

**DRAFT An Act Establishing a Regional Wastewater Partnership for the Towns of Bourne, Marion, Plymouth and Wareham, and the Massachusetts Maritime Academy. This is a hypothetical draft legislation modeled on the Special Act passed for the Mansfield Norton Foxboro district. The Upper Bay partners have discussed many of the provisions reflected herein, but no partner has taken an official position on the creation of a regional district. In the event partners move forward with the creation of a district, this document can be used as a starting point for discussion.**

**SECTION 1.** As used in this act, the following words shall have the following meanings unless the context clearly requires otherwise:

“Agreement”, the agreement entered into by and among the towns of Bourne, Marion, Plymouth and Wareham and approved at town meetings of the towns, as supplemented and amended by the towns in accordance with section 7, and approved by the Board of Directors of the MMA.

“Commission”, the commission established in section 3.

“District” or “partnership”, the DHY clean waters community partnership established in section 1.

“Treasurer”, the treasurer appointed by the commission pursuant to section 3.

**SECTION 1:** There shall be a regional wastewater district for the towns of Bourne, Marion, Plymouth and Wareham, and the Massachusetts Maritime Academy, to be known as the Upper Buzzards Bay Wasterwater Partnership, which shall be a body politic and corporate and political subdivision of the commonwealth. Notwithstanding the procedural requirements of section 25 of chapter 40N, or sections 28 to 33, inclusive of chapter 21 of the General Laws all actions taken by the towns of Bourne, Marion, Plymouth and Wareham, and the Massachusetts Maritime Academy and the district commission which are not inconsistent with this act are hereby validated, ratified and confirmed in all respects. The purpose of the district shall be to manage and control the wastewater treatment plant, interceptors, effluent discharge and appurtenances, to act as a regional wastewater district and to provide for the collection, treatment, and discharge of effluent for the member towns and state.

**SECTION 2:** For the purposes of the act, “district” shall mean the Upper Buzzards Bay Wastewater Partnership established in section 1 and “agreement” shall mean the agreement among the towns of Bourne, Marion, Plymouth and Wareham, and the Massachusetts Maritime Academy passed at the town meetings of those towns in XXXX as may be supplemented and amended by those towns in accordance with section 7.

**SECTION 3:** (a) The powers, duties and liabilities of the district shall be vested in and exercised by a district commission organized in accordance with this section and the agreement. The commission shall choose a chairperson and secretary by ballot from its membership. It shall appoint a treasurer, who shall not be a member of the commission. The treasurer shall receive and take charge of all money belonging to the district and shall pay any bill of the district which shall have been approved by the commission. The treasurer may, by vote of the commission, be compensated for services. The treasurer of the district shall be subject to sections 35, 52 and 109A of chapter 41 of the General Laws, provided that in applying said sections to said treasurer, the word “district” shall be substituted for “town” and “district commission” shall be substituted for “selectmen”.

(b) **DESCRIBE THE MAKE UP OF THE COMMISSION. TO BE DETERMINED.** Marion and Bourne shall appoint 2 commission members. Wareham shall appoint 3 members. Plymouth and MMA shall each appoint 1 member. The X and X members shall be appointed by the board having the authority of water & sewer commissioners. One of the X members shall be appointed by the board of selectmen and the other by the board having the authority of water & sewer commissioners.

**SECTION 4.** Notwithstanding the last sentence of section 25 of chapter 40N of the General Laws, the district shall have the following powers and duties:

- (1) to adopt a name and a corporate seal, and the engraved or printed facsimile of such seal appearing on a bond or note of the district shall have the same legal effect as such seal would have if it were impressed on the bond or note;
- (2) to sue and be sued, but only to the same extent and upon the same conditions that a city or town may be sued, and to plead and be impleaded;
- (3) to purchase, take by eminent domain under chapter 79 of the General Laws or otherwise acquire land within the member towns, or an interest in land within those towns, for the purposes of the district to construct, reconstruct, replace, rehabilitate, repair, equip, operate and maintain wastewater treatment, pumping and collection and effluent recharge and reuse facilities for the benefit of said towns, or any other facilities necessary to carry out the purposes of the district; and to make any necessary contracts in relation to those purposes; provided, however, that at least 2 commission members from the town in which the land is located must vote in the affirmative; and provided, further, that land may be taken by eminent domain only if the district first requests, in writing, that the town take such land and the town does not take such land within 120 days after the district has requested;
- (4) to purchase or otherwise acquire land outside the member towns for the purposes stated in subsection (3), but only if the district first obtains approval, in writing, of the board of selectmen for each town in which the land is located or from the mayor and city council, aldermen or equivalent for each city in which the land is located;
- (5) to incur debt for the purpose of acquiring land, or an interest in land, and constructing, reconstructing, replacing, rehabilitating, repairing and equipping wastewater treatment, pumping, collection and effluent discharge facilities and any other facilities necessary to carry out the purposes of the district, including debt for the purposes of designing and otherwise planning any such improvements, for a term not exceeding 30 years; but written notice of the amount of the debt and of the general purposes for which it was authorized shall be given to the board of selectmen of each town comprising the district and to each town's board exercising the powers of sewer commissioners not later than 10 business days after the date on which said debt was authorized by the district commission, and no debt shall be incurred until the expiration of 45 days from the date said debt was authorized by the district commission;
- (6) to issue bonds and notes in the name and upon the full faith and credit of the district and each issue of bonds or notes shall be a separate loan; said bonds or notes shall be signed by the chairman and the treasurer of the district commission; provided, however that the chairman authorize the treasurer to cause to be engraved or printed on said bonds or notes a facsimile of the chairman's signature; provided, further that the chairman's authorization must be in writing, bearing the chairman's written signature, filed in the office of the treasurer, and open to public inspection;
- (7) to receive and disburse funds for a district purpose, and to invest funds in an investment legally permitted for a city or town;

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- (8) to incur temporary debt in anticipation of revenue to be received from the member towns or from any other source;
- (9) to assess member towns for any expenses of the district;
- (10) to maintain a reserve fund, and to carry over the remaining balance of such fund into the ensuing fiscal year, subject to the limitations in section 5;
- (11) to apply to receive and expend or hold a grant or gift for the purposes of the district;
- (12) to engage legal counsel, financial advisors, engineers, accountants, consultants, agents and other advisors;
- (13) to submit an annual report to each of the member towns, containing a detailed financial statement and a statement showing the method by which the annual charges assessed against each town were computed;
- (14) to employ an executive director and such other employees as necessary to operate the district;
- (15) to enter into contracts with any persons, including, but not limited to, non-member cities and towns, other bodies politic and the United States of America, that are necessary or convenient to carrying out the powers of the district, including, but not limited to, contracts for the purchase or for the operation and management of the sewer, wastewater treatment plant, collection, treatment, and discharge facilities of the district;
- (16) to enact by-laws and rules concerning the management and regulation of its affairs and the use of its facilities and the provision of its services;
- (17) to convey, sell, lease or otherwise dispose of any district real or personal property, or interests in such property, no longer needed for district purposes; and
- (18) to do any and all other things necessary and convenient to carry out the powers and purposes of the district, and all other things incidental and related to the powers of the district.

An engraved or printed facsimile signature under subsection 5 shall have the same validity and effect as the chairman's written signature so long as it complies with all requirements of that subsection.

**SECTION 5.** The district commission shall annually determine the amounts necessary to be raised to maintain and operate the district during the ensuing fiscal year, plus a reserve fund not to exceed 15 per cent of the annual budget for the ensuing year, and shall apportion the amounts so determined among the several member towns in accordance with the terms of the agreement. The amounts for the upcoming fiscal year so apportioned for each town shall, prior to February 1 in each year, be certified by the district treasurer to the treasurers of the member towns and to each town's sewer commissioners or board exercising the powers of sewer commissioners. Except to the extent that the district treasurer's certification provides a credit from sewer system revenues and other sources, the sewer commissioners or board exercising the powers of sewer commissioners of each member town shall without further vote include each amount so certified in the amounts to be assessed annually in such town upon sewer users and others assessable under sections 14 to 24, inclusive, of chapter 83 of the General Laws and section 23 of chapter 59 of the General Laws, and with or without a town appropriation the town treasurer shall pay to the district the amounts so apportioned at the times specified in the agreement. The amounts apportioned or to be apportioned under the agreement shall not be included in calculating total taxes assessed in paragraph (a) of section 21C of said chapter 59, or the maximum levy limit in paragraph (f), of said section 21C of said chapter 59. The amounts certified by the district treasurer shall be deemed to be for services customarily provided locally or subscribed to at local option and shall not be subject to the limitation of section 20B of said chapter 59.

