

MAINE STATE LEGISLATURE

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REPORT OF
THE JOINT STANDING COMMITTEE ON PUBLIC UTILITIES
ON
SEWERAGE AND SANITARY DISTRICTS
December, 1980

Senate

Dana C. Devoe, Chairman
Sanuel W. Collins, Jr.
Barbara M. Trafton

House

Richard S. Davies, *Chairman
Philip P. Berry
Richard E. McKean*
Merle Nelson
Harry L. Vose*
Gordon F. Cunningham*
Darryl N. Brown*
Katharine J. Gavett*
Gary L. Lowe
James W. Reeves

* Members served on the subcommittee which prepared the study. Rep. Gordon Cunningham served as chairman.

Legislative Assistants

Haven Whiteside
John Selser

Safe Reserve #1

SENATE

DANA C. DEVOE, PENOBSCOT, CHAIRMAN
SAMUEL W. COLLINS, JR., KNOX
BARBARA M. TRAFTON, ANDROSCOGGIN

JAMES A. NICHOLS, COMMITTEE ASSISTANT



HOUSE

RICHARD S. DAVIES, ORONO, HOUSE CHAIRMAN
PHILIP P. BERRY, SUXTON
RICHARD E. MCKEAN, LIMESTONE
MERLE NELSON, PORTLAND
HARRY L. VOSE, EASTPORT
GORDON F. CUNNINGHAM, NEW GLOUCESTER
DARRYL N. BROWN, LIVERMORE FALLS
KATHARINE J. GAVETT, ORONO
GARY L. LOWE, WINTERPORT
JAMES W. REEVES, NEWPORT

STATE OF MAINE

ONE HUNDRED AND NINTH LEGISLATURE

COMMITTEE ON PUBLIC UTILITIES

December 31, 1980

Legislative Council
110th Legislature
State House
Augusta, Maine 04333

Members of the Council:

In accordance with H.P. 2030, an Order directing the Committee on Public Utilities to study sewerage and sanitary district operation and regulation, we enclose the final report of the Committee. As directed by the Legislative Council, the study was prepared by a Subcommittee. The Subcommittee elected Representative Cunningham as chairman.

Sincerely,


Dana C. Devoe
Senate Chairman


Richard S. Davies
House Chairman


Gordon Cunningham
Subcommittee Chairman

EXECUTIVE SUMMARY

Sewerage & Sanitary District Study

Questions

The 109th Legislature, in H.P. 2030, directed the Joint Standing Committee on Public Utilities to study the present system of regulation of sewer utilities, with particular attention to the roles of the Legislature, the public, and (potentially) the Public Utilities Commission, and report to the 110th Legislature.

Process

The study was carried out by a subcommittee, which conducted a survey of all sewer utilities in Maine, reviewed existing law, and consulted with the Maine Public Utilities Commission and the Department of Environmental Protection, as well as the Council of State Governments.

The study made 8 recommendations and developed draft legislation, "AN ACT to Provide More Public Accountability for Sewer and Sanitary Districts."

Findings

Of 169 sewer utilities in Maine, 95 are managed by the municipality and 46 are sewer or combined districts under the Private & Special Laws, while only 16 are sanitary districts under the Enabling Act. The other 12 are in miscellaneous categories.

Specific findings were:

1. DEP reviews all sewer discharges for environmental acceptability.
2. There is no State economic regulation of sewer utilities.
3. Accountability and public participation vary greatly among districts

4. The readiness to serve charge is fair.
5. There are unnecessary barriers to formation of districts.
6. Too many local issues are brought before the Legislature.

Recommendations

It is recommended that:

- (1) Users in municipal systems, or any other districts should have the option of forming a Sanitary District under the Enabling Act.
- (2) (a) Regulation by the Public Utilities Commission is not recommended.
(b) Methods for improved local accountability should be considered by the Joint Standing Committee on Public Utilities.
- (3) Trustees should be made more accountable by requiring: election, 3 year terms, at least 3 trustees, at least one from each municipality, provision for recall for serious cause.
- (4) Voter approval should be required for expansion of district boundaries.
- (5) Due process in eminent domain should be ensured by requiring notice, hearing, filing, and an appeal procedure.
- (6) For existing systems, the burden of proof should be shifted to the trustees before hookup can be required.

