

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 1670**

H. P. 1562

House of Representatives, May 28, 1981

Reported by Representative Vose from the Committee on Public Utilities.  
Printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

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**AN ACT to Provide More Public Accountability for Sewer and Sanitary Districts.**

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

**Sec. 1.** 38 MRSA § 1062, 2nd ¶, as amended by PL 1971, c. 618, § 12, is further amended to read:

A sanitary district may only be formed where the Board of Environmental Protection finds that there is a need throughout a part or all of the territory embraced within the proposed district for the accomplishment of the purpose of providing an adequate, efficient system and means of collecting, conveying, pumping, treating and disposing of domestic sewage and industrial wastes within the proposed district ~~and that such purposes cannot be effectively accomplished throughout a part or all of the territory of the proposed district by an existing public agency or agencies~~ and that such purposes can be effectively accomplished therein on an equitable basis by a sanitary district if created and that the creation and maintenance of such a district will be administratively feasible and in furtherance of the public health, safety and welfare.

**Sec. 2.** 38 MRSA § 1101, sub-§ 1-A is enacted to read:

**1-A. Application by referendum. Residents of a municipality or municipalities, or portions thereof, that desire to form a sanitary district may petition the municipal officers to file an application for a sanitary district with the Board of Environmental Protection. The petition shall contain a description of the territory of the proposed district.**

Upon receipt of a written petition signed by at least 10% of the number of voters voting for the gubernatorial candidates at the last statewide election in that proposed district, the municipal officers shall submit the question to the voters of the proposed district at the next general, primary or special election within the proposed district. The referendum question shall read as follows:

“Shall the municipal officers representing the proposed sanitary district, consisting of (describe the territory of the proposed district), file an application for a sanitary district with the Board of Environmental Protection on behalf of the residents of the proposed district?”

If the referendum question is approved by a majority of the legal voters voting at the election, provided that the total number of votes cast for and against the referendum question equaled or exceeded 20% of the total number of votes cast in the proposed district in the last gubernatorial election, the municipal officers representing the residents of the proposed sanitary district shall file an application for that proposed district in accordance with subsection 1.

Sec. 3. 38 MRSA § 1104, as enacted by PL 1965, c. 310, is repealed and the following enacted in its place:

#### § 1104. Trustees

1. **Authorization.** All the affairs of a sanitary district shall be managed by an elected board of trustees which shall consist of not less than 3 trustees, or not less than 5 trustees in sanitary districts involving more than one municipality or one or more municipalities and residents of an unorganized territory. The exact number of trustees shall be determined in accordance with section 1101. A sanitary district may alter the number of trustees by submitting the proposed alteration to the voters in the same manner as provided in section 1101, subsection 7. No municipality nor unorganized territory within any sanitary district may have less than one trustee. A quorum of the trustees may conduct the affairs of the district even if there is a vacancy on the board of trustees.

2. **Recall.** Trustees may be recalled under the following provisions.

A. The qualified electors of the sanitary district may petition for the recall of any trustee after the first year of the term for which the trustee is elected by filing a petition with the municipal clerk, or the county commissioners in the case of unorganized territory, demanding the recall of the trustee. A trustee may be subject to recall for misfeasance, malfeasance or nonfeasance in office. The petition shall be signed by electors of the political subdivision which that trustee represents equal to at least 25% of the vote cast for the office of Governor at the last gubernatorial election within the political subdivision of the trustee being recalled. The recall petition shall state the reason for which removal is sought.

B. Within 3 days after the petition is offered for filing, the official with whom the petition is left shall determine by careful examination whether the petition is sufficient and so state in a certificate attached to the petition. If the petition

is found to be insufficient, the certificate shall state the particulars creating the insufficiency. The petition may be amended to correct any insufficiency within 5 days following the affixing of the original certificate. Within 2 days after the offering of the amended petition for filing, it shall again be carefully examined to determine sufficiency and a certificate stating the findings shall be attached. Immediately upon finding an original or amended petition sufficient, the official shall file the petition and call a special election to be held not less than 40 days nor more than 45 days from the filing date. The official shall notify the trustee, against whom the recall petition is filed, of the special election.

