

# MAINE STATE LEGISLATURE

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# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

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**Legislative Document**

**No. 1231**

S.P. 436

In Senate, April 7, 2015

### **An Act To Create the Southwest Harbor Water and Sewer District**

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

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator LANGLEY of Hancock.

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

2       **Sec. 1. Territorial limits and corporate name and purposes.** The  
3 inhabitants and territory of the Town of Southwest Harbor constitute a quasi-municipal  
4 corporation under the name of the Southwest Harbor Water and Sewer District, referred  
5 to in this Act as "the district," for the purpose of supplying the inhabitants of the district  
6 with potable water for domestic, commercial, sanitary and municipal purposes and for the  
7 purpose of providing in the district a system of public sewerage and drainage for the  
8 comfort, convenience and health of the inhabitants of the district.

9       **Sec. 2. Powers of the Southwest Harbor Water and Sewer District.** The  
10 district is authorized to take, hold, divert, use and distribute water from any source within  
11 the territory of the district, including but not limited to Long Pond in the Town of  
12 Southwest Harbor. The district is also authorized, for the purposes of its incorporation, to  
13 locate, construct and maintain pipes, dams, wells, reservoirs, pumping stations, treatment  
14 plants and other necessary structures and equipment and to do all things necessary to  
15 furnish water, sewerage and drainage for those purposes and for the public health, safety,  
16 comfort and convenience of the inhabitants of the district.

17       **Sec. 3. Authorized to lay mains, pipes, conduits and other water**  
18 **conveyances through public ways and across private lands.** The district is  
19 authorized to lay, maintain, repair and replace pipes, mains and other fixtures and  
20 appurtenances in, along and through the streets, roads, ways, highways, bridges, ponds  
21 and watercourses and in, along and through private lands of any person or corporation  
22 within the district. When the district lays, maintains, repairs or replaces pipes, mains and  
23 any fixtures or appurtenances in any street, road, way or highway, it shall do so with as  
24 little obstruction as practicable to public travel and shall at its own expense and without  
25 unnecessary delay replace in proper condition the earth and pavement removed by it.

26       The district is authorized to lay, maintain, repair and replace pipes, mains and other  
27 fixtures and appurtenances to or into any drain or sewer now or hereafter built that  
28 empties into watercourses or treatment works, the discharge to be at such point or points  
29 consistent with the requirements of public health and as convenient and reasonable for the  
30 district and consistent with the requirements of applicable federal, state and local laws  
31 and the flow of existing watercourses.

32       **1. Sewer extensions.** Sewer extensions are governed by the Maine Revised Statutes,  
33 Title 38, section 1042.

34       **2. Coordination with municipal planning.** The trustees of the district shall  
35 cooperate with municipal officials in the development of municipal growth management  
36 and other land use plans and ordinances.

37       Municipal officers shall cooperate with the trustees of the district during the consideration  
38 of development applications that may affect the operations of the sewer district.

39       **3. Abutting owners have right to enter.** The district shall permit the owners of  
40 premises abutting upon its lines of pipes and conduits to enter the same with all proper  
41 sewerage and to connect the same for potable water, if the owners of such premises

1 conform to the rules and regulations of the district and pay the established rates, tolls,  
2 rents and other lawful charges.

3 **4. Inspection of sewers.** The officers or agents of the district have free access to all  
4 premises served by the district's sewers, at all reasonable hours, for inspection of  
5 plumbing and sewage fixtures, to ascertain the quality and quantity of sewage discharged  
6 and the manner of discharge and to enforce the provisions of this Act and the rules  
7 prescribed by the trustees of the district.

8 **5. Injury to the property of the district.** A person may not place, discharge or  
9 leave any offensive or injurious matter or material on or in the conduits, catch basins or  
10 receptacles of the district contrary to its regulations or knowingly injure any conduit,  
11 pipe, reservoir, flush tank, catch basin, manhole, outlet, engine, pump or other property  
12 held, owned or used by the district.

13 A person who violates this subsection is liable to pay twice the amount of the damages to  
14 the district to be recovered in any proper action and is subject to a civil penalty not to  
15 exceed \$2,500 for each violation, payable to the district. The civil penalty is recoverable  
16 in a civil action.