- (7) (a) Every District must have a debt limit.
 - (b) Amendments require local referendum and legislative approval.
 - (c) A statutory requirement for referendum on bond issues is not recommended.
- (8) The Joint Standing Committee on Public Utilities should consider methods of providing for review of sewer extensions which are not fully reviewed by DEP.

Cost of Recommendations

These recommendations are procedural, and are not expected to result in a net cost to the State or the District. Although some of the procedures will require modest additional local costs, these should be more than balanced by savings due to fewer appeals to the Legislature and greater satisfaction of district voters.

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I. PURPOSE AND PROCEDURE OF STUDY

The 109th Legislature directed the Joint Standing Committee on Public Utilities to study the present system of sewerage and sanitary district operation and regulation, with particular attention to the roles of the Legislature, the public, and (potentially) the role of the Public Utilities Commission. The study order, H.P. 2030 (see Appendix 1), required that the Committee report its findings, recommendations, and any necessary implementing legislation for the First Regular Session of the 110th Legislature. At the direction of the Legislative Council, a six member subcommittee was appointed by the Committee chairmen to conduct the study.

The subcommittee met twice (on September 18 and November 25) to hear and consider information from the following sources:

- Department of Environmental Protection
- Council of State Governments
- Public Utilities Commission
- Staff review of the Sanitary District Enabling Act of 1965 (38 MRSA Ch. 11) (summary in Appendix 2)
- Staff review of recent legislative efforts in Maine (Appendix 3)
- Survey of sewer and sanitary districts and other providers of sewer services in Maine (Appendix 4).

The subcommittee also met on December 4th

to review the draft report before transmission to the 110th Legislature.

II. FINDINGS

The study revealed that, of 169 sewer utilities in Maine, 95 are managed directly by the municipality, 16 are sanitary districts chartered under the Enabling Act, 46 are sewer or combined districts chartered by Private and Special Laws, and 12 fall in a miscellaneous category. Three-fourths of the sewer and sanitary districts responded to the survey.

Legislative Involvement

In the past, numerous bills have come before the Legislature relating to particular sewer and sanitary districts. Often these involve local issues, not matters of State policy, and thus they should be decided at the local level. Furthermore, it seems inappropriate for the Legislature to be involved in minor changes to a district's charter.

Passage of the Sanitary District Enabling Act in 1965 should have helped this situation, but there are still 3 times as many districts chartered under Private & Special Laws as under the general statute. On the whole, the Enabling Act provides a reasonable framework for operation of a district.

Accountability and Public Participation

The accountability of sewer and sanitary districts to the public for their actions varies greatly from one charter to another. Public participation is not always required in their decision making, and there are no minimal procedural standards, such as requirements for notice, hearings, or coordination with local government, that apply to all sewer and sanitary districts.

Existing Systems & Readiness to Serve

38 MRSA §1202 mandates inclusion of a readiness to serve charge against owners of real estate not actually connected, but abutting on, or accessible to, sewers or drains of the district. The subcommittee discussed this concept and felt that it was fair, and a sufficient tool to encourage hookup, except in case of an unsatisfactory existing system. In that case, hookup should be required, to protect public health and welfare, but the burden of proof should be on the district to show that the existing system is unsatisfactory.

Sanitary District Formation

Under the Sanitary District Enabling Act, the Department of Environmental Protection (DEP) may only approve sanitary district formation under the Enabling Act if there is a need for sewer service that "cannot effectively be accomplished" by existing public agencies. This creates a barrier to formation of a sanitary district under the Enabling Act where service is already provided by a municipality or by a district formed under the Private & Special Laws.

Regulation

All sewer discharges are subject to permits from DEP, and thus are reviewed for environmental acceptability.

DEP also must review sewage treatment systems constructed with Federal or State funds to see if they are cost-effective as well as environmentally sound. (Incidentally, municipalities can get the same State and Federal funding as a district.) DEP does not review rates or collector extensions. Public hearings are not required for them.

The Public Utilities Commission (PUC) regulates sewer and sanitary districts in many states, but not in Maine, although a few were regulated in the past. On at least six occasions, from 1963 through 1976, legislation was introduced to require economic regulation of sewer and sanitary districts by PUC. The last time, this was a result of a legislative study. Legislation from this study was supported by the Committee and the PUC, but it failed, primarily because it would have required an increase in the PUC budget.