C. The trustee against whom the recall petition is filed shall be a candidate at the special election without nomination, unless he resigns within 10 days after the original filing of the petition. There shall be no primary. Candidates for the office may be nominated under the usual procedure of nomination for a primary election by filing nomination papers, not later than 5 p.m., 4 weeks preceding the election and have their names placed on the ballot at the special election.

D. The official against whom a recall petition has been filed shall continue to perform the duties of his office until the result of the special election is officially declared. The person receiving the highest number of votes at the special election shall be declared elected for the remainder of the term. If the incumbent receives the highest number of votes, he shall continue in office. If another receives the highest number of votes, he shall succeed the incumbent, if he qualifies, within 10 days after receiving notification.

E. After one recall petition and special election, no further recall petition may be filed against the same official during the term for which he was elected.

3. Trustees retirement. Trustees who have not been members of the Maine State Retirement System prior to January 1, 1982, as a result of their selection as trustees, and who are not full-time employees, shall not be eligible to join the Maine State Retirement System as a result of their selection as trustees.

Sec. 4. 38 MRSA § 1105, 5th ¶, last sentence, as enacted by PL 1965, c. 310, is repealed and the following enacted in its place:

All trustees shall serve until their successors are elected and qualified. The trustees shall receive compensation as recommended by them and approved by majority vote of the municipal officers in municipalities representing a majority of the population within the district, including compensation for any duties they perform as officers as well as for their duties as trustees. Certification thereof shall be recorded with the Secretary of State and recorded in the bylaws. Their compensation for duties as trustees shall be on the basis of such specific amount as may be specified in the bylaws, meeting actually attended and reimbursement for travel and expenses, with the total not to exceed such specific amount as may be specified in the bylaws. Compensation schedules in effect in January 1, 1982, shall continue in effect until changed.

Sec. 5. 38 MRSA § 1152-A is enacted to read:

**§ 1152-A. Procedure in exercise of right of eminent domain**

The right of eminent domain granted in section 1152 may only be exercised after complying with the following procedures.

1. **Notice to owner.** The district shall provide notice to the owner as follows.

A. The owner or owners of record shall be notified as follows:

- (1) The determination of the trustees that they will exercise the right of eminent domain;
- (2) A description and scale map of the land or easement to be taken;
- (3) The final amount offered for the land or easement to be taken, based on the fair value, as estimated by the district; and
- (4) Notice of the time and place of the hearing provided in subsection 3.

B. Notice may be made:

- (1) By personal service in hand by an officer duly qualified to serve civil process in this State; or
- (2) By certified mail, return receipt requested, to his last known address.

C. **Alternate notice.** If the owner or owners are not known or if they cannot be notified by personal service or certified mail, notice may be given by publication in the same manner as provided in subsection 3.

2. **Notice to tenant.** Notice shall be made to any tenants in the same manner as for the owner.

3. **Hearing.** The trustees shall hold a public hearing on the advisability of the proposed exercise of the right of the eminent domain. Notice of the hearing shall be made by publication in a newspaper of general circulation in the area of the taking and shall be given once a week for 2 successive weeks, the last publication to be at least 2 weeks prior to the time appointed in the hearing. The hearing notice shall include:

- A. The time and place of the hearing;
- B. A description of the land or easement taken; and
- C. The owners, if known.

Sec. 6. 38 MRSA § 1160, 2nd sentence, as enacted by PL 1965, c. 310, is amended to read:

Existing buildings which are already served by a private sewer or drainage system shall not be required to connect with any such sewer or drain of the district so long as ~~in the judgment of the trustees, such~~ the private sewer or drainage system functions in a satisfactory and sanitary manner, and does not violate any law or ordinance applicable thereto or any applicable requirement of

the State of Maine Plumbing Code, as determined by the municipal plumbing inspector, his alternate, or, in the event that both are trustees or employees of the district, the Division of Health Engineering.

