

MAINE STATE LEGISLATURE

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NINETY-SEVENTH LEGISLATURE

Legislative Document

No. 72

H. P. 67

House of Representatives, January 19, 1955

Referred to the Committee on Public Utilities, sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Bibber of Kennebunkport.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-FIVE

AN ACT Creating a Sewer District in the Town of Kennebunk.

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

Sec. 1. Territorial limits. The territory, and the inhabitants therein, of the town of Kennebunk which is situated between the Atlantic Ocean and the southeasterly side of the Maine Turnpike is hereby made and declared to be a public sewerage district and a body politic and corporate under the name of "Kennebunk Sewer District" and shall be a system of public sewerage constructed, maintained and operated for the public health and welfare and for the benefit of said residents and of the property therein served by said sewerage facility, in the manner, with the rights, duties and immunities hereinafter in this act set forth.

Sec. 2. Authority to contract and maintain. Within said territory said Kennebunk Sewer District is hereby authorized to lay pipes, drains, sewers and conduits, and to take up, repair and maintain the same or to contract for the same to be done, in and along the public ways, private ways and public grounds, and through lands of any person or corporation as hereinafter provided, to and into tidal waters, rivers, watercourses or filtration plants or to or into any drain or sewer now or hereafter built which empties into tidal waters, rivers or into any watercourse or filtration plant, the discharge therefrom to be at such points consistent with the requirements of public health as shall be found convenient and reasonable for said district and the flow of existing watercourses; also to construct and maintain filtration plants, pumping stations, basins, reservoirs, flush tanks and such other appliances for collecting, holding, purifying, distributing and disposing of sewage matter and surface or waste waters as may be necessary and proper; and in general, do any or all things incidental to accomplish the purposes of this act.

Sec. 3. Trustees; election to office; tenure of office; vacancies; first meeting of organization of board; annual report. All of the affairs of said district shall be managed by a board of 5 trustees, residents therein, who shall be chosen as hereinafter provided.

As soon as may be after the acceptance of this act, as hereinafter provided, the municipal officers of the town of Kennebunk shall appoint 5 trustees of said district to hold office as follows: One to serve until the next annual meeting of said district following the acceptance of this act; one to serve until the 2nd annual meeting of said district thereafter; one to serve until the 3rd annual meeting of said district thereafter; one to serve until the 4th annual meeting of said district thereafter and one to serve until the 5th annual meeting of said district thereafter. At each annual meeting of said district, beginning with the annual meeting after the acceptance of this act, 1 trustee shall be elected by the district as hereinafter provided, to serve until the annual meeting of the district occurring 5 years thereafter. Following each annual meeting of said district, the trustees shall choose a chairman, a clerk and a treasurer to serve until the next annual meeting of said district and until their successors are elected and qualified. Whenever any trustee ceases to be a resident of said district, he vacates the office of trustee. Vacancies in the office of trustee shall be filled for the unexpired term at a special meeting of the district, unless said vacancy shall occur within 3 months prior to the next annual meeting of said district, at which annual meeting such vacancy shall be filled.

As soon as convenient after their appointment, the 1st board of trustees shall hold a meeting at some convenient place in the district, to be called by any member thereof in writing, designating the time and place and delivered in hand to the other 4 members, not less than 2 full days before the meeting; provided, however, that they may meet by agreement without such notice. They shall then organize by electing from their own number a chairman and a clerk. They shall choose a treasurer, adopt a corporate seal and by-laws and perform any other acts within the powers delegated to them by law. They may choose and fix the compensation of any other necessary officers and agents who shall serve at their pleasure. The treasurer shall furnish bond in such sum and with such sureties as the trustees shall approve, the cost thereof to be paid by the district. Members of the board of trustees shall be eligible to any office under the board. The trustees, as such, shall serve without compensation; but the treasurer may be allowed such compensation as the trustees shall determine.

The trustees shall be sworn to the faithful performance of their duties as such, which shall include the duties of any member who shall serve as clerk or clerk pro tem. They shall make and publish an annual report, including a report of the treasurer.

