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Date: (Filing No. S-)

ENERGY, UTILITIES AND TECHNOLOGY

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**STATE OF MAINE
SENATE
127TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 436, L.D. 1231, Bill, “An Act To Create the Southwest Harbor Water and Sewer District”

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. Territorial limits and corporate name and purposes. The inhabitants and territory within the Town of Southwest Harbor constitute a utility district under the name of "Southwest Harbor Water and Sewer District," referred to in this Act as "the district," for the purpose of supplying the inhabitants of the district with potable water for domestic, commercial, sanitary and municipal purposes and for the purpose of providing in the district a system of public sewerage and drainage for the comfort, convenience and health of the inhabitants of the district.

Sec. 2. Powers of the Southwest Harbor Water and Sewer District. The district is authorized to take, hold, divert, use and distribute water from any source within the territory of the district, including but not limited to Long Pond in the Town of Southwest Harbor. The district has all the powers of a standard water district under the Maine Revised Statutes, Title 35-A, section 6404 and all the powers of a standard sewer district under Title 38, section 1039.

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

The district is authorized to lay, maintain, repair and replace pipes, mains and other fixtures and appurtenances to or into any drain or sewer now or hereafter built that

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1 empties into watercourses or treatment works, the discharge to be at such point or points
2 consistent with the requirements of public health and as convenient and reasonable for the
3 district and consistent with the requirements of applicable federal, state and local laws
4 and the flow of existing watercourses.

5 **Sec. 4. Sewer extensions.** Sewer extensions are governed by the Maine Revised
6 Statutes, Title 38, section 1042.

7 **Sec. 5. Coordination with municipal planning.** The trustees of the district
8 shall cooperate with the Board of Selectmen of the Town of Southwest Harbor in the
9 development of municipal growth management and other land use plans and ordinances.

10 The Board of Selectmen of the Town of Southwest Harbor shall cooperate with the
11 trustees of the district during the consideration of development applications that may
12 affect the operations of the district.

13 **Sec. 6. Abutting owners have right to enter.** The district shall permit the
14 owners of premises abutting upon its lines of pipes and conduits to enter the same with all
15 proper sewerage and to connect the same for potable water, if the owners of such
16 premises conform to the rules and regulations of the district and pay the established rates,
17 tolls, rents and other lawful charges.

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

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

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

32 **Sec. 9. Required connection.** Upon receiving a request from the district to
33 connect a building located in the territory of the district that is accessible to a sewer or
34 drain of the district and that is intended for human habitation or occupancy or that has
35 facilities for discharge or disposal of waste water or commercial or industrial waste, the
36 owner of that building shall arrange to have the building connected through a sanitary
37 sewer or drainage system to the district's accessible sewer or drain in the most direct
38 manner possible. If feasible, each building requiring connection must have its own
39 separate connection. The connection must be completed within 90 days of the receipt by
40 the owner of the request, or within any extended period requested by the owner and
41 agreed to by the trustees. For purposes of this section, "owner" includes the owners of
42 record or any person against whom property taxes on the building are assessed.

1 A person who receives a notice in accordance with this section to connect to a
2 building and fails to connect to the building in accordance with this section is subject to a
3 civil penalty not to exceed \$2,500, payable to the district. This penalty is recoverable in a
4 civil action.

5 **Sec. 10. Connections not required.** An existing building that is already served
6 by a private sewer system is not required to connect with a sewer or drain of the district
7 as long as the private sewer or drainage system functions in a satisfactory and sanitary
8 manner and does not violate applicable law or ordinance applicable to the connection
9 with a sewer or drain of the district or any applicable requirements of the state plumbing
10 code, as determined by the municipal plumbing inspector or the municipal plumbing
11 inspector's alternate, or, in the event that both are trustees or employees of the sewer
12 district, the division of health engineering within the Department of Health and Human
13 Services.

14 **Sec. 11. Permissive connection.** A person not otherwise required to connect a
15 private sewer into a sewer of the district may connect to the district's sewer if that person
16 obtains a permit from the district and pays any charges required by the district. The clerk
17 of the district shall record the permit in the records of the district.

18 **1. Construction complete.** If construction of the district's sewer is complete at the
19 proposed point of entry of the private sewer and the district has established an entrance
20 charge for entry at that location, the person seeking to connect the private sewer at that
21 location shall pay the entrance charge before the connection is undertaken.

22 **2. Construction not complete.** If the district's sewer is under construction and not
23 completed at the point of the proposed entry of the private sewer, the person seeking to
24 connect the private sewer at that location is not required to pay an entrance charge until
25 construction is completed.