Sec. 7. 38 MRSA § 1160, last sentence, as enacted by PL 1965, c. 310, is amended to read:

A building shall be deemed to be accessible to a sewer or drain of the district for the purposes of this section if such building, or any private sewer or drain directly or indirectly connected thereto or carrying sewage or commercial or industrial waste therefrom, shall at any point be or come within ~~100~~ 200 feet of a sewer or drain of the district; provided that nothing in this section shall require the owner of any such building to acquire any real property or easement therein for the sole purpose of making such connection.

Sec. 8. 38 MRSA § 1162 is enacted to read:

§ 1162. Expansion of sanitary district boundaries

A sanitary district may expand the boundaries of the sanitary district in the same manner as is provided for the formation of the sanitary district in section 1101.

Sec. 9. 38 MRSA § 1163 is enacted to read:

§ 1163. Sewer extensions

Prior to authorizing any sewer extension, except by specific state or federal mandate, the trustees shall notify the legislative bodies and the planning boards of the affected municipalities in order to assure conformity with their comprehensive plans and other public policies relating to their growth and development. The trustees shall publish a notice of the proposed action in a newspaper with general circulation in the district no less than 7 days prior to the meeting at which they will take final action on the authorization of the extension.

Sec. 10. 38 MRSA § 1201, sub-§ 1, first ¶, as enacted by PL 1979, c. 696, § 1, is amended to read:

Any sanitary district formed under this chapter may provide, subject to the limit on total indebtedness as established by section 1201-A, by resolution of its board of trustees, without district vote, except as provided in subsection 10, for the borrowing of money and the issuance from time to time of bonds for any of its corporate purposes, including, but not limited to:

Sec. 11. 38 MRSA § 1201, sub-§ 10 is enacted to read:

10. Certain bond issues; notice; special meeting; vote. In the event that the trustees vote to authorize bonds or notes, the estimated cost of which, singly or in the aggregate included in any one financing, is \$150,000 or more, adjusted, relative to 1981 as the base year according to the annual Consumer Price Index, as defined in Title 5, section 1001, subsection 6-A, the trustees shall provide notice to the

general public of the proposed bond or note issue and the purposes for which the debt is being issued. The notice shall be published at least once in a newspaper having general circulation in the district. The trustees shall give notice to each ratepayer by mail.

No debt may be incurred under the vote of the trustees until the expiration of 7 full days following the date on which the notice was first published. Prior to the expiration of the period, the trustees shall call a special district meeting for the purpose of permitting the collection of testimony from the public concerning the amount of debt so authorized.

Except for indebtedness to fund projects specifically mandated by the State Government and Federal Government, for debts in excess of the amount specified in the first paragraph, if requested by petition of not less than 50 voters of the district or 5% of the voters, whichever is greater, filed with the clerk of the district on or before the date of the meeting, the meeting shall express approval or disapproval of the amount of debt so authorized. If a majority of voters present and voting expresses disapproval of the amount of debt authorized by the trustees, the debt shall not be incurred and the vote of the trustees authorizing it shall be void and of no effect.

Sec. 12. 38 MRSA § 1201-A is enacted to read:

§ 1201-A. Total indebtedness outstanding

The total indebtedness of the district outstanding at any one time issued for capital outlay purposes may not exceed a sum which has been determined by the voters of the district, not including indebtedness in anticipation of matching government grants or loans or to carry out projects specifically mandated by the State Government or Federal Government.

Sec. 13. 38 MRSA § 1202, as last amended by PL 1979, c. 696, § 4, is further amended by adding after the 2nd paragraph a new paragraph to read:

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

Sec. 14. 38 MRSA c. 12 is enacted to read:

CHAPTER 12

SEWER DISTRICTS

§ 1251. Definitions

As used in this chapter, unless the context indicates otherwise, "sewer district" means any district, including multipurpose districts, created by the private and special laws of the State whose purposes include collection, interception and

treatment of sewerage, except those districts whose sewerage activities are confined to interception and treatment shall be exempt from the requirements of this chapter.

**§ 1252. Additions to private and special laws**

The following provisions shall be incorporated into the private and special laws governing all sewer districts. Any part of a sewer district charter not in compliance with this chapter shall be considered repealed.