The Subcommittee also reviewed a concept of PUC regulation which would only apply in exceptional cases, when a petition was received from 10% of the customers. Such a system applies to small water districts, under 35 MRSA §69 and §72. However, it was noted that there have apparently not been many rate complaints, and the fear was expressed that a rate case could serve as a back door to bring in other complaints. There are some current procedures, primarily appeal to the courts, which provide a forum for rate complaints, but these would only provide redress if the rate-setting could be shown to be arbitrary and capricious.

The subcommittee prefers other methods of achieving accountability in rate-setting, such as local public hearings.

III. RECOMMENDATIONS

(1) In case users in municipal systems or districts formed under the Private and Special Laws are dissatisfied with their present system, it is recommended that they have the option of forming a Sanitary District under the Enabling Act:

A petition signed by 10% of the number of voters in the last gubernatorial election would place the question on the ballot. The question would be decided by majority vote, but 20% of those eligible (i.e., all registered voters in the area of the district) would have to vote, for the election to be valid.

(2) Regulation of sewer utilities by the Public Utility Commission is not recommended, in order to avoid unnecessary expense and the possibility of lengthy but unproductive regulatory hearings. Other methods of achieving accountability in rate-setting such as local public hearings, should be discussed by the Joint Standing Committee on Public Utilities of the 110th Legislature and considered for inclusion in any legislation reported out by the Committee.

(3) In order to enhance the accountability of trustees it is recommended that:

a. Trustees be elected, beginning in 1982, for terms not exceeding 3 years.

b. There be at least 3 trustees in any District (5 for districts which include more than one municipality.) Each municipality within any district shall have at least one trustee.

c. Provision be made in the statute for recall of trustees, by vote of the District, for serious cause, such as malfeasance, misfeasance or non-feasance.

(4) In order to ensure local discussion and agreement, before seeking approval by the State, for expansion of district boundaries it is recommended that:

Expansion of district boundaries must be approved by the voters in each municipality, or part thereof, and then ratified by the Legislature in the case of sewer districts, and by DEP in the case of statutorily formed sanitary districts.

(5) In order to ensure due process in the exercise of eminent domain it is recommended that the following be required:

- a. personal notice to the owner of record and tenant, if any;
- b. public hearing, and notice;
- c. filing a description of the proposal with the Register of Deeds and/or Municipal Clerk;
- d. a procedure for appeal to an outside authority.

(6) In order to protect owners of satisfactory existing private disposal systems from needless expense, it is recommended that:

Trustees have the burden of showing that an existing system is operating in an unsatisfactory or unsanitary manner before they can require hookup (at present, 38 MRSA §1160 has such a provision, but it applies only to

Sanitary Districts, and it requires only the judgment of the trustees, not a burden of proof).

(7) In order to promote financial integrity and ensure district-wide approval in fiscal matters before seeking State approval, it is recommended that:

a. Every District must have a debt limit. For those which have none in their charter by July 1, 1982, the limit shall be their current debt, plus 10%.

b. Amendments to the debt limit shall require local referendum, followed by legislative approval for sewer districts operating under a Private and Special Law.

c. A statutory requirement for a local referendum on bond issues is not recommended.

(8) Because there appears to be a need for a forum for review of sewer extensions which are not already fully reviewed by DEP, but the study had insufficient time to resolve this problem, it is recommended that:

The Joint Standing Committee on Public Utilities consider such options as: approval by referendum, requirement for conformity with the comprehensive plan, and review by municipal officials; and amend the bill to include any which are found appropriate.

NOTES:

Only recommendation (1) applies to systems operated directly by a municipality. All recommendations apply to other systems.

STATE OF MAINE

In House H.P. 2030~~Ordered~~

Whereas, sewerage and sanitary districts are not regulated by the Public Utilities Commission; and

Whereas, sewerage and sanitary districts are required to undertake complex and costly projects to comply with federal and state environmental laws; and

Whereas, there is a broad range in the powers and duties of boards of trustees among sewerage and sanitary districts; and

Whereas, the Legislature is required to approve all changes in provisions in sewerage district charters; and

Whereas, the sewerage district projects, the powers and duties of trustees and charter changes made by the Legislature have a very significant impact upon development in each district and upon user rates throughout the entire State; and

Whereas, the opportunity for public participation in the decision-making process is limited in sewerage and sanitary districts; and

Whereas, there is widespread public concern about the policies of sanitary and sewerage districts; now, therefore, be it

