

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 1176

H.P. 815

House of Representatives, March 25, 2009

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### An Act To Revise the Charter of the Portland Water District

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

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative HASKELL of Portland.  
Cosponsored by Senator BARTLETT of Cumberland and  
Representatives: BRYANT of Windham, MORRISON of South Portland, RUSSELL of  
Portland, Senator: ALFOND of Cumberland.

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

2 **Sec. 1. P&SL 1907, c. 433, §9, first ¶,** as repealed and replaced by P&SL 1975,  
3 c. 84, is amended to read:

4 **Sec. 9. Authorized to borrow money to issue bonds and notes.** The district,  
5 through its trustees and without vote of its inhabitants, is authorized to issue from time to  
6 time bonds or notes of the district ~~to pay for the costs of capital outlay incurred by the~~  
7 ~~district~~ in connection with accomplishing any of the purposes set forth in this Act,  
8 including to finance any necessary expenses and liabilities incurred in acquiring  
9 properties; renovating properties; laying pipes, aqueducts, conduits, drains, interceptor  
10 lines, trunk sewers, force mains, and outfalls; construction of treatment plants,  
11 laboratories and other water and ~~waste water~~ wastewater and sewer facilities; and ~~for~~  
12 making renewals, additions, extensions and improvements, to finance any of the regional  
13 costs as defined in section 12, to provide funds to assist any participating municipality  
14 with respect to its financing costs assessed pursuant to section 13, subsection B and to  
15 fund the establishment of a reasonable reserve for future payments of debt service, ~~and~~  
16 ~~for interest on bonds or notes during the period of construction of items of capital outlay~~  
17 ~~to be paid from the proceeds of such bonds or notes and for a period not exceeding one~~  
18 ~~year thereafter. For the purpose of the preceding sentence, a reasonable reserve for future~~  
19 ~~payment of debt services shall be deemed to mean a reserve, the amount of which shall~~  
20 ~~not in the case of an issue of serial bonds or notes exceed the largest amount of principal~~  
21 ~~and interest payable in any year except the last in which that issue of bonds or notes is~~  
22 ~~outstanding and in the case of any other issue of bonds or notes exceed the lesser of the~~  
23 ~~largest amount of any mandatory sinking fund payment payable on account of the~~  
24 ~~particular issue of bonds or notes in any year except the last in which that issue of bonds~~  
25 ~~or notes is outstanding, or 4% of the original principal amount of that issue plus in each~~  
26 ~~case the largest amount of interest payable on that issue of bonds or notes in any such~~  
27 ~~year.~~

28 **Sec. 2. P&SL 1907, c. 433, §9, 2nd ¶,** as enacted by P&SL 1975, c. 84, is  
29 amended to read:

30 ~~Said~~ The bonds or notes shall must be issued in such an amount or amounts as the district,  
31 acting through its trustees and without vote of its inhabitants, may determine. ~~Said~~ The  
32 bonds or notes may be issued to mature serially, in annual installments of principal, ~~no~~  
33 ~~one of which shall exceed by more than 25% any earlier installment and which need not~~  
34 ~~be equal,~~ the first of which shall must be payable not later than 3 years from the date of  
35 ~~such~~ the bonds or notes and the last of which shall must be payable not later than 40 years  
36 from ~~said~~ that date. ~~Said~~ The bonds or notes may also be issued for a term of years not  
37 exceeding 40 years or in a combination to mature serially and for a term of years not  
38 exceeding 40 years, ~~all~~ as the trustees shall determine, and in the case of such term bonds,  
39 or combination of term bonds and serial bonds, the bonds in combination mature or are  
40 subject to an annual mandatory sinking fund redemption starting no later than 3 years  
41 after the bonds' date of issuance. ~~Said~~ The bonds may be callable with or without  
42 premium and shall must contain such terms and conditions, and be sold in such manner,  
43 at public or private sale, with or without provisions for prepayment in advance of  
44 maturity, at par, at a discount or at a premium, ~~all~~ as the trustees shall determine. The

1 trustees may determine or may authorize the treasurer or a committee of 2 or more  
2 trustees to determine the selling price and rate or rates of interest to be paid on bonds or  
3 notes and, if specifically authorized by the trustees, the rate of interest may vary.

