturity. If the debt is callable, the trustees shall  
determine whether it will be callable at par or at a premium.

526 3. Certain requirements concerning indebtedness. All  
528 bonds, notes or other evidences of indebtedness must have  
530 inscribed upon their face the corporate name of the standard  
532 district, as specified in the charter creating the district,  
534 and be signed by the treasurer and countersigned by the chair  
of the board of trustees of the standard district. If coupon  
bonds are issued, the interest coupon attached to the coupon  
bonds must bear the facsimile signature of the treasurer.

536 4. Legal effect; tax exemption; reissue and refund  
538 authorization. All bonds, notes and other evidences of  
540 indebtedness issued by a standard district in accordance with  
542 this section are legal obligations of the standard district  
within the meaning of Title 30-A, section 5701. All bonds,  
notes and other evidences of indebtedness issued by the  
standard district are legal investments for savings banks in  
the State and are exempt from state income tax.

544 A standard district, through its trustees, may refund and  
546 reissue, from time to time, in one or in separate series, its  
bonds, notes and other evidences of indebtedness, and each  
548 authorized issue constitutes a separate loan.

550 §6413. Standard districts and water districts; debt and  
552 approval of inhabitants of the district.

554 A standard district is not required to obtain approval of  
556 the inhabitants of the standard district before receiving aid  
or grants. The trustees may not incur any debt without  
obtaining prior approval of the inhabitants of the standard  
district in accordance with this subsection.

558

1. Standard districts; debt limit. Prior to incurring any  
560 debt on behalf of a standard district, the trustees shall  
propose a debt limit for the standard district which they must  
562 submit for approval in a district-wide referendum. The  
referendum must be called, advertised and conducted according  
564 to the law relating to municipal elections, except the standard  
district's registrar of voters is not required to prepare or  
566 the clerk to post a new list of voters. For the purpose of  
registering voters, the registrar of voters must be in session  
568 the secular day preceding the election. The question presented  
shall conform to one of the following forms, as applicable:

570

A. For establishment of initial debt limit:

572

574 Do you favor establishing the debt limit of the  
(insert name of standard district) at an initial  
ceiling of (insert amount)?

576

B. For amendment of an existing debt limit:

578

580 Do you favor changing the debt limit of the (insert  
name of standard district) from (insert current debt  
limit) to (insert proposed debt limit)?

582

584 The voters shall indicate by cross or check mark place against  
the words "Yes" or "No" their opinion on the question.

586 The results must be declared by the trustees and entered upon  
the standard district's records. Due certificate of the  
588 results must be filed by the clerk with the Secretary of State.

590 A debt limit proposal becomes effective immediately upon its  
acceptance by a majority of the legal voters within the  
592 standard district voting at the referendum. Failure of  
approval by the necessary majority of voters at the referendum  
594 does not prevent subsequent referenda from being held for the  
same purpose. The costs of referenda are borne by the standard  
596 district.

598 Trustees may not incur any debt unless the total amount of all  
debt incurred is no more than an amount approved by referendum  
600 according to this section.

602

**§6414 Standard districts; rates.**

604

606 The rates of a standard district must be established in  
accordance with chapter 61. The rates must be sufficient to  
provide revenue to the standard district to carry out the  
608 purposes of its incorporation, without the need for any  
financial assistance from any municipality, other than the

610 normal payment of water charges for services rendered and any  
612 loan or loans provided to the district for initial funds as set  
614 forth in section 6412. All customers of a standard district  
shall pay to the treasurer or other designated officer of the  
district the rates established for the water used by them.

616 **§6415 Standard districts; tax exempt.**

618 A standard district is a public municipal corporation  
620 within the meaning of Title 36, section 651 and the property of  
622 the district is exempt from taxation to the extent provided in  
that section.

624 • **§ 6416. Water districts; mutual funds**

626 A water district may invest its funds, including sinking  
628 funds, reserve funds and trust funds, to the extent that the  
630 terms of any instrument creating the funds do not prohibit the  
632 investment, in shares of an investment company registered under  
634 the federal Investment Company Act of 1940, whose shares are  
636 registered under the United States Securities Act of 1933, only  
638 if the investments of the investment company are limited to  
obligations of the United States or any agency or  
instrumentality, corporate or otherwise, of the United States  
or repurchase agreements secured by obligations of the United  
States or any agency or instrumentality, corporate or  
otherwise, of the United States. This section is in addition  
to, and not in limitation of, any power of a water district to  
invest its funds.