Sec. 4. Right of eminent domain conferred. Said Kennebunk Sewer District is hereby expressly granted the right of eminent domain, and for the purposes of this act is authorized to take and hold, either by exercising its right of eminent domain, or by purchase, lease or otherwise, as for public uses any land, easements or interests therein, and any sewers or sewer rights necessary for constructing, establishing, maintaining and operating sewers, reservoirs, flush tanks, manholes, catch basins, filtration plants, pumping stations and other ap-

pliances and property, used or usable, for collecting, holding, purifying and disposing of sewage matter and waste waters.

Sec. 5. Procedure under eminent domain. In exercising from time to time the right of eminent domain, said district by its board of trustees, shall file in the office of the county commissioners of York county and cause to be recorded in the registry of deeds in said county plans of the location of all lands or interests therein or sewers or sewerage rights to be taken, with an appropriate description and the names of the owners thereof, if known. When, for any reason, the district fails to acquire property which it is authorized to take and which is described in such location, or if the location so recorded is defective and uncertain, it may, at any time, correct and perfect such location and file a new description thereof; and in such case the district is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the district shall not be liable for any acts which would have been justified if the original taking had been lawful. No entry shall be made on any private lands, except to make surveys, until the expiration of 10 days from such filing, whereupon possession may be had of all said lands or interests therein or property or rights to be taken, but title thereto shall not vest in said district until payment therefor.

Sec. 6. Assessment of damages by county commissioners; procedure on appeals. If any person sustaining damages by any taking as aforesaid shall not agree with said district upon the sum to be paid therefor, either party, upon petition to the county commissioners of York county, may have said damages assessed by them; the procedure and all subsequent proceedings and right of appeal thereon shall be had under the same restrictions, conditions and limitations as are or may be by law prescribed in the case of damages by the laying out of highways.

Sec. 7. Limitations on crossing a public utility. In case of crossing of any public utility, unless consent is given by the company owning or operating such public utility as to place, manner and conditions of the crossing within 30 days after such consent is requested by said district, the Public Utilities Commission shall determine the place, manner and conditions of such crossing; and all work on the property of such public utility shall be done under the supervision and to the satisfaction of such public utility, but at the expense of the district. Provided, however, nothing herein contained shall be construed as authorizing said district to take by right of eminent domain any of the property or facilities of any other public service corporation or district used or acquired for future use by the owner thereof in the performance of a public duty unless expressly authorized herein or by subsequent act of the legislature.

Sec. 8. Rights and obligations of abutters or others to enter. Any person may enter his private drain into any sewer of the district while the same is under construction and before completion of said sewer at the point of entry, and before an entrance charge is established, on obtaining a permit in writing from the trustees; but after the sewer is completed to the point of entry and an entrance charge established on that location, no person shall enter his private drain into such sewer until he has paid the entrance charge and obtained a permit in writing

from the trustees as aforesaid. All such permits shall be recorded by the clerk of the district in its records before the same are issued.

The owner, or persons in possession, or against whom taxes are assessed, of all buildings or premises intended for human habitation, occupancy or use, abutting on a street in which there is a sewer maintained by this district, or if such buildings stand on premises which are benefited and to which sewer service is available, shall connect with said sewer in the most direct manner possible within 90 days after receiving notice thereof from the sewer district, or within such further time as its trustees may grant.

Sec. 9. Contracts with municipalities authorized. Said district is authorized to contract with persons and corporations including the town of Kennebunk; and said town is authorized to contract with said district for the collection, distribution and disposal of sewage, surface water or other waste matter, and for said purposes, said town may raise money as for other municipal charges.

Sec. 10. Excavation or repair work, closing of ways. Whenever said district shall enter, dig up or excavate any public way or other land for the purpose of laying its sewer or pipes, constructing manholes or catch basins or their appurtenances, or maintaining the same, or for any other purpose, the work shall be expeditiously done with the least possible interruption, and on completion of the work, the district shall restore said way or land to the condition it was in prior to such work, or to a condition equally as good.

