

MAINE STATE LEGISLATURE

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UTILITIES AND ENERGY

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STATE OF MAINE
SENATE
121ST LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 447, L.D. 1359, Bill, "An Act To Establish the Locally Governed Water District Act"

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

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

CHAPTER 62

LOCALLY GOVERNED WATER DISTRICTS

§6201. Short title

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

§6202. Definitions

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

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

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

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

4 4. Locally governed water district. "Locally governed
water district" means a consumer-owned water utility that has
6 been selected by the commission to participate in the pilot
project described in section 6203.

8 5. Water district; district. "Water district" or
10 "district" has the same meaning as set forth in section 6101,
subsection 3.

12 §6203. Local governance pilot project

14 1. Local governance pilot project. The commission shall
16 establish a local governance pilot project, referred to in this
chapter as "the pilot project," to determine whether economic
18 regulation of consumer-owned water utilities should be
transferred to the local level in a manner similar to other
20 quasi-municipal entities in the State. The commission shall
oversee the pilot project in accordance with this section.

22 2. Designation of participants. Within 6 months after the
24 effective date of this section, the commission shall designate no
more than 10% of the consumer-owned water utilities operating in
26 the State to participate in the pilot project. The participating
utilities must include at least one representative from each of
28 the following classes of utilities:

30 A. A large utility serving an area with a population of
100,000 or more people;

32 B. A medium-sized utility serving an area with a population
34 over 10,000 people but under 100,000 people; and

36 C. A small utility serving an area with a population of
38 10,000 or less people.

40 At least one of the participating utilities must be a municipal
water department.

42 3. Election by participating water utility. To qualify for
44 designation by the commission under subsection 2, the governing
body of the consumer-owned water utility must affirmatively vote
46 to participate in the pilot project. The election must be
certified by the secretary or clerk of the utility. Prior to
48 taking the vote, the utility shall hold a public hearing at which
the Public Advocate and any customers of the utility may testify
and may question the utility's officials regarding participation
50 in the pilot project. Public notice of the time, date, location

2 and purpose of the hearing must be made no less than 14 days in
4 advance of the hearing in a newspaper of general circulation in
6 the area encompassed by the utility. In addition, the utility
8 shall provide one notice to each of its customers containing the
10 same information in the public notice, which notice must be
12 distributed by mail or other similar means no less than 14 days
14 prior to the hearing. A copy of the notice must be provided
16 concurrently to the commission and the Public Advocate.

10 4. Municipal approval. If the governing body of the
12 consumer-owned water utility votes to participate in the pilot
14 project pursuant to subsection 3, then the municipal officers of
16 a municipality within the consumer-owned water utility's service
18 area shall vote on whether to approve the utility's election.
20 For utilities serving more than one municipality, the approval of
22 municipalities representing a majority of the population within
24 the utility's service area is required. Prior to requesting a
26 vote by any municipality under this subsection, the utility shall
28 provide to the clerk of the municipality a copy of the utility's
30 certified vote pursuant to subsection 3.

22 5. Term of pilot project. Once designated by the
24 commission as a locally governed water district, a utility is a
26 locally governed water district until June 1, 2007. At the
28 expiration of the pilot project, a locally governed water
30 district resumes business as a consumer-owned water utility. The
32 commission may discontinue the project prior to February 1, 2007
34 for one or more of the utilities if it determines, following
36 notice and public hearing, that local governance by the
38 participating utility is not in the public interest. Public
40 notice of the time, date, location and purpose of the hearing
42 must be made no less than 14 days in advance of the hearing in a
44 newspaper of general circulation in the area encompassed by the
46 utility.

36 6. Assessments. During the term of the pilot project,
38 locally governed water districts shall continue to pay any
40 required assessments according to the terms of section 116.

40 **§6204. Scope**

42 1. Chapter governs affairs. Notwithstanding any other
44 provision of this Title, except as specifically provided in
46 subsection 2, this chapter governs the affairs of locally
48 governed water districts.