Ordered, the Senate concurring, subject to the Legislative Council's review and determinations hereinafter provided, that the Joint Standing Committee on Public Utilities shall study the present system of sewerage and sanitary district operation and regulation with particular attention to the present role

~~XXXX~~~~XXXX~~

D. OF R.

of the Legislature over district charters, the advantages and disadvantages of regulation by the Public Utilities Commission and the role of the public in establishing district policies; and be it further

Ordered, that the committee $\langle \text{-----} \rangle$ report its findings and recommendations, together with all necessary implementing legislation in accordance with the Joint Rules, to the Legislative Council for submission in final form at the First Regular Session of the 110th Legislature; and be it further

Ordered, that the Legislative Council, before implementing this study and determining an appropriate level of funding, shall first ensure that this directive can be accomplished within the limits of available resources, that it is combined with other initiatives similar in scope to avoid duplication and that its purpose is within the best interests of the State; and be it further

Ordered, upon passage in concurrence, that a suitable copy of this Order shall be forwarded to members of the committee.

(Davies)
NAME: Richard Davies

Town: Orono

COSPONSORS:

[Signature]
(Higgins)

Shirley B. Benoit
(Ms. Benoit)

Richard E. McKean
(McKean)

From: Scarborough

From: South Portland

From: Limestone

HP2030

APPENDIX 2



STATE OF MAINE
OFFICE OF LEGISLATIVE ASSISTANTS
STATE HOUSE
AUGUSTA, MAINE 04333

September 12, 1980

Dear Sir or Madam:

The Joint Standing Committee on Public Utilities of the Maine Legislature has been directed by Study Order HP 2030 to study

"The present system of sewerage and sanitary district operation and regulations with particular attention to the present role of the Legislature over district charters, the advantages and disadvantages of regulation by the Public Utilities Commission and the role of the public in establishing district policies."

As a part of the study, the Committee will be reviewing the organization, duties, and powers of sewer and sanitary districts throughout the state. To assist the Committee in that review, we are collecting the charters of the various sewer and sanitary districts. It would be greatly appreciated if you would send us a copy of the charter, as amended, for your sewer district and complete the brief enclosed questionnaire.

The Committee is scheduled to meet this month and we would appreciate your response as soon as possible. Thank you for your assistance. If you have any questions, do not hesitate to call. (289-2486)

Sincerely,

A handwritten signature in dark ink, appearing to read "Haven Whiteside".

Haven Whiteside
Committee Staff

A handwritten signature in dark ink, appearing to read "John R. Selser".

John R. Selser
Committee Staff

enclosure

HW/JRS/elk

1. NAME OF DISTRICT: _____

2. ADDRESS/PHONE: _____

3. Municipality or municipalities within the district. (If only part of a municipality is within the district please indicate by placing the word "(partial)" after the name of that municipality:

4. Total population within the district: _____

5. Date of establishment (if known) _____

6. Name of person who may be contacted for further discussion of this study order: _____

(Name)

(Phone)

SEWER & SANITARY DISTRICTS

	Responded ?	Date Established	# of trustees	Term (yrs.)	Elected/Appointed (Yr)
1. Ashland	X	'47	3	3	E(69)
2. Auburn	X	'17	6	6	A
3. Augusta	X	'55	3	3	A*
4. Baileyville	-				
5. Berwick	X	'75	5	3	A
6. Burnham	-				
7. Blue Hill	-				
8. Boothbay Harbor	X	'63	3	3	E
9. Brownville Jct.	X	'47	3	3	A
10. Brunswick	X	'47	5	5	A
11. Camden	-				
12. Caribou	X	'45	3	3	A
13. Clinton	X	'46	3	3	A
14. Corinna	-				
15. Dexter	X	'71	5	3	E(76)
16. Eagle Lake	-				
17. Eastport	X	'77	5	3	E
18. Ft. Fairfield	X	'47	3	3	A
19. Freeport	X	'47	7	3	E
20. Hallowell	X	'71	3	3	A
21. Houlton Corp.	X	'87	6	3	E
22. Jackman	X	'69	5	5	E
23. Kennebunk	X	'55	5	5	E
24. Limerick	-				
25. Limestone	X	'63	3	3	E
26. Mapleton	-				
27. Mars Hill	X	'57	5	3	E
28. Mexico	X	-	3	3	A
29. Some Town	-				
30. Milo	X	'09	3	3	A
31. Monson	-				
32. Norridgewock	X				
33. Ogunquit	X	-	3	3	E
34. Paris	X	'67	5	3	E
35. Presque Isle	X	'28	3	3	E
36. Richmond	X	-	3	3	E
37. Rumford-Mexico	X	'71	7	3	A
38. Sanford	X	'49	3	3	E

* must appoint 1 from State Minority Party.