Whenever the character of the work is such as to endanger travel on any public way, the municipal officers of the town of Kennebunk may order a temporary closing of such way, and of any intersecting way, upon request of said district, and the way shall remain closed to public travel until said municipal officers deem it is restored to a condition safe for traffic.

Sec. 11. Sanitary provisions and penalty for violations. Any person who shall place or leave any offensive or injurious matter or material on or in the conduits, catch basins or receptacles of said district contrary to its regulations, or shall willfully injure any conduit, pipe, reservoir, flush tank, catch basin, manhole, outlet, engine, pump or other property held, owned or used by said district for the purposes of this act shall be liable to pay twice the amount of the damages to said district, to be recovered in any proper action; and such person, on conviction of either of said acts of willful injury aforesaid, shall be punished by a fine not exceeding \$200 or by imprisonment not exceeding 1 year.

Sec. 12. Annual meeting 1st Saturday of June; qualifications of voters of district. The annual meeting of the district shall be held in the district on the 1st Saturday of June in each year at such hour and place as may be designated by resolution of the board of trustees as provided in the by-laws. Notice thereof, signed by the chairman or clerk of the board, shall be conspicuously posted in 2 public places within the district, not less than 7 days before the meeting. Special meetings may be called by the board in like manner at any time, and notice of special meetings shall state the business to be transacted thereat. If for any reason an annual meeting is not held on the above date, a meeting in lieu thereof may be called in like manner to be held within 3 months from said date. Twenty-five persons qualified to vote in such meetings shall constitute a quorum.

All persons resident in said district and qualified to vote for Governor under the laws of this state shall be entitled to vote in any meeting of the district, including the meeting for acceptance of this charter.

Sec. 13. Trustees granted certain powers of selectmen. After the meeting for acceptance of this charter, the trustees shall have the same powers and perform the same duties as otherwise are exercised and performed by the selectmen of towns in correcting and preparing lists of the persons qualified to vote in said district, and for that purpose they shall be in session at the office of the said sewer district between the hours of 10 o'clock in the forenoon and 12 o'clock noon of the secular day next before the date of every meeting; and 2 hours next before the opening of the meeting; and notice thereof shall be given in the call for the meeting. All meetings of the district shall be presided over by a moderator chosen in the same manner and with the same authority as moderators of town meetings.

Sec. 14. Authorized to acquire sewage system of town; right of eminent domain conferred. Said sewer district is hereby authorized and empowered to acquire by purchase or by the exercise of the right of eminent domain, which right is hereby expressly delegated to said district for said purpose, the entire plant and property of the sewage system, or any part thereof, now in said district and owned by the town of Kennebunk; and the town of Kennebunk is hereby authorized and empowered to sell to said district its said sewage plant and system or any part thereof, provided the voters in said town shall, at a town meeting legally called, notified and held, vote to do so.

Sec. 15. Property tax exempt. The property, rights and franchises of said district shall be forever exempt from taxation.

Sec. 16. Authorized to issue bonds and notes; to borrow money. For accomplishing the purposes of this act, said district, by resolution of its board of trustees, is hereby authorized to borrow money temporarily and to issue therefor its negotiable notes, and for the purpose of renewing and refunding the indebtedness so created, of paying any necessary expenses and liabilities incurred under the provisions of this act, including organizational and other necessary expenses and liabilities; and in acquiring properties, paying damages, laying sewers, drains and conduits, constructing, maintaining and operating a sewage plant or system and making renewals, extensions, additions, extensions and improvements to the same, and to cover interest payments during the period of construction. Said Kennebunk Sewer District, by resolution of its board of trustees, is also hereby authorized to issue, from time to time, bonds, notes or other evidences of indebtedness of the district in 1 series, or in separate series, in an amount or amounts at such rates of interest and on such terms and conditions as the trustees shall determine; provided, however, that the total outstanding indebtedness of said district shall at no time exceed the sum of \$300,000. Said bonds, notes and other evidences of indebtedness shall be legal obligations of said district and a direct obligation on the taxable property within the district; shall bear the seal of the district and shall be signed by its treasurer and countersigned by the chairman of its board of trustees; and any interest coupons attached thereto shall bear the facsimile of the signature of its treasurer. Said district may refund and reissue, from time to time, in one or in separate series,

its bonds and other evidences of indebtedness, and each authorized issue shall constitute a separate loan. All bonds issued by said district shall be legal investment for savings banks in the State of Maine and shall be tax exempt.

