

MAINE STATE LEGISLATURE

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(EMERGENCY)
New Draft of H. P. 1003, L. D. 1204

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1775

H. P. 1556

House of Representatives, May 11, 1977

Reported by Mr. Nadeau from Committee on Public Utilities. Sent up for concurrence and printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Amend the Charter of the Portland Water District.

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

Whereas, the construction of certain portions of the Portland Water District's system is nearing completion and the permanent financing is being arranged which requires clarification of the enabling legislation before being offered for sale to the public; and

Whereas, certain short-term financing of the district needs to be refinanced and the amendments hereinafter set forth would clarify essential provisions relating to such refinancing; and

Whereas, certain of the municipalities desire to have the district act as a collector of user charges or to finance or to assume ownership of municipal collector facilities which the existing charter does not permit; and

Whereas, all of the foregoing are essential for the district to complete promptly its sewerage project in order that the participating municipalities may comply with existing federal and state water pollution control laws; 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. P&SL 1907, c. 433, § 2, ¶ B, 4th ¶, as enacted by P&SL 1975, c. 84, is amended to read:

In addition to the operation of the waste water and sewage system, the district is also authorized to contract with persons, firms and corporations, including municipal corporations, upon such terms as may be agreed to manage, operate, construct and maintain waste water and sewage collection and treatment systems, and in addition to contract with municipal and quasi-municipal corporations to acquire, own and finance municipal collection and treatment systems.

Sec. 2. P&SL 1907, c. 433, § 9, 3rd ¶, as enacted by P&SL 1975, c. 84, is amended to read:

If the trustees vote to issue bonds or notes, the trustees may authorize the issuance, in the name of the district, of temporary notes for a period not to exceed 3 5 years in anticipation of the money to be received from the sale of such bonds or notes but in no event later than one year after completion of construction of items of capital outlay to be paid from the proceeds of such temporary notes. The time within which such temporary notes shall be payable need not be included in determining the period for which bonds or notes may be issued.

Sec. 3. P&SL 1907, c. 433, § 9, as last repealed and replaced by P&SL 1975, c. 84, is amended by inserting after the 3rd paragraph the following new paragraphs to read:

For the purpose of paying preliminary expenses with respect to the investigation and planning for a waste water and sewage system or the improvement of an existing system for the benefit of a participating municipality not served or to be served by an existing system of the district, including without limitation expenses related to or incurred in connection with engineering, design, acquisition of rights-of-way, legal fees or financing, the district through its trustees and without vote of its inhabitants is authorized to borrow by the issuance of temporary notes, including notes authorized under section 102nd paragraph, for a period of not more than one year and to renew such notes. Notes authorized under the authority of this paragraph shall be paid from the proceeds of government grants, funded by bonds or notes issued to finance the particular system or improvement if and when the same have been authorized or paid from sums apportioned as financing costs pursuant to section 13 on the municipality or municipalities for whose benefit the proposed system or improvement was intended. Any borrowing under this paragraph shall be paid or funded as herein provided not later than 5 years after the date of issuance of the original note or notes evidencing such borrowing.

If the system for which such expenses were paid by the district does not become operational prior to such amount being funded, the district shall assess the participating municipality for whose benefit such expenses were incurred for the repayment of such expenses together with any interest attributable thereto. Such assessment shall be payable over a 5-year period in substantially equal installments. The amounts assessed hereunder shall be in addition to any amount otherwise apportioned pursuant to section 13 hereof.

Sec. 4. P&SL 1907, c. 433, § 10, 2nd ¶, as enacted by P&SL 1975, c. 84, is amended to read:

In addition to the authority granted in section 9, the district may borrow by the issuance of temporary notes in anticipation of the receipt of the proceeds of any such grant, provided, however, that said notes shall not be issued for longer than one year but may be ~~reserved~~ renewed by the issuance of other notes until receipt of the grant in anticipation of which such notes are issued and provided further that payments on account of such grant when received shall be held in a separate account and used only to pay such notes to the extent then outstanding.