640 **§6417. Water districts; rights conferred subject to provisions**  
642 **of law.**

644 Except as otherwise specifically provided by law, all the  
646 rights and duties mentioned in this chapter must be exercised  
648 and performed in accordance with all the applicable provisions  
of this Title to the extent this Title affects the operations  
of a water district .

650 **§6418. Separability clause.**

652 If any section or part of a section of this chapter is held  
654 invalid by a court of competent jurisdiction, the holding does  
656 not affect the remainder of this chapter, it being the  
658 intention that the remaining portions of this chapter stand,  
notwithstanding the unconstitutionality or invalidity of any  
section, sentence, clause or phrase of this chapter.

660 • §6419. Water districts; Legislative acts.

662 Prior to acting upon any proposal to create or to amend a  
664 water district charter, the joint standing committee of the  
Legislature having jurisdiction over public utilities shall  
666 obtain written comments from the municipalities that lie in  
whole or in part within the district or proposed district.

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## **APPENDIX D**





# SAMPLE CHARTER

## An Act to Create the (insert name) Standard Water District

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

**Sec. 1. Territorial limits; corporate name.** Pursuant to Title 35-A, Chapter 64, that part of the Town of (insert name of town) described as follows: (insert description) and its inhabitants constitute a standard district under the name "(insert name) Standard Water District" and referred to in this Act as "the district" .

**Sec. 2. Powers; authority; duties.** The district has all the powers and authority and is subject to all the requirements and restrictions provided in Title 35-A, Chapter 64.

**Sec. 3. Number of trustees.** The board of trustees of the district is composed of (insert number not less than 3) of trustees.

**Sec. 4. (OPTION #1) Appointment of first board.** The first board is appointed by (insert appointing authority).

**Sec. 4. (OPTION #2) Election of first board.** The first board is elected as follows (insert process and timeframe).

**Sec. 5. Terms of trustees; (election or appointment).** After the appointment (or election) of the first board, trustees are (insert whether elected or appointed and, if appointed, by whom) to (insert number not less than 3) year terms.

**Sec. 6. Referendum; effective dates.** This Act takes effect when approved only for the purpose of permitting its submission to the legal voters within (insert relevant municipalities) at an election called for that purpose and held by (insert drop dead date). The election must be called, advertised and conducted according to the law relating to municipal elections, except that the registrar(s) of voters are not required to prepare or the clerk(s) to post a new list of voters. For the purpose of registration of voters, the registrar(s) of voters must be in session the secular day preceding the election. The subject matter of this Act is reduced to the following question:

"Do you favor creating the (insert name) Standard Water District?"

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

The results must be declared by the municipal officers of the town(s) of (insert towns) and due certificate of the results filed by the clerk(s) with the Secretary of State.

This Act takes effect for all purposes immediately upon its approval by a majority of the legal voters voting at the special election. Failure to achieve the necessary approval in any referendum does not prohibit subsequent referenda consistent with this section, provided the referenda are held prior to (insert drop dead date again).



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## **APPENDIX E**

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January 24, 1994

To: Members, Joint Standing Committee on Utilities

From: Jon Clark, Legislative Counsel *jc*

Subj: Passamaquoddy Water District Property Tax Provision

This committee has now discussed at some length the tax issues raised by L.D. 661, "An Act to Amend the Charter of the Passamaquoddy Water District". This discussion began as a result of a memo from me to the committee dated April 5, 1993 in which I discussed several issues raised by several charters under consideration at that time. Since that time this committee has heard from Deputy Attorney General Crombie Garrett on some these issues.

While I have expressed my opinion on these issues to the committee, I thought the committee would be served if I put my opinion in writing. This memo offers my written opinion on these issues.

DOES THE CURRENT TAX PROVISION OF THE PASSAMAQUODDY WATER DISTRICT VIOLATE THE EQUAL TAXATION PROVISION OF THE MAINE CONSTITUTION?

The current charter provides that all property of the district is taxable:

The property of the district shall not be exempt from all taxation in the City of Eastport and the town of Perry or any other city or town where any part of its plant may be located. P&SL 1983, c. 25, §15.

36 MRSA §651, sub-§1, ¶¶D and E create generally applicable tax exemptions for public service corporations:

The following public property is exempt from taxation....