SEWER & SANITARY DISTRICTS

	Responded ?	Date Established	# of trustees	Term (yrs.)	Elected/Appointed (Yr)
39. So. Berwick	X	'65	5	3	E
40. Topsham	X	'58	3	3	A
41. Unity	-				
42. Van Buren		'65			
43. Venice	X	'51	3	3	E
44. Waldoboro	X	'63	3	3	E
45. Waterville	X	'49	5	5	A*
46. Winthrop	-				
47. York	X		5	5	E
* must appoint 2 from the minority party.					
SANITARY DISTRICTS (ALL)			3	3	E
1. Anson-Madison	X				
2. Great Salt Bay	-				
3. Guilford-Sangerville	-				
4. Kennebec	X				
5. Lincoln	-				
6. Manchester	X				
7. Mechanic Falls	X				
8. Monmouth	X				
9. Moosehead	X				
10. Newport	X				
11. North Berwick	X				
12. St. Agatha	X				
13. Scarborough	X				
14. Stonington	X				
15. Wells	X				
16. Winterport	X				

MUNICIPALITIES which supply sewer service directly.

1. Bangor*
2. Bar Harbor*
3. Bath*
4. Belfast*
5. Bethel*
6. Biddeford*
7. Boothbay
8. Brewer*
9. Bridgton
10. Bristol
11. Buckfield
12. Bucksport
13. Calais
14. Canton*
15. Cape Elizabeth
16. Cornish
17. Cumberland
18. Danforth*
19. Dixfield*
20. Dover-Foxcroft*
21. ?East Millinocket
22. Eliot
23. Ellsworth*
24. Fairfield (W. Kennebec)
25. ?Farmingdale
26. Falmouth
27. Farmington*
28. Fort Kent*
29. Fryeburg
30. Gardiner
31. Gorham
32. Greenville
33. Hampden
34. Harrington
35. Hartland
36. Herman
37. Howland
38. Isleboro
39. Jay
40. Jonesboro
41. Kennebunkport*
42. Kittery
43. Lebanon
44. ?Lee
45. Lewiston*
46. Lisbon*
47. Livermore Falls*
48. Machias
49. ?Madawaska
50. Medway
51. Milbridge
52. Milford
53. Millinocket
54. Mt. Desert
55. New Sharon
56. North Haven
57. Northport
58. Norway*
59. Oakland*
60. Old Orchard Beach
61. Old Town*
62. Orono*
63. Parsonsfield
64. Patten
65. Peru
66. Pittsfield
67. Portland
68. Randolph
69. Rangely*
70. Rockland*
71. Rumford
72. Sabattus
73. Saco*
74. St. George
75. Sangerville
76. Searsport
77. Skowhegan
78. Solon
79. So. Portland
80. Southwest Harbor
81. Strong
82. Thomaston*
83. Turner
84. Union
85. Vinalhaven
86. Washburn*
87. ?Washington
88. Webster
89. Westbrook*
90. Wilton*
91. Windham
92. Winslow
93. Winter Harbor
94. Wiscasset
95. Yarmouth*

*responded to questionnaire

OTHER ENTITIES which supply sewer service.

1. Bucks Harbor Air Force Station
2. Caswell Air Force Station (closed)
3. Charleston Air Force Station (transferred to the State)
4. Penobscot Indian Tribal Housing Authority
5. Pineland Hospital & Training Center
6. Pleasant Point Passamaquoddy
7. Princeton - Indian Township
8. Public Service Company of New Hampshire
9. U.S. Navy Security Group, Winter Harbor
10. Veteran's Administration, Togus
11. Warren - Prison Farm
12. Washington County Vocational Technical Institute

THE SUMMARY OF THE MAINE SANITARY DISTRICT ENABLING ACT
(Title 38 Chapter 11, MSRS)

SUBCHAPTER I: General Provisions

A. A sanitary district may consist of one municipality two or more municipalities, a section or sections of a municipality or two or more municipalities, a sufficient number of persons residing in an unorganized territory, or any combination of the above.

