

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION
(EMERGENCY)

ONE HUNDRED AND FIRST LEGISLATURE

Legislative Document

No. 1625

H. P. 1154

House of Representatives, January 6, 1964

The Committee on Public Utilities suggested.

HARVEY R. PEASE, Clerk

Presented by Mr. Roberts of South Berwick.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-FOUR

AN ACT to Incorporate the South Berwick Sewer District.

Emergency preamble. Whereas, acts and resolves do not become effective until 90 days after the Legislature adjourns unless passed as emergency measures; and

Whereas, the South Berwick Sewer Company, which presently serves part of the area of the proposed sewer district, has expressed a desire to sell its property and franchises to the district, if one is created; and

Whereas, the present sewer system is inadequate to provide for the needs of the users within the proposed sewer district and a more adequate system must be immediately created; and

Whereas, an adequate sewer system is essential to the health and well-being of the inhabitants of the Town of South Berwick within the limits of the proposed sewer district; and

Whereas, the Town of South Berwick is under a mandate from the Legislature to cease pollution of the Salmon Falls River so that these waters will meet the standards established by the Maine Water Improvement Commission; and

Whereas, the Town of South Berwick at a recent special meeting voted to purchase the South Berwick Sewer Company in conjunction with its program to create a sewer district; and

Whereas, it is imperative that action be taken at the earliest possible time to eliminate such condition; and

Whereas, in the judgment of the Legislature, these facts create an emergency

within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. Territorial limits; incorporation. That part of the Town of South Berwick, in the County of York, and the inhabitants therein, which is bounded and described as follows: Beginning on the Maine bank of the Salmon Falls River at the southerly boundary line of the Boston and Maine Railroad bridge; thence turning and running northeasterly and southeasterly, by and along land of said Boston and Maine Railroad right-of-way and the division line between the Towns of Berwick and South Berwick, to the northwesterly sideline of Route 4, and continuing on said last course across Route 4 to the southeasterly sideline thereof; thence turning and running in a southerly direction, by the southeasterly sideline of Route 4 to the southerly sideline of the old Boston and Maine Railroad right-of-way; thence turning and running in an easterly direction, by and along the southerly sideline of said Boston and Maine Railroad right-of-way to the center line of Agamenticus Road; thence turning and running in a southwesterly direction, by the center line of said Agamenticus Road, to the center line of the right-of-way of the Central Maine Power Company 38 K.V. transmission line and which center line is taken to be the pole line of said transmission facility; thence turning and running south $23^{\circ}-56'$ West through pole number 86 at station $244+66$; thence continuing on said course to pole number 93 at station $262+82.13$; thence turning and running South $8^{\circ}-54'$ East to pole number 5 at station $268+61.28$; thence turning and running South $35^{\circ}-41'$ East to pole number 99 at station $281+60$; thence turning and running South $40^{\circ}-50'$ West to pole number 101 at station $287+79$; thence turning and running South $66^{\circ}-23'$ West through pole number 102 to a point which is 200 feet measured on said course from the northeasterly sideline of Academy Street, so called; thence turning and running southeasterly, on a line 200 feet, more or less, from the northeasterly sideline of said Academy Street, to a point on the center line of said Academy Street which point is determined by measuring 300 feet southeasterly from the intersection of the center lines of Route 236 and Liberty Street, so called; thence turning and running southwesterly to a point which is determined by measuring on a perpendicular whose base is at said last point a distance of 200 feet from said last point; thence turning and running in a general northwesterly direction on a line which is 200 feet from the center line of Academy Street across Route 236, and 200 feet from the center line of Liberty Street, so called, to a point on the property line of the Central Maine Power Company and a fence, which point is approximately 40 feet southerly on said fence line from a 48-inch Elm tree, and which is further determined by measuring 200 feet southerly on a perpendicular whose base line is on the center line of said Liberty Street; thence turning and running southerly by said Central Maine Power Company's fence line to a corner; thence turning and running westerly by said Central Maine Power Company's fence line to a 48-inch Willow tree on the bank of the Salmon Falls River; thence turning and running northwesterly and northerly, by the Salmon Falls River, to the point of beginning; is hereby created a body politic and corporate under the name of "South Berwick Sewer District", hereinafter called the dis-

trict, for the purposes of providing and maintaining within the district a system of sewers, drains, sewage facilities and sewage disposal plant when, as and if, such disposal plant becomes necessary, for public purposes and for the health, comfort, convenience and welfare of the inhabitants of said district.

Sec. 2. Authority to construct and maintain. Within said territory and the territory of any adjoining municipality, said South Berwick Sewer District is 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, along and through any public or private ways and public grounds, and in, along and through lands of any persons or corporations as hereinafter provided, to and into tidal waters, rivers, water courses or treatment works or to or into any drain or sewer now or hereafter built which empties into tidal waters, rivers, water courses or treatment works, 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 water courses; to construct and maintain treatment works, pumping stations, basins, reservoirs, flush tanks and such other appliances for collecting, holding, purifying, distributing and disposing of sewage matters and industrial waste and, subject to the provisions of section 11, of surface and waste waters, all as may be necessary or proper; and in general to do any or all other things necessary or incidental to accomplish the purposes of this act.

Sec. 3. Authority to acquire and hold properties; right of eminent domain conferred. The district is hereby authorized and empowered to acquire and hold real and personal property necessary and convenient for the purposes of this act, and is expressly granted the right of eminent domain, and for the purposes of this act is authorized to take and hold, either by exercising its rights of eminent domain, or by purchase, lease or otherwise, as for public uses any land, real estate, easement or interest therein and any sewer, drain or conduit and any sewer or drainage rights necessary for constructing, establishing, maintaining and operating sewers, drains, reservoirs, flush tanks, manholes, catch basins, treatment works, pumping stations or other appliances and property used or useful for collecting, holding, purifying, distributing and disposing of sewage matters and industrial waste and surface and waste waters located within the district or elsewhere.

