

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1333

H.P. 996

House of Representatives, March 5, 2001

An Act to Permit Consumer-owned Water Utilities to Exercise Local Control Regarding Matters within the Jurisdiction of the Public Utilities Commission.

Reference to the Committee on Utilities and Energy suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative SAVAGE of Buxton.
Cosponsored by Senator DAGGETT of Kennebec and
Representatives: BERRY of Belmont, CLOUGH of Scarborough, COWGER of Hallowell,
Speaker SAXL of Portland, Senators: CARPENTER of York, DOUGLASS of Androscoggin,
GOLDTHWAIT of Hancock, SMALL of Sagadahoc.

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

4 **Sec. 1. 35-A MRSA c. 62** is enacted to read:

6 **CHAPTER 62**

8 **LOCALLY GOVERNED WATER DISTRICTS**

10 **§6201. Short title**

12 This chapter is known and may be cited as the "Locally Governed Water District Act."

14 **§6202. Definitions**

16 As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

18 1. Charter. "Charter" has the same meaning as set forth in section 6402, subsection 1.

22 2. Consumer-owned water utility. "Consumer-owned water utility" has the same meaning as set forth in section 6101, subsection 1-A.

26 3. Governing body. "Governing body" has the same meaning as set forth in section 6101, subsection 1-B.

28 4. Locally governed water district. "Locally governed water district" means a consumer-owned water utility that has made an election under section 6203 after that election has taken effect.

34 **§6203. Election for local control**

36 1. Election of governing body. Upon the affirmative vote of its governing body, a consumer-owned water utility may elect to become subject to this chapter. The election must be certified by the secretary or clerk of the utility.

40 2. Public hearing. Prior to making an election under subsection 1, the consumer-owned water utility shall hold a public hearing at which the Public Advocate and any customer may testify and may question the utility's officials regarding the proposed election. Public notice of the time, date, location and purpose of the hearing must be made at least 14 days in advance in a newspaper of general circulation in the area encompassed by the utility. In addition, the utility shall provide one notice to each of its customers containing the same information in the public notice, which notice must be

2 distributed by mail or other similar means at least 14 days prior
3 to the hearing. A copy of the notice must be provided
4 concurrently to the commission and the Public Advocate.

6 3. **Municipal approval.** An election under subsection 1
7 takes effect when the municipal officers of a municipality within
8 the consumer-owner water utility's service area vote to approve
9 the utility's election. For utilities serving more than one
10 municipality, the approval of municipalities representing a
11 majority of the population within the utility's service area is
12 required. Prior to requesting a vote by any municipality under
13 this subsection, the utility shall provide to the clerk of the
14 municipality or municipalities a copy of the utility's certified
15 vote pursuant to subsection 1.

16 4. **Effective date.** An election takes effect 30 days after
17 the commission receives the certified vote of any municipality
18 required to approve the election under subsection 3. The utility
19 shall record the election in its bylaws once the election takes
20 effect.

22 **§6204. Scope**

24 1. **Chapter governs affairs.** Notwithstanding any other
25 provision of this Title, this chapter governs the affairs of
26 locally governed water districts. Locally governed water
27 districts are not subject to the provisions of this Title outside
28 this chapter, except as specifically provided in subsection 2.

30 2. **Regulation of districts.** To the extent applicable to
31 water utilities, the following laws apply to locally governed
32 water districts:

34 A. **Section 706, subsections 3, 4, 5 and 6;**

36 B. **Section 761, subsection 3;**

38 C. **Section 2102;**

40 D. **Section 2110, but only to the extent the governing body**
41 **of a locally governed water district consents to the**
42 **extension of service under section 2110;**

44 E. **Sections 2303, 2307, 2308 and 2309;**

46 F. **Chapter 25;**

48 G. **Section 6103;**

50 H. **Section 6110;**

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I. Section 6111;

J. Chapter 64, but only to the extent the locally governed water district is chartered as a standard district;

K. Section 6705; and

L. Section 6706.

The application of these laws is not intended to permit the commission to issue any order or condition regulating locally governed water districts except as specifically permitted under this subsection or in this chapter.

