

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

DATE: *March 25, 2002* (Filing No. S-*498*)

UTILITIES AND ENERGY

Reported by:

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE
SENATE
120TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "*A*" to S.P. 794, L.D. 2147, Bill, "An Act Providing for the Supply of Water to the City of Brewer"

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

Sec. 1. Transfer of assets of Brewer Water District. Upon the approval of a majority of the City Council of Brewer and the approval of a majority of the trustees of the Brewer Water District, the Brewer Water District shall expeditiously convey, assign and transfer to the City of Brewer for no consideration:

1. All physical and intangible assets of the Brewer Water District, including all cash, lands, water rights, waters, dams, reservoirs, mains, pipes, service pipes, hydrants, gates, gate-boxes, fixtures, machinery, tools, apparatus, appliances, structures and any other physical element necessary and convenient for providing pure water for domestic, commercial, sanitary and municipal purposes;

2. All valid and legally enforceable contracts or other obligations between the Brewer Water District and any 3rd party as of the effective date of this Act. The City of Brewer shall redeem or otherwise satisfy all nonassumable debt of the Brewer Water District; and

3. All permits, licenses and approvals of any municipal, state or federal entity or agency.

COMMITTEE AMENDMENT

2 All property, contracts, obligations and franchises of the
3 Brewer Water District must be conveyed subject to all debentures,
4 bonds, mortgages, liens and encumbrances thereon, all of which
5 must be assumed by the City of Brewer.

6
7 **Sec. 2. Contractual obligations not impaired.** In order to avoid
8 any unconstitutional impairment of existing contractual rights
9 that are valid and enforceable, the City of Brewer and, if
10 necessary, the Brewer Water District shall enter into any
11 contractual agreements necessary for the City of Brewer to
12 fulfill any such contractual obligations of the Brewer Water
13 District, including any existing financial obligations to the
14 Brewer Water District's bondholders.

15
16 **Sec. 3. Pledge of revenues.** In order to carry out the purposes
17 of this Act and notwithstanding the Maine Revised Statutes, Title
18 30-A, section 5772, the City of Brewer is authorized to issue its
19 notes or bonds in the form of either a general obligation pledge
20 or a revenue pledge, as the municipal officer may determine, to
21 replace or refinance any or all of the existing debts or
22 obligations of the Brewer Water District and is authorized to
23 deliver other instruments evidencing its assumption of the debts,
24 obligations and other liabilities of the Brewer Water District
25 without the need for any further action or approval from the
26 Brewer City Council or the voters of the City of Brewer. Any
27 notes or bonds or other instruments evidencing the city's
28 assumption of the debts, obligations and other liabilities of the
29 Brewer Water District may be issued in the amounts necessary to
30 pay the principal of, premium, if any, and interest on the debts,
31 obligations and other liabilities of the Brewer Water District
32 and may mature up to but not later than the stated maturity date
33 of the debts, obligations and other liabilities of the Brewer
34 Water District.

35
36 **Sec. 4. Corporate successor to Brewer Water District.** For
37 purposes of assuming all debts and obligations of the Brewer
38 Water District, the City of Brewer is the corporate successor to
39 the Brewer Water District upon the transfer of the assets and
40 obligations of the Brewer Water District to the City of Brewer
41 pursuant to this Act.

42
43 **Sec. 5. Public Utilities Commission review of contracts.** In order
44 to facilitate the efficient transfer of water service from the
45 Brewer Water District to the City of Brewer, the Public Utilities
46 Commission, at the request of the City of Brewer, shall review
47 any employment contract of the Brewer Water District entered into
48 within one year of the effective date of this Act. If the
49 commission finds after review that any such contract was an
50 unreasonable act of the Brewer Water District when executed,

it may enter an order providing that such contract is void and unenforceable by any party. Enforcement of any such contract under review by the commission must be tolled pending a final decision of the commission.

Sec. 6. Water service outside the City of Brewer. Upon the transfer of the assets and obligations of the Brewer Water District to the City of Brewer pursuant to this Act, the City of Brewer is authorized to provide water service to customers of the Brewer Water District who as of the effective date of this Act do not reside within the city. In order to serve these customers, the City of Brewer is authorized to take and hold, as for public uses, by purchase or otherwise, including by right of eminent domain, any land or interest in land considered necessary. In addition, the City of Brewer may petition the Public Utilities Commission to extend service to any additional individuals residing outside the city.

Sec. 7. Transfer of rights to acquire source of supply. Upon the transfer of the assets and obligations of the Brewer Water District to the City of Brewer pursuant to this Act, the City of Brewer may, for the purpose of providing water service to its customers, take, collect, store, flow, use, detain, distribute and convey water from Eaton Brook and its tributaries in the City of Brewer and the Town of Eddington and the Town of Holden, from Hatcase Pond in the Town of Dedham and the Town of Eddington and Mountain Pond in the Town of Dedham. The City of Brewer has the right to maintain, repair and replace any water pipes, pumps and associated fixtures and appurtenances necessary to deliver water from these sources of supply to customers receiving water service from the City of Brewer and is authorized to take and hold, as for public uses, by purchase or otherwise, including by right of eminent domain, any land or interest in land necessary for delivering water from these sources of supply and any rights-of-way or roadways to these sources of supply.