17 **6. Required connection.** Upon receiving a request from the district to connect a  
18 building located in the territory of the district that is accessible to a sewer or drain of the  
19 district and that is intended for human habitation or occupancy or that has facilities for  
20 discharge or disposal of waste water or commercial or industrial waste, the owner of that  
21 building shall arrange to have the building connected through a sanitary sewer or  
22 drainage system to the district's accessible sewer or drain in the most direct manner  
23 possible. If feasible, each building requiring connection must have its own separate  
24 connection. The connection must be completed within 90 days of the receipt by the  
25 owner of the request, or within any extended period requested by the owner and agreed to  
26 by the trustees. For purposes of this subsection, "owner" includes the owners of record or  
27 any person against whom property taxes on the building are assessed.

28 A person who receives a notice in accordance with this subsection to connect to a  
29 building and fails to connect to the building in accordance with this subsection is subject  
30 to a civil penalty not to exceed \$2,500, payable to the district. This penalty is recoverable  
31 in a civil action.

32 **7. Connections not required.** An existing building that is already served by a  
33 private sewer system is not required to connect with a sewer or drain of the district as  
34 long as the private sewer or drainage system functions in a satisfactory and sanitary  
35 manner and does not violate applicable law or ordinance applicable to the connection  
36 with a sewer or drain of the district or any applicable requirements of the state plumbing  
37 code, as determined by the municipal plumbing inspector or the municipal plumbing  
38 inspector's alternate, or, in the event that both are trustees or employees of the sewer  
39 district, the Department of Health and Human Services, Division of Health Engineering.

40 **8. Permissive connection.** A person not otherwise required to connect a private  
41 sewer into a sewer of the district may connect to the district's sewer if that person obtains  
42 a permit from the district and pays any charges required by this section. The clerk of the  
43 district shall record the permit in the records of the district.

1 A. If construction of the district's sewer is complete at the proposed point of entry of  
2 the private sewer and the district has established an entrance charge for entry at that  
3 location, the person seeking to connect the private sewer at that location shall pay the  
4 entrance charge before the connection is undertaken.

5 B. If the district's sewer is under construction and not completed at the point of the  
6 proposed entry of the private sewer, the person seeking to connect the private sewer  
7 at that location shall connect to the sewer upon completion after the entrance fee is  
8 paid.

9 **Sec. 4. Authority to acquire property; right of eminent domain**  
10 **conferred; procedures in exercising eminent domain.** The district is authorized  
11 and empowered to acquire and hold real and personal property necessary or convenient  
12 for its purposes. The district is granted the right of eminent domain as specified in the  
13 Maine Revised Statutes, Title 38, section 1040 with respect to its sewer functions and is  
14 granted the right of eminent domain as specified in Title 35-A, section 6408 with respect  
15 to its water functions.

16 **1. Procedures as to the exercise of right of eminent domain for sewer.** With  
17 respect to the sewer functions of the district, the procedures for the exercise of eminent  
18 domain must conform to Title 38, section 1040.

19 **2. Procedures as to the exercise of right of eminent domain for water.** With  
20 respect to the water functions of the district, the procedures for the exercise of eminent  
21 domain must conform to Title 35-A, section 6409.

22 **Sec. 5. Crossing property of other public utilities and railroad**  
23 **corporations.** If the district, in constructing, maintaining or replacing any of its  
24 facilities, must cross property of another public utility or railroad corporation, the district  
25 shall obtain the consent of the other public utility or railroad corporation and undertake  
26 the work in accordance with conditions established by agreement. If, within 30 days after  
27 requesting consent, the district fails to reach an agreement with the public utility or  
28 railroad corporation, the district may petition as follows.

29 **1. Public utility.** In the case of crossing property of a public utility, the district may  
30 petition the Public Utilities Commission to determine the time, place and manner of  
31 crossing. All work done on the property of the public utility must be done under the  
32 supervision and to the satisfaction of the public utility or as prescribed by the Public  
33 Utilities Commission.