It is also empowered through its trustees to make contracts with persons or corporations for the collection, discharge or disposal of sewerage and other waste matters. It may discharge sewage into the Piscataqua River, the Great Works River and the Salmon Falls River at points most reasonable and convenient for said district and said district is hereby invested with all the powers, rights, privileges and immunities incident to similar corporations, or necessary for the accomplishment of their purposes.

Sec. 4. Procedure under eminent domain. In exercising from time to time the right of eminent domain conferred upon it, or in exercising any rights of eminent domain through or under the franchise of the South Berwick Sewer Company by it acquired, said district, by its board of trustees, shall file for record in the office of the county commissioners of York County and cause to be recorded in the registry of deeds in said York County plans of the locations

of all lands, real estate, easements or interest therein, and sewers, drains or conduits and any sewer or drainage 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 entries shall be made upon 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, real estate, easements or interest therein and other property and rights as aforesaid to be taken, but title thereto shall not vest in said district until payment therefor. However, the district and its authorized agents and employees may enter upon any lands, waters and premises in the Town of South Berwick for the purposes of making surveys, soundings, drillings and examinations, as it may deem necessary or convenient for the purposes of this act, and such entries shall not be deemed a trespass.

Nothing herein shall be construed as authorizing said sewer 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 owners thereof in the performance of a public duty, unless expressly authorized herein or by subsequent act of the Legislature.

Sec. 5. Assessment of damages; procedure on appeals. If any person sustaining damages by any taking as aforesaid shall not agree with the trustees of 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 the rights of appeal thereon shall be had under the same restrictions, conditions and limitations as are or may be prescribed in the case of damages by the laying out of highways by municipalities.

Sec. 6. Procedure on crossing a public utility. In case of any 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 consent is requested by said district, the Public Utilities Commission shall determine the place, manner and condition 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.

Sec. 7. Authorized to construct facilities through public ways and across private lands. The said district is hereby authorized to lay in and through streets, roads, ways and highways, or private lands, and to maintain, repair and replace all such pipes, mains, conduits, aqueducts and fixtures as may be necessary and convenient for its corporate purposes. Whenever said district shall lay any pipes or aqueducts in any street, road, way or highway, or private

lands, it shall cause the same to be done with as little obstruction as practicable to the public travel or owners and shall at its own expense without unnecessary delay cause the earth and pavement removed by it to be replaced in proper condition.

Whenever the character of the work is such as to endanger travel on any public way, the selectmen of the Town of South Berwick or the municipal officers of the adjoining municipality, wherever the instance may apply, may order a temporary closing of such 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. 8. Authorized to acquire property and franchises of other public and private sewer corporations or companies. The district is hereby authorized and empowered to acquire by purchase or by the exercise of the right of eminent domain, the entire plant, pipes, mains, property, franchises, rights, privileges and assets owned, used, or exercised by the South Berwick Sewer Company and the Raymond Therrien Sewer Company, both so called, in the Town of South Berwick. If, and when, so acquired, the district in addition to the powers conferred by this act shall have and enjoy and be entitled to exercise all of the rights, privileges and franchises of said South Berwick Sewer Company and the Raymond Therrien Sewer Company, and may do and perform any and all of the acts and things authorized by the original charter of the South Berwick Sewer Company and the said Raymond Therrien Sewer Company, insofar as they are not inconsistent with this act. In case the trustees fail to agree with the said South Berwick Sewer Company or with the said Raymond Therrien Sewer Company, upon the terms of purchase of either or both of the above mentioned properties on or before January 1, 1965, the district, through its trustees, is hereby authorized to take the entire plant, pipes, mains, property, franchises, rights, privileges and assets, as for public use, by petition therefor in the manner hereinafter provided. The district, through its trustees, is hereby authorized on or before July 1, 1965, to file a petition in the clerk's office of the Superior Court in and for the County of York, in term time or in vacation, addressed to any Justice of the Superior Court who, after due notice to the said South Berwick Sewer Company and its mortgagees, if any, or after due notice to the said Raymond Therrien Sewer Company, and its mortgagees, if any, shall, after hearing and within 30 days after the date at which said petition is returnable, appoint 3 disinterested appraisers, one of whom shall be learned in the law, and none of whom shall be residents of the Town of South Berwick, for the purpose of fixing a valuation of said plants, pipes, mains, property, franchises, rights, privileges and assets. At the hearing aforesaid, the said justice, upon motion of the petitioner, may order the production and filing in court for the inspection of the petitioner of all books and papers pertinent to the issue and necessary for a full understanding of the matter to be heard by said appraisers, the terms and conditions of such producing and filing of books and papers to be determined by the justice in his order therefor, and the justice at said hearing may make upon motion of either party, such other orders as may be deemed reasonable and proper in the premises, and all of such orders may be enforced from time to time by any Justice of the Superior Court, either in term time or vacation. The appraisers so appointed shall, after notice and hearing, fix the valuation of said plant, pipes, mains, property, franchises, rights,