Sec. 5. P&SL 1907, c. 433, § 12, as last repealed and replaced by P&SL 1975, c. 84, is repealed and the following enacted in its place:

12. Determination of annual sewer costs. The fiscal year of the district for the waste water and sewage operations shall be the calendar year, and the trustees shall, prior to January 15th of each year, determine the total anticipated amount to be raised from the participating municipalities based on the trustees' best estimate to provide for the operation of the waste water and sewage system for that fiscal year and such amount shall be apportioned as provided in section 13. The amounts so apportioned for each municipality shall forthwith be certified by the trustees to the appropriate municipal officials of each participating municipality. In the event that the amount apportioned and certified as herein provided shall by reason of erroneous estimates or otherwise be insufficient to provide for the operation of the waste water and sewage system for the remainder of a fiscal year, as shown by the budget or amended budget of the district, any additional amount required for such operation may be apportioned and certified as herein provided and the amounts thereafter paid to the district by the participating municipalities affected may, at the option of the respective municipalities assessed, be adjusted so as to result in the payment over the remainder of the year of the additional amount so certified. No such additional amount shall be certified after October 1st in any year. The assessors of the respective participating municipalities shall without further vote include the amount so certified in those amounts to be raised in the subject calendar year by municipal tax or assessment or in the case of a supplemental certification to the extent if any that the same is not paid from funds otherwise available, in the first levy of municipal tax or assessment thereafter made. The respective city or town treasurers shall pay the amount so certified to the treasurer of the district in substantially equal monthly installments with the first monthly installment to be payable in January after receipt of such certification.

A participating municipality may raise all or a portion of the amounts certified annually by the district through equitable and proportional charges against its inhabitants, corporations and other users of the waste water and sewage system of the district in each such municipality. The participating municipalities shall be subject to such rules and regulations imposed or required by law as a condition of receipt of governmental grants and loans, as described in section 10.

The amount anticipated to be raised in a fiscal year and apportioned as provided in this section shall be the total of regional costs, financing costs and operating and maintenance costs less, with respect to regional costs, any funds on hand or in the judgment of the trustees to be received during said year from other than the participating municipalities and available to pay regional costs, and with respect to financing costs and operating and maintenance costs, funds on hand or in the judgment of the trustees to be received during said year from other than participating municipalities and available to pay financing costs and operating and maintenance costs, as the case may be. As used in this Act, the following terms shall have the following meanings.

A. "Regional costs" shall mean: All regional organizational and development costs; namely, costs incurred by the district to enable it to provide waste water and sewage disposal services on a regional basis and all expenses incidental to such costs. Regional costs shall not include any costs related to facilities or services provided by the district, for the benefit of one or more, but less than all, of the participating municipalities. The accounting for regional costs shall be in accordance with generally accepted accounting practices.

B. "Financing costs" shall include:

(1) Payment of unfunded capital outlay; namely, capital outlay items the cost of which is not to be funded or paid from the proceeds of a government grant or other donation;

(2) Payment of interest; namely, interest due and payable in such year on indebtedness created or assumed by the district in providing a waste water and sewage system, exclusive of interest on temporary notes in anticipation of assessments;

(3) Payment of principal; namely, principal due and payable in such year on indebtedness created or assumed by the district in providing a waste water and sewage system and not to be refunded and for the payment of which indebtedness funds are not in the judgment of the trustees otherwise available; and

(4) Sinking fund payments; namely, a sum equal to not less than 2% nor more than 5% of:

(a) That portion of the final installment of any issue of serial sewer bonds or notes created or assumed by the district in connection with its waste water and sewage system, which for any such issue exceeds the average annual payment of principal paid or payable thereon in each year except the last; and

(b) The amount of principal of any term bonds assumed or issued by the district for said waste water and sewage system, which shall be turned into a separate sinking fund and there kept together with any earnings on said sinking fund to provide for the extinguishment of that portion of said indebtedness.

The money set aside for the sinking fund shall be devoted to the retirement of the obligations of the district resulting from its waste water and

sewage system, and meanwhile may be invested in such securities as savings banks in the State of Maine are now or hereafter allowed to hold.

