

MAINE STATE LEGISLATURE

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DATE: April 23, 2001 (Filing No. S-66)

UTILITIES AND ENERGY

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**STATE OF MAINE
SENATE
120TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 440, L.D. 1442, Bill, "An Act to Create the Boothbay Region Water District"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. Territorial limits; corporate name. Pursuant to the Maine Revised Statutes, Title 35-A, section 6403, subsection 1, paragraph B and subject to section 8 of this Act, the territory and the inhabitants of the Town of Boothbay and the Town of Boothbay Harbor constitute a standard water district under the name "Boothbay Region Water District," referred to in this Act as the "district."

Sec. 2. Powers; authority; duties. Except as otherwise expressly provided in this Act, the district has all the powers and authority and is subject to all the requirements and restrictions provided in the Maine Revised Statutes, Title 35-A, chapter 64. The district is authorized to provide water to the Town of Southport.

Sec. 3. Authority to take water. Notwithstanding the Maine Revised Statutes, Title 35-A, section 6404, the district is authorized to take, to hold and to convey within the Town of Boothbay, the Town of Boothbay Harbor and the Town of Southport and from any part of those towns and the islands adjacent to those towns water from Adams Pond, Knickerbocker Lake, Wiley Pond

COMMITTEE AMENDMENT

and Meadow Brook Wells in the Town of Boothbay and the Town of Boothbay Harbor and any other surface and groundwater source within the towns.

Sec. 4. Additional powers; eminent domain. Notwithstanding the Maine Revised Statutes, Title 35-A, sections 6404, 6405, 6406, 6408, subsection 2 and 6409, the district has the powers and authority provided in this section.

The district has the power and is authorized to survey for, lay, erect and maintain suitable dams, reservoirs, aqueducts, pipes, hydrants, buildings, treatment or purification plants, pumping equipment and fixtures for flowage, power, pumping its water supply or conveying wastewater produced in the operation of a treatment or filtration facility through its mains; to enter upon any land or public way for laying, erecting and maintaining the pipes and structures and to make surveys for those purposes; and to pass over, excavate and flow any lands.

The district is authorized to take and hold for public uses, by purchase, eminent domain or otherwise, any land that may be necessary for supplying, treating or purifying water; conveying wastewater; laying and maintaining its pipelines and constructing other structures; preserving the purity of its watershed; and ensuring the purity of its water supply. The district is also authorized to take and hold in the same manner any land that may be necessary for rights of way or roadways to its sources of supply, dams, power stations, reservoirs, mains, aqueducts, structures and land. The district may hold all real estate and personal property necessary or convenient to these purposes.

The district may not take by right of eminent domain any property or facilities of any other public utility used or acquired for future use in the performance of a public duty.

The district shall file in the registry of deeds for Lincoln County plans and descriptions of the location of all the lands and water rights taken under the provisions of this Act, and entry may not be made upon any land, except to make surveys, until the expiration of 10 days from the filing. With the plan, the district may file a statement of the damages it is willing to pay to any person for any property or property rights taken. If the amount finally awarded does not exceed that sum, the district may recover costs against a person; otherwise that person may recover costs against the district. Within 30 days after the filing of the plans and descriptions, the district shall publish notice of the taking and filing in a newspaper in the county, the publication to be continued 3 weeks successively.

Any person aggrieved by the determination of the damages awarded to owners of property or interests taken under this section may appeal, within 60 days after service of the condemnation order and check, to the Superior Court of Lincoln County. The court shall determine damages by a verdict of its jury or, if all parties agree, by the court without a jury or 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 entitled party. A decision of the Superior Court may be appealed to the Law Court as in other civil actions.

Sec. 5. Trustees; how elected; first board; meeting; officers. All of the affairs of the district must be managed by a board of trustees composed of 5 members: two residents of the Town of Boothbay Harbor, 2 residents of the Town of Boothbay, and one at-large member.

1. First board. The municipal officers of the Town of Boothbay Harbor and the Town of Boothbay at a joint meeting shall appoint the first board of trustees, 3 of whom must be residents of the Town of Boothbay Harbor, 2 of whom must be residents of the Town of Boothbay and all of whom must be current commissioners of the Boothbay Harbor Water System or trustees of the East Boothbay Water District. The trustees from the Town of Boothbay Harbor serve terms as follows: one for a term of one year, one for a term of 2 years and one for a term of 3 years. The trustees from the Town of Boothbay serve terms as follows: one for a term of 2 years and one for a term of 3 years. The municipal officers shall determine the term of office of each trustee. Vacancies are filled pursuant to subsection 4. After the expiration of the term of the Town of Boothbay Harbor trustee with the one-year term, the succeeding trustee is elected at large from the district for a term of 3 years.

