

# MAINE STATE LEGISLATURE

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**Report to Joint Standing Committee on Utilities  
and Energy from stakeholders established by:**

**Public Law 2009, Chapter 377, An Act to  
Create a Funding Structure for Sustainable  
Investment in Public Water and Wastewater  
Infrastructure in the State**

**Maine Department of Environmental Protection**

17 State House Station  
Augusta, Maine 04333-0017

**Maine Department of Health and Human Services**

11 State House Station  
Augusta, Maine 04333-0017

**February 1, 2010**

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DAVID P. LITTELL  
COMMISSIONER - DEP

STATE OF MAINE  
DEPARTMENTS OF:  
ENVIRONMENTAL PROTECTION  
HEALTH AND HUMAN SERVICES

JOHN ELIAS BALDACCI  
GOVERNOR

BRENDA HARVEY  
COMMISSIONER - DHHS

February 9, 2010

Senator Barry J. Hobbins, Chair  
Representative Jon Hinck, Chair  
Joint Standing Committee on Utilities and Energy  
100 State House Station  
Augusta, ME 04333

**RE: Report from stakeholders established by PL 2009, Ch. 377, An Act to Create a Funding Structure for Sustainable Investment in Public Water and Wastewater Infrastructure in the State**

Dear Senator Hobbins, Representative Hinck and Members of the Committee:

Attached is a report from the stakeholder group established by PL 2009, Ch 377.

This is a joint report from the Department of Environmental Protection and the Department of Health and Human Services. We understand that a representative from the stakeholder group will be contacting you to request an opportunity to brief the committee on this report.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Littell", written over a horizontal line.

David P. Littell  
Commissioner  
Department of Environmental Protection

A handwritten signature in black ink, appearing to read "Brenda Harvey", written in a cursive style.

Brenda M. Harvey  
Commissioner  
Department of Health and Human Services

## Summary of Law

Public Law 2009, Chapter 377 *An Act To Create a Funding Structure for Sustainable Investment in Public Water and Wastewater Infrastructure in the State*<sup>1</sup> established a funding structure for capital investment in public water and wastewater infrastructure, but did not provide actual funds at enactment. The funding structure established by Chapter 377 (the Act) consists of:

- The State Water and Wastewater Infrastructure Fund within the Maine Municipal Bond Bank (MMBB), which is designed to provide financial assistance for capital investment in public water and wastewater infrastructure.
- The Maine Drinking Water Fund within the Department of Health and Human Services (DHHS), which is designed for capital investment and improvement of public water systems, drinking water supplies and water treatment facilities.
- The Maine Clean Water Fund within the Department of Environmental Protection (DEP), which is designed for capital investment and improvement of public wastewater systems and treatment facilities and water pollution abatement systems.

While the three funds are separate and distinct they are designed to function as an integrated system. For the purpose of this report these three funds will be collectively referred to as the “Funds”.

## Charge to Stakeholder Group and Stakeholder Group Recommendations

The Act directs the DEP and the DHHS to convene a stakeholder group to develop recommendations regarding the Funds. *“The stakeholder group shall, at a minimum, review and make recommendations regarding funding needs and sources for the State Water and Wastewater Infrastructure Fund, taking into account the intent to use that fund as a state match for federal funds and to transfer funds from that fund to the Maine Drinking Water Fund, and the Maine Clean Water Fund.”*

*No later than February 1, 2010, the DEP and the DHHS shall jointly submit a report to the Joint Standing Committee on Utilities and Energy regarding the findings and recommendations of the stakeholder group. Following receipt and review of the report, the committee may submit legislation related to the report to the Second Regular Session of the 124th Legislature.”*

The stakeholder group consisted of a variety of members from the drinking water, wastewater, construction, regulatory and financial assistance community<sup>2</sup>. Most of the members were involved in previous discussions that led to the creation of the Act. A series of four meetings were held. The group worked to develop consensus recommendations. The stakeholder group also provided comments on drafts of this report.

The key recommendations developed and agreed to by the stakeholder group are:

1. New money developed by this legislation (PL 2009, Chapter 377) should go directly to reducing the funding gap for drinking water and wastewater projects, as identified in this report, through a new grant program.

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<sup>1</sup> A copy of the Act is included in Appendix A.

<sup>2</sup> A stakeholder group service list is included as Appendix B.

2. The Funds should be funded with existing sales tax revenue from a variety of consumer products that impact drinking water, surface water, drinking water infrastructure or wastewater infrastructure.
3. A volunteer advisory panel should be established to advise DHHS, DEP and the MMBB on management of the Funds.
4. State match requirements to draw down federal funds for the Drinking Water State Revolving Fund and Clean Water State Revolving Fund should be funded annually through the State General Fund or an automatic annual bond issue. In particular, match requirements for 2011-2013 should be addressed this legislative session.
5. The legislature should approve annual environmental/economic development bond issues for state grants that will provide grants above and beyond those provided by the Funds in order to fully address the infrastructure needs gap identified in this report.