C. "Operating and maintenance costs" shall include:

- (1) Operating expenses; namely, the current expenses of operating the waste water and sewage system, and including interest on notes issued in anticipation of assessments;
- (2) Deficit; namely, any deficit incurred in the operation of said waste water and sewage system outstanding at the end of the prior calendar year for the payment of which funds are not, or in the judgment of the trustees will not, be available in the calendar year;
- (3) Current expenses; namely, the current expenses of repairing and maintaining the waste water and sewage system, including renewals and replacements and all other expenses not otherwise specifically provided herein; and
- (4) Collection expenses; namely, the expenses of collecting rates, fees and other charges for participating municipalities under contracts authorized under section 14 including any adjustment required to render the budgeted collection expenses in prior years equal to the actual costs for such prior years.

D. The words "assess or assessment" as used in this Act shall mean, except when the context otherwise requires: The amount apportioned or allocated to a participating municipality which has been certified by the trustees as hereinbefore provided or with respect to which a participating municipality has otherwise been notified hereunder that such amount is to be paid to the district.

If a surplus exists at the end of a calendar year, it shall be transferred to a sewer surplus account which at no time shall exceed 3% of the net book value of the assets of the district attributable to the waste water and sewage system. The trustees may add to the sinking fund so much of any excess over said 3% as they determine advisable, and any remainder shall be credited against sums otherwise to be assessed upon the participating municipalities on an equitable basis.

Sec. 6. P&SL 1907, c. 433, § 13, ¶ B, sub-¶ (1), as enacted by P&SL 1975, c. 84, is amended to read:

- (1) All financing costs of facilities used or to be used by only one of the participating municipalities shall be apportioned to such municipality.

Sec. 7. P&SL 1907, c. 433, § 13, ¶ B, sub-¶ (2), 1st and 2nd ¶¶'s, as enacted by P&SL 1975, c. 84, are repealed and the following enacted in their place:

- (2) All financing costs of any facility designed to be jointly used shall be apportioned by the trustees between or among the participating municipalities for whose benefit the facilities were designed in the ratio of the percentage of use capability of such facility attributed to each such participating municipality in the original design of such facility, provided

that if in the judgment of the trustees the actual use of this facility by one or more of such participating municipalities will not occur within 24 months of the actual use of the first such participating municipality, financing costs shall be apportioned under this paragraph to only those participating municipalities whose use or joint use of the facilities is expected to take place within said 24 month period. Except as otherwise provided in this paragraph, when a participating municipality makes first use of a facility which had previously been used by one or more participating municipalities, such participating municipality shall also be assessed for its fair share of the financing cost of said jointly used facility which has been previously assessed up to the time of the first use of said facility by such joining municipality. Such additional share shall be determined by the trustees on the same formula set forth herein. The trustees shall apportion said additional share to such joining municipality over a period of years equal to the term for which the original bonded indebtedness was issued, and shall make corresponding annual adjustments in the assessments of the participating municipalities previously using said facility by crediting the amount of said additional share to said participating municipalities in proportion to their respective total payments to the district on account of said financing costs of said facility made by said participating municipalities up to the time of first use of such facility by such joining municipality.

Sec. 8. P&SL 1907, c. 433, § 14, 2nd ¶, as enacted by P&SL 1975, c. 84, is repealed and the following enacted in its place:

Any participating municipality which has established a schedule of rates, fees and charges for the services furnished or to be furnished by its sewer system any of which are computed at least in part according to the amount of water consumed may, by resolution of its legislative body, request the district to collect such user charges on its behalf. Upon receipt of such request, the district shall enter into a contract with such participating municipality which shall provide for the following:

A. With respect to the date when collections under the contract period shall begin, which shall not be earlier than July 1st nor later than December 31st next succeeding the year in which the request is made, and with respect to the manner in which the contract may be amended and terminated;

B. That the participating municipality shall during the period of the contract keep in force a schedule of rates, fees and charges sufficient to produce each year funds required to pay the costs apportioned or to be apportioned to such participating municipality for that year pursuant to sections 12 and 13 hereof;

C. That to the extent the district does not maintain such records in the ordinary course of its business, the participating municipality shall provide the district with a list of the users of its sewer system responsible for payment of such rates, fees and charges and keep the same up-to-date;