26 **Sec. 12. Authority to acquire property; right of eminent domain**
27 **conferred; procedures in exercising eminent domain.** The district is authorized
28 and empowered to acquire and hold real and personal property necessary or convenient
29 for its purposes. The district is granted the right of eminent domain as specified in the
30 Maine Revised Statutes, Title 38, section 1040 with respect to its sewer functions and is
31 granted the right of eminent domain as specified in Title 35-A, section 6408 with respect
32 to its water functions. The trustees of the district shall obtain the consent of the Board of
33 Selectmen of the Town of Southwest Harbor prior to each exercise of its rights of
34 eminent domain.

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

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

41 **Sec. 13. Crossing property of other public utilities and railroad**
42 **corporations.** If the district, in constructing, maintaining or replacing any of its
43 facilities, must cross property of another public utility or railroad corporation, the district

1 shall obtain the consent of the other public utility or railroad corporation and undertake
2 the work in accordance with conditions established by agreement. If, within 30 days after
3 requesting consent, the district fails to reach an agreement with the public utility or
4 railroad corporation, the district may petition as follows.

5 **1. Public utility.** In the case of crossing property of a public utility, the district may
6 petition the Public Utilities Commission to determine the time, place and manner of
7 crossing. All work done on the property of the public utility must be done under the
8 supervision and to the satisfaction of the public utility or as prescribed by the Public
9 Utilities Commission.

10 **2. Railroad corporation.** In the case of crossing property of a railroad corporation,
11 the district may petition the Department of Transportation to determine the time, place
12 and manner of crossing. All work done on the property of the railroad corporation must
13 be done under the supervision and to the satisfaction of the railroad corporation or as
14 prescribed by the Department of Transportation.

15 **Sec. 14. Trustees, appointment; tenure of office; vacancies; first meeting**
16 **and organization of board; annual report; transition provisions.** All the affairs
17 of the district must be managed by a board of 3 trustees. One of the trustees must be the
18 town manager for the Town of Southwest Harbor. If the town manager position is
19 vacated and in the absence of an acting town manager, the board of selectmen shall
20 appoint a resident of the Town of Southwest Harbor to serve as a trustee until the town
21 manager position is filled. The remaining 2 trustees must be residents of the Town of
22 Southwest Harbor who are appointed by the board of selectmen. No member of the board
23 of selectmen may, during the term for which the member is elected, be appointed as a
24 trustee of the district. The appointed trustees shall hold office for terms of 3 years and
25 until their respective successors are appointed and qualified. Upon appointment of the
26 first board, the board of selectmen shall determine the terms of the 2 appointed trustees.

27 Within one week after their initial appointment, after the effective date of this Act,
28 the trustees shall meet and elect from among their members a president and clerk, adopt a
29 corporate seal and elect a treasurer, who may or may not be a trustee, and any other
30 officers and agents as needed, who with the treasurer serve at the pleasure of the trustees.
31 The treasurer shall furnish a bond in the sum and with sureties approved by the trustees.
32 The district shall pay the cost of the bond. Members of the board of trustees may hold
33 any office for the board, but may not receive any compensation, except as trustees, unless
34 authorized by a vote of the Board of Selectmen of the Town of Southwest Harbor.

35 The trustees of the district shall receive compensation as recommended by the
36 trustees and approved by majority vote of the Board of Selectmen of the Town of
37 Southwest Harbor, including compensation for any duties they perform as officers as well
38 as for their duties as trustees. Certification of the vote must be recorded with the
39 Secretary of State and recorded in the bylaws. Compensation for duties as trustees must
40 be based on an amount specified in the bylaws for each meeting actually attended plus
41 reimbursement for travel and expenses, with the total not to exceed a specific amount as
42 specified in the bylaws.

43 Whenever the term of office of an appointed trustee expires, the Board of Selectmen
44 of the Town of Southwest Harbor shall appoint a successor to serve the full term of 3
45 years. If any other vacancy of an appointed trustee arises from any cause it must be filled

1 in like manner for the unexpired term. All appointed trustees are eligible for
2 reappointment. Trustees must be sworn to the faithful performances of their duties by the
3 clerk of the Town of Southwest Harbor. When any appointed trustee ceases to be a
4 resident of the Town of Southwest Harbor, that trustee vacates the office of trustee. The
5 trustees may adopt and establish bylaws consistent with the laws of the State and
6 necessary for the convenience and the proper management of the affairs of the district and
7 perform other acts within the powers delegated by law to the trustees. The trustees shall
8 publish an annual financial report.

