

# MAINE STATE LEGISLATURE

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# ONE - HUNDRETH LEGISLATURE

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**Legislative Document**

**No. 1387**

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S. P. 434

In Senate, February 8, 1961.

Referred to Committee on Legal Affairs. Sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary

Presented by Senator Mayo of Sagadahoc.

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## STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-ONE

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### AN ACT Authorizing Creation of Municipal Sewerage Systems.

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

**R. S., c. 90-C, additional.** The Revised Statutes are amended by adding a new chapter 90-C, to read as follows:

#### **'Chapter 90-C**

#### **Municipal Sewerage Systems.**

**Sec. 1. Definitions.** As used in this chapter:

I. "Acquire a sewerage system" means obtain title to all or any part of a sewerage system or any interest therein by purchase, condemnation, grant, gift, lease, rental or otherwise.

II. "Construct a sewerage system" means to acquire land, easements, rights-of-way or any other real or personal property or any interest therein, plan, construct, reconstruct, equip, extend and enlarge all or any part of a sewerage system.

III. "Operate a sewerage system" means own, use, equip, re-equip, repair, maintain, supervise, manage, operate and perform any act pertinent to the collection, transportation and disposal of sewage.

IV. "Sewage" means any substance, liquid or solid, which may contaminate or pollute or affect the cleanliness or purity of any water.

V. "Sewerage system" means any device, equipment, appurtenance, facility and method for collecting, transporting, receiving, treating, disposing of or discharging sewage.

Sec. 2. Sewer authority; appointment; terms. Any municipality may, by ordinance, designate any existing board or commission of the municipality or create a new board or commission to be designated, as the sewer authority for such municipality. If a new board or commission is created, the municipality shall, by ordinance, determine the number of members thereof, their compensation, if any, the method of their appointment and removal and their terms of office, which shall be so arranged that not more than  $\frac{1}{2}$  of such terms shall expire within any one year.

Sec. 3. Power to acquire land, construct and equip sewerage system. Any municipality by its sewer authority may acquire, construct and operate a sewerage system or systems; may enter upon and take and hold by purchase, condemnation or otherwise the whole or any part of any real property or interest therein which it determines is necessary or desirable for use in connection with any sewerage system; may establish and revise rules and regulations for the supervision, management, control, operation and use of a sewerage system, including rules and regulations prohibiting or regulating the discharge into a sewerage system of any sewage or any storm-water runoff which in the opinion of the sewer authority will adversely affect any part or any process of the sewerage system; may enter into and fulfill contracts, including contracts for a term of years, with any person or any other municipality or municipalities to provide or obtain sewerage system service for any sewage. The sewer authority may establish rules for the transaction of its business. It shall keep a record of its proceedings and shall designate an officer or employee to be the custodian of its books, papers and documents.

Sec. 4. Determination of compensation for property. Whenever the sewer authority is unable to agree with the owner of any property as to the compensation to be paid for the taking of such property, the sewer authority in the name of the municipality may petition the superior court for the county wherein such property is located to determine such compensation. Such petition shall be accompanied by a summons, signed by a competent authority, to be served as process in civil actions before said court, notifying the owner of the property to be taken, and all persons interested in such property, to appear before said court. Said court shall appoint a committee of 3 disinterested persons who shall be sworn before commencing their duties. Such committee, after giving reasonable notice to the parties, shall view the property in question, hear the evidence, ascertain the value, assess just damages to the owners or parties interested in the property so proposed to be taken and report its doings to said court. Said court may accept such report or reject it for irregular or improper conduct by the committee in the performance of its duties. If the report is rejected, said court shall appoint another committee, which shall proceed in the same manner as the first committee was required to proceed. If the report is accepted, such acceptance shall have the effect of a judgment in favor of the owner of the property against the municipality for the amount of the assessment made by the

committee and, except as otherwise provided by law, execution may issue therefor. Said court may make any order in such proceedings necessary to protect the rights of all parties interested. Except as hereinafter provided, such property shall not be used or inclosed by the sewer authority until the amount of the assessment as so determined has been paid to the party to whom it is due, or deposited for his use with the treasurer of the county wherein the property is located. Upon such payment or deposit, such property shall become the property of the municipality. The expenses and costs of such hearings shall be taxed by the court. When it appears to the satisfaction of the court at any stage of the foregoing proceedings that the public interest will be prejudiced by delay, said court may direct that the sewer authority be permitted to enter immediately upon any real property proposed to be taken and to devote it to the public use specified in the petition upon the deposit with the clerk of the court of a sum to be fixed by said court upon a notice to the parties of not less than five days. Such sum when so fixed and paid shall be applied, so far as necessary for that purpose, to the payment of any award that may be made with interest thereon from the date of the entry of the petitioner upon such real property, and the costs and expenses of the proceeding, and the residue, if any, shall be returned to the municipality.