D. The property of any public municipal corporation of this State appropriated to public uses, if located within the corporate limits and confines of such municipal corporation.

E. The pipes, fixtures, hydrants, conduits, gatehouses, pumping stations, reservoirs and dams, used only for reservoir purposes, of public municipal corporations engaged in supplying water, power or light, if located outside the limits of such public municipal corporation.

Thus, while under general law, water district properties of certain types are exempt from taxation, in the case of the Passamaquoddy Water District, all property is taxed.

The equal taxation provision of the State Constitution, Art IX, §8 provides in part,

All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof.

Based on the Law Court's historic interpretation of this provision (e.g., State v. Hamlin, 86 Me. 495, 505 (1884); Brewer Brick Co. v. Inhabitants of Brewer, 62 Me. 62 (1873)) and based on analysis which appears in certain AG opinions (e.g., A.G. Op. No. 81-35, April 7, 1981), it appears to me that this provision prohibits the type of tax provision which appears in the Passamaquoddy Water District Charter in that it treats the district property differently for tax purposes from the manner in which other water district property is treated under Title 36, §651, ¶¶D and E.

The precedent suggests that the equal taxation provision forbids the Legislature from taxing one and exempting another of the same class or type of property. For instance, in Brewer, the court remarked:

It cannot be pretended that it would be constitutional to impose on a church in A., and to exempt one of the same character in B.; to say that all or a part of the farms in the former shall be subject to a tax, while those in the latter shall be free from taxation. Id., 74.

The Attorney General opined in an April 7, 1981 opinion (No. 81-35) that

(T)he Law Court has interpreted the Uniformity Clause (another name for the equal taxation provision) to require the establishment of uniform classes of taxable property at the State, county and local level for property tax purposes. Id., at 3.

Therefore, it appears to me that, absent some clear evidence that the Passamaquoddy Water District property is of a different class or type from other water district property, the special tax provision in the Passamaquoddy Water District Charter violates the equal taxation provision.<sup>1</sup> I must caution, however, that since the courts, so far as I am aware, have never dealt with any case substantially similar to the one at hand, it is possible that if an action were brought challenging the district's tax provision under the equal taxation clause, a court might develop a theory to distinguish this case from Brewer and its progeny and uphold the provision.

---

<sup>1</sup> It should be noted that the Law Court has carved out an exception to its general theory. In City of Portland vs. Portland Water Co., 67 Me. 135 (1877), the court upheld a temporary local tax exemption approved by the city of Portland for property of the privately owned Portland Water Company. The city did so pursuant to State authority granted under the company's charter. Of most importance to the court appeared to be the fact that the city granted the exemption under an arrangement in which the company agreed to supply water free to the city. According to the court, "The state, through the general benefits to the public, may receive a sufficient compensation for the remission of taxes to one corporation and not to another". Id. at 137. See also, Maine Water Company v. City of Waterville, 93 Me. 586 (1948) (contract to pay water company amount of company's payment in taxes if company supplied water to town, upheld).

While City of Portland involved a water utility and a charter provision, it does not appear to apply directly to the case at hand. Here there is no exemption granted. Rather, there is the imposition of a tax on property which would otherwise be exempt. The general exemption under Title 36 is not conditional upon some local quid pro quo (e.g. free water service in exchange for the exemption), thus it cannot be argued that the lack of a quid pro quo in this case justifies subjecting the property of the district to a tax.



As you are aware, Deputy Attorney General Crombie Garrett appears not to believe that the equal taxation provision is applicable in this case. (See letter to Rep. George Townsend, dated 12/22/93.)

DOES THE CHARTER'S TAX PROVISION VIOLATE THE EQUAL TAXATION PROVISION OF THE MAINE CONSTITUTION?

Mr. Garrett has suggested to this committee that he believes the charter may run afoul of the equal protection provision of the Maine Constitution (Art I, §6-A). As I have indicated to the committee, I disagree with Mr. Garrett: I do not believe that the provision runs afoul of that provision.

My analysis leads me to believe that a court would apply to this case what is referred to in equal protection jurisprudence as the "rational basis test". Courts have historically been deferential to the Legislature under this test (see., e.g., Beaulieu v. City of Lewiston, 440 A.2d 334 (Me. 1982)); it seems highly unlikely to me that a court would find that there was no rational basis for the Legislature to have created this special tax provision. Protection of the local tax base would be one obvious rational basis for the Legislature's action.