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

12 **Sec. 15. Removal of appointed trustees.** An appointed trustee may be removed
13 under the following provisions.

14 **1. Vote of board of selectmen.** An appointed trustee may be removed from the
15 board of trustees with a majority vote of the Board of Selectmen of the Town of
16 Southwest Harbor for misfeasance, malfeasance or nonfeasance in office. The selectmen
17 must state at a regularly scheduled meeting of the board of selectmen the reason for
18 which removal is sought.

19 **2. Appeal.** Within 30 days after the vote by the board of selectmen pursuant to
20 subsection 1, the trustee may appeal the decision to the Board of Appeals of the Town of
21 Southwest Harbor.

22 **3. Further appeals.** Further appeals may be made to the Maine Superior Court
23 under Rule 80B of the Maine Rules of Civil Procedure once all municipal procedures
24 have been followed.

25 **Sec. 16. Authority to make and assume contracts.** The district, through its
26 trustees, in order to carry out the purposes of its incorporation, may contract with a
27 person, standard district, utility or corporation or with a municipality, the State or other
28 governmental entity whether located inside or outside the boundaries of the district.

29 **Sec. 17. Authority to acquire water utility property and franchises of the**
30 **Town of Southwest Harbor.** The Town of Southwest Harbor is authorized to sell to
31 the district and the district is authorized and empowered to acquire by purchase or by the
32 exercise of the right of eminent domain the entire water utility plant, property, franchise,
33 property rights, privileges and assets owned by the Town of Southwest Harbor, including
34 all land, waters, water rights, reservoirs, pipes, machinery, fixtures, hydrants, tools and all
35 apparatus and appliances used or usable in supplying water facilities and drainage in the
36 territory served by the municipal water department. Upon transfer by the Town of
37 Southwest Harbor to the district of its plant, property, franchise, property rights,
38 privileges and assets, the district assumes all the outstanding debts and liabilities of the
39 municipal water department, including, without limitation, any outstanding bonds, notes
40 or other evidence of indebtedness of the municipal water department that are due on or
41 after the date of transfer.

42 The sale and transfer by the Town of Southwest Harbor of its water utility plant,
43 property, franchise, property rights, privileges and assets; the assumption by the district

1 of all the outstanding debts and liabilities of the municipal water department and the
2 department assets; and all other water utility activities are subject to the approval of the
3 Public Utilities Commission as may be required by the Maine Revised Statutes, Title
4 35-A.

5 **Sec. 18. Authority to acquire sewer-related property and franchises of**
6 **the Town of Southwest Harbor.** The Town of Southwest Harbor is authorized to sell
7 to the district and the district is authorized and empowered to acquire by purchase or by
8 the exercise of the right of eminent domain the entire sewer plant, property, franchise,
9 property rights, privileges and assets owned by the Town of Southwest Harbor, including
10 all land, easements, mains, conduits, fixtures, pumping stations, basins, treatment
11 facilities and outlets used or usable in providing a public system of public sewerage and
12 drainage in the territory served by the municipal sewer department. Upon transfer by the
13 Town of Southwest Harbor to the district of its plant, property, franchise, property rights,
14 privileges and assets, the district assumes all the outstanding debts and liabilities of the
15 municipal sewer department, including, without limitation, any outstanding bonds, notes
16 or other evidence of indebtedness of the municipal sewer department that are due on or
17 after the date of transfer.

18 **Sec. 19. Completion of transfer.** Promptly after completion of the transfer and
19 assumption of assets and liabilities pursuant to sections 17 and 18, the Town of
20 Southwest Harbor shall cause to be filed with the Secretary of State notice that all sewer
21 and water assets of the municipality and all debts and liabilities of the water and sewer
22 departments of the Town of Southwest Harbor have been transferred to the district. The
23 notice must be signed by the chair of the Board of Selectmen of the Town of Southwest
24 Harbor and by the municipal clerk.

25 **Sec. 20. Authorized to borrow money; to issue bonds and notes.** For
26 accomplishing the purposes of this Act, the district, by vote of its board of trustees, is
27 authorized to borrow money temporarily and to issue for the borrowing of money its
28 negotiable notes.

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

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

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

42 **Sec. 21. Property tax exempt.** The property of the district is exempt from all
43 taxation in the Town of Southwest Harbor.