3. Scope or application. This section may not be interpreted to affect the scope or application of any provision of law outside this Title. Although this chapter provides for a reduced level of regulation by the commission of locally governed water districts, the districts remain water utilities for purposes of the applicable provisions of this Title listed in subsection 2 and for all laws outside of this Title. Any reference outside this Title to entities that include water utilities, including, but not limited to, references to public utilities, water districts and public service corporations, includes locally governed water districts. Once a proposed rate becomes final, a copy of the rate must remain on file at the main office of the district for public inspection.

§6205. Establishment of rates

1. Authority. The governing body of a locally governed water district shall establish rates, tolls, deposits, customer contributions or charges in accordance with this section.

2. Purposes. The governing body of a locally governed water district may establish rates or charges to provide revenue to the district in order to carry out any lawful purpose of the locally governed water district, including, but not limited to, the following purposes:

A. To pay the current expenses for operating and maintaining the water system and to provide for normal renewals and replacements;

B. To provide for the payment of the interest on the indebtedness created or assumed by the district;

C. To create a sinking fund for the extinguishment of term indebtedness;

2 D. To provide annual principal payments on serial
3 indebtedness created or assumed by the district;

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5 E. To provide for a contingency reserve fund to pay losses
6 of the district in the event of insufficient revenues;

7 F. To provide for a water supply protection fund to acquire
8 interests in land in order to protect the district's sources
9 of supply;

10 G. To provide for system development related to an increase
11 in demand for service; and

12 H. To provide for capital improvements and expansions to
13 the system.

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15 3. Process. Prior to the adoption of a new rate schedule,
16 the governing body of a locally governed water district shall
17 hold a public hearing regarding the proposed rate schedule. The
18 governing body shall publish the proposed rates and notice of the
19 hearing in a newspaper having a general circulation in the
20 district not less than 7 days prior to the hearing. The district
21 shall mail to each ratepayer a notice of the public hearing and
22 the proposed new rate at least 14 days prior to the hearing.

23 4. Just and reasonable rates. The governing body of a
24 locally governed water district shall establish rates that are
25 just and reasonable and that do not give any undue or reasonable
26 preference, advantage, prejudice or disadvantage to a particular
27 person. This subsection is not intended to limit the ability of
28 a locally governed water district to charge different rates or
29 enter into special contracts upon a determination by the
30 governing body that such a practice is in the best interest of
31 the district.

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33 **§6206. Eminent domain**

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35 A locally governed water district is authorized to acquire
36 and hold real and personal property necessary or convenient for
37 its purposes and is granted the right of eminent domain. For
38 these purposes a locally governed water district is authorized to
39 take and to hold, by exercising its right of eminent domain or by
40 purchase or lease or otherwise, any land, real estate or
41 easements or interest in these for any source of water supply or
42 location for storage and for the protection of such locations, as
43 well as for the transmission and distribution of water to the
44 public. This section is not intended to limit any right of
45 eminent domain contained in the charter of any locally governed
46 water district.

2 **§6207. Annual audit**

4 A locally governed water district shall conduct an annual
6 audit of its books and records by an independent accountant.
8 Within 3 months after the audit is completed, the district shall
 submit a copy of the audit to the commission. For good cause
 shown, the commission may extend the deadline for submitting the
 audit.

10 **§6208. Service standards; appeal**

12 1. Final decision; action. This section applies to any
14 final decision or action of a locally governed water district
16 with regard to the provision of water service by the district,
18 including matters relating to denial or termination of service,
 terms and conditions of service and billing, metering and
 collection for service.

20 2. Right of appeal. A person aggrieved by a final decision
22 or action covered by this section may appeal that decision or
24 action to the governing body of the locally governed water
 district. The governing body shall establish rules concerning
 the manner in which an appeal may be taken. A decision on appeal
 constitutes the final decision of the governing body.

26 3. Delegation of authority. The governing body of a
28 locally governed water district may elect to delegate its
30 authority to make a final decision on appeal under subsection 2
32 to any person, board or entity that may lawfully review and
 decide the appeals, including an ombudsman or appeals board
 appointed by the governing body.