It is therefore my opinion while there is an issue raised under the equal protection clause, it is unlikely that a court would strike down the provision under that clause.

IF THE LEGISLATURE REPEALS THE CURRENT TAX PROVISION IN THE CHARTER WOULD THE STATE BE LIABLE FOR 50% OF THE PROPERTY TAX LOSS TO AFFECTED TOWNS?

Art. IV, Part 3, §23 provides,

The Legislature shall annually reimburse each municipality from State tax sources for 50% of the property tax revenue loss suffered by that municipality during the previous calendar year because of statutory property tax exemptions or credits enacted after April 1, 1978.

By repealing the tax provision, the existing general tax exemption provided under 36 MRSA §651 would apply. It would therefore appear that no statutory tax exemption has been enacted and consequently that Art. IV, Pt. 3, §23 would not apply.

On the other hand, because the district property is now taxed, and it is a statutory enactment which will result in the tax exemption, an argument might be made that such action by the Legislature is constitutionally equivalent to the enactment of a tax exemption, and thus that 50% reimbursement is required.

I am not aware that any court has ever addressed the issue in this somewhat curious context. It is my opinion that the former is the more persuasive argument and that a court would likely conclude that this was not the enactment of a new tax exemption and find the State not liable.

WOULD REPEAL OF THE TAX PROVISION IN THE CHARTER CONSTITUTE  
A STATE MANDATE UNDER THE MAINE CONSTITUTION?

Art. 9, §21 provides in part:

(T)he State may not require a local unit of government to expand or modify that unit's activities so as to necessitate additional expenditures from local revenues unless the State provides annually 90% of the funding for these expenditures from State funds not previously appropriated to that local unit of government.

This provision also provides that the Legislature may enact exceptions to its requirements by 2/3 vote of all members elected to each House.

The creation of a tax exemption does not necessitate additional expenditures from local revenues. What it presumably does is reduce revenues coming to the town. This may be offset by a reduction in the town's water bill, since the district's costs would obviously be reduced in consequence of its not having to pay taxes; if it is not offset, the town may respond by raising taxes on other property. The Legislature, however, is certainly not requiring such a response. It is therefore my opinion that repealing the tax provision in the charter is not a State mandate requiring reimbursement.

The Office of Fiscal and Program Review, which makes such determinations in its fiscal analysis of bills, has indicated that it does not view a tax exemption as a mandate.

I hope the forgoing is useful to the committee. Don't hesitate to contact me if you have further questions.

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## **APPENDIX F**

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MICHAEL E. CARPENTER  
ATTORNEY GENERAL

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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE HOUSE STATION 6  
AUGUSTA, MAINE 04333

March 7, 1994

Honorable John J. Cleveland  
Maine State Senate  
State House Station 3  
Augusta, Maine 04333

Re: L.D. 661, "AN ACT To Amend The Charter Of The Passamaquoddy  
Water District"

Dear Senator Cleveland:

I am responding to your letter of February 14, 1994, in which you requested an opinion on issues raised by the above-titled L.D. I will address your inquiries in the order they are set forth in your letter.

Your first inquiry is whether the current provisions of the Passamaquoddy Water District Charter making all of the property of the water district subject to property taxation violate either Art. IX, § 8 or Art. I, § 6-A of the Constitution of Maine. It is the opinion of this Department that the property of the Passamaquoddy Water District may legally be taxed by municipalities which also receive water service from the district in accordance with the Charter provisions. If the taxing municipality is not also served by the water district, the municipality may tax district property only to the extent permitted by 36 M.R.S.A. § 651.

You have also inquired whether a repeal of the Passamaquoddy Water District Charter relating to taxability of district property would constitute a "mandate" under Art. 9, § 321 of the Maine Constitution or would require reimbursement to the affected communities under Art. IV, Pt. 3, § 23. It is the opinion of this Department that a repeal of the subject provision would neither be deemed a mandate nor would repeal obligate the State to reimburse affected municipalities for lost property tax revenues.

Article I, § 6-A, insofar as relevant, guarantees equal protection of the law to persons in Maine. See Lambert v. Wentworth, 423 A.2d 527 (Me. 1980). Article IX, § 8 of the Constitution provides, in substance, that all taxes on property must be apportioned and assessed equally according to the just (fair market) value of the

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property. See Shawmut Inn v. Inhabitants of Town of Kennebunkport, 428 A.2d 384 (Me. 1981). The particular question involved in your inquiry is whether the Passamaquoddy Water District, a public municipal corporation, may have its property subject to municipal taxation while other such chartered districts are exempted from property taxation in whole, or in part, by general statute, viz., 36 M.R.S.A. § 651, or by specific provisions contained within the legislatively enacted charters for individual water districts. Our conclusion and reasoning is set forth below.

