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Private & Special Law

124th Legislature

First Regular Session

Chapter 18

H.P. 815 - L.D. 1176

An Act To Revise the Charter of the Portland Water District

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

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 P&SL 1907, c. 433, §9, first ¶, as repealed and replaced by P&SL 1975, c. 84, is amended to read:

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

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

Said ~~The~~ bonds or notes shall must be issued in such an amount or amounts as the district, acting through its trustees and without vote of its inhabitants, may determine. Said ~~The~~ bonds or notes may be issued to mature serially, in annual installments of principal, ~~no one of which shall exceed by more than 25% any earlier installment and which need not be equal,~~ the first of which shall must be payable not later than 3 years from the date of such ~~the~~ bonds or notes and the last of which shall must be payable not later than 40 years from said ~~that~~ date. Said ~~The~~ bonds or notes may also be issued for a term of years not exceeding

40 years or in a combination to mature serially and for a term of years not exceeding 40 years, all as the trustees shall determine, and in the case of such term bonds, or combination of term bonds and serial bonds, the bonds in combination mature or are subject to an annual mandatory sinking fund redemption starting no later than 3 years after the bonds' date of issuance. Said ~~The~~ bonds may be callable with or without premium and shall must contain such terms and conditions; and be sold in such manner, at public or private sale, with or without provisions for prepayment in advance of maturity, at par, at a discount or at a premium, all as the trustees shall determine. The trustees may determine or may authorize the treasurer or a committee of 2 or more trustees to determine the selling price and rate or rates of interest to be paid on bonds or notes and, if specifically authorized by the trustees, the rate of interest may vary.

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

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

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

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

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

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

District" and "Sewer Bond" and ~~shall~~ must be executed as the trustees ~~shall~~ determine. All bonds issued in the exercise of the authorization of section 2, paragraph C, ~~shall~~ must have inscribed upon their face "Portland Water District" and "Purification" and ~~shall~~ must be executed as the trustees ~~shall~~ determine.

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Apportionment of financing costs:

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

(2) All financing costs of any facility designed to be jointly used must be apportioned by the trustees between or among the participating municipalities for whose benefit the facilities were designed in the ratio of the percentage of use capability of the facility attributed to each participating municipality in the original design of the facility. If in the judgment of the trustees the actual use of this facility by one or more of the participating municipalities will not occur within 24 months of the actual use of the first participating municipality, financing costs must be apportioned under this paragraph to only those participating municipalities whose use or joint use of the facilities is expected to take place within the 24-month period. Except as otherwise provided in this paragraph, when a participating municipality makes first use of a facility that had previously been used by one or more participating municipalities, that participating municipality must also be assessed for its fair share of the financing cost of the jointly used facility that had been previously assessed up to the time of the first use of the facility by the joining municipality. The additional share must be determined by the trustees on the same formula set forth in this paragraph. The trustees shall apportion the additional share and, in addition, if the trustees determine that it is appropriate and reasonable, an annual interest component at a rate to be determined by the trustees to the joining municipality over a period of years equal to the term for which the original bonded indebtedness was issued. The trustees shall make corresponding annual adjustments in the assessments of the participating municipalities previously using the facility by crediting the amount of the additional share to the participating municipalities in proportion to their respective total payments to the district on account of the financing costs of the facility made by the participating municipalities up to the time of first use of the facility by the joining municipality.

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

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

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

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

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

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

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

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

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

F. That the district may deduct at such times as stated in the contract, which must be at least monthly, that portion of sums collected that represent the amounts due to the district from the participating municipality pursuant to sections 12 and 13 and pay the balance of the funds to the participating municipality, and that to the extent the portions retained by the district fail to equal the portion of district costs then due from the participating municipality, the deficit must be paid to the district by the participating municipality;

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

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

A participating municipality with respect to fixing a schedule of rates, fees and other charges for the services furnished or to be furnished by or through its sewer system has such authority as may be granted by its charter, if any, by any private and special laws and by the Maine Revised Statutes, including, without limitation, Title 30-A, chapters 161 and 213, to the extent applicable. Notwithstanding any provision of law to the contrary, a participating municipality may by vote of its legislative body authorize the exercise by the district on behalf of the participating municipality of any or all of the powers granted to the participating municipality to collect such rates and charges from the users of the sewer

system of the participating municipality as provided in this Act, however, nothing in this section may be construed to permit the transfer by a participating municipality to the district of the right to make or collect assessments authorized by Title 30-A, chapter 161, subchapter 1, or any private and special law authorizing a participating municipality to make or collect such assessments.

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

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

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

Trustees are elected for a term of 5 years at elections as described in this paragraph. ~~Trustees elected from the City of Portland are elected at the City of Portland's regular municipal elections in November. Trustees elected from the City of Portland, the City of South Portland, the Town of Cape Elizabeth, the City of Westbrook, the Town of Gorham and , the Town of Scarborough, the Town of Windham and the Town of Raymond are elected at elections on the first Tuesday after the first Monday of November. The trustee elected from the Town of Cumberland and the Town of Falmouth is elected on a mutually coincident municipal election date in the Town of Cumberland and the Town of Falmouth in June, but, if there is not a mutually coincident municipal election date, then on the 2nd Tuesday of June. The trustee elected from the Town of Raymond and the Town of Windham is elected on the date of municipal elections in the Town of Windham in June. The Town of Raymond shall hold a special town meeting to elect the trustee on the same day that the Town of Windham holds its election to elect the trustee. Costs for any trustee election held concurrently with a federal, state or municipal election are divided between the municipality and the district. When there is a division of costs, the district is responsible for the costs proportional to the total number of offices and referenda issues voted upon at the election. If an election for a trustee results in a tie vote, the other trustees shall select the person who becomes a trustee.~~

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

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

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

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

Effective September 12, 2009