

# MAINE STATE LEGISLATURE

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# 131st MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2023

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Legislative Document

No. 1655

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S.P. 660

In Senate, April 13, 2023

### **An Act to Amend the Laws Governing Consumer-owned Water Utilities**

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Submitted by the Public Utilities Commission pursuant to Joint Rule 204  
Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator LAWRENCE of York.

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

2 **Sec. 1. 35-A MRSA §505, sub-§1**, as amended by PL 2019, c. 586, §1, is further  
3 amended to read:

4 **1. Consumer-owned water utilities.** Except as provided in this subsection, the  
5 commission may not require under this section that a qualified small water utility cause to  
6 be conducted an annual audit of its accounts. For purposes of this subsection, "qualified  
7 small water utility" means a consumer-owned water utility with gross annual revenues ~~that~~  
8 ~~do not exceed \$250,000~~ of less than \$500,000.

9 A. A qualified small water utility with gross annual revenues of ~~\$50,000~~ \$100,000 or  
10 less shall for any year used as a test year for rate-making purposes cause to be  
11 conducted, in accordance with generally accepted auditing standards, an audit of its  
12 accounts by an independent certified public accountant licensed to practice in the State.  
13 The commission, for good cause shown by the qualified small water utility, may waive  
14 the requirements of this paragraph.

15 B. A qualified small water utility with gross annual revenues greater than ~~\$50,000~~  
16 \$100,000:

17 (1) Shall cause to be conducted, in accordance with generally accepted auditing  
18 standards, an annual review of its accounts by an independent certified public  
19 accountant licensed to practice in the State; and

20 (2) Not less than once every 5 years and for any year used as a test year for rate-  
21 making purposes, shall cause to be conducted, in accordance with generally  
22 accepted auditing standards, an audit of its accounts by an independent certified  
23 public accountant licensed to practice in the State.

24 Nothing in this subsection limits or affects any other reporting, review, auditing or other  
25 requirement imposed by a creditor of the qualified small water utility or by any other  
26 applicable law or government authority.

27 **Sec. 2. 35-A MRSA §901**, as enacted by PL 1987, c. 141, Pt. A, §6, is amended by  
28 adding at the end a new paragraph to read:

29 The requirements of this chapter do not apply to a consumer-owned water utility as  
30 defined in section 6101, subsection 1-A.

31 **Sec. 3. 35-A MRSA §6104, sub-§3**, as amended by PL 1995, c. 255, §9, is further  
32 amended to read:

33 **3. Notice of proposed rate change and hearing.** The consumer-owned water utility  
34 shall, at least 14 days prior to the hearing, ~~publish a notice of the proposed rate change and~~  
35 ~~the hearing, including the date, time, place and purpose of the hearing, in a newspaper of~~  
36 ~~general circulation in the area encompassed by the consumer-owned water utility and give~~  
37 ~~one~~ provide notice of the proposed rate change and the date, time, place and purpose of the  
38 hearing to ~~each of its customers~~ in a manner prescribed by the commission. ~~The published~~  
39 ~~and individual notices~~ Any such notice must include a statement describing the amount of  
40 the rate change and the percentage change for each customer class, the customer's right to  
41 request information relating to the present and proposed rates, the right to an open and fair  
42 hearing and the right to further hearings before the commission, and the availability of  
43 assistance from the Public Advocate. ~~The published and individual notices~~ Any such notice

1 must inform customers that they can petition the commission to investigate the proposed  
2 rate change and must include a statement that signatures on petitions filed pursuant to  
3 subsection 7 are invalid unless accompanied by the printed names and addresses of the  
4 signers. ~~The published and individual notices~~ Any such notice must also inform customers  
5 that the utility will, upon request, provide customers with petition forms that include space  
6 for signatures and the printed names and addresses of the signers. Copies of ~~the notice~~ all  
7 notices must be sent to the commission and the Public Advocate at least 14 days prior to  
8 the hearings.

9 **Sec. 4. 35-A MRSA §6104, sub-§10**, as amended by PL 1987, c. 490, Pt. B, §12,  
10 is further amended to read:

11 **10. Review of rates under section 310.** Nothing in this section prohibits a consumer-  
12 owned water utility from petitioning the commission for review pursuant to section 310 ~~in~~  
13 ~~the first instance.~~

14 **Sec. 5. 35-A MRSA §6104-A, sub-§1**, as enacted by PL 2009, c. 237, §2, is  
15 amended to read:

16 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
17 following terms have the following meanings.

18 A. "Large consumer-owned water utility" means a consumer-owned water utility with  
19 total annual revenues of at least ~~\$750,000~~ \$1,000,000 during the most recent fiscal  
20 year.

21 B. "Medium consumer-owned water utility" means a consumer-owned water utility  
22 with total annual revenues of less than ~~\$750,000~~ \$1,000,000 and at least ~~\$250,000~~  
23 \$500,000 during the most recent fiscal year.