48 2. Regulation of districts. To the extent applicable to
50 water utilities, the following laws apply to locally governed
water districts:

- 2 A. Section 706, subsections 3, 4, 5 and 6;
 - 4 B. Section 761, subsection 3;
 - 6 C. Section 2102;
 - 8 D. Any provision of this Title that authorizes a
10 consumer-owned water utility to enter into a lease and
12 leaseback transaction with respect to some or all of its
14 property, including any requirement that such transaction be
16 approved by the commission under section 1101;
 - 18 E. Section 2110, but only to the extent the governing body
20 of a locally governed water district consents to the
22 extension of service under section 2110;
 - 24 F. Sections 2303, 2307, 2308 and 2309;
 - 26 G. Chapter 25;
 - 28 H. Section 6103;
 - 30 I. Section 6109;
 - 32 J. Section 6110;
 - 34 K. Section 6111;
 - 36 L. Chapter 64, as applicable pursuant to the express terms
38 of that chapter or the express terms of the charter of the
40 locally governed water district, except that:
 - 42 (1) Section 6401, subsection 3 and section 6414 do not
44 apply; and
 - 46 (2) Notwithstanding section 6408, subsection 2 and
48 section 6409, the provisions of sections 6701, 6702,
50 6703 and 6704 do not apply;
 - 52 M. Section 6704-A;
 - 54 N. Section 6705; and
 - 56 O. Section 6706.
- 58 The application of these laws is not intended to permit the
60 commission to issue any order or condition regulating locally
62 governed water districts except as specifically permitted under
64 this chapter.

2 This section may not be interpreted to affect the scope or
3 application of any provision of law outside this Title. Although
4 this chapter provides for a reduced level of regulation by the
5 commission of locally governed water districts, the districts
6 remain water utilities for purposes of the applicable provisions
7 of this Title listed in subsection 2 and for all laws outside of
8 this Title. Any reference outside this Title to entities that
9 include water utilities, including, but not limited to,
10 references to public utilities, water districts and public
11 service corporations, includes locally governed water districts.

12 **§6205. Establishment of rates**

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

18 2. Provide revenue. The governing body of a locally
19 governed water district may establish rates or charges to provide
20 revenue to the district in order to carry out any lawful purpose
21 of the locally governed water district, including, but not
22 limited to:

24 A. Paying the current expenses for operating and
25 maintaining the water system and providing for normal
26 renewals and replacements;

28 B. Providing for the payment of the interest on the
29 indebtedness created or assumed by the district;

30 C. Creating a sinking fund for the extinguishment of term
31 indebtedness;

34 D. Providing annual principal payments on serial
35 indebtedness created or assumed by the district;

36 E. Providing for a contingency reserve fund to pay losses
37 of the district in the event of insufficient revenues;

40 F. Providing for a water supply protection fund to acquire
41 interests in land in order to protect the district's sources
42 of supply;

44 G. Providing for system developments related to an increase
45 in demand for service; and

46 H. Providing for capital improvements and expansions to the
47 system.

2 3. Process. Before the adoption of a new rate schedule
3 under this section, the governing body of a locally governed
4 water district shall hold a public hearing regarding the proposed
5 rate schedule. The governing body shall publish the proposed
6 rate schedule and notice of the hearing in a newspaper having a
7 general circulation in the district not less than 7 days prior to
8 the hearing. The district shall mail to each ratepayer a notice
9 of the public hearing and the proposed new rate schedule not less
10 than 14 days prior to the hearing. Once a proposed rate schedule
11 becomes final, a copy of the rate schedule must remain on file at
12 the main office of the district for public information.

13 4. Just and reasonable rates. The governing body of a
14 locally governed water district shall establish rates that are
15 just and reasonable and that do not give any undue or
16 unreasonable preference, advantage, prejudice or disadvantage to
17 a particular person. This subsection is not intended to limit
18 the ability of a locally governed water district to charge
19 different rates or enter into special contracts upon a
20 determination by the governing body that such a practice is in
21 the best interest of the district.