4 **Sec. 3. P&SL 1907, c. 433, §9, 3rd ¶**, as amended by P&SL 1977, c. 48, §2, is  
5 further amended to read:

6 If the trustees vote to issue bonds or notes, the trustees may authorize the issuance, in the  
7 name of the district, of temporary notes for a period not to exceed 5 years in anticipation  
8 of the money to be received from the sale of such bonds or notes ~~but in no event later~~  
9 ~~than one year after completion of construction of items of capital outlay to be paid from~~  
10 ~~the proceeds of such temporary notes.~~ The time within which such the temporary notes  
11 shall must be payable need not be included in determining the period for which bonds or  
12 notes may be issued.

13 **Sec. 4. P&SL 1907, c. 433, §9, 4th ¶**, as enacted by P&SL 1977, c. 48, §3, is  
14 amended to read:

15 For the purpose of paying preliminary expenses with respect to the investigation and  
16 planning for a ~~waste water~~ wastewater and sewage system or the improvement of an  
17 existing system for the benefit of a participating municipality not served or to be served  
18 by an existing system of the district, including without limitation expenses related to or  
19 incurred in connection with engineering; design, acquisition of ~~rights-of-way~~ rights of  
20 way, legal fees or financing, the district through its trustees and without vote of its  
21 inhabitants is authorized to borrow by the issuance of temporary notes, including notes  
22 authorized under section 10, ~~2nd paragraph~~, for a period of not more than one year and to  
23 renew such the notes. Notes authorized under the authority of this paragraph shall must  
24 be paid from the proceeds of government grants, funded by bonds or notes issued to  
25 finance the particular system or improvement if and when the ~~same~~ bonds or notes have  
26 been authorized or paid from sums apportioned as financing costs pursuant to section 13  
27 on the municipality or municipalities for whose benefit the proposed system or  
28 improvement was intended. Any borrowing under this paragraph shall must be paid or  
29 funded as herein provided ~~not later than 5 years after the date of issuance of the original~~  
30 ~~note or notes evidencing such borrowing in this Act.~~

31 **Sec. 5. P&SL 1907, c. 433, §9, 7th ¶**, as enacted by P&SL 1975, c. 84, is  
32 amended to read:

33 The district may refund from time to time in one or in separate series its bonds, notes or  
34 other evidences of indebtedness ~~provided, however, no refunding shall be earlier than 6~~  
35 ~~years before the maturity or earliest date of redemption of the bonds or notes to be~~  
36 ~~refunded and provided further that pending the payment of the refunded bonds or notes,~~  
37 ~~the proceeds of the refunding bonds or notes shall be held in trust and invested only in~~  
38 ~~securities issued or guaranteed by the United States of America which mature not later~~  
39 ~~than the maturity or redemption date of the bonds or notes to be refunded.~~ All water  
40 bonds shall must have inscribed upon their face "Portland Water District" and "Water  
41 Bond" and shall must be executed as the trustees shall determine. All sewer bonds shall  
42 must have inscribed upon their face "Portland Water District" and "Sewer Bond" and  
43 shall must be executed as the trustees shall determine. All bonds issued in the exercise of

1 the authorization of section 2, paragraph C, ~~shall~~ must have inscribed upon their face  
2 "Portland Water District" and "Purification" and ~~shall~~ must be executed as the trustees  
3 ~~shall~~ determine.

4 **Sec. 6. P&SL 1907, c. 433, §9, last ¶**, as enacted by P&SL 1975, c. 84, is  
5 amended to read:

6 All ~~such~~ bonds, notes and evidences of indebtedness ~~so~~ issued by the district ~~shall be~~  
7 pursuant to this section are legal obligations of the district, which is declared to be a  
8 quasi-municipal corporation within the meaning of the Maine Revised Statutes, Title 30  
9 30-A, section 5053 5701, and all provisions of ~~said section shall be~~ 5701 are applicable  
10 ~~thereto~~. All bonds, notes and evidences of indebtedness issued by ~~said the~~ district  
11 pursuant to this Act ~~shall be~~ are legal investments for savings banks in the State of Maine,  
12 and ~~shall be~~ are exempt from Maine income tax.