1 **Sec. 22. Sewer rates payable; adoption of new rates; application of**
2 **revenue; collection of unpaid rates; authority to disconnect water for**
3 **nonpayment of sewer service.** Notwithstanding the Maine Revised Statutes, Title 38,
4 section 1048, this section governs the sewer rates of the district.

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

14 Rates, tolls, rents and entrance charges must be uniform within the district whenever
15 the cost to the district of installation and maintenance of sewers or their appurtenances
16 and the cost of service is substantially uniform, but nothing precludes the district from
17 establishing a higher rate, toll, rent or entrance charge than the regular rates, tolls, rents
18 and entrance charges in sections where, for any reason, the cost to the district of
19 construction and maintenance, or the cost of service, exceeds the average, but such higher
20 rates, tolls, rents and entrance charges must be uniform throughout the sections where
21 they apply.

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

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

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

35 **1. Current operating expenses.** Pay the current expenses of operating and
36 maintaining the sewerage, drainage and treatment system of the district including the cost
37 of depreciation;

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

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

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

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

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

13 There is a lien issued on real estate served by the district to secure the payment of
14 unpaid sewer rates and other lawful charges. The sewer lien takes precedence over all
15 other claims on the real estate, except claims for taxes. The procedures for obtaining,
16 enforcing and receiving payment on the lien are governed by Title 38, section 1050.

17 **Sec. 23. Water rates; application of revenue; sinking fund.** An individual,
18 firm or corporation, whether public, private or municipal, shall pay to the treasurer of the
19 district the rates and other lawful charges established by the trustees for the water used or
20 made available to it. All water rates and other lawful charges of the district are governed
21 by the Maine Revised Statutes, Title 35-A, chapter 61.

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

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

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

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

36 There is a lien issued on real estate served by the district to secure the payment of
37 unpaid water rates and other lawful charges. The water lien takes precedence over all
38 other claims on the real estate, except claims for taxes and sewer rates. The procedures of
39 obtaining, enforcing and receiving payment on the water lien are governed by Title 35-A,
40 section 6111-A.

41 **Sec. 24. Incidental powers granted.** All incidental powers, rights and privileges
42 necessary to the accomplishment of the objectives set forth in the Act are granted to the
43 district.

1 **Sec. 25. Replacement of equipment; road openings.** Upon the reconstruction
2 of any public roadway by the Town of Southwest Harbor, the district shall coordinate the
3 replacement of any sewer or water lines, equipment, valves or hydrants that have reached
4 their maximum useful life. A rebuilt or resurfaced road may not be opened or excavated
5 by the district except under emergency conditions, within 5 years of reconstruction or
6 repavement of the road.

7 **Sec. 26. Referendum; effective date.** This Act takes effect when approved only
8 for the purpose of permitting its submission to the legal voters within the Town of
9 Southwest Harbor at a referendum called for that purpose and held within 2 years of the
10 effective date of this Act. The election must be called by the Board of Selectmen of the
11 Town of Southwest Harbor and must be held at the regular voting place. The referendum
12 must be called, advertised and conducted according to the law relating to municipal
13 elections. The registrars shall make a complete list of all the eligible voters of the
14 proposed district as described in this Act. The list prepared by the registrars governs the
15 eligibility of a voter. For the purpose of registration of voters, the registrars of voters
16 must be in session the regular workday preceding the referendum. The subject matter of
17 this Act is reduced to the following question:

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

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

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

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

31 **SUMMARY**

32 This amendment makes minor changes to language in the bill. This amendment
33 makes consent of the Board of Selectmen of the Town of Southwest Harbor required
34 prior to the exercise by the Southwest Harbor Water and Sewer District of the rights of
35 eminent domain. This amendment provides that one of the trustees of the district must be
36 the town manager of the Town of Southwest Harbor. This amendment also provides a
37 process if the town manager position becomes vacant, which allows either the acting
38 town manager to serve as a trustee or, in the absence of an acting town manager, the
39 Board of Selectmen of the Town of Southwest Harbor to appoint a resident of the Town
40 of Southwest Harbor as a trustee until the town manager position is filled. This
41 amendment also requires the board of selectmen to determine the terms of the 2 appointed
42 trustees, for the first board only. This amendment requires that notice be filed with the
43 Office of the Secretary of State, instead of a certificate of dissolution, stating that all

1 sewer and water assets of the municipality and all debt and liabilities of the water and
2 sewer departments of the Town of Southwest Harbor have been transferred to the district.
3 This amendment strikes the provision of the bill regarding the debt responsibility of the
4 Town of Southwest Harbor.