B. Purpose. To construct, maintain, operate and provide a system of sewerage for public purposes and for the health, welfare, comfort and convenience of the inhabitants of the district.

C. Sanitary district property is exempt from taxation.

D. The provisions of this chapter are supplemental to other laws.

E. Any municipality which falls within a sanitary district shall be entitled to reimbursement from the district.

SUBCHAPTER II: Organization of a sanitary district

A. Formation of a sanitary district.

1. Application. An application must be filed with the Board of Environmental Protection and shall include the following:

a. The names of the municipalities or portions thereof that propose to be included in the district;

b. A description of the territory of the proposed district;

c. The name proposed for the district;

d. A statement showing the existence of the following conditions: that the district is formed for "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 be accomplished therein on equitable basis by a sanitary district if created" and that the district "will be administratively feasible and in furtherance of the public health, safety and welfare;" and

e. Applicable engineering studies.

2. The Board of Environmental Protection shall hold a public hearing on the application.

3. The Board of Environmental Protection shall approve or deny the application. (An application which has been denied may not be refiled within a year of the denial.)

4. The first organizational meeting shall be held to determine a fair and equitable number of trustees to be elected by and to represent each participating municipality.

5. Upon acceptance of the record of that meeting by the Board of Environmental Protection the question shall be submitted to the voters to determine whether or not a sanitary district shall be formed.

B. Approval and organization. Upon approval by the Board of Environmental Protection of an affirmative vote for a sanitary district and upon completion of the other steps in the formation of the proposed sanitary district, the Board shall issue a certificate of organization in the name of the sanitary district.

C. The municipal officers shall transfer the necessary property to the sanitary district.

D. The trustees of the sanitary district shall number not less than 5 nor more than 18.

E. The trustees shall be nominated and elected in the same manner as municipal officers or, in the case of unorganized territory, in accordance with the procedure for the organization of larger townships. The trustees shall serve three-year staggered terms. The trustees shall hold an organizational meeting and annual meetings thereafter.

SUBCHAPTER III: Powers of the sanitary district

A. General powers.

1. To lay pipes, drains, sewers and conduits, and to take up, repair and maintain the same or contract for such services.

2. To construct and maintain treatment works, pumping stations, basins, reservoir, flush tanks and such other appliances for collecting, holding, purifying, distributing and disposing of sewage matter and commercial and industrial waste and of storm and surface water.

3. To do any or all other things necessary to accomplish the purposes of the district.

B. To acquire and hold real and personal property and to exercise the right of eminent domain to accomplish the purposes of the district. (An appeal from condemnation proceedings may be made to the county commissioners.)

C. Crossing other public utilities. Sewer lines crossing the property or line of any other public utility shall be done

by consent of that utility or by approval of the Public Utilities Commission. The right of eminent domain does not extend to other public utility property.

D. Private sewers may be extended to the main sewer line before completion of the sewer by permit. After the sewer is completed a permit and an entrance charge are required.

E. A sanitary district is authorized to contract for disposal of sewage.

F. Sanitary district excavations must be done expeditiously and, on completion of the work, the district shall restore the land to the condition it was in prior to the excavation. The municipal officers or county commissioners may authorize the closing of a public way if sanitary district excavations are such as to endanger travel on any public way.

G. The sanitary district shall have free access to all premises served by the sewers for purposes of inspection.

H. Every building in a sanitary district intended for human habitation or with facilities for discharge of sewage or commercial or industrial waste, which is accessible to a sewer or drain of such district, must connect to the sewer within 90 days after receiving a request therefore from the district. Existing buildings which are already served by private sewer or drain system shall not be required to connect with the sewer so long as the trustees approve of the private sewer or drainage system and it does not violate State law or local ordinances.

I. It shall be a Class E crime to cause injury to the property of the sewer district and the damages shall be twice the actual amount of damage to the district property.

SUBCHAPTER IV: Bonds, rates and assessments

A. Sanitary districts may borrow money and issue tax exempt bonds, notes or other evidences of indebtedness to accomplish the purposes of the district. (Details on the issuance of bonds may be found in Title 38, Section 1201.)

B. Rates. Rates, tolls, rents and entrance charges shall be uniform within a sanitary district, whenever the cost of those fees is substantially uniform. The sewer rates, tolls, rents and entrance charges shall be so established as to provide revenue for the following purposes:

1. current operating expenses;
2. payment of interest and principal;
3. sinking fund for retirement of obligations; and
4. surplus. (If any surplus remains at the end of the year, it may be turned into the sinking fund.)