13 **Sec. 7. P&SL 1907, c. 433, §11, sub-§C**, as enacted by P&SL 1975, c. 84, is  
14 amended to read:

15 C. To provide each year a sum equal to not less than ~~one nor more than 5%~~ 1% of  
16 the entire indebtedness created or assumed by the district, other than indebtedness  
17 that matures serially or that has mandatory sinking fund payments, for the water  
18 system, ~~which~~. That sum shall must be turned into a sinking fund and there kept to  
19 provide for the extinguishment of ~~such the~~ indebtedness, or, if serial bonds ~~or~~ notes  
20 or term bonds with mandatory sinking fund payments are issued for water purposes,  
21 to pay the principal of ~~such the~~ bonds ~~or~~ notes or term bonds payable in ~~such that~~  
22 year. The money set aside for the sinking fund ~~shall~~ must be devoted to the  
23 retirement of the obligations of the district or invested in such securities as savings  
24 banks are allowed to hold.

25 **Sec. 8. P&SL 1907, c. 433, §12, sub-§B, ¶(4)**, as enacted by P&SL 1977, c. 48,  
26 §5, is amended to read:

27 (4) Sinking fund payments; namely, a sum equal to not less than 2% ~~nor more~~  
28 ~~than 5%~~ of:

29 (a) That portion of the final installment of principal of any issue of serial  
30 sewer bonds or notes or term sewer bonds or notes, with mandatory sinking  
31 fund payments, created or assumed by the district in connection with its  
32 ~~waste water~~ wastewater and sewage system, ~~which that~~ for any such issue  
33 exceeds the average annual payment of principal paid or payable ~~thereon~~ in  
34 each year ~~except~~ excluding the last installment of principal from the  
35 calculation of the average annual payment; and

36 (b) The amount of principal of any term bonds issued without mandatory  
37 sinking fund payments assumed or issued by the district for ~~said waste water~~  
38 the wastewater and sewage system, which ~~shall~~ must be turned into a  
39 separate sinking fund and there kept together with any earnings on ~~said the~~  
40 sinking fund to provide for the extinguishment of that portion of said  
41 indebtedness.

1           The money set aside for the sinking fund shall must be devoted to the retirement  
2           of the obligations of the district resulting from its ~~waste water~~ wastewater and  
3           sewage system, and meanwhile may be invested in such securities as savings  
4           banks in the State of Maine are now or hereafter allowed to hold.

5           **Sec. 9. P&SL 1907, c. 433, §12, sub-§D**, as enacted by P&SL 1977, c. 48, §5, is  
6           amended to read:

7           D. The words "assess or assessment" as used in this Act shall mean, except when the  
8           context otherwise requires: The amount apportioned or allocated to a participating  
9           municipality ~~which that~~ has been certified by the trustees as hereinbefore provided or  
10          with respect to which a participating municipality has otherwise been notified  
11          hereunder that such amount is to be paid to the district.

12          If a surplus exists at the end of a calendar year, ~~it shall~~ the surplus must be transferred  
13          to a sewer surplus account, which ~~at no time shall~~ may not exceed 3%, unless  
14          ~~otherwise approved by the trustees~~, of the net book value of the assets of the district  
15          attributable to the ~~waste water~~ wastewater and sewage system. The trustees may add  
16          to the sinking fund so much of any excess over ~~said~~ the 3% as they determine  
17          advisable, and any remainder shall must be credited against sums otherwise to be  
18          assessed upon the participating municipalities on an equitable basis.

19          **Sec. 10. P&SL 1907, c. 433, §13, sub-§B**, as amended by P&SL 1977, c. 48,  
20          §§6 and 7, is repealed and the following enacted in its place:

21          B. Apportionment of financing costs:

22          (1) All financing costs of facilities used or to be used by only one of the  
23          participating municipalities must be apportioned to such municipality.