34 **2. Railroad corporation.** In the case of crossing the property of a railroad  
35 corporation, the district may petition the Department of Transportation to determine the  
36 time, place and manner of crossing. All work done on the property of the railroad  
37 corporation must be done under the supervision and to the satisfaction of the railroad  
38 corporation or as prescribed by the Department of Transportation.

39 **Sec. 6. Trustees, appointment; tenure of office; vacancies; first meeting**  
40 **and organization of board; annual report; transition provisions.** All the affairs  
41 of the district are managed by a board of 3 trustees, residents of the Town of Southwest

1 Harbor who are appointed by the Board of Selectmen. No member of the Board of  
2 Selectmen may, during the term for which the member is elected, be appointed as a  
3 trustee of the district. The trustees hold office for terms of 3 years and until their  
4 respective successors are appointed and qualified. The terms of the first board are  
5 governed by the Maine Revised Statutes, Title 35-A, section 6410.

6 As soon as convenient after the Act becomes effective, the trustees shall meet and  
7 elect from among their members a president and clerk, adopt a corporate seal and elect a  
8 treasurer, who may or may not be a trustee, and any other officers and agents as needed,  
9 who with the treasurer serve at the pleasure of the trustees. The treasurer shall furnish a  
10 bond in the sum and with sureties approved by the trustees. The district shall pay the cost  
11 of the bond. Members of the board of trustees may hold any office under the board, but  
12 may not receive any compensation, except as trustees, unless authorized by a vote of the  
13 Board of Selectmen of the Town of Southwest Harbor.

14 The trustees of the district shall receive compensation as recommended by the  
15 trustees and approved by majority vote of the municipal officers representing a majority  
16 of the population within the district, including compensation for any duties they perform  
17 as officers as well as for their duties as trustees. Certification of the vote must be  
18 recorded with the Secretary of State and recorded in the bylaws. Compensation for duties  
19 as trustees must be based on an amount specified in the bylaws for each meeting actually  
20 attended plus reimbursement for travel and expenses, with the total not to exceed a  
21 specific amount as specified in the bylaws.

22 Whenever the term of office of a trustee expires, the Board of Selectmen of the Town  
23 of Southwest Harbor shall appoint a successor to serve the full term of 3 years. If any  
24 other vacancy arises from any cause it must be filled in like manner for the unexpired  
25 term. All trustees are eligible for reappointment. Trustees must be sworn to the faithful  
26 performances of their duties by the clerk of the Town of Southwest Harbor. When any  
27 trustee ceases to be a resident of the Town of Southwest Harbor, that trustee vacates the  
28 office of trustee. The trustees may adopt and establish bylaws consistent with the laws of  
29 the State and necessary for the convenience and the proper management of the affairs of  
30 the district and perform other acts within the powers delegated by law to the trustees.  
31 The trustees shall publish an annual financial report.

32 A person who has not been a trustee of a sewer district prior to January 1, 1987 and  
33 who is not a full-time employee is not eligible to become a member of the Maine Public  
34 Employees Retirement System as a result of the person's selection as a trustee.

35 **1. Trustee removed.** A trustee may be removed under the following provisions.

36 A. A trustee may be removed from the board of trustees with a majority vote of the  
37 municipal Board of Selectmen of the Town of Southwest Harbor for misfeasance,  
38 malfeasance or nonfeasance in office. The selectmen must state at a regularly  
39 scheduled meeting of the Board of Selectmen the reason for which removal is sought.

40 B. Within 30 days after the vote by the Board of Selectmen pursuant to paragraph A,  
41 the trustee may appeal the decision to the Board of Appeals of the Town of  
42 Southwest Harbor.

1 C. Further appeals may be made to the Maine Superior Court under Rule 80B of the  
2 Maine Rules of Civil Procedure once all municipal procedures have been followed.

3 **Sec. 7. Authorized to make and assume contracts.** The district, through its  
4 trustees, in order to carry out the purposes of its incorporation, may contract with a  
5 person, standard district, utility or corporation or with a municipality, the State or other  
6 governmental entity whether located inside or outside the boundaries of the district.