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

2. **Eminent domain.** The authority and procedures for the exercise of eminent domain by sewer districts shall conform to sections 1152, 1152-A, 1153 and 1154. In addition, no sewer district may take by right of eminent domain any of the property or facilities of any other public utility used, or acquired for future use by the owner thereof, in the performance of a public duty, unless expressly authorized by a special Act of the Legislature.

3. **Connection of private sewers.** Existing buildings which are already served by a private sewer system are not required to connect with any sewer or drain of the district as long as the private sewer or drainage system functions in a satisfactory and sanitary manner and does not violate any law or ordinance applicable thereto or any applicable requirements of the State of Maine Plumbing Code, as determined by the municipal plumbing inspector, his alternate, or, in the event that both are trustees or employees of the district, the Division of Health Engineering.

4. **Expansion of district boundaries.** Amendments to expend the boundaries of a sewer district must be approved by the voters of the district prior to consideration by the Legislature.

5. **Trustees' compensation.** The trustees shall receive compensation as recommended by them and approved by majority vote of the municipal officer in municipalities representing a majority of the population within the district, including compensation for any duties they perform as officers as well as for their duties as trustees. Certification thereof shall be recorded with the Secretary of State and recorded in the bylaws. Their compensation for duties as trustees shall be on the basis of such specified amount as may be specified in the bylaws, each meeting actually attended and reimbursement for travel and expenses, with the total not to exceed such specific amount as may be specified in the bylaws. Compensation schedules in effect on January 1, 1982, shall continue in effect until changed.

6. **Trustees retirement.** Trustees who have not been members of the Maine



State Retirement System prior to January 1, 1981 as a result of their selection as trustees, and who are not full-time employees, shall not be eligible to join the Maine State Retirement System as a result of their selection as trustees.

7. Sewer extensions. Prior to authorizing any sewer extension, except by specific state or federal mandate, the trustees shall notify the legislative bodies and the planning boards of the affected municipalities in order to assure conformity with their comprehensive plans and other public policies relating to their growth and development. The trustees shall publish notice of the proposed action in a newspaper with general circulation in the district no less than 7 days prior to the meeting at which they will take final action on the authorization of the extension.

§ 1253. Governance of sewer districts

1. Formation of new sewer districts. Any quasi-municipal district formed after January 1, 1982, to serve the functions of a sewer district shall be formed in accordance with the Maine Sanitary District Enabling Act, chapter 11, as amended.

2. Reorganization of existing sewer districts. Any sewer district existing on January 1, 1982, may, but is not required to, reorganize as a sanitary district under the Maine Sanitary District Enabling Act. In order to accomplish this, the referendum procedure of section 1101, subsection 1-A may be initiated by the voters or by majority vote of the trustees.

3. Legislative amendment of charters. Each year, on or before April 15th, the legislative committee having jurisdiction over public utilities shall report out legislation entitled "AN ACT to Amend the Charters of Various Sewer Districts Organized Under the Private and Special Laws." Amendments to sewer district charters shall generally be included in that Act. Prior to acting upon any proposed sewer district charter amendment the legislative committee shall obtain written comments from the municipalities that lie in whole or in part within the district.

§ 1254. Effective date

This chapter shall take effect January 1, 1983, except that section 1252, subsections 5 and 6 and section 1253 shall take effect January 1, 1982.

Sec. 15. Effective date. This Act shall take effect January 1, 1982, except that for sanitary districts operative on that date sections 10, 11 and 12 shall not be effective until January 1, 1983, and section 14 shall take effect as specified in this Act.

STATEMENT OF FACT

The new draft retains the purpose of the original bill, to provide more accountability for both sanitary districts, formed under the Maine Sanitary District Enabling Act, Title 38, chapter 11 and sewer districts formed under the private and special laws.

The new draft makes it easier for other sewer entities to form a sanitary district under the Act. New districts would be formed under that Act, while existing districts could continue under the private and special laws. There are notice requirements for new rates and for extensions. Trustees' salaries are set locally, and trustees who are not full-time employees cannot join the Maine State Retirement System by virtue of their being trustees.

The hookup distance for sanitary districts is increased to 200 feet, but abutters with existing systems need not hook up unless their systems become inadequate.

Written comments from the municipality should accompany future requests to the Legislature for charter changes under the private and special laws.