24          (2) All financing costs of any facility designed to be jointly used must be  
25          apportioned by the trustees between or among the participating municipalities for  
26          whose benefit the facilities were designed in the ratio of the percentage of use  
27          capability of the facility attributed to each participating municipality in the  
28          original design of the facility. If in the judgment of the trustees the actual use of  
29          this facility by one or more of the participating municipalities will not occur  
30          within 24 months of the actual use of the first participating municipality,  
31          financing costs must be apportioned under this paragraph to only those  
32          participating municipalities whose use or joint use of the facilities is expected to  
33          take place within the 24-month period. Except as otherwise provided in this  
34          paragraph, when a participating municipality makes first use of a facility that had  
35          previously been used by one or more participating municipalities, that  
36          participating municipality must also be assessed for its fair share of the financing  
37          cost of the jointly used facility that had been previously assessed up to the time of  
38          the first use of the facility by the joining municipality. The additional share must  
39          be determined by the trustees on the same formula set forth in this paragraph.  
40          The trustees shall apportion the additional share and, in addition, if the trustees  
41          determine that it is appropriate and reasonable, an annual interest component at a  
42          rate to be determined by the trustees to the joining municipality over a period of  
43          years equal to the term for which the original bonded indebtedness was issued.

1 The trustees shall make corresponding annual adjustments in the assessments of  
2 the participating municipalities previously using the facility by crediting the  
3 amount of the additional share to the participating municipalities in proportion to  
4 their respective total payments to the district on account of the financing costs of  
5 the facility made by the participating municipalities up to the time of first use of  
6 the facility by the joining municipality.

7 Any participating municipality has the right to prepay any portion of the original  
8 bonded indebtedness allocable to the participating municipality.

9 **Sec. 11. P&SL 1907, c. 433, §14,** as amended by P&SL 1977, c. 48, §8, is  
10 repealed and the following enacted in its place:

11 **Sec. 14. Water use and records; billing agency.** The district at cost, shall  
12 provide to any participating municipality upon written request, sufficient water use  
13 records to enable the municipality to determine sewer rates and charges and for other  
14 municipal purposes.

15 A participating municipality that has established a schedule of rates, fees and charges for  
16 the services furnished or to be furnished by its sewer system any of which are computed  
17 at least in part according to the amount of water consumed may, by resolution of its  
18 legislative body, request the district to collect the user charges on its behalf. Upon receipt  
19 of a request, the district shall enter into a contract with the participating municipality that  
20 provides for the following:

21 A. The date when collections under the contract period must begin, which may not  
22 be earlier than July 1st nor later than December 31st next succeeding the year in  
23 which the request is made, and with respect to the manner in which the contract may  
24 be amended and terminated;

25 B. That the participating municipality shall during the period of the contract keep in  
26 force a schedule of rates, fees and charges sufficient to produce each year funds  
27 required to pay the costs apportioned or to be apportioned to the participating  
28 municipality for that year pursuant to sections 12 and 13;

29 C. That to the extent the district does not maintain such records in the ordinary  
30 course of its business, the participating municipality shall provide the district with a  
31 list of the users of its sewer system responsible for payment of the rates, fees and  
32 charges and keep the same up to date;

33 D. That the district shall on behalf of the participating municipality collect from the  
34 users the amounts due from time to time according to the schedule of rates, fees and  
35 charges and keep the sums collected in a separate account;

36 E. That the district shall keep its accounts and records showing the sums collected,  
37 payments made from the collected sums and charges remaining to be collected up to  
38 date at all times and shall provide for an audit of the accounts and records at least  
39 annually;

40 F. That the district may deduct at such times as stated in the contract, which must be  
41 at least monthly, that portion of sums collected that represent the amounts due to the  
42 district from the participating municipality pursuant to sections 12 and 13 and pay the

1 balance of the funds to the participating municipality, and that to the extent the  
2 portions retained by the district fail to equal the portion of district costs then due from  
3 the participating municipality, the deficit must be paid to the district by the  
4 participating municipality;

5 G. For a method of resolving disagreements concerning operations under the  
6 contract, which may be by arbitration, except that the obligations of each of the  
7 parties to the contract with respect to the payment of money to the other must be  
8 unconditional and that neither party may withhold payment to the other of funds due  
9 under the contract during the pendency of any dispute; and