**SECTION 6.** Notwithstanding chapter 44 of the General Laws, only sections 16 to 28, inclusive, of said chapter 44, shall apply to the district; provided, however, that section 16 of said chapter 44 relating to the countersigning of bonds and notes and section 24 of said chapter 44 relating to the countersigning and approval of notes and the certificates of the clerk relating to notes shall not apply to the district; and provided, further, that notwithstanding section 19 of said chapter 44 to the contrary, the maturities of each issue of bonds and notes of the district shall be arranged so that for each issue the amounts payable in the several years for principal and interest combined shall be as nearly equal as practicable, in the opinion of the treasurer, or in the alternative, in accordance with a schedule providing for a more rapid amortization of principal. Any debt incurred by the district shall not be subject to the limit of indebtedness prescribed in section 10 of said chapter 44. Nothing in this act shall prevent the individual towns from establishing and maintaining a sewer enterprise fund under section 53F½ of said chapter 44 as the mechanism for assessing, collecting and paying the amounts certified by the district treasurer under sections 5 and 8.

**SECTION 7.** The member towns and state shall adopt an agreement consistent with this act prior to organization of the district commission under section 2 and may from time to time amend the agreement so long as the amended agreement is consistent with this act.

**SECTION 8.** Notwithstanding section 5 or the terms of the agreement or any general or special law to the contrary, each member's share of the costs of the district's wastewater treatment facility improvements and expansion shall be based on each town's share of overall expansion and each member's share of the costs of plant upgrade shall be based on each member's overall allocation of flow capacity as further detailed in the agreement.

Each of the members shall pay its share of such costs upon receipt by the treasurer of the town of the certification of the costs allocated to that town under the agreement by the district treasurer, in accordance with the due date and payment instructions set by the district treasurer. Except to the extent that the district treasurer's certification provides a credit from sewer system revenues and other sources, the sewer commissioners or board exercising the powers of sewer commissioners of each member town shall without further vote include each amount so certified in the amounts to be assessed annually in such town upon sewer users and others assessable under sections 14 to 24, inclusive, of chapter 83 of the General Laws and section 23 of chapter 59 of the General Laws, and, with or without a town appropriation, the town treasurer shall pay to the district the amounts so apportioned at the times specified in the agreement. The amounts apportioned or to be apportioned under the agreement shall not be included in calculating total taxes assessed in paragraph (a) of section 21C of said chapter 59, or the maximum levy limit in paragraph (f), of said section 21C of said chapter 59. The amounts certified by the district treasurer shall be deemed to be for services customarily provided locally or subscribed to at local option and shall not be subject to the limitation of section 20B of said chapter 59.

**SECTION 9.** In the event that a member town, which has received a certification of the district's charges, shall fail to pay the same to the district when due after demand by the district, the district may, not less than 60 days after such demand and without any requirement of election of remedy provided that there is no duplication of recovery: (i) certify to the state treasurer the amount owing to the district by the member town, whereupon the state treasurer shall promptly pay over to the district any amount

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otherwise certified to the state treasurer for payment to the member town as unrestricted general government aid and any other amount for local reimbursement, grant or assistance programs entitled to be received by the member town until such time as any deficiency in the member town's payment of charges to the district shall be set off by such payments from the state treasurer; and (ii) recover from the member town in an action in superior court the amount of such unpaid charges together with such lost interest and other actual damages the district shall have sustained from the failure or refusal of the member town to pay over said amount. Any amount paid to the district by the state treasurer as a set off under this section which is later determined, upon audit, to be in excess of the actual amount of charges, interest and damages due to the district, shall, upon demand of the member town, be repaid by the district to the member town.

**SECTION 10.** The district shall adopt such by-laws as may be necessary and proper for the effective functioning of the district and its operations, capital improvements and finances, including, but not limited to, by-law provisions as put forth in the agreement. The by-laws may also provide for appointment of alternate members and such other matters relative to the business and affairs of the district as may be appropriate to exercise all powers necessary, convenient or incidental to the purposes for which the district was formed.

**SECTION 11.** The district may, from time to time, prescribe rules and regulations regarding the use of common sewers to prevent the entrance or discharge in the sewers of any substance which may tend to interfere with the flow of sewage or the proper operation of the sewerage system and the treatment and disposal works, for the connection of estates and buildings with sewers, for the construction, alteration and use of all connections entering into such sewers, and for the inspection of all materials used in the sewers; and may prescribe civil penalties, not exceeding \$5,000 per violation for each day of violation of any such rule or regulation. The rules and regulations shall be published once in a newspaper of general circulation within each of the member towns, and shall include a notice that the rules and regulations shall be available for inspection by the public, and shall not take effect until such publication has been made. The rules and regulations shall conform with federal and state laws.