Providing the Passamaquoddy Water District's property is located in municipalities which also purchase water service from Passamaquoddy Water District, the Passamaquoddy Water District can pass the cost of such property tax through its rate base to the taxing communities. The taxes paid by the water district will be borne by the residents of the taxing community through increased water rates. In effect, residents of the municipalities are paying through their water rates an amount roughly equivalent to increased local property tax costs that would be borne by them if the property of the water district were otherwise exempt from tax. Cf. Brewer Brick Co. v. Inhabitants of Brewer, 62 Me. 62 (1872). This situation is analogous to the situation involved in Portland v. Portland Water Co., 67 Me. 135 (1877), where the Law Court determined that it was within the constitutional authority of the Legislature to allow a city to exempt property of a private water company in consideration of an agreement by that company to furnish water free of cost to the City. Thus, the ratepayers of the water district were, in effect, treated no differently economically than those of any other district.

The history of the taxability of the property of public municipal corporations and, in particular, water districts, supports the above conclusion. Prior to 1911, all property of public municipal corporations devoted to public uses was exempt from tax. P.L. 1903, ch. 46; and see Inhabitants of Boothbay v. Inhabitants of Boothbay Harbor, 148 Me. 31 (1952). In 1911, the law was amended to provide a more specific and limited exemption for public municipal corporations as follows:

Section 6. The following property and polls are exempt from taxation:

I. The property of the United States and of this state and the property of any public municipal corporation of this state appropriated to public uses if located within the corporate limits and confines of such public municipal corporation, and also the pipes, fixtures, hydrants, conduits, gate-houses, pumping stations, reservoirs, and dams used only for reservoir purposes, of public municipal corporations engaged in supplying water power or light if located outside of the limits of such public municipal corporations, but nothing herein contained shall abridge any power of taxation possessed by any city or town by virtue of any special act. P.L. 1911, ch. 120. (Amendatory language underlined).

This amendment specifically provided that the statute was not intended to abridge any power of their conferred on a municipality by any special act. *Id.* Thus, the Legislature provided for different property tax treatment which was likely already occurring with respect to certain property of public water districts. That there was a need for such flexibility in the statute is reflected by the significant variation in taxability of property in the 130 or so existing water districts. See Memorandum, dated February 4, 1994, from John Clark to Joint Standing Committee in Utilities (copy attached). This office is unable to determine the reasons for varying tax treatments but assumes there is a rational basis for such differentiation.

Despite variations in circumstances and tax treatment of water district properties, it is fair to conclude that the Legislature's intention was that the users, i.e. municipal ratepayers, bear substantially the same financial burden for water service, whether as a direct cost or as an increase in local property tax whether a water district's property was exempt or taxable. To conclude otherwise, would result in a different treatment of water district ratepayers with no rational basis in violation of Art. 1, § 6-A of the Constitution of Maine.

Based on the foregoing, it is my conclusion that the property of the Passamaquoddy Water District may legally be taxed by the served municipalities in which the property is located. Where, however, a municipality in which public water district property is located is not also served by the water district, that municipality may not tax property of the water district to any greater degree than is permitted by existing provisions of general law. See 36 M.R.S.A. § 651(D) and (E). Under such circumstances, allowing taxation of property otherwise exempt under Title 36 could be deemed a violation of the provisions of Art. IX, § 8 of the Maine Constitution. See Brewer Brick Co. v. Brewer, 62 Me. 62 (1872).

In your second inquiry, you ask whether repeal of the tax provision in the Passamaquoddy Water District charter would constitute a state mandate under Art. 9, § 12 of the Maine Constitution. Our answer to this inquiry is that a repeal of an existing statute is not a mandate under the cited constitutional provision.

You also inquire whether a repeal of the tax provision in the charter would require the State to reimburse the municipalities presently taxing the property of the Passamaquoddy Water District. Our answer to this inquiry is that such a repeal would not trigger the reimbursement provision of Art. 4, pt. 3, § 23 of the Maine Constitution because any exemptions which might affect the municipalities preexist the April 1, 1978 date set forth in section 23.