### **The Importance of Drinking Water and Wastewater Infrastructure Funding**

Providing for safe drinking water and proper treatment of wastewater is extremely important for the protection of public health, protection of the environment and a strong economy. Safe drinking water and proper treatment of wastewater is only possible with regular investments in our water and wastewater infrastructure systems.

Communities without adequate water and wastewater systems are simply not an option for economic development projects. Therefore, fully funding both water and wastewater projects on a planned and proactive basis is proven to be the most prudent and fiscally responsible management method.

#### Drinking water:

Maine has approximately 160 public water systems which are regulated by the Maine Public Utilities Commission and the Maine Drinking Water Program at DHHS. These 160 water systems serve over 200 towns and cities with more than 250,000 customers. These systems are operated by municipal, quasi-municipal and private entities.

Public water systems use surface water sources, such as lakes and rivers, and ground water wells to provide safe and reliable water to customers 24 hours a day, seven days per week. Public water system infrastructure includes water lines, storage tanks, wells, surface water intakes, pumping stations and treatment plants. Many of the water systems began serving customers in the late 1800's and still have some 100 year old plus water lines and tanks in operation. There are over 5,000 miles of water main in service at the 160 water systems.

Most of these systems not only provide water for consumption but also provide water for fire protection, manufacturing, agriculture, and tourism.

In 1974 Congress passed the Safe Drinking Water Act which set national standards for drinking water quality. The Safe Drinking Water Act was amended in 1986 and 1996 to provide additional public health protections. This has resulted in increasingly stringent water quality requirements. Almost all public water systems provide some level of treatment to meet state and federal drinking water quality standards.

In 2003 the federal Environmental Protection Agency estimated the 20 year infrastructure need in Maine to be approximately \$900 million based on a limited survey of a fraction of the systems operating in the State. Therefore, this is considered a conservative minimum and does not consider the cost associated with enhancing public fire protection, system expansion, or future water quality standards. In addition, this figure does not include non-health based system improvements such as road and bridge reconstruction that are the result of DOT or municipal projects that may require replacement of water or wastewater infrastructure. A significant portion of the 5,000 miles of water lines in Maine are located within the public right of way (DOT or municipal roads and bridges). Reconstruction of roads and bridges results in some infrastructure being replaced before the end of its useful service life. This increases the cost to water system customers. Therefore, the 20 year cost cited above is likely to be underestimated.

In 2009 alone the Drinking Water Program received over \$111 million worth of requests for financial assistance. Even with the influx of funding in 2009 through the American Recovery and Reinvestment Act (\$19.5 million), only one-third<sup>3</sup> of the requests were able to be funded.

#### Wastewater:

Maine currently has 164 publicly owned treatment works (POTWs). These facilities are operated by municipal and quasi-municipal entities and range in size from 2,000 gallons per day to 20 million gallons per day. They are located throughout the state in Maine's smallest towns and our largest cities. They treat wastewater from residences, businesses, and industry so that it may be safely discharged into the waters of the state; typically rivers, streams and marine waters. Some systems spray wastewater onto the surface of the land at dedicated sites, and a few smaller systems discharge treated wastewater subsurface to groundwater. The majority of Maine POTWs were built in the 1970s-1980s with federal grants. In addition, each treatment facility has an extensive network of sewers and pump stations. In many cases, sewer lines were in place long before any treatment facilities were built. In some cases sewer lines may be as old as 100 years.

The typical useful life of a POTW is 25-30 years. It is estimated that within five years \$348 million will need to be invested in the existing wastewater infrastructure (POTWs and collection systems) in order to keep these facilities operating properly.

In 2009 the DEP received over \$300 million worth of requests for financial assistance. Even with the influx of funding through the American Recovery and Reinvestment Act (\$29.1 million), only 10% of the requests were able to be funded.

### **Needs Assessment for Drinking Water and Wastewater Infrastructure**

The DEP and DHHS compile, through a variety of means, estimates of the future upgrades that will be necessary for the state's drinking water and wastewater infrastructure. These needs are indicated below.

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<sup>3</sup> Funding one third of the projects was accomplished through combining ARRA funds with existing State Revolving Fund money.

Also shown below, is an assessment of the funding sources that are currently available to address these needs, and an assessment of the available funding gap or unmet need that the Funds are designed to help address.

#### Funding Sources:

The following is a summary of the funding sources that are currently available to meet infrastructure needs. While all of these programs play an important role in infrastructure funding, current infrastructure needs exceed the funding these programs can provide.

