



Portland Water District
FROM SEBAGO LAKE TO CASCO BAY

January 13, 2022

Committee on Labor and Housing
Cross Building Room 202
100 State House Station
Augusta, ME 04333

Re: Testimony on LD 555 An Act to Expand the Rights of Public Sector Employees

Dear Senator Craig Hickman, Chair, and Representative Mike Sylvester, Chair, and members of the Labor and Housing Committee:

On behalf of the Portland Water District, I am submitting testimony on LD 555, An Act to Expand Rights of Public Sector employees.

The Portland Water District has provided testimony against a similar bill in 2020 and in 2021. For your ease of reference, I am attaching copies of the testimony here. The objections of the Water District expressed in 2020 and in 2021 are identical to the objections the Water District has to this bill today; namely:

Persons engaged in the provision of water and wastewater services **MUST NOT** be allowed to strike.

- They are needed on the job 24/7 to keep water and wastewater services working properly. Catastrophic consequences that compromise public health and safety can result if these services are not maintained.
- They are needed to respond to emergencies that can occur at any time of the day or night. Catastrophic consequences that compromise public health and safety can result if emergencies are not immediately responded to.
- It cannot be assured that striking employees will report to work to operate facilities or to deal with emergencies. They may not be able to be reached, may not be in the area, may not be able to interrupt their activities, or may not be fit for duty.

Should the Committee be inclined to support a public employee's right to strike, the Portland Water District proposes that those who provide water and wastewater services be exempted from the provisions of this bill. Suggested language to accomplish this exemption is attached as well.

PLEASE exempt those who provide water and wastewater services from this bill. The public health and safety of your constituents and our customers depend on it.

Respectfully submitted,

Carrie Lewis
General Manager

LABOR AND HOUSING

4 Reproduced and distributed under the direction of the Clerk of the House.

5 **STATE OF MAINE**

6 **HOUSE OF REPRESENTATIVES**

7 **130TH LEGISLATURE**

8 **FIRST REGULAR SESSION**

9 COMMITTEE AMENDMENT " " to H.P. 400, L.D. 555, Bill, "An Act To
10 Expand the Rights of Public Sector Employees"

11 Amend the bill by striking out all of section 2 and inserting the following:

12 'Sec. 2. 26 MRS §964-B is enacted to read:

13 **§964-B. Authorized strikes**

14 **1. Authorization to engage in a strike.** A public employee, except for an employee
15 whose duties include protecting public safety or public health; a public employee organization; an
16 agent of a public employee or public employee organization; a member of a public employee
17 organization; or a bargaining agent of a public employee or public employee organization
18 may engage in a strike and a public employee organization may authorize a strike of the
19 members of the organization pursuant to the following procedures:

20 A. The membership of a public employee organization or unit of a public employee
21 organization that is affected by the issue for which the strike is called must conduct a
22 vote of a majority of members;

23 B. Upon an affirmative vote in paragraph A, the public employee organization or
24 unit of the public employee organization shall deliver to the public employer of the
25 employees voting to strike or the employer's agent a notice of the intent to strike and
26 state the date upon which the strike will begin and the date upon which the strike will
27 end; and

28 C. The public employee organization or unit of the public employee organization
29 sending notice of a strike or public employer receiving notice of a strike under
30 paragraph B may call for emergency bargaining within 3 days prior to the date upon
31 which the strike is intended to start.

32 For the purposes of this subsection, "employee whose duties include protecting public
33 safety or public health" includes a law enforcement officer as defined in Title 25, section 1611,
34 subsection 5; a municipal firefighter as defined in Title 30-A, section 3151, subsection 2; an
35 emergency dispatcher; emergency medical, response or rescue personnel; and a

1 corrections officer as defined in Title 25, section 2801-A, subsection 2 who provides
2 direct care to inmates and detainees committed to the care of a sheriff in a jail as defined
in Title 17-A, section 2, subsection 15-A; and persons engaged in the provision of water
and wastewater services.

4 **2. Prohibited employer conduct.** A public employer may not permanently replace
5 a public employee who engages in a strike in accordance with subsection 1 because that
6 employee engaged in a strike.'

7 Nothing in this section prohibits a public employer, during a strike authorized in
8 accordance with subsection 1, from requiring that the minimum necessary number of
9 public employees report to work in order to ensure that the public health, safety and
10 welfare are protected during any event or occasional combination of circumstances that
11 calls for immediate action or remedy. A public employee required to work during a strike
12 may file a grievance.



Portland Water District
FROM SEBAGO LAKE TO CASCO BAY

March 4, 2021

Committee on Labor and Housing
Cross Building Room 202
100 state House Station
Augusta, ME 04333

Dear Senator Joseph Rafferty Chair, Representative Mike Sylvester Chair, and members of the Labor and Housing Committee:

Re: Testimony on LD 555 An Act to Expand the Rights of Public Sector Employees

My testimony is provided to convey to the members of the Committee the importance of including employees of water and wastewater utilities as employees "whose duties include protecting public safety" for the purposes of this bill. With that change, water and wastewater system employees would not be allowed to strike and public health, safety and welfare would be protected. All the discussion below would become irrelevant. Without that change, the bill as written (even with the provision that requires employees to report to work when emergency situations arise) is *not* sufficient to ensure that water and wastewater systems will continue to operate and that public health, safety and welfare will be protected.

Water and wastewater utilities and their workers provide critical, essential services that protect public safety, health and the environment. As Maine braced for the impact of the COVID-19 pandemic, water and wastewater workers and utilities were immediately declared to be essential.