Sec. 17. Rates and tolls; application of revenues. All persons and corporations, whether public, private or municipal, shall pay to the treasurer of said district the entrance charges, rates, tolls, rents and other lawful charges established by the trustees for the sewer or drainage service used, or to which such beneficial service is available with respect to their lots or parcels of land; and in determining real estate interests, "real estate" as defined in section 3 of chapter 92 of the revised statutes of 1954 may be applied by the trustees.

Rates, tolls, rents and entrance charges shall be uniform within the territory supplied by the district whenever the installation and maintenance of sewers or their appurtenances and the cost of service is substantially uniform; but nothing in this act shall preclude the district from establishing a higher rate, toll, rent or entrance charge than the regular rates, tolls, rents and charges in sections where, for any reason, the cost of construction and maintenance, or the cost of service, exceeds the average, but such higher rates, tolls, rents and charges shall be uniform throughout the sections where they apply.

The sewer rates, tolls, rents and entrance charges shall be so established as to provide revenue for the following purposes:

- I. To pay the current expenses for operating and maintaining the sewerage system;
- II. To provide for the payment of the interest on the indebtedness created by such system;
- III. To provide each year a sum equal to not less than 1% nor more than 5% of the entire indebtedness created by said sewer district, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of said indebtedness. Money set aside for the sinking fund shall be devoted to the retirement of the obligations of said sewer district, or invested in such securities as savings banks in this State are allowed to hold;
- IV. If any surplus remains at the end of the year, it may be turned into the sinking fund.

Sec. 18. Lien for payment of rates. There shall be a lien to secure the payment of rates established under section 17 of this act and legally assessed on real estate within the district, which shall take precedence of all other claims on such real estate, excepting only claims for taxes.

The treasurer of the district shall have the authority and power to sue for and collect the rates, tolls, rents and charges, all of which shall be committed to him. In addition to other methods previously established by law for the collection of the rates, tolls, rents and charges, the lien herein created may be enforced in the following manner; provided, however, that in making the assessment there shall be a description of the real estate served by the several sewers of the district, sufficiently accurate to identify the real estate against which any of the several rates, tolls and charges may be levied; the treasurer, when a rate, toll or charge has been committed to him for collection, may, after the expiration of 8 months and within 1 year after date of commitment to him, in the case of a per-

son resident in the town where the rate, toll or charge is assessed, give to the person against whom the same is assessed, or leave at his last and usual place of abode, a notice in writing signed by the officer stating the amount of such rate, toll or charge and describing the real estate on which it is assessed, alleging that a lien is claimed on the real estate to secure the payment thereof and demanding its payment within 10 days after the service of such notice. After the expiration of the 10 days and within 10 days thereafter, in the case of a resident, and in all other cases within 1 year from the date of commitment of the rate, toll or charge to said officer, the officer shall record in the registry of deeds of York county a certificate signed by him setting forth the amount of such rate, toll or charge, a description of the real estate on which the same is assessed and an allegation that a lien is claimed on the real estate to secure the payment of the rate, toll or charge, that a demand for payment of the same has been made in accordance with the provisions of this act and that the rate, toll or charge remains unpaid. In all cases, except in the case of a resident, the certificate so filed need not contain the allegation that payment of the rate, toll or charge has been demanded. At the time of the recording of the certificate in the registry of deeds as herein provided, the officer shall file in the office of the district a true copy of the certificate and also mail by registered letter to each record holder of a mortgage on said real estate, addressed to him at his last and usual place of abode, a true copy of the certificate. The fee to be charged for such notice and filing shall be \$1 and the fee of the register of deeds for such filing shall be \$1, which fees shall become an expense of the person owing the rate, toll or charge. The filing of the aforesaid certificate in the registry of deeds as aforesaid shall be deemed to create a mortgage on the real estate to the district having priority over all other mortgages, liens, attachments and encumbrances of any nature, except liens, attachments and claims for taxes, and shall give to the district all the rights usually incident to a mortgage, except that the mortgagee shall not have any right of possession of the real estate until the right of redemption herein provided for shall have expired.