Sec. 5. Assessment of benefits. At any time after a municipality, by its sewer authority, has authorized the acquisition or construction of a sewerage system or portion thereof, the sewer authority may apportion and assess the whole or any portion of the cost thereof upon the lands and buildings in the municipality which, in its judgment, are especially benefited thereby, whether they abut on such sewerage system or not, and upon the owners of such land and buildings, according to such rule as the sewer authority adopts, subject to the right of appeal as hereinafter provided. Such assessment may include a proportionate share of the cost of any part of the sewerage system, including the cost of preliminary studies and surveys, detailed working plans and specifications, acquiring necessary land or property or any interest therein, damage awards, interest charges during construction, legal and other fees, or any other expense incidental to the completion of the work. The sewer authority may divide the total territory to be benefited by a sewerage system into districts and may levy assessments against the property benefited in each district separately. In assessing benefits against property in any district the sewer authority may add to the cost of the part of the sewerage system located in the district a proportionate share of the cost of any part of the sewerage system located outside the district but deemed by the sewer authority to be necessary or desirable for the operation of the part of the system within the district. In assessing benefits and apportioning the amount to be raised thereby among the properties benefited, the sewer authority may give consideration to the area, frontage, grand list valuation and to present or permitted use or classification of benefited properties and to any other relevant factors. The sewer authority may make reasonable allowances in the case of properties having a frontage on more than one street and whenever for any reason the particular situation of any property requires an allowance. Revenue from the assessment of benefits shall be used solely for the acquisition or construction of the sewerage system providing such benefits or for the payment of principal of and interest on bonds or notes issued to finance

such acquisition or construction. No assessment shall be made against any property in excess of the special benefit to accrue to such property.

Sec. 6. Public hearing; appeal. No assessment shall be made until after a public hearing before the sewer authority at which the owner of the property to be assessed shall have an opportunity to be heard concerning the proposed assessment. Notice of the time, place and purpose of such hearing shall be published at least ten days before the date thereof in a newspaper having a circulation in the municipality, and a copy of such notice shall be mailed to the owner of any property to be affected thereby at such owner's address as shown in the last-completed tax list of the municipality or at any later address of which the sewer authorities may have knowledge. A copy of the proposed assessment shall be on file in the office of the clerk of the municipality and available for inspection by the public for at least ten days before the date of such hearing. When the sewer authority has determined the amount of the assessment to be levied, it shall file a copy thereof in the office of the clerk of the municipality and, not later than 5 days after such filing, shall cause the same to be published in a newspaper having a circulation in the municipality. Such publication shall state the date on which such assessment was filed and that any appeals from such assessment must be taken within 21 days after such filing. Any person aggrieved by any assessment may appeal to the Superior Court for the county wherein the property is located and shall bring any such appeal to the next return day of said court. Said court may appoint 3 disinterested persons to appraise the benefits to such property and to make a report of their doings to the court. The judgment of said court, either confirming or altering such assessment, shall be final. Such appeal, during the pendency thereof, shall stay all proceedings for the collection of the particular assessment upon which the appeal is predicated.

Sec. 7. New and supplementary assessments. If any assessment is not valid or enforceable for any reason, a new assessment may be made. If any assessment is made which is not sufficient to cover the entire cost of the work to be paid for by such assessment, a supplementary assessment may be made by the sewer authority against those properties previously assessed to the end that a sum sufficient to pay the cost of such work may be obtained, provided no such supplementary assessment, together with the original assessment, shall exceed the value of the special benefit to accrue to the property against which the benefit is assessed.

Sec. 8. Due date of assessment. Assessments shall be due and payable at such time as is fixed by the sewer authority, provided no assessment shall become due until the work or particular portion thereof for which such assessment was levied has been completed. The sewer authority shall give notice of the date when assessments are due and payable by publication at least twice within a period of 15 days in a newspaper having a circulation in the municipality. Such notice shall list the streets and describe the area within which are located any properties against which such assessments are due. No assessment shall be due and payable earlier than 30 days after the publication of such notice.