2. Organization; conduct of business. Organization and powers of the board of trustees must be in accordance with the Maine Revised Statutes, Title 35-A, chapter 64.

All decisions of the board of trustees must be by a majority of those present and voting. A quorum of the board of trustees is 3 trustees.

3. Bylaws. The trustees may adopt and establish such bylaws as are necessary for the proper management of the affairs of the district.

4. Vacancy. Whenever the term of office of a trustee from the Town of Boothbay Harbor expires, the trustee's successor must be elected from the Town of Boothbay Harbor by the inhabitants of the district, except that, after the first year, the successor of

the trustee from the Town of Boothbay Harbor that served a term of one year must be elected at large by the inhabitants of the district at town meetings to be held in the Town of Boothbay Harbor and the Town of Boothbay. Whenever the term of office of a trustee from the Town of Boothbay expires, the trustee's successor must be elected from the Town of Boothbay by the inhabitants of the district. Trustees are elected at the annual town meetings from the town that the trustees represents. The trustee so elected shall serve the full term of 3 years. If any vacancy arises in the membership of the board of trustees, it must be filled in like manner for the unexpired term by a special election to be called by the trustees of the district. When any trustee ceases to be a resident of the district, the trustee shall vacate the office of trustee and the vacancy must be filled as provided in this subsection. All trustees are eligible for reelection, but a person who is a municipal officer in the Town of Boothbay Harbor or the Town of Boothbay is not eligible for nomination or election as trustee.

5. Compensation. Notwithstanding the Maine Revised Statutes, Title 35-A, section 6410, subsection 7, the compensation of the trustees and the treasurer of the board of trustees is determined by the board of trustees.

Sec. 6. Borrowing. Notwithstanding the Maine Revised Statutes, Title 35-A, section 6412, subsections 1 and 2 and section 6413, the district, in order to accomplish the purpose of this Act, by vote of its board of trustees and without district vote, is authorized to borrow money, including temporary borrowing, for the purposes of acquisition and renovation of the Boothbay Harbor Water System and the East Boothbay Water District system, of renewing and refunding the indebtedness of water-related notes or bonds of the Town of Boothbay Harbor and the East Boothbay Water District, of paying necessary expenses and liabilities incurred under this Act, and of acquiring properties; paying damages; laying pipes, mains, sewers, drains and conduits; purchasing, constructing, maintaining and operating a water system; and making renewals, additions, extensions and improvements to that system, and is authorized to issue, from time to time, bonds, notes or other evidences of indebtedness of the district in such amount or amounts, bearing interest at such rate or rates and having such terms and provisions as the trustees determine. In the case of a vote by the trustees after acquisition and renovation of the Boothbay Harbor Water System and the East Boothbay Water District system to authorize bonds or notes to pay for the acquisition of property, the cost of a water system or part of a water system, renewals or additions or for other improvements in the nature of capital costs, the estimated cost of which singly or in the aggregate included in any one financing is \$500,000 or more, but not for renewing or refunding

existing indebtedness or to pay for maintenance, repairs or current expenses, notice of the proposed debt and of the general purpose or purposes for which it was authorized must be given by the district by publication at least once in a newspaper having a general circulation in the towns of Boothbay Harbor and Boothbay. The total indebtedness outstanding of the district may not exceed the sum of \$12,000,000 at any one time or such other amount as may be established pursuant to this section.

Notwithstanding the limitation on total indebtedness established in this section, the trustees of the district may propose a different debt limit and submit that debt limit for districtwide approval in a referendum held in accordance with this section. The referendum 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 nor the clerk to post a new list of voters. For the purpose of registering voters, the registrar of voters must be in session on the regular workday preceding the election. The question presented must conform to the following form:

"Do you favor changing the debt limit of the Boothbay Region Water District from (insert current debt limit) to (insert proposed debt limit)?"

The voters shall indicate by a cross or check mark placed against the word "Yes" or "No" their opinion on the question.

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

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

The total indebtedness of the district at any one time outstanding may not exceed the sum approved by referendum.