If the mortgage, together with interest and costs, shall not have been paid within 18 months after the date of filing of the certificate in the registry of deeds as herein provided, the mortgage shall be deemed to have been foreclosed and the right of redemption to have expired.

The filing of the certificate in the registry of deeds shall be sufficient notice of the existence of the mortgage herein provided for.

In the event that the rate, toll and charge with interest and costs shall be paid within the period of redemption herein provided for, the treasurer of the district shall discharge the mortgage in the same manner as is now provided for discharge of real estate mortgages.

Sec. 19. Construction of this act; by-laws and rules authorized. This act shall be construed as authorizing a charge by said district for the use of sewers, sewer systems or drains for disposal purposes in addition to any other assessments now lawfully imposed by general law.

Said board of trustees may by by-laws define the person or persons to whom such special tax, toll or charge shall be assessed and may adopt such other by-

laws, rules and regulations as may be necessary to carry out the provisions of this act.

Sec. 20. Incidental powers and rights. All incidental powers, rights and privileges necessary to the accomplishment of the main objects of this act, as hereinbefore set forth, are granted to said district; including the right of the trustees to determine when and where sewerage facilities are most needed, and how said sewers shall be built.

Sec. 21. Existing statutes not affected; rights conferred subject to provisions of law. Nothing herein contained is intended to repeal or shall be construed as repealing the whole or any part of any existing statute, and all the rights and duties herein mentioned shall be exercised and performed in accordance with all the applicable provisions of chapter 44 of the revised statutes of 1954 and all acts amendatory thereof or additional thereto.

Sec. 22. Local referendum; effective date; certificate to Secretary of State. For the purpose of the calling and holding the special election herein authorized, this act shall take effect 90 days after the final adjournment of the 97th Legislature; and this act shall take complete effect, as hereinafter provided, when approved by a majority of the legal voters resident in said district, present and voting for or against this act, by ballot at an election to be specially called by the selectmen of said town of Kennebunk and to be held for that purpose not later than 30 days following the completion of said 90-day period after the final adjournment of this legislature. Said election shall be called, warned and conducted according to the law relating to municipal elections in said town; provided, however, that the selectmen of said town shall not be required to prepare for posting nor the town clerk to post a new list of said voters, and for the purpose of registration of voters said selectmen shall be in session on the secular day next preceding said special election. The town clerk of said town shall reduce the subject matter of this act to the following question: "Shall the Act Creating a Sewer District in the Town of Kennebunk, as enacted by the 97th legislature, be accepted?" And the voters shall indicate by a cross or check mark placed upon their ballots over the words "Yes" or "No" their opinion of the same.

The result shall be declared by the selectmen and due certificate thereof filed by said town clerk with the Secretary of State, and if said result so filed shows that a majority of the vote is for approval of this act, it shall take complete effect; provided that the total vote cast for and against the acceptance of this act equals or exceeds 10% of the total vote for all candidates for governor cast at the next previous gubernatorial election in said district.

In the event of failure of approval by the necessary percentage of voters, subsequent elections to vote on said question, to be called, warned, conducted and the result declared in the manner hereinbefore provided, may be held on petition therefor on a day fixed in said petition when said petition is signed by at least 25 legal voters resident in said district, and a certificate of the result of any such election shall be filed by the said town clerk with the Secretary of State, with the same effect as obtains with respect to the 1st election, as provided in this act.