privileges and assets, at which they are fairly and equitably worth, so that the said South Berwick Sewer Company or the said Raymond Therrien Sewer Company or both shall receive just compensation for all and the same, and the said appraisers shall have the power of compelling witnesses to attend, and the production of all books, accounts and papers pertinent to the issue and necessary for a full understanding by them of the matters in question, and may administer oaths; and any witnesses or persons in charge of such books, accounts and papers refusing to attend or to produce the same shall be subject to the same penalty and proceedings, so far as applicable, as witnesses summoned to attend the Superior Court. Depositions may be taken as in civil actions. The first day of January, 1965 shall be the date as of which the valuation aforesaid shall be fixed, from which date interest on said award shall run, and all rents and profits accruing thereafter shall belong to said district. The report of said appraisers or a majority of them shall be filed in said clerk's office, in term time or in vacation, as soon as may be after their appointment, but within 4 months in any event, and the justice of said court may, after notice and hearing, confirm or reject the same or recommit it if justice requires. Upon the confirmation of the said report, the court so sitting shall thereupon, after hearing, make final decree upon the entire matter, including the application of the purchase money and transfer of property, jurisdiction over which is hereby conferred, and with the power to enforce said decree as in equity cases. All findings of fact by said court shall be final, but any party aggrieved may take exceptions as to any ruling of law so made, the same to be accompanied by so much of the case as may be necessary to a clear understanding of the question raised thereby. Such exception shall be claimed on the docket within 10 days after such final decree is signed, entered and filed, and notice thereof has been given to the parties or their counsel, and said exception so claimed shall be made up, allowed and filed within said time, unless further time is granted by the court or by agreement of the parties. They shall be entered at the next term of the law court to be held after the filing and entry of said decree and there heard unless otherwise agreed; or the law court for good cause shall order further time for hearing thereon. Before said plant, pipes, mains, property, franchises, rights, privileges and assets are transferred in accordance with such final decree and before payment therefor as hereinbefore provided, such justice shall, upon motion of either party, after notice and hearing, take account of all receipts and expenditures properly had or incurred by the South Berwick Sewer Company or the Raymond Therrien Sewer Company, or both, from and after the first day of January, 1965, and all net rents and profits accruing thereafter, and shall order the net balance to be added to or deducted from the amount to be paid under such final decree, as the case may be. All findings of fact by such justice at such hearing shall be final. On payment or tender by said district of the amount so determined and the performance of all the other terms and conditions so imposed by said court, the entire plant, mains, property, franchises, rights, privileges and assets of the South Berwick Sewer Company or the Raymond Therrien Sewer Company, or both, used and useable in disposing of sewage in the Town of South Berwick, shall become vested in said district. Either party may file and prosecute motions and petitions relating to the premises at any stage of the proceedings, and the proceedings shall not become discontinued except upon consent of both parties.

Sec. 9. Rights of abutters or others to enter. The district at all times shall be bound to permit the owners of premises abutting upon its lines of pipes and conduits to enter the same with all proper sewage upon conformity to the rules and regulations of the district and payment of the rates, prices and rentals established therefor. No person may enter his private sewer into such sewer pipes and conduits until he has obtained a permit in writing from the trustees of the district and conformed to the rules and regulations of the district. All such permits shall be recorded by the clerk of the district in its records before the same are issued.

Sec. 10. Contracts with municipalities authorized. The district is authorized to contract with persons, corporations, districts and other municipalities both inside and outside the boundaries of the district to provide for disposal of sewage and commercial and industrial waste through the district's system and through the system of any such person, corporation, district or other municipality.

Sec. 11. Surface water facilities; joint facilities; separation of same. Any other provision of this act to the contrary notwithstanding, the said district shall be under no duty or obligation to construct, maintain, improve, extend or provide drains, pipes, catch basins or any other facilities for storm or surface water drainage. All drains, pipes, catch basins or any other facilities owned by the Town of South Berwick for storm or surface water drainage, within said district, used exclusively for storm or surface water drainage, shall remain the property of said municipality, and no such drain, pipe, catch basin or other facility shall be transferred to the district to be thereafter maintained and operated by the district without the joint approval of the municipal officers of the Town of South Berwick and the trustees of the district.

Any sewer or drain owned by the Town of South Berwick within the district, at the time of the acceptance of this act, and used for both sanitary sewage disposal and storm and surface water drainage shall pass to and be vested in said district, and said district shall be entitled to charge said municipality for the use of the same for storm or surface water drainage at such rates as the trustees may determine. No additional catch basins or other facilities draining into any such combined sewer or drain shall be constructed without the approval of said trustees. If and when the district shall construct and provide a sewer or drain which permits separation of sanitary sewage previously disposed of through any such combined sewer or drain, the said district, by vote of the trustees, shall transfer and convey back to the Town of South Berwick the facilities for storm and surface water drainage.

Sec. 12. Free access to premises. The officers or agents of the district shall have free access to all premises served by its sewers, at all reasonable hours, for inspection of plumbing and sewage fixtures, to ascertain the quality and quantity of sewage discharge and the manner of discharge, and to enforce this act and the rules and regulations prescribed by the trustees thereunder.

Sec. 13. Buildings to connect with sewer if available. All buildings or premises intended for industrial, business or recreational use, or for human habitation, occupancy or use, abutting on a street in which there is a public sewer, or if the property line of the premises containing such building or structure is

within 100 feet of a public sewer, shall have a house drainage system which shall be caused to be connected with the sewer by the owner, or person in possession, or person against whom taxes on the premises are assessed, in the most direct manner possible within 90 days after receiving a request therefor from the district, or within such further time as the trustees of the district may grant, and, if feasible, with a separate connection for each house or building.

Sec. 14. Offenses and penalties. Any person who shall place, discharge or leave any offensive or injurious matter or material on or in the conduits, catch basins or receptacles of said district contrary to its rules or 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 the acts of willful injury aforesaid, shall be punished by a fine not exceeding \$200 and by imprisonment not exceeding one year, or by both.