Governor Mills' Executive Order 19FY 19/20, issued on March 24, 2020, directed that "All Essential Businesses and Operations shall continue their activities...". This Executive Order declared water and wastewater utilities essential in Maine and also referenced the United States Department of Homeland Security, Cybersecurity & Infrastructure Security Agency Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response dated March 19, 2020. This memo, which also specifically includes water and wastewater workers and services, begins with the following directive:

"If you work in a critical infrastructure industry, as defined by the Department of Homeland Security... you have a special responsibility to maintain your normal work schedule."

Portland Water District treats and distributes water for fire protection and drinking/sanitary purposes to 200,000 people in 11 communities. Two drinking water treatment plants, seven pumping stations, nine water storage facilities, 1,000 miles of water mains, 5,169 hydrants and 12,062 valves must be working properly to deliver this water. We intercept and treat wastewater, returning it safely to the environment, for six communities. It takes four wastewater treatment plants, 76 pumping stations, 120 miles of sewer and forcemain pipe with over 2,600 manholes to do this. Each of these elements must be in good working condition and be properly maintained in order for these services to be delivered. Knowledgeable, trained employees, many of whom are licensed professionals, are needed to staff and operate these facilities every day and also to be standing by to promptly address and respond to emergencies.

There are essential activities that must be continually performed to keep these services operational. Employees must be on duty for their scheduled shifts to perform these activities. To name a few, deliveries of chemicals essential to treatment processes require oversight, preventative maintenance keeps critical equipment running, samples must be collected and analyzed to comply with regulatory requirements, inspections must be performed as new infrastructure is built to ensure proper standards and specifications are met. Vehicles must be fueled and functional. Computers and industrial control systems must be up and running.

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And, there are situations that arise that call for "immediate action and remedy". To name a few, locating and repairing water system leaks that would compromise firefighting and create hazardous situations in roadways, thawing frozen hydrants, troubleshooting unusual water quality results, unclogging wastewater pumps so that sewage doesn't back up into basements. The reality is that an employer will not be able to get striking employees back to work in the event of an emergency. Employees who are on strike have no obligation to be available for work. They may not answer the phone, they may not be in the vicinity, or they may not be fit for duty. No invocation of employer rights will ensure that employees will report to work to deal with emergencies during a strike.

As previously stated, the employees that are involved in providing water and wastewater services are expert and often licensed professionals with many years of training. Their skills cannot be replaced by just anyone. They need to be at work to perform the activities that keep the systems operational. They are also obligated to be available to work on an agreed-upon schedule to respond to emergencies. Any interruption to their work could result in insufficient water for firefighting and toilet flushing, inadequately treated drinking water, and improperly collected and treated wastewater and wastewater discharges. These are serious threats to public health and to public safety.

Given the nature of the essential services provided by water and wastewater utilities and employees, and that they have been deemed "essential" by both state and federal government actions, they should be deemed exempt from LD 555. I have proposed language for an exemption, attached hereto, to remove those who provide water and wastewater services from this bill. The public health and safety of your constituents and our customers depends on it.

Don't hesitate to call (207-523-5270) or email (clewis@pwd.org) if I can provide additional information. Thank you for your time and consideration.

Respectfully,



Carrie Lewis
General Manager



Portland Water District
FROM SEBAGO LAKE TO CASCO BAY

February 10, 2020

Committee on Labor and Housing
Cross Building Room 202
100 state House Station
Augusta, ME 04333

Dear Senator Bellows, Representative Sylvester, and members of the Labor and Housing Committee:

I am the General Manager of the Portland Water District. I attended the work session on LD 900 which was held on February 5, and listened carefully to the discussion of the members of the Committee. I attended the hearing and submitted written testimony last year on the bill, and have been following its development. As a result of certain representations that were made, I feel the need to clear up possible misconceptions as to how the ability for public employees to strike – in particular employees who provide water and wastewater services – will work in the workplace.

A Chair of the Committee indicated that in the event of a strike, the proposed amendment to LD 900 would allow employers to invoke management rights and recall employees during a crisis or emergency. On its face, this would seem to give appropriate public health and safety protection to the public. However, this simply will not provide the protection that your constituents and our customers need for a variety of reasons.

First, employees who are on strike will not be sitting by the phone, ready to come in to work if called in the event of an emergency. The reality is that many may not answer a call from their employer, may not be in the vicinity, or they may not be fit for duty. As I stated in my testimony last year, and has been underscored by testimony from the Maine Water Utilities Association, the employees that are involved in providing water and wastewater services are expert and often licensed professionals with many years of training. Their skills cannot be replaced by just anyone. They are at work 24/7 and their skills are needed there 24/7, not just in the event of an emergency. Any interruption to their work could result in insufficient water for firefighting and toilet flushing, inadequately treated drinking water, and improperly collected and treated wastewater and wastewater discharges. These are serious threats to public health and to public safety. No invocation of employer rights will alleviate these risks or consequences.

Further, employees are not likely to cross a picket line to get in to work. An employer has no way to compel any employee – or possible replacement – to cross a picket line. To assert that an employer can simply bargain with a union to determine which employees are essential in the event of a strike is unrealistic as well. If contract negotiations deteriorate such that employees feel the need to strike – there will be no agreement on who is an essential employee for day to day operations.

Given the nature of the services provided by water and wastewater employees, I renew our request to be exempted from the operation of LD 900. PWD has proposed an exemption which I enclose herein and is limited to those who provide water and wastewater services. I renew my request for your consideration. The public health and safety of your constituents and our customers depends on it.

Don't hesitate to call if you have questions, 207-252-8022 is my cell and thank you again for your time and consideration.

Respectfully,

Carrie Lewis
General Manager

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