10 H. For such other related matters as determined appropriate by the parties to the  
11 contract.

12 A participating municipality with respect to fixing a schedule of rates, fees and other  
13 charges for the services furnished or to be furnished by or through its sewer system has  
14 such authority as may be granted by its charter, if any, by any private and special laws  
15 and by the Maine Revised Statutes, including, without limitation, Title 30-A, chapters  
16 161 and 213, to the extent applicable. Notwithstanding any provision of law to the  
17 contrary, a participating municipality may by vote of its legislative body authorize the  
18 exercise by the district on behalf of the participating municipality of any or all of the  
19 powers granted to the participating municipality to collect such rates and charges from  
20 the users of the sewer system of the participating municipality as provided in this Act,  
21 however, nothing in this section may be construed to permit the transfer by a participating  
22 municipality to the district of the right to make or collect assessments authorized by Title  
23 30-A, chapter 161, subchapter 1, or any private and special law authorizing a  
24 participating municipality to make or collect such assessments.

25 In the event the user of the sewer system of the district or municipality fails within  
26 reasonable time to pay the statement of rates, fees or charges submitted by the district to  
27 the user, the district has the power to disconnect the water service of the user,  
28 notwithstanding any rule or statute to the contrary, as long as the action by the district is  
29 accomplished in accordance with the procedures set forth in applicable statutes and rules  
30 for the disconnection of utility services.

31 Nothing in the contract authorized under this section may affect in any way the  
32 unconditional obligation of the participating municipality to pay its share of the district's  
33 costs apportioned and certified as provided in section 13.

34 **Sec. 12. P&SL 1907, c. 433, §18, 2nd ¶,** as amended by P&SL 2001, c. 56, §2,  
35 is further amended to read:

36 Trustees are elected for a term of 5 years at elections as described in this paragraph.  
37 ~~Trustees elected from the City of Portland are elected at the City of Portland's regular~~  
38 ~~municipal elections in November.~~ Trustees elected from the City of Portland, the City of  
39 South Portland, the Town of Cape Elizabeth, the City of Westbrook, the Town of Gorham  
40 and, the Town of Scarborough, the Town of Windham and the Town of Raymond are  
41 elected at elections on the first Tuesday after the first Monday of November. The trustee  
42 elected from the Town of Cumberland and the Town of Falmouth is elected on a mutually  
43 coincident municipal election date in the Town of Cumberland and the Town of Falmouth  
44 in June, but, if there is not a mutually coincident municipal election date, then on the 2nd



1 Tuesday of June. ~~The trustee elected from the Town of Raymond and the Town of~~  
2 ~~Windham is elected on the date of municipal elections in the Town of Windham in June.~~  
3 ~~The Town of Raymond shall hold a special town meeting to elect the trustee on the same~~  
4 ~~day that the Town of Windham holds its election to elect the trustee.~~ Costs for any  
5 trustee election held concurrently with a federal, state or municipal election are divided  
6 between the municipality and the district. When there is a division of costs, the district is  
7 responsible for the costs proportional to the total number of offices and referenda issues  
8 voted upon at the election. If an election for a trustee results in a tie vote, the other  
9 trustees shall select the person who becomes a trustee.

10 **Sec. 13. P&SL 1907, c. 433, §18, 6th ¶**, as amended by P&SL 1979, c. 26, §2, is  
11 further amended to read:

12 The municipal clerks shall present the returns of their respective municipalities to the  
13 clerk of the district not later than 5 days after said the elections. The trustees shall at the  
14 annual first regular business meeting after the election determine and declare the  
15 successful candidates of each area.

16 **Sec. 14. P&SL 1907, c. 433, §26** is enacted to read:

17 **Sec. 26. Provision of administrative services to nonparticipating**  
18 **municipalities.** The district is authorized to enter into contracts with nonparticipating  
19 municipalities, governmental entities or water and sewer utilities for the purposes of  
20 providing administrative services. Services may include but are not limited to billing  
21 services, accounting services and other administrative services related to water and sewer  
22 operations.

## 23 SUMMARY

24 This bill revises the charter of the Portland Water District.