7 **Sec. 8. Authorized to acquire water utility property and franchises of the**  
8 **Town of Southwest Harbor.** The Town of Southwest Harbor is authorized to sell to  
9 the district and the district is authorized and empowered to acquire by purchase or by the  
10 exercise of the right of eminent domain the entire water utility plant, property, franchise,  
11 property rights, privileges and assets owned by the Town of Southwest Harbor, including  
12 all land, waters, water rights, reservoirs, pipes, machinery, fixtures, hydrants, tools and all  
13 apparatus and appliances used or usable in supplying water facilities and drainage in the  
14 territory served by the municipal water department. Upon transfer by the Town of  
15 Southwest Harbor to the district of its plant, property, franchise, property rights,  
16 privileges and assets, the district assumes all the outstanding debts and liabilities of the  
17 municipal water department, including, without limitation, any outstanding bonds, notes  
18 or other evidence of indebtedness of the municipal water department that are due on or  
19 after the date of transfer.

20 The sale and transfer by the Town of Southwest Harbor of its water utility plant,  
21 property, franchise, property rights, privileges and assets; the assumption by the district  
22 of all the outstanding debts and liabilities of the municipal water department and the  
23 department assets; and all other water utility activities are subject to the approval of the  
24 Public Utilities Commission as may be required by the Maine Revised Statutes, Title  
25 35-A.

26 **Sec. 9. Authorized to acquire sewer-related property and franchises of**  
27 **the Town of Southwest Harbor.** The Town of Southwest Harbor is authorized to sell  
28 to the district and the district is authorized and empowered to acquire by purchase or by  
29 the exercise of the right of eminent domain the entire sewer plant, property, franchise,  
30 property rights, privileges and assets owned by the Town of Southwest Harbor, including  
31 all land, easements, mains, conduits, fixtures, pumping stations, basins, treatment  
32 facilities and outlets used or usable in providing a public system of public sewerage and  
33 drainage in the territory served by the municipal sewer department. Upon transfer by the  
34 Town of Southwest Harbor to the district of its plant, property, franchise, property rights,  
35 privileges and assets, the district assumes all the outstanding debts and liabilities of the  
36 municipal sewer department, including, without limitation, any outstanding bonds, notes  
37 or other evidence of indebtedness of the municipal sewer department that are due on or  
38 after the date of transfer.

39 **Sec. 10. Completion of transfer.** Promptly after completion of the transfer and  
40 assumption of assets and liabilities pursuant to sections 8 and 9, the Town of Southwest  
41 Harbor shall cause to be filed with the Secretary of State certificates of dissolution  
42 certifying that all sewer and water assets of the municipality and all debts and liabilities  
43 of water and sewer departments of the Town of Southwest Harbor have been transferred

1 to the district. The certificates of dissolution must be signed by the chair of the Board of  
2 Selectmen of the Town of Southwest Harbor and by the municipal clerk. Upon the  
3 respective filing dates of the certificates of dissolution of the Southwest Harbor water and  
4 sewer departments, the existence of those departments ceases.

5 **Sec. 11. Authorized to borrow money; to issue bonds and notes.** For  
6 accomplishing the purposes of this Act, the district, by vote of its board of trustees, is  
7 authorized to borrow money temporarily and to issue for the borrowing of money its  
8 negotiable notes.

9 The district, by vote of its board of trustees, is authorized to issue bonds, notes or  
10 other evidences of indebtedness of the district, bearing interest at a rate or rates and  
11 having terms and provisions as the trustees determine. All notes and bonds with a  
12 maturity of more than one year and issued in connection with the water system only must  
13 first be approved by the Public Utilities Commission.

14 All bonds, notes and other evidences of indebtedness issued by the district must have  
15 inscribed upon their face the corporate name of the district and be signed by the treasurer  
16 and countersigned by the president of the board of trustees of the district.

17 All bonds, notes and other evidences of indebtedness issued by the district are legal  
18 obligations of the district, which is declared to be a quasi-municipal corporation within  
19 the Maine Revised Statutes, Title 30-A, section 5701. All bonds, notes and other  
20 evidences of indebtedness issued by the district are legal investments for savings banks  
21 and are exempt from state income tax.