Sec. 15. Trustees and officers; tenure of office, annual meetings, etc. The affairs of the district shall be managed by a board of 5 trustees, who shall be qualified voters in the Town of South Berwick and residents within the district, who shall be chosen as hereinafter provided. As soon as may be after the acceptance of this act, as hereinafter provided, the selectmen of the Town of South Berwick shall appoint 5 trustees of said district to hold office as follows: 2 to serve until the first annual meeting of said district following acceptance of this act; 2 to serve until the 2nd annual meeting of said district following acceptance of this act; and one to serve until the 3rd annual meeting of said district following acceptance of this act.

The annual meeting of said district shall be held on the 2nd Monday of March of each year at such hour and place as may be designated by resolution of the board of trustees as provided in the bylaws. At the annual meeting of said district, beginning with the first annual meeting after acceptance of this act and the initial appointment of the first board of trustees, as many trustees shall be elected by the district as shall be necessary to fill the vacancy of those whose terms have expired. They to serve until the annual meeting of the district occurring 3 years thereafter, and until their successors are elected and qualified. When any trustee ceases to be a resident of said district, he vacates his office as trustee, and if a vacancy should occur for this reason or through death, resignation, or other means, otherwise than by expiration of term, the remaining trustees shall choose another trustee to serve until the next annual meeting when such vacancy shall be filled by election for the unexpired term of the trustee whose office has become vacant. All trustees, if residents of said district, shall be eligible for reelection or reappointment.

The nomination of all candidates for trustee to be elected as provided by this act shall be by nomination paper signed in the aggregate, for each candidate, by not less than 25 qualified voters resident in said district. Each voter signing a nomination paper shall make his signature in person, and each voter may subscribe to as many nominations as there are trustees to be elected in said district and no more. Such nomination papers, before being filed, shall be submitted to the clerk of the South Berwick Sewer District, who shall forthwith

certify thereon that number of the signatures which are names of qualified voters resident in said district. One of the signers of each such separate paper shall swear to the truth thereon, and the certificate of such oath shall be annexed to or made upon the nomination papers. Such nomination paper shall be filed with the clerk of the South Berwick Sewer District not less than 14 days, exclusive of Sundays, previous to the day of such election. With such nomination papers shall also be filed the consent in writing of the person or persons nominated. All nomination papers, being filed and being in apparent conformity with the foregoing provisions, shall be deemed to be valid. If not in apparent conformity, they may be seasonably amended under oath. In case any candidate who has been duly nominated under the provisions hereof shall die before the day of election, or shall withdraw in writing, or shall remove his place of residence from said district, the vacancy may be supplied in the manner herein provided for such nomination, except that the time limit for filing such nomination papers shall not apply. The names so supplied for the vacancy shall, if the ballots have not been printed, be placed on the ballots instead of the original nomination; or if the ballots have been printed, new ballots containing the new nominations shall, if practicable, be furnished, or slips containing the nominations shall be printed under the direction of the district clerk, which shall be placed upon said ballots and over the name of the candidate whose nomination has been vacated as aforesaid, and thereafter shall become part of said ballots as if originally printed thereon. The ballots in said district shall contain the names of all candidates so nominated in such district alphabetically arranged, printed in one column under the heading "Vote for Trustee for South Berwick Sewer District". Above such heading shall be printed "Vote for (the number to be elected to be inserted therein). Make a cross or a check mark to the right of the name(s) voted for". As many blank spaces shall be left after the names of the candidates as there are trustees to be elected in which the voter may, by writing, insert the name of any person or persons for whom he desires to vote. In preparing his ballot, the voter shall mark a cross (X) or a check mark (✓) against and to the right of such names on the ballot as he desires to vote for, not to exceed the number of trustees so to be elected in said district. The result of the election shall be declared by the trustees of the district and due certificate thereof filed with the clerk of the Town of South Berwick.

As soon as convenient after their appointment, the first 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. At this original meeting, the trustees shall organize by electing from their own members a chairman, a treasurer, and a clerk and adopting a corporate seal. The trustees may adopt and establish bylaws, consistent with the laws of the State of Maine and necessary for their own convenience and the proper management of the affairs of the district, and fix and collect the fees to be paid for entry of the same, and also the rentals for the use thereof, and do and perform any other acts within the powers delegated to them by law.

Within one week after each annual election, the trustees shall meet for the

purpose of electing a chairman, treasurer and clerk to serve for the ensuing year and until their successors are elected and qualified. The trustees from time to time may choose and employ, and fix the compensation of, any other necessary officers and agents who shall serve at their pleasure. The trustee serving as treasurer shall furnish bond in such sum and with such sureties as the board may approve. Members of the board shall be eligible to any office under the board, but shall not receive any compensation therefor except as trustee. The trustees, as such, shall receive as compensation for their services an amount to be determined by them not to exceed \$150 each per year, except for the chairman who shall receive as compensation for this service an amount to be determined by the board but not to exceed \$250 per year; 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 duty of any member who shall serve as clerk, clerk pro tem or treasurer. They shall make and publish an annual report, including a report of the treasurer.

After the meeting of the voters of the district for acceptance of this charter, and after the organization of the first board of trustees appointed by the selectmen of the Town of South Berwick, the trustees shall have the same powers and perform the same duties as otherwise exercised and performed by the selectmen of the Town of South Berwick 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 place designated for the holding of the meeting between the hours of 10 o'clock in the forenoon and 12 o'clock noon on the secular day before the date of every meeting and 2 hours before the opening of the meeting, and notice thereof shall be given in the call of 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. All persons resident in said district and qualified to vote for Governor under the laws of the State of Maine shall be entitled to vote in any meeting of the district, including the meeting for acceptance of this charter.