- 4 -

I hope your inquiries have been adequately addressed. If you require clarification or have further questions, please feel free to contact me.

Yours very truly,

  
MICHAEL E. CARPENTER  
Attorney General.

MEC/vv

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## **APPENDIX G**

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**(TITLE 35-A)  
(PUBLIC UTILITIES)**

**(PART 6)  
(WATER)**

**CHAPTER 63  
WATER DISTRICTS**

**35A § 6301. Short title; purpose**

This chapter shall be known and may be cited as the "Maine Water District Act." The purpose of this chapter is to provide minimum guidelines to the water districts chartered under private and special laws of the Legislature. These guidelines will provide more public participation and more accountability for water districts, and encourage the maximum degree of local control consistent with protection of health and economic welfare of the citizens.

**35A § 6302. Formation of districts**

The formation of water districts under the private and special laws to provide public drinking water supplies is encouraged. The question of the formation of the proposed district shall be submitted to the voters residing within it for approval by majority vote.

**35A § 6303. Trustees**

**1. Authorization.** All of the affairs of a water district shall be managed by an elected board of trustees which shall consist of not less than 3 trustees, but no municipality nor unorganized territory within a water district may have less than one trustee. Trustees shall serve for a term specified in the charter, but not longer than 3 years.

**2. Nominations and elections.** Nominations and elections shall be conducted in accordance with the laws relating to municipal elections, except that in the unorganized townships, nominations and elections shall be conducted by the county commissioners.

**3. Organization of board of trustees.** Within one week after each annual election, the trustees shall meet for the purpose of electing a chairman, treasurer and clerk from among them to serve for the ensuing year and until their successors are elected and qualified. The trustees, from time to time, may choose and employ, and fix the compensation of, any other necessary officers and agents who shall serve at their pleasure. The treasurer shall furnish bond in the sum and with sureties as approved by the trustees. The district shall pay the cost of the bond.

At this original meeting, the trustees shall organize by electing from their own members a chairman and a clerk, and adopting a corporate seal and electing a treasurer who may or may not be a trustee. The trustees may adopt and establish bylaws consistent with the laws of this State and necessary for their own convenience and the proper management of the affairs of the district, and perform other acts within the powers delegated to them by law.

The trustees shall be sworn to the faithful performances of their duties, which shall include the duties of any member who serves as clerk or clerk pro tem. They shall make and publish an annual report, including a report of the treasurer.

**4. Trustees' compensation.** The trustees shall receive compensation as recommended by them and approved by a majority of the municipal officers of the municipality, including compensation for any duties they perform as officers, as well as for their duties as trustees. For districts serving more than one municipality, any change in the compensation received by the trustees for any duties they perform within the district shall be recommended by them and approved by majority vote of the municipal officers in each municipality in municipalities representing a majority of the population within the district. Certification of the vote shall be recorded with the Secretary of State and recorded in the bylaws. Their compensation for duties as trustees shall be on the basis of such specific amount as may be specified in the bylaws, for each meeting actually attended and reimbursement for travel and expenses, with the total not to exceed such specific amount as may be specified in the bylaws. Compensation schedules in effect on January 1, 1982, shall continue in effect until changed.

**5. Trustees' retirement.** Persons who have not been trustees prior to January 1, 1987, and who are not full-time employees, shall not be eligible to become members of the Maine State Retirement System as a result of their selection as trustees. For purposes of

determining a water district trustee's eligibility to be a member of the Maine State Retirement System prior to January 1, 1987, the provisions of the appropriate governing charter in effect at the time of the trustee's application for membership shall control.

### **35A § 6304. Issuance of bonds and notes**

1. **Notice to general public and rate payers.** In the event that the trustees vote to authorize bonds or notes, the estimated cost of which, singly or in the aggregate included in any one financing, is \$150,000 or more adjusted, relative to 1981 as the base year according to the annual Consumer Price Index, as defined in Title 5, section 17001, subsection 9, the trustees shall provide notice to the general public of the proposed bond or note issue and the purposes for which the debt is being issued. The notice shall be published at least once in a newspaper having general circulation in the district. The trustees shall give notice to each ratepayer by mail. Notice of a rate change under section 6104, which contains the notice required by this section satisfies the notice requirements of this section.