Sec. 8. General rule-making authority. Upon the transfer of the assets and obligations of the Brewer Water District to the City of Brewer pursuant to this Act, the City of Brewer may adopt rules not inconsistent with the general laws of the State to prevent the pollution and preserve the purity of the water of Hatcase Pond, and the City of Brewer may prescribe penalties for the violation of those rules. Those rules may specifically restrict or prohibit boating or fishing, in a manner not inconsistent with the general laws of the State, to prevent pollution and preserve the purity of the water. Those rules may restrict swimming to prevent pollution and preserve the purity of the water, but any such restriction may not be more stringent than the 3,000-foot ban contained in Private and Special Law 1945, chapter 146, section 14-B and must be consistent with

the general laws of the State. The rules have the same force and effect as municipal ordinances, and the District Court has jurisdiction over violations.

Sec. 9. Dissolution and termination of the Brewer Water District.

Upon completion of the transfer of assets and obligations of the Brewer Water District to the City of Brewer in accordance with this Act, the clerk of the City of Brewer shall file a certificate to this effect with the Secretary of State and the corporate existence of the Brewer Water District terminates. The certificate must be prepared by the clerk of the City of Brewer once all of the necessary assets and obligations have been transferred to the city from the Brewer Water District. The City of Brewer may commence and carry out municipal water service prior to completion of the transfer of assets and obligations of the Brewer Water District, if necessary to carry out the purposes of this Act, and, in such event, the Brewer Water District may continue to exist for the limited purpose of carrying out the requirements of this Act until such time as the transfer of assets and obligations is complete. After filing the certificate with the Secretary of State, the clerk of the City of Brewer shall submit legislation to repeal Private and Special Law 1909, chapter 265 and Private and Special Law 1945, chapter 146, as amended. The legislation may include any necessary amendments or additions to this Act to allow the City of Brewer to provide adequate water service in accordance with this Act.

Sec. 10. Referendum; effective date.

This Act takes effect 90 days after the adjournment of the Second Regular Session of the 120th Legislature only for the purpose of permitting its submission to the legal voters of the City of Brewer at a special election called and held for the purpose not later than December 31, 2002. The election must be called, advertised and conducted according to the law relating to municipal elections, except that the registrar of voters of the City of Brewer is not required to prepare nor the clerk to post a new list of voters. For the purpose of registration of voters, the registrar of voters in the City of Brewer must be in session the secular day next preceding the election. The subject matter of this Act must be reduced to the following question:

"Do you favor the dissolution of the Brewer Water District and the transfer of the district's assets to the City of Brewer?"

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

2 The results must be declared by the municipal officers of
the City of Brewer and due certification of the results filed by
the city clerk with the Secretary of State.

4
6 This Act takes effect for all purposes immediately upon
acceptance by a majority of the legal voters voting in the
election only if the total number of votes cast for and against
8 the acceptance of this Act equals or exceeds 15% of the total
vote for candidates for Governor cast in the City of Brewer at
10 the next preceding gubernatorial election, but failure of
approval by the necessary percentage of voters at any election
12 does not prohibit a subsequent election or elections to be held
for the purpose on or before December 31, 2002.'

14
16 Further amend the bill by inserting at the end before the
summary the following:

18
20 **FISCAL NOTE**

22 This bill authorizes the dissolution of the Brewer Water
District and the transfer of the district's assets and
obligations if approved by the voters, the majority of the City
24 Council of Brewer and a majority of the trustees of the water
district.

26
28 The Public Utilities Commission will incur some minor
additional costs to examine employment contracts of the
district. These costs can be absorbed within the commission's
30 existing budgeted resources.'

32
34 **SUMMARY**

36 This amendment replaces the bill. This amendment preserves
the essential elements of the bill but makes various
modifications and adds new provisions. This amendment:

38
40 1. Authorizes the City of Brewer to hold a referendum on
the dissolution of the Brewer Water District and the transfer of
the district's assets to the city;

42
44 2. Upon approval of the referendum, and approval of a
majority of the City Council of Brewer and a majority of the
trustees of the district, requires the transfer of the assets and
46 obligations of the water district to the city;

48
50 3. Upon the transfer of the assets and obligations of the
water district to the city, grants to the city authority now
possessed by the district to take water from water sources

COMMITTEE AMENDMENT "A" to S.P. 794, L.D. 2147

2 outside the city, to serve customers outside the city, to lay
pipe and exercise eminent domain outside the city and to adopt
4 rules to protect Hatcase Pond, which is located in the Town of
Dedham and the Town of Eddington; and

6 4. Requires the Public Utilities Commission, at the request
of the city, to examine employment contracts of the district and
8 authorize the commission to void a contract if the commission
finds the contract was an unreasonable act of the district.
10

The amendment also adds a fiscal note to the bill.