The notice and call for the annual meeting of the district shall be 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. Twenty-five qualified voters shall constitute a quorum. If for any reason a legally sufficient annual meeting is not held, a special meeting in lieu thereof may be called in like manner to be held within 3 months from said annual meeting date. A complete report of the doings of the district shall be rendered at such annual meeting by the board of trustees, including a financial report.

Sec. 16. Authorized to borrow money, to issue bonds and notes. For accomplishing the purposes of this act, the district, by vote of its board of trustees, without district vote except as hereinafter provided, is hereby authorized to borrow money temporarily and to issue therefor its negotiable notes for the purposes of renewing and refunding the indebtedness so created or paying any necessary expense and liability incurred under the provisions of this act, includ-

ing organizational and other necessary expenses and liabilities whether incurred by the district or incurred prior to the organization of the district by the Town of South Berwick in acquiring properties, paying damages, laying sewers, drains and conduits, constructing, maintaining and operating a sewage plant or system and making renewals, additions, extensions and improvements to the same and to cover interest payments during the period of construction, the district being authorized to reimburse said Town of South Berwick for any such expense incurred or paid by it. Said South Berwick Sewer District, by vote by its board of trustees, without district vote except as hereinafter provided, is also hereby authorized to issue, from time to time, bonds, notes or other evidences of indebtedness of the district in such amount or amounts, bearing interest at such rate or rates, and having such terms and provisions as the trustees shall determine. The total indebtedness of said district at any one time outstanding shall not exceed the sum of \$500,000. In the case of a vote by the trustees to authorize bonds or notes to pay for the acquisition of property, for the cost of a sewage plant or system or part thereof, for renewals or additions or for other improvements in the nature of capital costs, the estimated cost of which singly or in the aggregate is \$25,000 or more, but not for renewing or refunding the existing indebtedness or to pay for maintenance, repairs or for current expenses, notice of the proposed debt and of the general purpose or purposes for which it was authorized shall be given by the clerk by publication at least once in a newspaper having a general circulation in the Town of South Berwick. No debt may be incurred under such vote of the trustees until the expiration of 7 full days following the date in which such notice was first published. Prior to the expiration of this period, the trustees may call a special district meeting for the purpose of permitting the voters of the district to express approval or disapproval of the amount of debt so authorized, and the trustees shall call such a special district meeting, if within 7 days following the publication of said notice, there shall have been filed with the clerk of the district a petition or petitions signed by not less than 50 qualified voters of the district requesting that such a special district meeting be called. If at such district meeting a majority of the voters present and voting thereon express disapproval of the amount of debt authorized by the trustees, the said debt shall not be incurred and the vote of the trustees authorizing the same shall be void and of no effect. Said bonds, notes and evidences of indebtedness may be issued to mature serially in annual installments of not less than 2% of the face amount of the issue and beginning not later than 3 years after the date thereof, or made to run for such period as the trustees may determine, but no issue shall run for a longer period than 40 years from the date of the original issue thereof. Bonds, notes or evidences of indebtedness may be issued with or without provisions for calling the same prior to maturity; and if callable may be made callable at par or at such premium as the trustees may determine. All bonds, notes or other evidences of indebtedness shall have inscribed upon their face the words "South Berwick Sewer District," shall be signed by the treasurer and countersigned by the chairman of the board of trustees of the district, and if coupon bonds are issued, the interest coupons attached thereto shall bear the facsimile of the signature of the treasurer. All such bonds, notes and evidences of indebtedness so issued by the district shall be legal obligations of the district, which is hereby declared to be a quasi-municipal corporation within the meaning of the Revised Statutes of 1954, chap-

ter 90-A, section 23, as amended, and all provisions of said section shall be applicable thereto. The said district may, from time to time, issue in one series or in separate series, its bonds, notes and other evidences of indebtedness, for the purpose of paying, redeeming or refunding outstanding bonds, notes or evidences of indebtedness, and each authorized issue shall constitute a separate loan. All bonds, notes and evidences of indebtedness issued by said district shall be legal investments for savings banks in the State of Maine and shall be tax exempt. The said district is authorized and empowered to enter into agreements with the State or Federal Government to grant or loan money to or otherwise assist in the financing of projects such as the district is authorized to carry out, and to accept grants and to borrow money from any such government agency, corporations, commission or board as may be necessary or desirable to carry out the provisions of this act.

Sec. 17. Sinking fund provided for. In case any of said bonds or notes are made to run for a period of years, a sinking fund shall be established by the trustees of said district for the purpose of redeeming each issue of said bonds or notes when they become due and beginning not later than the 3rd year following the date of each such issue, a sum equal to not less than 1% of the original face amount of the bonds or notes so issued on account of or in behalf of said district, as aforesaid, shall be turned into said sinking fund each year to provide for the final extinguishment of said district funded debt.

The money set aside for a sinking fund and any increment thereon shall be devoted to the retirement of such notes and bonds, and shall be used for no other purposes, and shall be invested in such securities as savings banks are allowed to hold. Any surplus in a sinking fund not required for the retirement of a particular issue of notes or bonds may be transferred to a sinking fund established for any other issue of notes or bonds of the district at the time outstanding or, if there are no such outstanding notes or bonds, for any lawful purpose.

Whenever any bonds or notes of said district for which a sinking fund has been established become due, or can be purchased by said trustees on favorable terms, said trustees shall, if sufficient funds have accumulated in said sinking fund for such issue, redeem or purchase said bonds or notes, and cancel them. In no case shall bonds or notes cancelled or redeemed be reissued.

In case the amount in said sinking fund shall not be sufficient to pay the total amount of the bonds or notes falling due at any one time, authority to issue new bonds sufficient to redeem so many of said bonds or notes as cannot be redeemed from the sinking fund is hereby granted to said trustees.