1. State Revolving Loan Funds (SRF):

The Drinking Water SRF (DWSRF) and the Clean Water SRF (CWSRF) provide low interest loans to municipalities and quasi-municipal corporations such as sanitary or utility districts for construction of drinking water and wastewater facilities. The DWSRF and the CWSRF are funded by a combination of federal capitalization grants and state matching funds equal to 20% of the federal grant. The Maine Municipal Bond Bank (MMBB) is the financial manager for the SRF programs. DHHS manages the procedural and technical aspects of the DWSRF and the DEP manages the procedural and technical aspects of the CWSRF.

2. United States Department of Agriculture Rural Development (RD) Loans and Grants:

The USDA RD Program provides low interest loans and grants for the purpose of developing water and wastewater systems in rural areas with populations of 10,000 or less. Grant eligibility is determined by median household income and is either zero, forty five, or a maximum of seventy five percent of eligible project costs. This grant assistance may be further restricted based on available funding and user costs.

3. Department of Economic and Community Development Block Grants (CDBG)

CDBG provides funds for eligible communities to address local issues, which are part of a community development strategy leading to future public and private investments. The eligible activities include water system installation and improvements, sewer system installation/improvements, water/sewer system hookups for low and moderate income households. The maximum grant award is \$500,000.

4. State and Federal Grants

Periodically, state grant money for wastewater infrastructure improvements is approved through environmental bond issues. When available, these funds are administered by the DEP. The annual amount of available grant varies greatly and in many years, these funds are not available. It is recommended that these grants continue, but with regular annual grant monies to support wastewater systems.

In addition, municipalities may receive a State and Tribal Assistance Grant (STAG) directly from Congress. Usually, only a few of these grants are awarded annually, and in some years no STAG grants are available.

5. Maine Municipal Bond Bank and Commercial Lenders

The MMBB general lending program and commercial lenders have the ability to lend money for water and wastewater infrastructure improvements. Although these programs exist, they are higher interest loans that may result in unduly high user charges in the long run unless supplemented with grants from another source such as the Funds.

In addition water and wastewater systems generate revenue for operations, maintenance, depreciation, capital improvement, and debt service through a charge on the users of the systems. Rates are typically based on a metered use of the system. User rates can vary widely among different systems based on a variety of factors including, size and complexity of the system, age of the system, number of users, etc. A few communities subsidize or replace user rates through taxation of the entire community such that community members who are not direct users of the systems (they may be on private water or septic systems) will provide revenue to the system through property taxes.

Drinking Water Needs

The chart on page 6 indicates the projected costs (needs) to upgrade drinking water infrastructure over the next 11 years (top three lines). These costs are based on EPA Needs Survey Data<sup>4</sup> reported to the DHHS from drinking water facilities and projected into the future with a range (5%-10%) for inflation of construction costs.

The chart also indicates the amount of federal and state funding (bottom line) that is projected to be available to meet the projected needs. The available funding is projected based on known and estimated funding for the DWSRF, RD, and CDBG programs described above.

The gap, or unmet need for water infrastructure funding, is indicated on the chart as the area between the bottom funding line and the top three needs lines. The curve of the funding line is primarily influenced by the following:

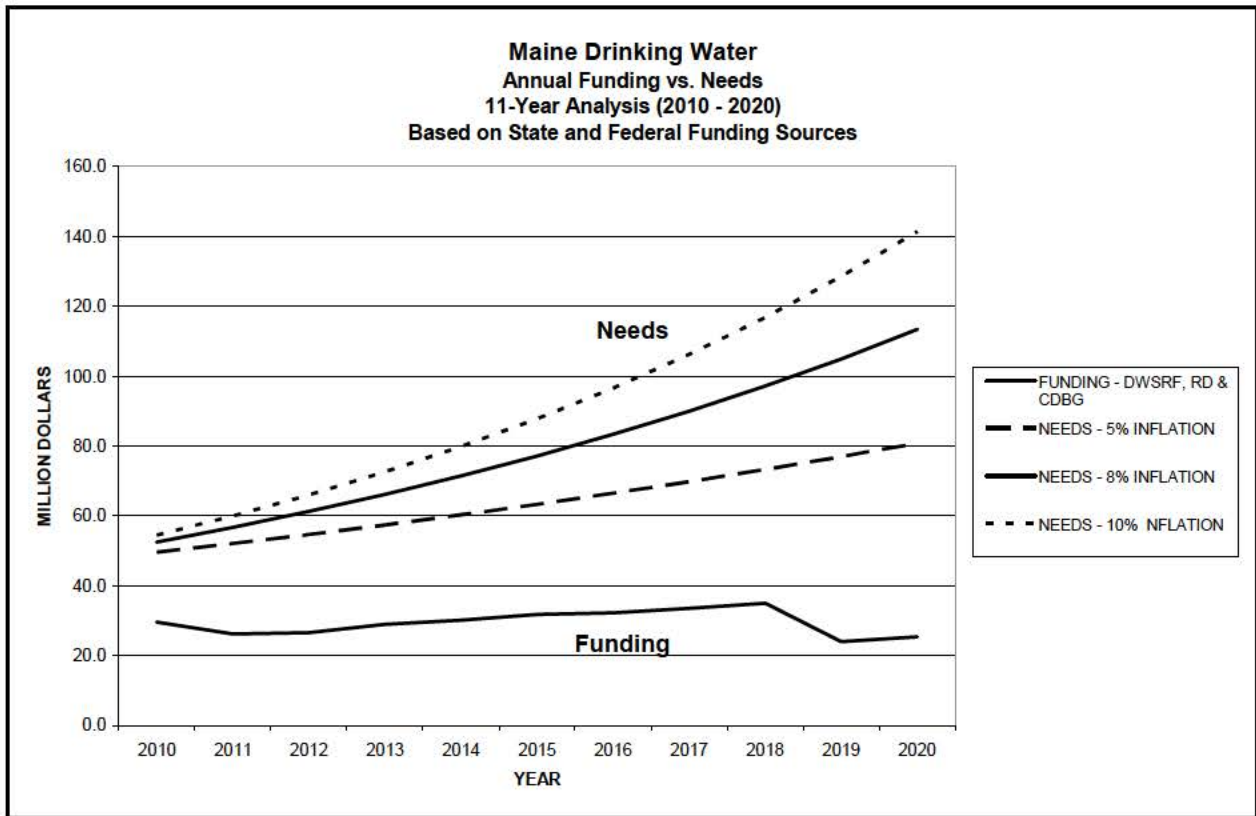
1. Funding for DWSRF is projected at the amount currently approved by Congress.<sup>5</sup>
2. Federal funding for DWSRF is expected to end in 2018 based on the original design for the DWSRF to become self sustaining over time. (This accounts for the sharp decline in available funding in 2018.)

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<sup>4</sup> Due to a limited sample size this survey may underestimate actual needs.

<sup>5</sup> It is noted that Congress is currently debating legislation that may change this level of funding.





As indicated above the funding gap for drinking water infrastructure needs is projected to be:

<b>Year</b>	<b>5% Inflation</b>	<b>8% Inflation</b>	<b>10% Inflation</b>
2010	\$20 million	\$23 million	\$25 million
2015	\$32 million	\$45 million	\$56 million
2020	\$56 million	\$88 million	\$116 million

## Wastewater Needs

The chart on page 8 indicates the projected costs (needs) to upgrade wastewater infrastructure over the next 11 years (top three lines). These costs are based on data reported to the DEP from wastewater facilities and projected into the future with a range (5%-10%) for inflation of construction costs.<sup>6</sup>

The chart also indicates the amount of federal and state funding (bottom line) that is projected to be available to meet the projected needs. The available funding is projected based on known and estimated funding for the CWSRF, RD, and CDBG programs described above.

The gap, or unmet need for wastewater infrastructure funding, is indicated on the chart as the area between the bottom funding line and the top three needs lines. The curve of the funding line is primarily influenced by the following:

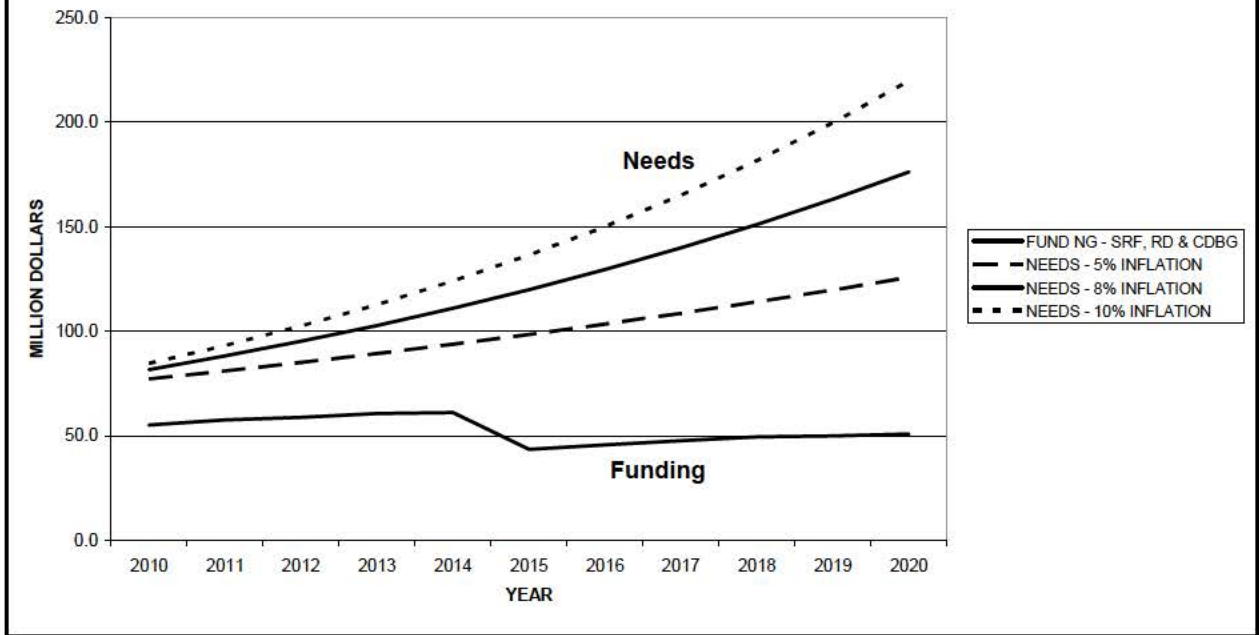
1. Funding for CWSRF is projected at the amount currently approved by Congress.<sup>7</sup>
2. Federal funding for CWSRF is expected to end in 2014 based on the original design for the CWSRF to become self sustaining over time. (This accounts for the sharp decline in available funding in 2014.)

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<sup>6</sup> It is noted that not all wastewater facilities have provided the DEP with data on their infrastructure needs and these projections most likely underestimate future needs.

<sup>7</sup> It is noted that Congress is currently debating legislation that may change this level of funding.

**Maine Wastewater  
Annual Funding vs. Needs  
11 Year Analysis (2010 - 2020)  
Based on State and Federal Funding Sources**



As indicated above the funding gap for wastewater infrastructure needs is projected to be:

<b>Year</b>	<b>5% Inflation</b>	<b>8% Inflation</b>	<b>10% Inflation</b>
2010	\$22 million	\$26 million	\$30 million
2015	\$55 million	\$76 million	\$93 million
2020	\$75 million	\$125 million	\$169 million

## **Recommendations for Sources of Revenue for the Funds**

The stakeholder group evaluated a wide variety of potential funding sources. After careful consideration, the stakeholders recommend that the Funds be capitalized through the dedication of the existing sales tax revenue generated by certain categories of consumer products. These products were selected due to their demonstrated and costly effects on drinking water, surface water, drinking water infrastructure or wastewater infrastructure. The products are:

- Residential use fertilizers
- Residential use pesticides
- Non prescription drugs
- A variety of polish and other sanitary cleaning preparation
- Sanitary paper products
- Soap and other detergents
- Non-Flushable and cloth wipes

A full listing of these products and suggested statutory language to implement this recommendation is attached as Appendix C. It is important to note that all of these products are currently subject to the sales tax. The stakeholders are not proposing the creation of a new tax, but the dedication of the existing sales tax revenues. It is estimated that the existing five percent sales tax on these products generates approximately \$27 million dollars per year.

It is noted that the \$27 million dollars per year noted above is insufficient to fully fund the gap between water and wastewater infrastructure needs and available funding, therefore, the stakeholders recommended fully funding the water and wastewater infrastructure needs on an annual basis through other additional means. When proactively maintained and updated overall costs are reduced and environmental and economic benefits are maximized. In order to fully fund the gap, it was recommended that the Legislature continue to pursue annual environmental/economic development bond issues for state grants and fund the needed matching funds for federal DWSRF and CWSRF capitalization grants through the State's General Fund or through environmental/economic development bond issues.

## **Recommendations for Distribution of Revenue into the Funds**

As noted above, the Act created the following three funds:

- State Water and Wastewater Infrastructure Fund (administered by the MMBB).
- Maine Drinking Water Fund (administered by the DHHS).
- Maine Clean Water Fund (administered by DEP).

While the Funds are separate and distinct they are designed to work together as a system for the most effective use and distribution of the money. The stakeholders recommend that revenue be distributed into the Funds as follows:

- All revenue dedicated for use in the Funds should initially be directed to the State Water and Wastewater Infrastructure Fund administered by the MMBB. This will allow for the most effective management of the funds as described below.