No debt may be incurred under the vote of the trustees until the expiration of 7 full days following the date on which the notice was first published and mailed. Prior to the expiration of the period, the trustees shall call a special district meeting for the purpose of permitting the collection of testimony from the public concerning the amount of debt so authorized.

2. **Voters approval or disapproval of debt.** Except for indebtedness to fund projects specifically mandated by the State Government and Federal Government, for debts in excess of the amount specified in this section, if requested by petition of not less than 50 voters of the district or 5% of the voters, whichever is greater, filed with the clerk of the district on or before the date of the meeting, the meeting shall express approval or disapproval of the amount of debt so authorized. If a majority of voters present and voting expresses disapproval of the amount of debt authorized by the trustees, the debt shall not be incurred and the vote of the trustees authorizing it shall be void.

### **35A § 6305. Liens**

Except as otherwise provided in section 706, no water district may include in its charter any provision providing a lien against the property for nonpayment of assessments or rates. The district may seek judgment, including a lien in court, in the same manner as any other creditor.

### **35A § 6306. Conformity with private and special laws**

This chapter governs all water districts formed on or after January 1, 1982. This chapter does not apply to water districts formed before January 1, 1982, except that section 6303, subsections 4 and 5, apply to those districts. Any portion of the charter of those districts which is contrary to those subsections is repealed.

### **35A § 6307. Legislative amendment of charter**

Prior to acting upon any proposed water district charter amendment, the joint standing committee of the Legislature having jurisdiction over public utilities shall obtain written comments from the municipalities that lie in whole or in part within the district.

### **35A § 6308. Long-term indebtedness of water districts**

The commission may establish reasonable terms upon which water districts shall extinguish their long-term indebtedness, notwithstanding any terms, conditions or limitations, either expressed or implied, in the special Act of the Legislature under which the district was organized or in any special Act of the Legislature under which it is franchised. Nothing in this section gives the commission the authority to alter the terms of any existing obligations of a water district.

### 35A § 6309. Mutual funds

A water district may invest its funds, including sinking funds, reserve funds and trust funds, to the extent that the terms of any instrument creating the funds do not prohibit the investment, in shares of an investment company registered under the federal Investment Company Act of 1940, whose shares are registered under the United States Securities Act of 1933, only if the investments of the investment company are limited to obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States or repurchase agreements secured by obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States. This section is in addition to, and not in limitation of, any power of a water district to invest its funds.





## **APPENDIX H**



## CHAPTER 83

H.P. 1269 - L.D. 1696

### An Act to Create the Mount Desert Water District

**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 Town of Mount Desert are in immediate need of forming a quasi-municipal entity to supply 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,

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

**Sec. 1. Territorial limits; corporate name; purposes.** That part of the Town of Mount Desert in the County of Hancock that lies south of 44° 20' 33" north latitude and between the meridians of 68° 13' 5" west longitude and 68° 18' 33" west longitude and north of the seaward line of the Town of Mount Desert and its inhabitants constitute a quasi-municipal corporation under the name of "Mount Desert Water District," referred to in this Act as the "district," for the purpose of supplying the town and the inhabitants and others of the district with potable water for domestic, sanitary, commercial, industrial, agricultural and municipal purposes.

**Sec. 2. Powers of district.** The district, for the purposes of its incorporation, may take, collect, store, flow, use, divert, distribute and convey to the district, or any part of the district, water from any source approved by the Department of Human Services, natural or artificial, within the area of the Town of Mount Desert and from any other source from which the Northeast Harbor Water Company or the Seal Harbor Water Company may take water on the effective date of this Act. It may also locate, construct and maintain aqueducts, pipes, conduits, dams, wells,

town may contract with the district for the supply of water for municipal purposes.

**Sec. 12. Authorized to receive government aid; borrow money; issue bonds and notes.** For accomplishing the purposes of this Act, the district, through its trustees, without vote of the inhabitants, may receive state and federal aid or grants, borrow money temporarily and issue for the money its negotiable notes for the purpose of renewing and refunding the indebtedness so created, for paying any necessary expenses and liabilities incurred under this Act, including organizational and other necessary expenses and liabilities, whether incurred by the district or the Town of Mount Desert, the district being authorized to reimburse the Town of Mount Desert for any such expense incurred by the town and in acquiring properties, paying damages, laying pipes, mains, aqueducts and conduits, constructing, maintaining and operating a water plant or system and making renewals, additions, extensions and improvements to the water plant or system and to cover associated interest payments. The district, through its trustees, may also issue, from time to time, in accordance with the Maine Revised Statutes, Title 35-A, chapter 63, bonds, notes or other evidences of indebtedness of the district in such amount or amounts, bearing interest at such rate or rates, selling at par or at a discount or a premium, to be sold in such manner, at public or private sale, and having such other terms and provisions as the trustees determine, except that loans running for one year or less do not require the approval of the Public Utilities Commission.