C. Assessments. The trustees of a sanitary district may determine what lots or parcels of land are benefited by a common sewer and estimate and assess upon such lots and parcels of land a sum related to the benefits the lot or parcel of land receives. (Limitations and notice requirements on the assessments may be found in Title 38, Section 1203 MSRS.) Persons aggrieved by an assessment may appeal. A lien shall be created for unpaid assessments. Assessments paid by persons who are not owners of a lot or parcel of land upon which the assessment was made shall have a lien upon the lot or parcel of land until such assessment is paid by the owner.

D. A lien may be created to secure the payment of rates

established by the sewer district.

E. Supplementary charges may be imposed by a sanitary district.

F. Contracts in excess of \$2,000 shall be awarded by a system of competitive bidding. The contracts shall be awarded to the lowest responsible bidder unless there are valid reasons to the contrary.

STATE OF MAINE

Inter-Departmental Memorandum Date Nov. 24, 1980

To Files Dept. _____

From Haven Whiteside Dept. _____

Subject Legislation relating to Sewer Utilities, generally, 1960-1980

Referendum - In 1977 a Danton (York) bill (LD 1226) "AN ACT Concerning a Referendum Under the Maine Sanitary District Enabling Act" was reported ONTP, and did not pass.

- In 1980 a Higgins (Scarborough) bill (LD 1808) "AN ACT Relating to Bonds and Notes Issued by Sanitary Districts", which was designed to make such securities more attractive to investors, passed. However, a Committee minority report that included a referendum on bond issues failed.

Regulation by P.U.C. - Historically some, but not all sewer districts were subject to PUC under their (private and special law) charters. However, in re Milo Water District the Maine Supreme Court in 1930 ruled that regulation of one sewer system out of several was unconstitutionally discriminatory. Eventually (1975 P.L., c. 461) PUC regulation was removed by statute from the district charters that still had it, and a study of general PUC regulation was ordered.

In the meantime, on at least six occasions (1963, 65, 69, 71, 73, 75 and 76), bills were introduced to require PUC regulation of sewer utilities. Then the 1976 bill which was the result of the study mentioned above, failed. The reasons for this failure appear to be:

- (1) Cost: in 1975, PUC estimated \$58,000 annually,
- (2) Few complaints: The Consumer Fraud Division of the Attorney General only reported 2 in 1974 and 1975.
- (3) All sewer districts except one (1975) are publicly owned and controlled, so that PUC would be a second layer of regulation.

Sanitary District Enabling Act (Title 38, ch. 11) was passed in 1965. (About 16) have been formed since then. Even for them, the Act has not prevented problems. One of the biggest controversies the Joint Standing Committee on Public Utilities faced in 1980 related to Scarborough, which had adopted the enabling act.

Taxation - In 1975 a Kelley (Machias) bill (LD 157) to "Exempt Sewer Service Charges from Sales Tax" was withdrawn.

HW/lk

APPENDIX 5

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

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

Sec. 1. 38 MRSA §1062, ¶2 is amended to read as follows:

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 state-wide 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 is repealed and replaced as follows:

§1104. Trustees

1. Authorization. All of the affairs of a sanitary district shall be managed by a board of trustees which shall consist of not less than 3 trustees, or not less than 5 trustees in sanitary districts encompassing more than one municipality or encompassing one or more municipalities and residents of unorganized territory. The exact number of trustees shall be determined in accordance with §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 §1101, sub-§7.

No municipality nor unorganized territory within any sanitary district shall have less than one trustee.

2. Recall.

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, gross dereliction or neglect of official duty, or incompetency causing him to be unfit to hold 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 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 shall be filed against the same official during the term for which he was elected.

Sec. 4. 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 §1152 may only be exercised after the following procedures have been complied with:

1. Notice to owner

A. The owner or owners of record shall be served notice of:

(1) the determination of the trustees to exercise the right of eminent domain;

(2) a description of the land or easement to be taken;

- (3) the amount of damages to be awarded for the land or easement taken; and
- (4) notice of the time and place of the hearing provided in sub-§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 sub-§3.

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

3. Hearing. A hearing shall be held on the proposed exercise of the right of 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 two (2) successive weeks, the last publication to be at least two (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. 5. 38 MRSA §1160, 2nd sentence, is amended to read:
Existing buildings which are already served by a private sewer 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 Plumbing Code.