## Recommendations for Management of the Funds

The stakeholders recommend the following:

1. A volunteer advisory board (board) should be created to provide guidance to the MMBB, DEP and DHHS on ongoing management of the funds. The board should include the following members:
  - a. The President of the Maine Wastewater Control Association (MWWCA) or their designee.
  - b. The Executive Director of the Maine Rural Water Association (MRWA) or their designee.
  - c. The Executive Director of the Maine Water Utilities Association (MWUA) or their designee.
  - d. A representative from a POTW with a licensed monthly average flow of 1.0 MGD or greater.<sup>8</sup>
  - e. A representative from a POTW with a licensed monthly average flow of 1.0 MGD or less.
  - f. A representative from a public drinking water supply serving a population of 10,000 or greater.
  - g. A representative from a public drinking water supply serving a population of 10,000 or less.
  - h. A representative of the Associated General Contractors of Maine.
  - i. A representative of the American Council of Engineering Companies of Maine.

Staff from the DEP, DHHS, and the MMBB shall serve as staff to the board. The board may invite others to attend as needed to solicit opinions and serve as subject matter experts.

2. The following principles should guide the board in their recommendations to the MMBB, DEP and DHHS for management of the Funds for grants:
  - a. The creation of these Funds was for the purpose of providing additional funding for water and wastewater infrastructure projects in Maine. The Funds should not be viewed as replacing existing revenue streams. The first priority of the Funds is to provide grants for water and wastewater infrastructure improvements.
  - b. Revenue should be split evenly between the Maine Drinking Water Fund (DHHS) and the Maine Clean Water Fund (DEP) to be used as grants for infrastructure improvements.
  - c. Grants should be distributed as broadly as possible.
  - d. Projects that are not eligible for DWSRF or CWSRF funding (such as unplanned replacement of water lines due to DOT road projects) should be eligible for a grants from the Funds.

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<sup>8</sup> The representatives noted in 1.d-g shall be mutually appointed by the President of the MWWCA, the Executive Director of the MRWA, the Executive Director of MWUA, the Commissioner of DHHS and the Commissioner of DEP.

- e. Projects completed using force labor that meet all other eligibility requirements should be eligible for grants from the Funds.<sup>9</sup>
  - f. The advisory committee should make recommendations to DEP and DHHS on the process and criteria that should be used to administer grants. In recommending these criteria the advisory committee should consider the utility of asset management planning for grant recipients.
3. Revenue bonds should be used by the MMBB to leverage the Fund only when the DEP, DHHS, and the advisory board conclude that there is a sufficient need to do so.
  4. Revenue in the Funds should be directed to meet state matching fund requirements for the DWSRF and the CWSRF only if bond issues or the general fund are insufficient to meet the match requirements. If there is insufficient revenue in the Funds to fully meet SRF match needs, the revenue should be split between DWSRF and CWSRF so that each program has an equal percentage of their match needs met.

**Additional Recommendations**

As noted above, consistently and fully funding Maine’s water and wastewater infrastructure needs is critical to a healthy environment and a healthy economy. Therefore the stakeholders recommend the following:

Fully fund the required state matching funds to acquire federal capitalization grants for the DWSRF and the CWSRF as noted below. Every state matching dollar brings in five federal dollars. The match shown below would enable Maine to draw down \$40.5 million in federal funds for the DWSRF and \$65 million in federal funds for the CWSRF.

	<b>DWSRF</b>	<b>CWSRF</b>
<b>2011</b>	\$2.7 million	\$4.2 million
<b>2012</b>	\$2.7 million	\$4.3 million
<b>2013</b>	\$2.7 million	\$4.5 million
<b>Total</b>	<b>\$8.1 million</b>	<b>\$13 million</b>

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<sup>9</sup> “Force labor” refers to projects that use facility staff rather than an outside contractor.

## APPENDIX A

### Chapter 377

# An Act To Create a Funding Structure for Sustainable Investment in Public Water and Wastewater Infrastructure in the State

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

Sec. 1. 22 MRSA §2610 is enacted to read:

## § 2610. Maine Drinking Water Fund

**1. Establishment; administration.** The Maine Drinking Water Fund, referred to in this section as "the fund," is established as provided in this section.

A. The fund is established as a nonlapsing fund to provide financial assistance, in accordance with subsection 2, for the acquisition, planning, design, construction, reconstruction, enlargement, repair, protection and improvement of public water systems, drinking water supplies and water treatment facilities.

B. The department shall administer the fund. The fund must be invested in the same manner as permitted for investment of funds belonging to the State or held in the State Treasury. The fund must be established and held separate from any other funds and used and administered exclusively for the purpose of this section. The fund consists of the following:

(1) Sums that are appropriated by the Legislature or transferred to the fund from time to time from the State Water and Wastewater Infrastructure Fund, pursuant to Title 30-A, section 6006-H;

(2) Interest earned from the investment of fund balances; and

(3) Other funds from any public or private source received for use for any of the purposes for which the fund has been established.