Sec. 18. Rates and application of revenues. All persons, firms and corporations, whether public, private or municipal, shall pay to the treasurer of said district the rates, tolls, rent, entrance charges and other lawful charges established or revised by the trustees for the sewer or drainage service, used or available with respect to their real estate, which rates shall be fair and reasonable charges for connection with and for the use of the sewer or drainage service and may include a charge or rate for the district's readiness to serve to be charged against owners, or persons in possession, or person against whom the taxes are

assessed, of all buildings or premises, whether the same are occupied or not, which abut on a street or location through which said district has constructed a sewer line, or the property line of which is within 100 feet of a sewer line controlled by said district, but not actually connected thereto, whether or not such real estate is improved. In establishing or revising such rates, tolls, rents or charges, the trustees may classify the property connected or to be connected with the district's sewerage system and may give consideration to any factors relating to kind, quality or extent of use of any such property or qualification of property including: (a) The volume of water discharged into the sewerage system; (b) The type and size of buildings connected with such system; (c) The number of plumbing fixtures connected with such system; (d) The number of persons customarily using the property served by such system; (e) In the case of commercial or industrial property the average number of employees, customers and guests using the property; and (f) The quality and character of the material discharged into the sewerage system. The trustees may establish minimum charges in connection with and for the use of its sewer system.

Rates, tolls, rents and interest charges shall be uniform whenever the cost to the district of installation and maintenance of sewers and drains and their respective appurtenances and the costs of services 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, rent and entrance charges in sections where, for any reason, the cost to the district for construction and maintenance, or the cost of service, exceeds the average, but such higher rates, tolls, rents and entrance charges shall be uniform throughout the section where they apply; and all such rates, rules and regulations of the district shall be subject to the approval of the Public Utilities Commission. The rates shall be so established as to provide revenue for the following purposes:

I. To pay the current running expenses for operating and maintaining the sewerage system including provisions for depreciation.

II. To provide for the payment of interest on the indebtedness created by the district;

III. To provide each year a sum equal to not less than 1% nor more than 5% of the entire indebtedness of the district, which sum shall be turned into a sinking fund for the final extinguishment of the debt. The money so set aside shall be devoted to the retirement of the obligations of the district, or invested in securities lawful for savings banks; provided, however, that the trustees may, in their discretion, in lieu of the establishment of a sinking fund, issue bonds or notes or other evidences of indebtedness of the district, so that not less than 1% of the notes, bonds or other evidences of indebtedness issued shall mature and be retired annually;

IV. If any surplus remains after the year's operations, this surplus may be added to the sinking fund, if any, or held as a reserve to pay maturing serial debts, or if no funded debt of the district is outstanding, for any lawful purpose.

Sec. 19. Assessment against lot benefited. When the district has constructed and completed a common sewer, the trustees may, if they so determine, in order

to defray a portion of the expenses thereof, determine what lots or parcels of land, whether or not buildings or other structures are located thereon or whether or not they are otherwise improved, are benefited by such sewer and shall estimate and assess upon such lots and parcels of land, and against the owners thereof, or persons in possession, or persons against whom taxes thereon are assessed, whether said persons to whom the assessments are so made shall be the owner, tenant, lessee or agent, or against the heirs or devisees of a deceased owner without designating any of them by name, and whether the same is occupied or not, such sum, not exceeding such benefit as they may deem just and equitable, toward defraying the expense of constructing and completing said sewer, together with such sewage disposal units and appurtenances as may be necessary, the whole such assessment not to exceed $\frac{1}{2}$ of the cost of said sewer and sewage disposal unit. The trustees shall file with the clerk of the district a plan showing the location of such sewer and sewage disposal units, and their assessment rolls containing a statement of the amount assessed upon each lot or parcel of land so assessed, a description of each lot or parcel of land so assessed, and the name of the person against whom said assessment is made, and the clerk of said district shall record the same in a book kept for that purpose. Each person so assessed shall be notified of such assessment by having an authentic copy of said assessment roll, with an order and notice signed by the clerk of said district, stating the time and place for hearing upon the subject matter of said assessment, given to each person so assessed or left at his usual place of abode in said district at least 10 days before said hearing, or by mailing the same to each person so assessed by certified mail addressed to his last known address and by publishing the same once a week for 3 successive weeks in any newspaper of general circulation in said district, said mailing and the last such publication to be at least 30 days before the hearing. A return made upon the copy of such notice by a sheriff or his deputy or by any constable in the Town of South Berwick or the production of the paper containing such notice or the certificate of the clerk of mailing or publication shall be conclusive evidence that said notice has been given, and upon such hearing the trustees shall have power to revise, increase or diminish any of such assessments, and any such revision, increase, or diminution shall be in writing and recorded by the clerk of the district. Supplemental assessments may be made within 5 years from the date of any assessment roll, whenever it appears any lot or parcel of land benefited has been omitted from the assessment, or said assessment, or any part thereof, is invalid or void for any reason. The trustees for the time being may make such supplemental assessments according to the procedure and the principles of the original assessment, and such supplemental assessment shall be valid even though it may, when added to the original, exceed one half of the cost of the sewer and sewage disposal unit.

Any person aggrieved by the decision of said trustees as it relates to any assessment for sewerage construction shall have the same rights of appeal as are provided in the case of the laying out of a town way.