24 C. "Small consumer-owned water utility" means a consumer-owned water utility with  
25 total annual revenues of less than ~~\$250,000~~ \$500,000 during the most recent fiscal year.

26 **Sec. 6. 35-A MRSA §6104-A, sub-§5**, as amended by PL 2011, c. 106, §1, is  
27 further amended to read:

28 **5. Notice of proposed rate increase and public meeting.** The consumer-owned  
29 water utility shall, at least 14 days prior to the public meeting required under subsection 4,  
30 ~~publish a~~ provide notice ~~of the proposed rate increase and the meeting, including the date,~~  
31 ~~time, place and purpose of the meeting, in a newspaper of general circulation in the area~~  
32 ~~encompassed by the consumer-owned water utility and give one~~ notice of the proposed rate  
33 change and the date, time, place and purpose of the meeting to ~~each of its customers~~ in a  
34 manner prescribed by the commission. ~~The published and individual notices~~ Any such  
35 notice must include a statement describing the amount of the rate increase and the  
36 percentage change for each customer class, the customer's right to request information  
37 relating to the present and proposed rates and the availability of assistance from the Public  
38 Advocate. Copies of ~~the notice~~ all notices must be sent to the commission and the Public  
39 Advocate at least 14 days prior to the meeting.

40 **Sec. 7. 35-A MRSA §6104-A, sub-§9**, as enacted by PL 2009, c. 237, §2, is  
41 amended to read:

1           **9. Review of rates under section 310.** Nothing in this section prohibits a consumer-  
2 owned water utility from petitioning the commission for review pursuant to section 310 or  
3 filing a rate change pursuant to section 6104 ~~in the first instance.~~

4           **Sec. 8. 35-A MRSA §6104-B** is enacted to read:

5           **§6104-B. Consumer-owned water utilities; expedited rate adjustments**

6           **1. Application of this section.** Notwithstanding section 310, 6104 or 6104-A, a  
7 consumer-owned water utility may elect to adjust rates pursuant to this section.

8           **2. Maximum rate adjustment.** The maximum rate adjustment that a consumer-  
9 owned water utility may propose under this section is 1.5% of current total annual revenue.  
10 A consumer-owned water utility may not propose a rate adjustment under this section more  
11 than once every 11 months.

12           **3. Notice of proposed rate increase.** The consumer-owned water utility shall, at least  
13 30 days prior to the effective date of the rate adjustment, provide notice of the proposed  
14 rate change to the commission, to the Public Advocate and to its customers in a manner  
15 prescribed by the commission. Any such notice must include a statement describing the  
16 amount of the rate adjustment, the percentage change for each customer class and a brief  
17 explanation of the reason for the rate adjustment.

18           **4. Filing changed rates.** The consumer-owned water utility shall file, in a manner  
19 prescribed by the commission, its adjusted rates with the commission and the Public  
20 Advocate at least 30 days prior to the effective date of the rate change.

21           **5. Effective date established for rate change.** Subject to the notice and waiver  
22 requirements of section 307, a consumer-owned water utility electing to adjust rates under  
23 this section may establish an effective date for a rate adjustment of at least one month, but  
24 not more than 9 months, from the date the rates are filed with the commission under  
25 subsection 3.

26           **6. Investigation of rates.** Nothing in this section prohibits a consumer-owned water  
27 utility from petitioning the commission for investigation pursuant to section 310 or filing a  
28 rate change pursuant to section 6104 or 6104-A.

29           **7. Correction of errors.** Upon review of a rate filing made pursuant to this section,  
30 the commission may order the consumer-owned water utility to correct mathematical or  
31 clerical errors.

32           **8. Suspension of the adjustment.** Notwithstanding any provision of this section to  
33 the contrary, the commission may at any time within the period preceding the effective date  
34 of the rate adjustment suspend the adjustment by filing with the proposed adjustment and  
35 delivering to the consumer-owned water utility a statement of its reasons for the suspension.  
36 The suspension may not be for a period longer than 12 months from the effective date of  
37 the order of suspension.

38           **Sec. 9. 35-A MRSA c. 64-A** is enacted to read:

39                                   **CHAPTER 64-A**

40                           **CONSUMER-OWNED WATER UTILITY CONSOLIDATION**

1 **§6431. Consolidation of consumer-owned water utilities into a single consumer-owned**  
2 **water utility**

3 **1. Petition.** Upon a petition of 2 or more consumer-owned water utilities for the  
4 consolidation of the consumer-owned water utilities into a single consumer-owned water  
5 utility, the commission shall initiate a proceeding to determine whether the proposed  
6 consolidation is in the public interest.

7 **2. Differing rates request.** Two or more consumer-owned water utilities may request  
8 in the petition submitted in accordance with subsection 1 to have differing geographically  
9 based rate structures consistent with the service areas serviced by the petitioning utilities if  
10 the commission approves consolidation into a single consumer-owned water utility. The  
11 commission may disallow the use of differing rate structures if the commission finds it is  
12 not in the best interest of ratepayers.