Sec. 6. 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 §1101.

Sec. 7. 38 MRSA §1201, 1st ¶ is amended to read as follows:

Any sanitary district formed under this chapter, for the purposes of accomplishing its objectives, of paying and refunding its indebtedness, of paying any necessary expenses and liabilities incurred under this chapter, including organizational and other necessary expenses and liabilities whether incurred by the district or any municipality therein, or any person residing in unorganized territory encompassed by said district, the district being authorized to reimburse any municipality therein or any person residing in unorganized territory encompassed by said district for any such expenses incurred or paid by it or him, and in acquiring properties, paying damages, laying sewers, drains and conduits, constructing, maintaining and operating sewage and treatment plants, or systems, and making renewals, additions, extensions and improvements to the same, and to cover interest payments during the period of construction, by resolutions of its board of trustees, ~~without-district-vote~~ is authorized to borrow money and issue, from time to time, bonds, notes or other evidences of indebtedness of the district in one series,

in such amount or amounts, bearing interest at such rate or rates, and having such terms and provisions as the trustees shall determine, subject to the limit on total indebtedness as established by §1201-A. Any such bonds, notes and evidences of indebtedness may be issued to mature serially or made to run for such periods as the trustees may determine. Bonds, notes or evidence of indebtedness may be issued with or without provision 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 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 to issued by any such district shall be legal obligations of the district, and all districts formed under this chapter are declared to be quasi-municipal corporations within the meaning of Title 30, section 5053. Subject to the foregoing provisions of this section, any such 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 evidenc-s of indebtedness, and each authorized issue shall constitute a separate loan. All bonds, notes and evidences of indebtedness issued by any such district shall be legal investments for savings banks in the State of Maine and shall be tax exempt.

Sec. 8. 38 MRSA §1201-A is enacted to read:

§1201-A. Total indebtedness outstanding

The total indebtedness of the district outstanding at any one time shall not exceed a sum which has been determined by the voters of the district. If any district has not determined a limit on the total indebtedness of the district by January 1, 1982, a limit shall be established, until such time as it is amended by the voters, not to exceed the current debt of the district as of June 30, 1981 plus 10%.

Sec. 9. 38 MRSA §1202 is amended by adding a new paragraph after the 2nd ¶ and before the 3rd ¶ to read as follows:

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. After adoption of the rates, copies of the rates shall be printed and made available to rate-payers and prospective rate-payers of the district.

Sec. 10. 38 MRSA, Chapter 12 is enacted to read:

CHAPTER 12

SEWER DISTRICTS

§1251. Purpose

The purpose of this chapter is to provide minimum guidelines to the sewer districts chartered under private and special laws of the Legislature. These guidelines will provide more public participation and more accountability for sewer districts.

§1252. Definition

As used in this chapter, "sewer district" means any district created by the private and special laws of the state whose purposes include collection, conveying and treatment of sewage.

§1253. Statutory guidelines

The following minimum provisions shall apply to all sewer districts:

1. Trustees. The authorization and recall of trustees shall conform to the provisions of Title 38, §1104.

2. Eminent domain. The authority and procedures for the exercise of eminent domain by sewer districts shall conform to Title 38, §§1152, 1152-A, 1153, and 1154. In addition, no sewer district is authorized to 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 Special Act of the Legislature.

3. Connection of private sewers. Existing buildings which are already served by a private sewer system shall not be required to connect with any sewer or drain of the district so 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 Plumbing Code.

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

5. Debt limit. All sewer districts shall establish a limit on the total indebtedness outstanding at any one time. Amendments to that debt limit must be approved by the voters of a district prior to consideration by the Legislature. The debt limit for any sewer district whose members have not approved a limit on the total indebtedness outstanding by January 30, 1982, shall automatically be an amount equal to the total outstanding indebtedness as of June 30, 1981, plus 10%.

6. 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. After adoption of the rates, copies of the rates shall be printed and made available to rate-payers and prospective rate-payers of the district.

§1254. Conformity with private and special laws.

The provisions of this chapter shall apply to all sewer district charters as of January 30, 1982. Any part of a sewer district charter not in compliance with the provisions of this chapter shall be considered to be repealed as of January 30, 1982.

Sec. 10. Effective date. The provisions of this Act shall take effect 90 days after adjournment of the Legislature except that Sec. 3 shall not take effect until January 1, 1982.