Sec. 20. Assessments; lien; sheriff's sale. All assessments and supplemental assessments made under the provisions of section 19 shall create a lien upon each and every lot or parcel of land so assessed and the buildings upon the same, which lien shall take effect when the trustees file with the clerk of the district

the completed assessment roll, and shall continue for one year thereafter or for one year after the termination of any appeal; and within 10 days after the date of hearing on said assessment, the clerk of the district shall make out a list of all such assessments, the amount of each, and the name of the person against whom the same is assessed, and he shall certify the list and deliver it to the treasurer of said district. If said assessments are not paid within 3 months from the date thereof, the treasurer may bring civil action for the collection of said assessments in the name of the district against the person against whom said assessment is made. Such action shall be begun by writ of attachment commanding the officer serving it to specially attach the real estate upon which the lien is claimed, which shall be served as other writs of attachment to enforce liens on real estate. The declaration in such action shall contain a statement of such assessment, a description of the real estate against which the assessment is made, and an allegation that a lien is claimed on said real estate to secure the payment of the assessment. If no service is made upon the defendant or it shall appear that any other persons are interested in such real estate, the court shall order such further notice of such action as appears proper, and shall allow such other persons to become parties thereto. If it shall appear upon trial of such action that such assessment was legally made against said real estate, and is unpaid, and that there is an existing lien on said real estate for the payment of such assessments, judgment shall be rendered for such assessment, interest and costs of suit against the defendants and against the real estate upon which the assessment was made, and execution issued thereon to be enforced by sale of such real estate in the manner provided for a sale on execution of real estate attached on original writs; provided that in making said sale, the officer shall follow the procedure in selling and conveying and there shall be the same rights of redemption as are provided in the Revised Statutes of 1954, chapter 91-A, section 87, as amended.

Sec. 21. Additional method of collection of assessments. If assessments under section 20 are not paid and said district does not proceed to collect unpaid assessments by a sheriff's sale of the real estate upon which such assessments are made under section 20, or does not collect or is in any manner delayed or defeated in collecting such assessments by a sheriff's sale of said real estate under section 20, then the treasurer, in the name of said district, may maintain a civil action against the party so assessed for the amount of said assessment, as for money paid, laid out and expended, in any court of competent jurisdiction, and in such suit may recover the amount of such assessment with interest at the rate of 10% per year on the same from the date of said assessment, and costs.

Sec. 22. Assessments paid by other than owner, how recovered. When any assessment under section 20 shall be paid by any person against whom such assessment has been made, who is not the owner of such lot or parcel of land, then the person so paying the same shall have a lien upon such lot or parcel of land with the buildings thereon for the amount of said assessment so paid by said person, and incidental charges, which lien shall continue for one year and which lien may be enforced in a civil action as for money paid, laid out and expended, and by attachment in the way and manner provided for the enforcement of liens upon buildings and lots under the Revised Statutes of 1954, chapter 178.

Sec. 23. Lien certificate; procedure. Liens on lots or parcels of land created by section 20, in addition to other methods established by law, may be enforced in the following manner.

The treasurer may, after the expiration of 8 months and within one year after the date of the assessment roll or termination of any appeal, give to the person against whom said assessment is made, or leave at his last and usual place of abode, or send by certified mail to his last known address, a notice in writing signed by said treasurer stating the amount of such assessment, describing the real estate on which the assessment is made, alleging that a lien is claimed on said real estate to secure the payment of the assessment and demanding the payment of said assessment within 10 days after service or mailing of such notice. In the case of supplemental assessments, said treasurer may give such notice after the expiration of 8 months and within one year after the date of the supplemental assessment roll or termination of any appeal therefrom. If an owner or occupant of real estate against whom any assessment is made shall die before such demand is made on him, such demand may be made upon the executor or administrator of his estate or upon any of his heirs or devisees.

After the expiration of said 10 days and within 10 days thereafter, the treasurer shall record in the registry of deeds of York County, a tax lien certificate signed by said treasurer setting forth the amount of such assessment, a description of the real estate on which the assessment is made and an allegation that a lien is claimed on said real estate to secure the payment of said assessment, that a demand for payment of said assessment has been made in accordance with the provisions of this action, and that said assessment remains unpaid. When the real estate of a deceased person has been assessed to his heirs or devisees without designating any of them by name, it will be sufficient to record in said registry a lien certificate in the name of the heirs or the devisees of said decedent without designating them by name.

At the time of the recording of the lien certificate in the York County registry of deeds as herein provided in all cases, the treasurer shall file in the office of the district a true copy of the lien certificate and shall send by certified mail to each record holder of a mortgage on said real estate, to his last known address, a true copy of the lien certificate.

The costs to be paid by the person assessed shall be \$1 plus the recording fees and registered mail fees paid for sending the true copies of the lien certificate.

The filing of the lien certificate in the registry of deeds shall create a mortgage on said real estate to the district, having priority over all other mortgages, liens, attachments and encumbrances of any nature, except claims for municipal taxes, and shall give to said district all the rights usually incident to a mortgagee, except that the district shall not have any right of possession of said real estate until the right of redemption hereinafter provided for shall have expired.

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

In the event that said assessment, interest and costs shall be paid within 12 months after the filing of the lien certificate in the registry of deeds, the treas-

urer shall prepare and record a discharge of the mortgage in the same manner as is now provided for the discharge of real estate mortgages.

If the mortgage, together with interest and costs, shall not be paid within 12 months after the date of the filing of the lien certificate in the registry of deeds, the said mortgage shall be deemed to have been foreclosed and the right of redemption to have expired.

The lien certificate, or a certified copy of the registry record thereof, shall be prima facie evidence in all courts in all proceedings by and against the district, its successors and assigns, of the truth of the statements therein and after the period of redemption has expired, of the title of the district to the real estate therein described, and of the regularity and validity of all proceedings with reference to the acquisition of title by such mortgage and the foreclosure thereof.