22 **Sec. 12. Property tax exempt.** The property of the district is exempt from all  
23 taxation in the Town of Southwest Harbor.

24 **Sec. 13. Sewer rates payable; adoption of new rates; application of**  
25 **revenue; collection of unpaid rates; authority to disconnect water for**  
26 **nonpayment of sewer service.** Notwithstanding the Maine Revised Statutes, Title 38,  
27 section 1048, this section governs the sewer rates of the district.

28 An individual, firm or corporation, whether public, private or municipal, shall pay to  
29 the treasurer the rates, tolls, rents, entrance charges and other lawful charges established  
30 by the trustees for the sewer or drainage service used or available with respect to its real  
31 estate, including rates for the district's readiness to serve, that are charged against owners  
32 of real estate abutting on or accessible to sewers or drains of the district, but not actually  
33 connected thereto, whether or not such real estate is improved. In this Act, "other lawful  
34 charges" and "other charges" include, but are not limited to, interest on delinquent  
35 accounts at a rate not to exceed the highest lawful rate set by the Treasurer of State for  
36 municipal taxes.

37 Rates, tolls, rents and entrance charges must be uniform within the district whenever  
38 the cost to the district of installation and maintenance of sewers or their appurtenances  
39 and the cost of service is substantially uniform, but nothing precludes the district from  
40 establishing a higher rate, toll, rent or entrance charge than the regular rates, tolls, rents  
41 and entrance charges in sections where, for any reason, the cost to the district of



1 construction and maintenance, or the cost of service, exceeds the average, but such higher  
2 rates, tolls, rents and entrance charges must be uniform throughout the sections where  
3 they apply.

4 Prior to the adoption of a new rate schedule, the trustees shall hold a public hearing  
5 regarding the proposed rate schedule. The trustees shall publish the proposed rates and  
6 notice of the hearing at least once in a newspaper of general circulation in the district not  
7 less than 7 days prior to the hearing. The district shall mail to each ratepayer a notice of  
8 the public hearing and the proposed new rate at least 14 days prior to the hearing.

9 Notwithstanding any other provision of law, if the district shares, supplies or  
10 contracts for services with another sewer or sanitary district, the district shall establish  
11 rates, tolls, rents and entrance charges mutually agreeable to the trustees of each  
12 participating district.

13 The sewer rates, tolls, rents, entrance charges, assessments and other lawful charges  
14 established by the board of trustees in accordance with this Act must be fixed and  
15 adjusted to produce, in the aggregate, revenue at least sufficient, with any other funds  
16 available for the purpose, to:

17 **1. Current operating expenses.** Pay the current expenses of operating and  
18 maintaining the sewerage, drainage and treatment system of the district including the cost  
19 of depreciation;

20 **2. Payment of interest and principal.** Pay the principal of, premium, if any, and  
21 interest on all bonds and notes issued by the district under this Act as the bonds and notes  
22 become due and payable;

23 **3. Sinking fund for retirement of obligations.** Create and maintain such reserves  
24 as may be required by any trust agreement or resolution securing bonds and notes;

25 **4. Repairs, replacements and renewals.** Provide funds for paying the cost of all  
26 necessary repairs, replacements and renewals of the sewerage, drainage and treatment  
27 systems of the district; and

28 **5. Payment of obligations.** Pay or provide for all amounts that the district may be  
29 obliged to pay or provide for by law including any resolution with or for the benefit of the  
30 holders of its bonds and notes.

31 Notwithstanding any other provision of law, in the event a user of the district's sewer  
32 system fails within a reasonable time to pay the district's rates, fees or charges for sewer  
33 service, the district may disconnect water service to the user, as long as the disconnection  
34 is accomplished in accordance with procedures established in applicable law or rules  
35 governing disconnection of utility services and terms and conditions approved by the  
36 Public Utilities Commission.

37 The district may become a qualified sewer district for purposes of Title 38, section  
38 1050 in accordance with subsection 4 of that section.