22 5. Fire protection charges; cost allocation. A locally
23 governed water district shall allocate as a percentage of gross
24 revenue its charges for water service for fire protection in
25 accordance with the standards, terms and conditions established
26 in any commission rules governing such allocation for
27 consumer-owned water utilities, or, if no such rules exist, based
28 on the results of a full allocation study of the district's water
29 system.

30 §6206. Eminent domain

31 A locally governed water district has eminent domain
32 authority as specified in its charter, except that any provision
33 in the charter that refers to a section of this Title that by the
34 terms of this chapter does not apply to the district does not
35 cause that section to apply.

36 §6207. Annual audit

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

43 §6208. Service standards; appeal

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1 1. Commission review of customer complaints. The
2 commission by rule shall establish procedures to review customer
3 complaints related to locally governed water districts concerning
4 denial or termination of service, terms and conditions of
5 service, billing, metering or collection for service and any
6 other matters the commission determines appropriate. The
7 procedures may be the same as those that apply to other water
8 districts. The commission's decisions under procedures adopted
9 pursuant to this subsection are subject to appeal in the same
10 manner as any other decision of the commission.

12 2. Right of appeal. Except as otherwise provided in the
13 charter of a locally governed water district and except in the
14 case of a complaint subject to review by the commission pursuant
15 to subsection 1, any person aggrieved by a final decision of the
16 district has a right to appeal to the Superior Court on questions
17 of law in the same manner as an appeal taken to the Law Court
18 from a judgment of the Superior Court in a civil action.

20 3. Other actions. A person may bring an action under the
21 Maine Rules of Civil Procedure, Rule 80B to review any action or
22 failure or refusal to act by a locally governed water district if
23 the action or failure or refusal to act is not subject to review
24 by the commission pursuant to subsection 1. Nothing in this
25 section may be interpreted to limit any rights of action or
26 appeal that may exist by operation of other law.

28 **§6209. Relation to private and special laws**

30 This chapter is not intended to limit or restrict the terms
31 of a private and special law or a valid charter of a locally
32 governed water district, except that a law or charter may not
33 prohibit or interfere with the ability of a consumer-owned water
34 utility to make an election under section 6203, subsection 3.

36 **§6210. Rules**

38 The commission has authority to adopt rules to carry out
39 this chapter. Rules adopted pursuant to this chapter are routine
40 technical rules as defined in Title 5, chapter 375, subchapter
41 2-A.

42 **Sec. 2. Interim report.** No later than October 31, 2006, the
43 Public Utilities Commission shall submit an interim report that
44 includes the commission's findings and recommendations concerning
45 the local governance pilot project established in this Act for
46 presentation to the joint standing committee of the Legislature
47 having jurisdiction over public utilities matters.'
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SUMMARY

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This amendment makes the following changes to the bill. It:

1. Changes certain references to "water districts" to "water utilities" to clarify that municipal water departments may participate in the local governance pilot project;
2. Requires participants in the pilot project to continue to pay Public Utilities Commission and Public Advocate assessments;
3. Provides that sale of land by a pilot project participant remains subject to Public Utilities Commission oversight;
4. Removes the provision of the bill authorizing a pilot project participant to adopt a local appeal process and replaces it with a directive that the Public Utilities Commission establish procedures to review customer complaints concerning denial or termination of service, terms and conditions of service, billing, metering or collection for service and any other matters the commission determines appropriate; and
5. Provides that a pilot project participant may take advantage of any authorization under existing law for a consumer-owned water utility to enter a lease and leaseback transaction, subject to Public Utilities Commission approval.

FISCAL NOTE REQUIRED
(See attached)

Approved: 05/07/03 *MAC*

**121st Maine Legislature
Office of Fiscal and Program Review**



LD 1359

An Act To Establish the Locally Governed Water District Act

LR 0927(02)

Fiscal Note for Bill as Amended by Committee Amendment "A" S-131

Committee: Utilities and Energy

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - Other Special Revenue Funds