D. That the district shall on behalf of such participating municipality collect from such users the amounts due from time to time according to said

schedule of rates, fees and charges and keep the sums collected in a separate account;

E. That the district shall keep its accounts and records showing said sums collected, payments made therefrom and charges remaining to be collected up-to-date at all times and shall provide for an audit of such accounts and records not less often than annually;

F. That the district may deduct at such times as shall be stated in the contract, which shall not be less often than monthly, that portion of such sums collected as shall represent the amounts due to the district from said participating municipality pursuant to said sections 12 and 13 and pay the balance of such funds to the participating municipality and that to the extent such portions retained by the district fail to equal the portion of district costs then due from such participating municipality, the deficit shall forthwith be paid to the district by the participating municipality;

G. For a method of resolving disagreements concerning operations under the contract, which may be by arbitration, but that the obligations of each of the parties to the contract with respect to the payment of moneys to the other shall be unconditional and that neither party may withhold payment to the other of funds due under such contract during the pendency of any dispute; and

H. For such other related matters as shall be deemed appropriate by the parties to the contract.

A participating municipality shall with respect to fixing a schedule of rates, fees and other charges for the services furnished or to be furnished by or through its sewer system have such authority as may be granted by its charter, if any, by any private and special laws and by the Revised Statutes as the same may from time to time be amended and supplemented, including without limitation, Title 30, chapters 235 and 237, to the extent applicable. Notwithstanding any provision of law to the contrary, a participating municipality may by vote of its legislative body authorize the exercise by the district on behalf of such participating municipality of any or all of the powers granted to such participating municipality to collect such rates and charges from the users of the sewerage system of such participating municipality as provided in this Act, provided that nothing herein shall be deemed to permit the transfer by a participating municipality to the district of the right to make or collect assessments authorized by the Revised Statutes, Title 30, chapter 237, subchapter III, or any private and special law authorizing a participating municipality to make or collect such assessments.

In the event the user of the sewer system of the district or municipality fails within reasonable time to pay the statement of rates, fees or charges submitted by the district to such user, the district shall have power to disconnect the water service of such user, notwithstanding any regulation or statute to the contrary; provided such action by the district is accomplished in accordance with the procedures set forth in applicable statutes and regulations for the disconnection of utility services.

Nothing in the contract authorized under this section shall affect in any way the unconditional obligation of the participating municipality to pay its share of the district's costs apportioned and certified as provided in section 13.

Sec. 9. P&SL 1907, c. 433, § 18, 3rd ¶, as enacted by P&SL 1975, c. 84, is amended to read:

All nominations of candidates to be elected from the cities of Portland, South Portland and Westbrook shall be made by nomination papers signed in the aggregate for each candidate by not less than 100 nor more than 150 qualified voters of such city. All nominations of candidates to be elected from the area consisting of either Cape Elizabeth and Gorham or Cumberland, Falmouth and Windham shall be made by nomination papers signed in the aggregate for each candidate by not less than 75 nor more than 125 of the voters of each of the towns within such area. Each voter signing a nomination paper shall make his signature in person and add to it his place of residence, and each voter may subscribe to as many nominations as there are trustees to be elected in his area and no more. Nomination papers shall be submitted to each municipal clerk of the municipalities within such area during business hours on or before the 21st day next prior to the day of election.

Immediately thereafter, such clerk shall notify the clerk of the district of the names of the candidates nominated for trustee for the area within which such municipality is located and shall notify the clerk of any other municipality within such area. With such nomination papers there shall be filed the consent in writing of the person or persons nominated agreeing to accept the nomination if nominated, not to withdraw and, if elected at the election to qualify as a trustee.

Each municipality shall prepare, under direction of its municipal clerk, ballots containing the names of the properly nominated candidates arranged in alphabetical order by last name. It shall contain no other names. At the end of the list of candidates, there shall be left as many blank spaces as there are vacancies to be filled, in which a voter may insert the name of any person for whom he desires to vote. A square shall be printed at the right of the name of each candidate, and 2 squares shall be printed at the right of any question submitted with "yes" above one and "no" above the other, so that a voter may designate his choice clearly by a cross mark (X) or a check mark (✓). Words of explanation such as, "Vote for one," may be printed on the ballot. Before distribution, the ballot shall be folded in marked creases to measure, when folded, from 4 to 5 inches wide and from 6 to 13-½ inches long. On the back and outside, when folded, shall be printed "Official Ballot for the Portland Water District," the date of election, and a facsimile of the signature of the clerk of the municipality.