1       **Sec. 14. Water rates; application of revenue; sinking fund.** An individual,  
2       firm or corporation, whether public, private or municipal, shall pay to the treasurer of the  
3       district the rates and other lawful charges established by the trustees for the water used or  
4       made available to it. All water rates and other lawful charges of the district are governed  
5       by the Maine Revised Statutes, Title 35-A, chapter 61.

6       The water rates and other lawful charges are established to provide revenue for the  
7       following purposes:

8       **1. Current operating expenses.** To pay the current expenses for operating and  
9       maintaining the water system including depreciation;

10       **2. Payment of interest.** To provide for the payment of interest on the indebtedness  
11       created by the district for the benefit of its water system; and

12       **3. Sinking fund.** To provide each year a sum equal to not less than 1% nor more  
13       than 5% of the entire indebtedness created by the district for the benefit of its water  
14       system, which sum must be turned into a sinking fund to provide for the extinguishment  
15       of the indebtedness. The money set aside for the sinking fund must be devoted to the  
16       retirement of the obligations of the district or invested in such securities as savings banks  
17       are allowed to hold. The trustees may, in their discretion and in lieu of the establishment  
18       of a sinking fund, issue bonds of the district so that not less than 1% of the amount of the  
19       bonds so issued mature and are retired each year.

20       There may be a lien issued on real estate served by the district to secure the payment  
21       of unpaid water rates and other lawful charges. The water lien takes precedence over all  
22       other claims on the real estate, except claims for taxes and sewer rates. The procedures of  
23       obtaining, enforcing and receiving payment on the water lien are governed by Title 35-A,  
24       section 6111-A.

25       **Sec. 15. Incidental powers granted.** All incidental powers, rights and privileges  
26       necessary to the accomplishment of the objectives set forth in the Act are granted to the  
27       district.

28       **Sec. 16. Debt responsibility of Town of Southwest Harbor.** The Town of  
29       Southwest Harbor is responsible to pay all debt service incurred on or after May 4, 2010  
30       by the district for capital expenditures and infrastructure expenditures. All debt service  
31       existing prior to May 4, 2010, as well as any debt service incurred on or after May 4,  
32       2010 for purposes other than capital expenditures and infrastructure expenditures must be  
33       financed through respective water and sewer service charges of the district.

34       For purposes of this section, "capital expenditures" means an outlay of funds for the  
35       acquisition or improvement of a fixed asset with an expected useful life of at least 20  
36       years that extends the life or increases the productivity of the asset and that is generally  
37       capitalized and depreciated over the estimated useful life of the asset. For purposes of  
38       this section, "infrastructure expenditures" means an outlay of funds for the basic facilities,  
39       equipment, installations and appurtenances, such as distribution lines, needed for the  
40       function of the district and having an expected useful life of at least 20 years.

**Sec. 17. Replacement of equipment; road openings.** Upon the reconstruction of any public roadway by the Town of Southwest Harbor, the district shall coordinate the replacement of any sewer or water lines, equipment, valves or hydrants that have reached their maximum useful life. A rebuilt or resurfaced road may not be opened or excavated by the district except under emergency conditions, within 5 years of reconstruction or repavement of the road.

**Sec. 18. Referendum; effective date.** This Act takes effect when approved only for the purpose of permitting its submission to the legal voters within the Town of Southwest Harbor at a referendum called for that purpose and held within 2 years of the effective date of this Act. The election must be called by the Board of Selectmen of the Town of Southwest Harbor and must be held at the regular voting place. The referendum 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 voters, the registrars of voters must be in session the regular workday preceding the referendum. The subject matter of this Act is reduced to the following question:

"Do you favor merging the Southwest Harbor water department and the Southwest Harbor sewer department to create the Southwest Harbor Water and Sewer District and transferring all municipal water and sewer assets to the Southwest Harbor Water and Sewer District?"

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

The results must be declared by the Board of Selectmen of the Town of Southwest Harbor and due certificate of the results filed by the clerk with the Secretary of State.

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

## SUMMARY

This bill provides for the creation of the Southwest Harbor Water and Sewer District and the transfer of all water and sewer assets of the Town of Southwest Harbor to the new district.