**2. Uses.** The fund may be used for one or more of the following purposes:

A. To make grants to public water systems, pursuant to this section, for the acquisition, planning, design, construction, reconstruction, enlargement, repair, protection or improvement of public water systems, drinking water supplies or water treatment facilities;

B. To forgive loans held by public water systems for the acquisition, planning, design, construction, reconstruction, enlargement, repair, protection or improvement of public water systems, drinking water supplies or water treatment facilities;

C. To provide a state match for federal funds provided to the Safe Drinking Water Revolving Loan Fund, pursuant to Title 30-A, section 6006-B;

D. To invest available fund balances and to credit the net interest income on those balances to the fund; and

E. To pay the costs of the department associated with the administration of the fund, as long as no more than 5% of the aggregate of the highest fund balance in any fiscal year is used for these purposes.

**3. Rules.** The department shall adopt rules necessary to implement this section, including rules to establish one or more grant programs in accordance with subsection 2, paragraph A. Rules adopted by the department pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 2. 30-A MRSA §6006-H** is enacted to read:

### **§ 6006-H. State Water and Wastewater Infrastructure Fund**

**1. Establishment; purposes.** The State Water and Wastewater Infrastructure Fund, referred to in this section as "the fund," is established as provided in this section.

A. The fund is established in the custody of the bank as a special fund to provide financial assistance for capital investment in public water and wastewater infrastructure. For the purposes of this section, "public water and wastewater infrastructure" includes, but is not limited to public water systems, drinking water supplies and treatment facilities, public wastewater systems and treatment facilities and water pollution abatement systems.

B. The bank shall administer the fund. The fund must be invested in the same manner as permitted for investment of funds belonging to the State or held in the State Treasury. The fund must be established and held separate from any other funds or money of the State or the bank and used and administered exclusively for the purpose of this section. The fund consists of the following:

(1) Sums that are appropriated by the Legislature or transferred to the fund from time to time by the Treasurer of State;

(2) Principal and interest received from the repayment of loans made from the fund;

(3) The proceeds of notes or bonds issued by the State for the purpose of deposit in the fund;

(4) Interest earned from the investment of fund balances;

(5) Private gifts, bequests and donations made to the State for any of the purposes for which the fund is established; and

(6) Other funds from any public or private source received for use for any of the purposes for which the fund has been established.



**2. Uses.** The fund may be used for one or more of the following purposes:

A. To guarantee or insure, directly or indirectly, the payment of notes or bonds issued or to be issued by the State for the purpose of financing capital investment in water and wastewater infrastructure through the fund;

B. To provide funds for capital investment in water and wastewater infrastructure through the Maine Drinking Water Fund, established in Title 22, section 2610, and the Maine Clean Water Fund, established in Title 38, section 411-C. Transfers to these funds must be made in consultation with the agencies administering those funds and must be secondary to the repayment of notes or bonds issued pursuant to paragraph A;

C. To provide a state match for federal funds provided to the State Revolving Loan Fund established in section 6006-A and the safe drinking water revolving loan fund established in section 6006-B;

D. To invest available fund balances and to credit the net interest income on those balances to the fund;

E. To invest as a source of revenue or security for the payment of principal and interest on general or special obligations of the bank if the proceeds of the sale of the obligations have been deposited in the fund; and

F. To pay the costs of the bank associated with the administration of the fund and projects financed by it as long as no more than 2% of the aggregate of the highest fund balance in any fiscal year is used for these purposes.

**3. Establishment of accounts.** The bank may establish accounts and subaccounts within the fund as it determines desirable to effectuate the purposes of this section, including, but not limited to, accounts to segregate a portion of the fund for grants and as security for bonds issued by the bank for deposit in the fund and to be invested for the benefit of specified projects receiving financial assistance from the fund.

**Sec. 3. 38 MRSA §411-C** is enacted to read:

### **§ 411-C. Maine Clean Water Fund**

**1. Establishment; administration.** The Maine Clean Water Fund, referred to in this section as "the fund," is established as provided in this section.

A. The fund is established as a nonlapsing fund to provide financial assistance, in accordance with subsection 2, for the acquisition, planning, design, construction, reconstruction, enlargement, repair, protection and improvement of public wastewater systems and treatment facilities and water pollution abatement systems.

B. The department shall administer the fund. The fund must be invested in the same manner as permitted for investment of funds belonging to the State or held in the State Treasury. The fund must be established and held separate from any other funds and used and administered exclusively for the purpose of this section. The fund consists of the following:

(1) Sums that are appropriated by the Legislature or transferred to the fund from time to time from the State Water and Wastewater Infrastructure Fund pursuant to Title 30-A, section 6006-H;

(2) Interest earned from the investment of fund balances; and

(3) Other funds from any public or private source received for use for any of the purposes for which the fund has been established.