The municipal clerks shall present the returns of their respective municipalities to the clerk of the district not later than 5 days after said elections. The trustees shall within 15 days after the election determine and declare the successful candidates of each area.

Sec. 10. P&SL 1907, c. 433, §§ 23, 24 and 25 are enacted to read:

Sec. 23. Notes deemed issued. Temporary notes of the district, the proceeds of which were used to pay preliminary expenses for the investigation and planning for waste water and sewage systems in participating municipalities not served or to be served by a waste water and sewerage treatment facility existing or under construction on the effective date of this Act, shall be deemed to have been issued under and pursuant to section 9, 4th paragraph, as amended, and any renewals of such temporary notes shall be in accordance with the applicable provisions of said section as amended.

Sec. 24. Renewals of outstanding temporary notes issued for regional costs and preliminary expenses. Temporary notes of the district, the proceeds of which were used to pay regional costs and preliminary expenses as set forth in section 9, 4th paragraph, as amended, all incurred in connection with the establishment of the district's waste water and sewage system may, to the extent not paid from the proceeds of assessments upon the participating municipalities, be renewed as hereinafter in this section provided. In the case of a participating municipality for whose benefit a waste water and sewage treatment facility is being financed under section 9, such temporary renewal notes may be consolidated with and issued as a part of any issue of notes or bonds being issued under said section 9. Renewal notes authorized by this section shall be issued in accordance with the provisions of section 9 of the charter so far as apt and shall mature not later than one year from their date and in no event later than December 31, 1982. There shall be a separately designated issue of renewal notes representing the sums allocated or allocable to each participating municipality.

Sec. 25. Preexisting contracts with participating municipality. The rights of the parties under a contract between the district and a participating municipality in force on the effective date of this Act shall not be adversely affected by this Act.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

The purpose of this new draft is to amend the Portland Water District's charter to allow the district to provide collector service to its participating municipalities as well as to amend certain aspects of the financing of the district's sewer operations. These are needed as the result of unforeseen problems in the sewer operations resulting from the district's experience in the last 15 months.

Also, this new draft :

1. Provides the district with authority to contract with municipalities to assume sewer collector responsibilities as well as own and finance such collectors;

2. Extends the term in which the district may issue temporary notes prior to the issue of bonds during the period of construction from 3 to 5 years. It also authorizes the district to borrow for the payment of preliminary planning and project costs for a period of up to 5 years pending the receipt of grant moneys or the actual bonding of the construction project. It further allows the district to assess these costs to a municipality in the event that the proposed construction project is not completed and provides for a 5-year repayment period once the assessment has been submitted to the municipality. This resolves a problem because of the impoundment of federal funds;

3. Corrects an inconsistency in the district's charter;

4. Provides a method by which the district may obtain more current payment for the sewer services which it provides to the municipalities. Presently, the district must wait one year to receive its payments and this necessitates additional borrowing, the costs of which borrowing must be eventually paid by the municipalities. This section will reduce the cost of sewer service to the inhabitants of the municipalities. It also defines regional costs to distinguish between the organizational costs and the continuing costs of a general nature, such as administration. It also defines the definition of current expenses to provide that the district may establish a fund for renewal and replacement of those facilities:

5. Provides a method by which the district and a municipality may contract for the district to collect the municipality's sewer charges and states that the district may terminate water service for the nonpayment of a sewer billing when the district is acting as the agent for the municipality;

6. Provides a clarification for the election procedures to be followed by the district;

7. Clarifies an ambiguity regarding the district's authority to issue certain outstanding obligations;

8. Provides that certain existing temporary notes of the district may be amortized over a 5-year period as opposed to requiring such an assessment to be made in one year; and

9. Provides that the charter amendments will not affect existing contracts with the participating municipalities.