Bonds, notes and evidences of indebtedness of the district may be issued to mature serially or made to run for a term of years as the trustees determine. Bonds, notes or evidences of indebtedness may be issued with or without provisions for calling the bonds, notes or evidences of indebtedness prior to maturity and, if callable, may be made callable at par or at such premium as the trustees determine. All bonds, notes or other evidences of indebtedness must have inscribed upon their face the words "Mount Desert Water District" and be signed by the treasurer and countersigned by the chair of the board of trustees of the district. If coupon bonds are issued, the interest coupon attached to the coupon bonds must bear the facsimile signature of the treasurer.

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

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 loan. All

bonds, notes and evidences of indebtedness issued by the district are legal investments for savings banks in the State and are exempt from state income tax.

**Sec. 13. Authorized to acquire property and franchises of Northeast Harbor Water Company and Seal Harbor Water Company.** The district, through its trustees, may acquire by purchase all or part of the plants, properties, franchises, rights and privileges owned by the Northeast Harbor Water Company and the Seal Harbor Water Company located within the Town of Mount Desert, including all lands, waters, water rights, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances used or usable in supplying water in the area of the district. The district may acquire by the exercise of the right of eminent domain, a right expressly delegated to the district for that purpose, all or part of the plants, properties, franchises, rights and privileges except cash assets and accounts receivable, owned by the Northeast Harbor Water Company and the Seal Harbor Water Company, including all lands, waters, water rights, dam structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances used or usable in supplying water in the area of the district, and if and when so acquired, the district, in addition to the powers conferred by this Act, may exercise all rights, privileges and franchises of the Northeast Harbor Water Company and of the Seal Harbor Water Company.

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

Any person aggrieved by the determination of the damages awarded to owners of property or interests therein under this section may, within 60 days after service of the condemnation order and check, appeal to the Superior Court of Hancock County. The court shall determine damages by a verdict of its jury or, if all parties agree, by the court without a jury.

by a referee or referees, and shall render judgment for just compensation, with interest when interest is due, and for costs in favor of the party entitled thereto. Appeal from the decision of the Superior Court may be had to the Law Court, as in other civil actions.

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

**Sec. 15. Existing laws not affected; rights conferred subject to provisions of law.** Nothing contained in this Act is intended to repeal, or may be construed as repealing, the whole or any part of any existing law, and all the rights and duties mentioned in this Act must be exercised and performed in accordance with all the applicable provisions of and amendatory acts to the Maine Revised Statutes, Title 35-A to the extent that that Title and its amendments affect the operations of the district.

**Sec. 16. Separability clause.** If any section or part of a section of this Act is held invalid by a court of competent jurisdiction, the holding does not affect the remainder of this Act, it being the intention that the remaining portions of this Act stand, notwithstanding the unconstitutionality or invalidity of any section, sentence, clause or phrase.

**Sec. 17. Emergency clause; referendum; effective date.** In view of the emergency cited in the preamble, this Act takes effect when approved but only for the purposes of permitting its submission to the legal voters of the Town of Mount Desert at an election called for that purpose and held by December 31, 1994. The election must be called, advertised and conducted according to the law relating to municipal elections, except that the registrar of voters is not required to prepare or the clerk to post a new list of voters and, for this purpose, the registrar of voters must be in session the 3 secular days preceding the election, of which the first 2 days must be devoted to registration of the voters and the last day to verification of the list and completion of the records of these sessions by the registrar. The subject matter of this Act is reduced to the following question:

"Do you favor creating the Mount Desert Water District?"

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

The results must be declared by the municipal officers of the Town of Mount Desert and the due certificate of the results filed by the clerk with the Secretary of State.

This Act takes effect for all purposes immediately upon its acceptance by a majority of the legal voters of the Town of Mount Desert voting at the special election. Failure of the approval by the necessary majority of voters at any such election does not prevent a subsequent election or elections from being held for that purpose.

Effective pending referendum.