**2. Uses.** The fund may be used for one or more of the following purposes:

A. To make grants to public wastewater systems under sections 411 and 412;

B. To forgive loans held by public wastewater systems for the acquisition, planning, design, construction, reconstruction, enlargement, repair, protection or improvement of public wastewater systems and treatment facilities and water pollution abatement systems;

C. To provide a state match for federal funds allocated to the state revolving loan fund established in Title 30-A, section 6006-A;

D. To invest available fund balances and to credit the net interest income on those balances to the fund; and

E. To pay the costs of the department associated with the administration of the fund as long as no more than 5% of the aggregate of the highest fund balance in any fiscal year is used for these purposes.

**Sec. 4. Stakeholder group; authority for legislation.** The Department of Health and Human Services and the Department of Environmental Protection shall convene a stakeholder group to develop recommendations regarding the funds created in this Act. The stakeholder group shall, at a minimum, review and make recommendations regarding funding needs and sources for the State Water and Wastewater Infrastructure Fund, established in the Maine Revised Statutes, Title 30-A, section 6006-H, taking into account the intent to use that fund as a state match for federal funds and to transfer funds from that fund to the Maine Drinking Water Fund, established in Title 22, section 2610, and the Maine Clean Water Fund, established in Title 38, section 411-C. No later than February 1, 2010, the Department of Health and Human Services and the Department of Environmental Protection shall jointly submit a report to the Joint Standing Committee on Utilities and Energy regarding the findings and recommendations of the stakeholder group. Following receipt and review of the report, the committee may submit legislation related to the report to the Second Regular Session of the 124th Legislature.

## APPENDIX B

### PL 2009, Ch. 377 Stakeholder Service List and DEP & DHHS Contacts

#### An Act to Create a Funding Structure for Sustainable Investment in Public Water and Wastewater Infrastructure in the State

##### **Maine Waste Water Control Association**

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##### **Portland Water District**

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## APPENDIX C

### Suggested Statutory Language to Transfer Sales Tax Revenue from Certain Consumer Products to the Funds

Sec. 1 36 MRSA Chapter 722 is enacted to read:

#### 36 §4951 Definitions

1. **Fertilizer.** "Fertilizer" means a substance containing one or more recognized plant nutrients that is used for its plant nutrient content and designed for use or claimed to have value in promoting plant growth. "Fertilizer" does not include animal and vegetable manures that are not manipulated, marl, lime, limestone or topsoil.
2. **Nonprescription drugs.** "Nonprescription drugs" means nonnarcotic drugs that may be sold without a prescription and that are prepackaged for use by the consumer and labeled in accordance with the requirements of the laws and rules of this State and the Federal Government.
3. **Pesticide.** "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pests and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

#### 36 §4952 Transfer by the State Treasurer

**1. Deposit to Funds.** Beginning July 1, 2012 and on a quarterly basis thereafter, the State Treasurer shall transfer to the State Water and Wastewater Infrastructure Fund established in 30-A, § 6006-H. in an amount, as certified by the State Tax Assessor, that is equivalent to the revenue from the tax collected during the preceding calendar quarter under Title 36, Part 3 on the following:

A. The sale of non-prescription drugs.

B. The sale of fertilizer for residential use.

C. The sale of pesticides for residential use.

D. The sale of polish and other sanitary cleaning preparations, including air fresheners, household ammonia, automobile polishers and cleaners, beeswax polishes and waxes, household bleach, brass polishes, buffing compounds, dusting and polishing cloths, copper cleaners, degreasing preparations, non-personal deodorants, disinfectants, drain pipe cleaners, dry cleaning preparations, fabric softeners, floor polishes and waxes, furniture polishes and waxes, glass and tile cleaners, ink eradicators, kitchen degreasing and cleaning preparations, household lye, metal polishes, oven cleaners, polishes, rug cleaners, rust removers, saddle soap, spot removers, laundry starch, toilet bowl cleaners, tub and tile cleaners, wallpaper cleaners, wax removers, waxes, window cleaners, and windshield washer fluids.

E. The sale of sanitary paper products, including, disposable diapers, facial tissues, paper handkerchiefs, napkins, pads, paper towels and tablecloths, sanitary napkins, and toilet paper.

F. The sale of soap and other detergents, including soaps, dentifrices, detergents, glycerin, scouring cleansers, and toothpaste

G. The sale of flushable wipes and all cloth wipes.

The tax amount must be based on actual sales and may not consider any accruals that may be required by law. The amount transferred from General Fund sales and use tax revenue does not affect the calculation for the transfer to the Local Government Fund.

**36 §4953 Effective Date**

This chapter shall be effective for taxable purchases made in this State on or after July 1, 2012 and for taxable items brought into this State by the user on or after July 1, 2012.