34 **§6209. Remedy**

36 Except as otherwise provided in the charter of a locally
38 governed water district, any person aggrieved by a final decision
40 of the governing body of that district has a right of appeal to
42 the Superior Court on questions of law in the same manner as an
 appeal taken to the Law Court from a judgment of the Superior
 Court in a civil action. Appeal pursuant to this section is the
 exclusive remedy under this chapter.

44 **§6210. Relation to private and special laws**

46 This chapter is not intended to limit or restrict the terms
48 of a private and special law or a valid charter of a locally
50 governed water district, except that a law or charter may not
 prohibit or interfere with the ability of a consumer-owned water
 utility to make an election under section 6203.

2 **§6211. District-initiated termination of local control**

4 **1. Election of governing body.** Upon the affirmative vote
6 of its governing body, a locally governed water district may
8 elect to terminate its status as a locally governed water
district and no longer be subject to this chapter. The election
must be certified by the secretary or clerk of the district.

10 **2. Municipal approval.** In order for an election under
12 subsection 1 to become effective, the municipal officers of a
14 municipality within the district must vote to approve the
16 district's election. For districts serving more than one
18 municipality, the approval of municipalities representing a
majority of the population within the district is required.
Prior to requesting a vote by a municipality under this
subsection, the district shall provide to the clerk of the
municipality or municipalities a copy of the district's certified
vote pursuant to subsection 1.

20 **3. Effective date.** An election under this section becomes
22 effective 30 days after the commission receives the certified
24 vote of a municipality required to approve the election under
26 subsection 2. The district shall record the election in its
bylaws once the election becomes effective.

28 **§6212. Consumer-initiated termination of local control**

30 **1. Consumer-initiated petition.** Fifteen percent of the
32 customers of a locally governed water district or 1,000
34 customers, whichever is less, may file with the clerk of the
utility petitions demanding that the district terminate its
status as a locally governed water district and no longer remain
subject to this chapter. A signature is valid for purposes of
this section only if it meets the requirements set forth in
section 6104, subsection 9.

38 **2. Scheduling of district-wide referendum.** Upon receipt of
40 petitions meeting the requirements of subsection 1, the governing
42 body of the district shall within 30 days certify the petitions.
44 Within 30 days following the certification, the clerk of the
46 district shall deliver a copy of the certificate to the clerk of
each municipality within the district along with a request of
each municipality to conduct a referendum. Upon receipt of the
certification, the municipal officers of the municipalities shall
call a referendum to take place at a time no less than 90 days
following receipt of the certification, and further providing
48 that the referendum must be held simultaneously with a statewide
election.

2 3. Manner of voting. The district shall prepare and
4 furnish to each municipality the required number of ballots for
6 carrying out a referendum properly called under subsection 2,
8 including absentee ballots. The referendum must place before the
10 voters the following question: "Do you favor having (name of
 district) terminate its status as a locally governed water
 district so that its business affairs may be fully regulated by
 Maine's Public Utilities Commission?" Voting in the towns must
 be held and conducted in accordance with Title 21-A.

12 4. Certification of referendum results. Once the results
14 of the referendum become final within each municipality, each
16 municipal clerk shall certify and send to the governing body the
18 total number of votes cast in the affirmative and negative within
20 the municipality. Once all of the results from all of the
22 municipalities have been returned, the governing body shall meet
24 and compute the total number of votes cast in all of the affected
26 municipalities in the affirmative and the negative. If the
 governing body determines that there were more votes cast in the
 affirmative than the negative, it shall declare that the
 referendum has passed, which result must be certified by the
 district and submitted to the commission within 30 days. An
 affirmative vote becomes effective 60 days after submitted to the
 commission. The district shall record an affirmative vote in its
 bylaws along with the date submitted to the commission.

28 5. Suspension of petition process. Prior to the holding of
30 a referendum under this section, a petition process initiated
32 under this section must be terminated at such time as any
 termination process initiated under section 6211 becomes
 effective.

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SUMMARY

38 This bill permits consumer-owned water utilities to exercise
40 local control by opting out of regulation by the Public Utilities
 Commission with respect to their rates, terms of service and
 business affairs.