13 **3. Notice to customers; public meeting.** Prior to the filing of a petition pursuant to  
14 subsection 1, the consumer-owned water utilities seeking consolidation must first hold a  
15 public meeting at which any customer may provide comment and may question the officials  
16 present regarding the proposed consolidation. The consumer-owned water utilities shall,  
17 at least 14 days prior to the public meeting required under this subsection, provide notice  
18 of the proposed consolidation and the meeting in a manner prescribed by the commission,  
19 including the date, time, place and purpose of the meeting to each of its customers. The  
20 notice must include a statement describing the consolidation. A public meeting held  
21 pursuant to this subsection must include a public comment period prescribed by the  
22 commission. After the public meeting, the governing bodies of the consumer-owned water  
23 utilities shall hold a meeting to deliberate and vote on the proposed consolidation, which  
24 may be modified on the basis of public comments received during the public meeting. The  
25 consumer-owned water utilities shall take minutes of the public meeting and the subsequent  
26 meeting of the governing bodies. Upon good cause shown, the commission may waive one  
27 or more of the requirements of this subsection.

28 **4. Proceeding; approval.** Upon a petition filed pursuant to subsection 1, the  
29 commission shall provide in a proceeding customers of the petitioning consumer-owned  
30 water utilities and other interested persons the opportunity to comment on or object to the  
31 proposed consolidation. Upon the conclusion of the proceeding, the commission shall issue  
32 a written decision. The commission may approve the consolidation petition or  
33 modifications of the petition upon a finding that the consolidation is in the public interest,  
34 subject to any reasonable conditions imposed by the commission.

35 **5. Rulemaking.** The commission may adopt rules to implement this section. Rules  
36 adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter  
37 375, subchapter 2-A.

38 **§6432. Consolidated consumer-owned water utility charter requirements;**  
39 **commission authority**

40 **1. Commission responsibility; charter creation.** If the commission approves a  
41 petition of 2 or more consumer-owned water utilities for consolidation into a single  
42 consumer-owner water utility in accordance with section 6431, by January 15th annually,  
43 the commission shall provide the joint standing committee of the Legislature having  
44 jurisdiction over utilities matters with a report on the consolidation of the utilities that  
45 includes a draft charter created in accordance with this section for the newly created

1 consumer-owned water utility. The committee shall report out a bill for each newly created  
2 water utility provided in the report.

3 **2. Charter requirements.** A consolidated consumer-owned water utility charter  
4 drafted by the commission pursuant to subsection 1 must:

5 A. Meet the requirements for a standard district in accordance with chapter 64; and

6 B. Specify that the consolidated consumer-owned water utility shall acquire all, and  
7 not less than all, of the plants, properties, assets, franchises, rights and privileges owned  
8 by the consumer-owned water utilities being consolidated, including, without  
9 limitation, all lands, buildings, waters, water rights, springs, wells, reservoirs, tanks,  
10 standpipes, mains, pumps, pipes, machinery, fixtures, hydrants, meters, services, tools,  
11 equipment and appliances used or useful in supplying water for domestic, sanitary,  
12 commercial, industrial and municipal purposes. The consideration to be paid for the  
13 plants, properties, assets, franchises, rights and privileges is the assumption by the  
14 consolidated consumer-owned water utility of all of the outstanding debts, obligations  
15 and liabilities of the consumer-owned water utilities being consolidated, including,  
16 without limitation, the assumption by the consolidated consumer-owned water utility  
17 of any outstanding notes or bonds of the consumer-owned water utilities being  
18 consolidated that are due on or after the date of the assumption.

## 19 SUMMARY

20 This bill does the following.

21 1. It increases the gross annual revenues thresholds that trigger audits for qualified  
22 small water utilities.

23 2. It exempts consumer-owned water utilities from specific requirements, including  
24 authorization by the Public Utilities Commission for the issuance of stocks, bonds and  
25 notes.

26 3. It removes the requirement that consumer-owned water utilities publish notices of  
27 public hearings and rate changes in a newspaper and instead provides the commission with  
28 the authority to prescribe the manner in which notice is provided to customers.

29 4. It increases the total annual revenues thresholds that classify what qualifies as a  
30 small, medium and large consumer-owned water utility.

31 5. It creates an expedited rate adjustment mechanism for consumer-owned water  
32 utilities to allow for up to a 1.5% increase in the current total annual revenue as long as  
33 proper notice is provided; however, it does allow the commission to suspend the  
34 adjustment.

35 6. It creates a process for 2 or more consumer-owned water utilities to petition the  
36 commission to consolidate into a single utility and requires the commission to report  
37 annually on consolidation activities to the joint standing committee of the Legislature  
38 having jurisdiction over utilities matters and include in that report draft charter language to  
39 be reported out of committee that creates the new consolidated utility.

40 7. It clarifies language.