

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)



121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1359

S.P. 447

In Senate, March 13, 2003

An Act To Establish the Locally Governed Water District Act

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by President DAGGETT of Kennebec.
Cosponsored by Representative HOTHAM of Dixfield, Representative SUSLOVIC of Portland
and Senators: BROMLEY of Cumberland, DAMON of Hancock, MAYO of Sagadahoc,
Representatives: BLISS of South Portland, BRUNO of Raymond, MARLEY of Portland,
MOODY of Manchester, USHER of Westbrook.

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 may be known and 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 been selected by the commission to participate in the pilot project described in section 6203.

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

38 **§6203. Local governance pilot project**

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

48 2. Designation of participants. Within 6 months after the effective date of this section, the commission shall designate no more than 10 percent of the consumer-owned water utilities

2 operating in the State to participate in the pilot project. The
3 participating utilities must include at last one representative
4 from each of the following classes of districts:

5 A. A large district serving an area with a population over
6 100,000 people;

7 B. A medium-sized district serving an area with a
8 population over 10,000 people but under 100,000 people; and

9 C. A small district serving an area with a population under
10 10,000 people.

11 At least one of the participating districts must be a municipal
12 water district.

13 **3. Election by participating water utility.** To qualify for
14 selection by the commission under subsection 1, the governing
15 body of the consumer-owned water utility must affirmatively vote
16 to participate in the pilot project. The election must be
17 certified by the secretary or clerk of the utility. Prior to
18 taking the vote, the utility shall hold a public hearing at which
19 the Public Advocate and any customers of the utility may testify
20 and may question the utility's officials regarding participation
21 in the pilot project. Public notice of the time, date, location
22 and purpose of the hearing must be made no less than 14 days in
23 advance of the hearing in a newspaper of general circulation in
24 the area encompassed by the utility. In addition, the utility
25 shall provide one notice to each of its customers containing the
26 same information in the public notice, which notice must be
27 distributed by mail or other similar means no less than 14 days
28 prior to the hearing. A copy of the notice must be provided
29 concurrently to the commission and the Public Advocate.

30 **4. Municipal approval.** If the governing body of the
31 consumer-owned water utility votes to participate in the pilot
32 project pursuant to subsection 3, then the municipal officers of
33 a municipality within the consumer-owned water utility's service
34 area shall vote on whether to approve the utility's election.
35 For utilities serving more than one municipality, the approval of
36 municipalities representing a majority of the population within
37 the utility's service area is required. Prior to requesting a
38 vote by any municipality under this subsection, the utility shall
39 provide to the clerk of the municipality a copy of the utility's
40 certified vote pursuant to subsection 2.

41 **5. Term of pilot project.** Once designated by the
42 commission as a local governed water district, a utility is a
43 locally governed water district until June 1, 2007. At the
44 expiration of the pilot project, a locally governed water
45 district shall be a municipal water district.

2 district resumes business as a consumer-owned water utility. The
3 commission may discontinue the project prior to February 1, 2007
4 for one or more of the utilities if it determines, following
5 notice and public hearing, that local governance by the
6 participating utility is not in the public interest. Public
7 notice of the time, date, location and purpose of the hearing
8 must be made no less than 14 days in advance of the hearing in a
9 newspaper of general circulation in the area encompassed by the
10 utility.

11 **§6204. Scope**

12
13 1. Chapter governs affairs. Notwithstanding any other
14 provision of this Title, except as specifically provided in
15 subsection 2, this chapter governs the affairs of locally
16 governed water districts.

17
18 2. Regulation of districts. To the extent applicable to
19 water utilities, the following laws apply to locally governed
20 water districts:

21
22 A. Section 706, subsections 3, 4, 5 and 6;

23
24 B. Section 761, subsection 3;

25
26 C. Section 2102;

27
28 D. Section 2110, but only to the extent the governing body
29 of a locally governed water district consents to the
30 extension of service under section 2110;

31
32 E. Sections 2303, 2307, 2308 and 2309;

33
34 F. Chapter 25;

35
36 G. Section 6103;

37
38 H. Section 6110;

39
40 I. Section 6111;

41
42 J. Chapter 64, as applicable pursuant to the express terms
43 of that chapter or the express terms of the charter of the
44 locally governed water district, except that:

45
46 (1) Section 6401, subsection 3 and section 6414 do not
47 apply; and
48

2 (2) Notwithstanding section 6408, subsection 2 and
3 section 6409, the provisions of sections 6701, 6702,
4 6703 and 6704 do not apply;

5 K. Section 6704-A;

6 L. Section 6705; and

7 M. Section 6706.

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

12 This section may not be interpreted to affect the scope or
13 application of any provision of law outside this Title. Although
14 this chapter provides for a reduced level of regulation by the
15 commission of locally governed water districts, the districts
16 remain water utilities for purposes of the applicable provisions
17 of this Title listed in subsection 2 and for all laws outside of
18 this Title. Any reference outside this Title to entities that
19 include water utilities, including, but not limited to,
20 references to public utilities, water districts and public
21 service corporations, includes locally governed water districts.

22 **§6205. Establishment of rates**

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

26 **2. Provide revenue.** The governing body of a locally
27 governed water district may establish rates or charges to provide
28 revenue to the district in order to carry out any lawful purpose
29 of the locally governed water district, including, but not
30 limited to:

31 A. Paying the current expenses for operating and
32 maintaining the water system and to provide for normal
33 renewals and replacements;

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

36 C. Creating a sinking fund for the extinguishment of term
37 indebtedness;

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

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

6 F. Providing for a water supply protection fund to acquire
8 interests in land in order to protect the district's sources
10 of supply;

12 G. Providing for system developments related to an increase
14 in demand for service; and

16 H. Providing for capital improvements and expansions to the
18 system.

20 **3. Process.** Before the adoption of a new rate schedule
22 under this section, the governing body of a locally governed
24 water district shall hold a public hearing regarding the proposed
26 rate schedule. The governing body shall publish the proposed
28 rate schedule and notice of the hearing in a newspaper having a
30 general circulation in the district not less than 7 days prior to
32 the hearing. The district shall mail to each ratepayer a notice
34 of the public hearing and the proposed new rate schedule not less
36 than 14 days prior to the hearing. Once a proposed rate schedule
38 becomes final, a copy of the rate schedule must remain on file at
40 the main office of the district for public information.

42 **4. Just and reasonable rates.** The governing body of a
44 locally governed water district shall establish rates that are
46 just and reasonable and that do not give any undue or
48 unreasonable preference, advantage, prejudice or disadvantage to
50 a particular person. This subsection is not intended to limit
the ability of a locally governed water district to charge
different rates or enter into special contracts upon a
determination by the governing body that such a practice is in
the best interest of the district.

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

§6206. Eminent domain

A locally governed water district has eminent domain
authority as specified in its charter, except that any provision
in the charter that refers to a section of this Title that by the

2 terms of this chapter does not apply to the district does not
3 cause that section to apply.

4 **§6207. Annual audit**

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

12 **§6208. Service standards; appeal**

14
15 **1. Local option; appeal.** The governing body of a locally
16 governed water district may elect to create a process for appeals
17 of its decisions to another person, board or entity, including an
18 ombudsman or appeals board appointed by the governing body, that
19 may lawfully review and decide such appeals. The governing body
20 may provide for appeals of any action of the governing body,
21 including, but not limited to, actions regarding matters relating
22 to denial or termination of service; terms and conditions of
23 service; and billing, metering and collection for service. The
24 governing body shall establish procedures concerning the manner
25 in which such appeals may be taken.

26
27 **2. Final action.** If the governing body establishes an
28 appeal process under subsection 1, a decision of the governing
29 body that has been appealed does not become a final decision of
30 the district for purposes of subsection 3 until a decision on
31 that appeal has been made. In all other cases, a decision of
32 the governing body is a final decision of the district for
33 purposes of subsection 3.

34
35 **3. Right of appeal.** Except as otherwise provided in the
36 charter of a locally governed water district, any person
37 aggrieved by a final decision of the district has a right to
38 appeal to the Superior Court on questions of law in the same
39 manner as an appeal taken to the Law Court from a judgment of the
40 Superior Court in a civil action.

41
42 **4. Other actions.** A person may bring an action under the
43 Maine Rules of Civil Procedure, Rule 80B to review any action or
44 failure or refusal to act by a locally governed water district.
45 Nothing in this section may be interpreted to limit any rights of
46 action or appeal that may exist by operation of other law.

47 **§6209. Relation to private and special laws**