Sec. 24. Lien for payment of rates. There shall be a lien on real estate served or benefited by the sewers of the district to secure the payment of rates established and due under section 18, which shall take precedence of all other claims on said real estate, excepting only claims for taxes. Real estate for the purposes of this act shall have the same definition as given in the Revised Statutes of 1954, chapter 91-A, section 4, as amended.

The treasurer of the district shall have full and complete authority and power to collect the rates, tolls, rents, and other charges established under section 18 and due and payable to the district. The treasurer may, after demand for payment, sue in the name of the district in a civil action for any rate, toll, rent or other charge remaining unpaid in any court of competent jurisdiction. In addition to other methods established by law for the collection of rates, tolls, rents and other charges, and without waiver of the right to sue for the same as aforesaid, the lien hereby created may be enforced in the following manner. Whenever any rate, toll, rent or other charge has become payable before the first day of January of any year and remains unpaid, the treasurer may during the month of January, give or cause to be given to the person against whom the rate, toll, rent or other charge is assessed, or leave or cause to be left at his last and usual place of abode, or send by certified mail to his last known address, a notice in writing signed by the treasurer stating the amount of such rate, toll, rent or other charge, and the periods for which they are payable, describing the real estate upon which the lien is claimed, and stating that a lien is claimed on said real estate to secure the payment of said rate, toll, rent or other charge and demanding within 10 days after the service of such notice or mailing of such notice, payment as aforesaid. If the person from whom any rate, toll, rent or other charge is payable shall die before such demand is made on him, such demand may be made upon the executor or administrator of his estate or upon any of his heirs or devisees. After the expiration of said period of 10 days and on or before February 20th of such year, the treasurer shall record in the registry of deeds of York County, a certificate signed by the treasurer setting forth the amount of such rate, toll, or other charge, describing the real estate on which the lien is claimed, and stating that a lien is claimed on the real estate to secure payment of said rate, toll, rent or other charge and that a notice and demand for payment of the same has been given or made in accordance with the pro-

visions of this section and stating further that such rate, toll, rent or other charge remains unpaid. At the time of the recording of the certificate in the registry of deeds as therein provided, the treasurer shall file in the office of the district a true copy of such certificate and shall mail a true copy thereof by certified mail to each record holder of any mortgage on said real estate, addressed to such record holder at his last known address. The fee to be charged by the district to the rate payer for such notice and filing shall not exceed \$1.50 and the fee to be charged to the district by the register of deeds for filing and recording shall not exceed \$1.

The filing of the aforesaid certificate in the registry of deeds as aforesaid shall be deemed to create, and shall create, a mortgage on the real estate therein described to the district which shall have 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 possessed by mortgagees, except that the district as mortgagee shall not have any right to possession of said real estate until the right of redemption hereinafter 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 said 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 hereby provided for. In the event that said rate, toll, rent or other charge, with interest and costs as aforesaid, 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 provided for discharge of real estate mortgages.

Sec. 25. Property tax exempt. The property, both real and personal, and rights and franchises of said district shall be forever exempt from taxation.

Sec. 26. Construction of this act; severability. This act shall be construed as authorizing a charge by said district for the use of sewers, sewer systems or drains for disposal purposes. The trustees of the district may, by bylaws, define the person or persons to whom such special sewer tax or charge shall be assessed and may adopt such other bylaws, rules and regulations as may be necessary to carry out this act. 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 trustees to determine when and where sewage facilities are most needed and how said sewers shall be built. Further, if any part of this act shall be declared invalid by a court of competent jurisdiction, such judgment shall not invalidate the remainder of the act.

Sec. 27. Existing statutes not affected. 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 any applicable provisions of the Revised Statutes of 1954, chapters 44 and 79, and all acts amendatory thereof or additional thereto; but the provisions of this section shall not be taken as implying the necessity of approval of the Public Utilities Commission of the State of Maine for the issuance of notes or bonds of the district.

Effective date; referendum; certificate to Secretary of State. In view of the emergency cited in the preamble, this act shall take effect when approved, only for the purpose of permitting its submission to the legal voters of the district at a special election or elections called and held for the purpose. Said elections shall be called by the municipal officers of the Town of South Berwick and shall be held at the regular voting place in the town. The dates of said elections shall be determined by said municipal officers, but any such election shall not be later than the first day of December, 1964. The board of registration of the Town of South Berwick shall prepare and furnish separate check lists for such of the voters within said district as are then legal voters of said town and reside in said district, and all notices, warrants or other proceedings shall be varied accordingly so as to show that only such voters as reside in said district are entitled to vote upon the question. Such special election shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, the board of registration shall not be required to prepare nor the town clerk to post a new list of voters; and for this purpose said board of registration shall be in session on the 3 secular days next preceding said election, the first and second days thereof to be devoted to registration of voters and the last day to enable the board to verify the correction of said list and to complete and close up its records of said session. The town clerk shall prepare the required ballots on which he shall reduce the subject matter of this act to the following question: "Shall An Act Creating the South Berwick Sewer District, passed by the First Special Session of the 101st Legislature, be accepted?" The voters shall indicate by a cross or a check mark placed against the words "Yes" or "No" their opinion of the same.

This act shall take effect for all the purposes hereof immediately upon its acceptance by a majority of the legal voters voting at such election; but only if the total number of votes cast for and against acceptance of this act in said election equals or exceeds 10% of the total number of names on the check list of voters of said district provided for herein, which check list shall be used at such elections; but failure of approval by the necessary percentage of voters shall not prevent subsequent elections.

The result of such elections shall be declared by the municipal officers of the Town of South Berwick and due certificates thereof filed by the town clerk with the Secretary of State.