Sec. 7. Authorized to acquire property and franchises of the Town of Boothbay Harbor, the Boothbay Harbor Water System and the East Boothbay Water District. The district, through its trustees, shall acquire by purchase in accordance with this section the plants, properties, franchises, rights and privileges owned by the Town of Boothbay Harbor, the Boothbay Harbor Water System and the East Boothbay Water District, including all lands, buildings, waters,

water rights, reservoirs, tanks, standpipes, mains, pumps, pipes,
machinery, fixtures, hydrants, meters, services, tools,
equipment, apparatus and appliances used or usable in supplying
water in the area of the district.

The Town of Boothbay Harbor, pursuant to Private and Special
Law 1995, chapter 74, and the East Boothbay Water District, a
quasi-municipal corporation organized and existing pursuant to
Private and Special Law 1959, chapter 132, shall sell, transfer
and convey to the district by appropriate instruments of
conveyance all, and not less than all, of their plants,
properties, assets, franchises, rights and privileges, including,
without limitation, lands, buildings, waters, water rights,
springs, wells, reservoirs, tanks, standpipes, mains, pumps,
pipes, machinery, fixtures, hydrants, meters, services, tools,
equipment, apparatus and appliances used or useful in supplying
water for domestic, commercial, industrial and municipal
purposes, in consideration of the assumption by the district of
all of the outstanding water-related debts, obligations and
liabilities of the Town of Boothbay Harbor and the East Boothbay
Water District, including, without limitation, the assumption of
any outstanding water-related notes or bonds of the Town of
Boothbay Harbor, the Boothbay Harbor Water System and the East
Boothbay Water District that are due on or after the date of
transfer.

The sale and transfer by the Town of Boothbay Harbor, the
Boothbay Harbor Water System and the East Boothbay Water District
to the district of their plants, properties, assets, franchises,
rights and privileges; the assumption by the district of all of
the outstanding debts, obligations and liabilities of the
district pursuant to this section; and the subsequent use of the
plants, properties, assets, franchises, rights and privileges by
the district within the limits of the district are subject to the
approval of the Public Utilities Commission as may be required by
the Maine Revised Statutes, Title 35-A, Part 1.

Sec. 8. Emergency clause; referenda; effective date. In view of
the emergency cited in the preamble, this Act takes effect when
approved only for the purpose of permitting its submission to the
legal voters within the territory described in section 1 of this
Act at each town's annual election or a special election called
for that purpose and held after May 1, 2001 but within 2 years
after the effective date of this Act. The election must be
called by the municipal officers of the respective towns and must
be held at the regular voting places. The election must be
called, advertised and conducted according to the law relating to
municipal elections. The registrars shall make a complete list
of all the eligible voters of the proposed district as described
in this Act. The list prepared by the registrars governs the
eligibility of a voter. For the purpose of registration of

COMMITTEE AMENDMENT "A" to S.P. 440, L.D. 1442

2 voters, the registrars of voters must be in session the secular
day preceding the election. The subject matter of this Act is
reduced to the following question:

4
6 "Do you favor creating the Boothbay Region Water District
and permitting the Boothbay Region Water District to acquire
the water-related assets of the Town of Boothbay Harbor, the
8 Boothbay Harbor Water System and the East Boothbay Water
District?"

10
12 The voters shall indicate by a cross or check mark placed
against the words "Yes" or "No" their opinion of the same.

14 The results must be declared by the municipal officers of
the Town of Boothbay Harbor and the Town of Boothbay and due
16 certificate of the results filed by the clerks with the Secretary
of State.

18
20 This Act takes effect for all purposes immediately upon its
approval by a majority of the legal voters of each town voting at
the election. Failure to achieve the necessary approval in any
22 referendum does not prohibit subsequent referenda consistent with
this section as long as the referenda are held within 2 years of
24 the effective date of this Act.

26 If, after May 1, 2001 but prior to approval of this Act, a
vote on the question specified in this section is held in
28 accordance with this section and a majority of the legal voters
of each town voting at the election cast votes in favor of the
30 question and due certificate of the results are filed with the
Secretary of State, this Act takes effect when approved.'

32
34 **SUMMARY**

36 This amendment, which is the majority report of the Joint
Standing Committee on Utilities and Energy, replaces the bill.
38 This amendment creates the Boothbay Region Water District,
subject to referendum approval, and requires the Town of Boothbay
40 Harbor and the East Boothbay Water District to sell their
water-related assets to the Boothbay Region Water District for
42 the consideration of the district assuming the liabilities and
responsibilities associated with the existing water systems.