Sec. 9. Instalment payment of assessment. The sewer authority may provide for the payment of any assessment in substantially equal annual instalments, not exceeding 20, and may provide for interest charges not exceeding 5% for any deferred payments, provided the last instalment of any assessment shall be due not later than one year prior to the date of the last maturity of any bonds or notes issued by the municipality to finance the acquisition or construction of any sewerage system or portion thereof in respect to which the assessment was levied. Any person may pay any instalment for which he is liable at any time prior to the due date thereof and no interest on any such instalment shall be charged beyond the date of such payment.

Sec. 10. Delinquent assessments; lien. Any assessment of benefits or any instalment thereof, not paid within 30 days after the due date, shall be delinquent and shall be subject to interest from such due date at the interest rate and in the manner provided by the general law for delinquent property taxes. Each addition of interest shall be collectible as a part of such assessment. Whenever any instalment of an assessment becomes delinquent, all remaining unpaid instalments of such assessment shall also become delinquent. Any unpaid assessment and any interest due thereon shall constitute a lien upon the real estate against which the assessment was levied from the date of such levy. Each such lien may be continued, recorded and released in the manner provided by law for continuing, recording and releasing property tax liens. Each such lien shall take precedence over all other liens and encumbrances except taxes and may be foreclosed in the same manner as property tax liens. The tax collector of the municipality may collect such assessments in accordance with any mandatory provision of the general law for the collection of property taxes and the municipality may recover any such assessment in a civil action against any person liable therefor. Whenever any person has become delinquent in the payment of any instalment and has paid all such past due instalments together with any interest or other charges, the sewer authority shall permit such person to pay any remaining instalments without additional penalty, except for subsequent default, in accordance with the original instalment schedule.

Sec. 11. Charges; hearing; appeal. The sewer authority may establish and revise fair and reasonable charges for connection with and for the use of a sewerage system. The owner of property against which any such connection or use charge is levied shall be liable for the payment thereof. Municipally-owned and other tax-exempt property which uses the sewerage system shall be subject to such charges under the same conditions as are the owners of other property, but nothing herein shall be deemed to authorize the levying of any property tax by any municipality against any property exempt by law from property taxation. No charge for connection with or for the use of a sewerage system shall be established or revised until after a public hearing before the sewer authority at which the owner of property against which the charges are to be levied shall have an opportunity to be heard concerning the proposed charges. Notice of the time, place and purpose of such hearing shall be published at least 10 days before the date thereof in a newspaper having a circulation in the municipality. A copy of the proposed charges shall be on file in the office of the clerk of the municipality and available for inspection by the public for at least 10 days before

the date of such hearing. When the sewer authority has established or revised such charges, it shall file a copy thereof in the office of the clerk of the municipality and, not later than 5 days after such filing, shall cause the same to be published in a newspaper having a circulation in the municipality. Such publication shall state the date on which such charges were filed and the time and manner of paying such charges and shall state that any appeals from such charges must be taken within 21 days after such filing. In establishing or revising such charges the sewer authority may classify the property connected or to be connected with the sewer system and may give consideration to any factors relating to the kind, quality or extent of use of any such property or classification of property including:

- I. The volume of water discharged to the sewerage system.
- II. The type or size of building connected with the sewerage system.
- III. The number of plumbing fixtures connected with the sewerage system.
- IV. The number of persons customarily using the property served by the sewerage system.
- V. In case of commercial or industrial property, the average number of employees and guests using the property.
- VI. The quality and character of the material discharged into the sewerage system.

The sewer authority may establish minimum charges for connection with and for the use of a sewerage system. Any person aggrieved by any charge for connection with or for the use of a sewerage system may appeal to the Superior Court for the county wherein the municipality is located and shall bring any such appeal to the next return day of said court. The judgment of the court shall be final.

Sec. 12. Revision of rates for payment of bonds. Whenever a municipality has pledged revenue to be derived from charges for connection with or for the use of a sewerage system to the payment of the principal or the interest of any bonds or notes, the sewer authority shall establish and, when necessary, revise such charges at rates which shall produce sufficient revenue for the punctual payment of the annual interest and amortization requirements of such bonds or notes and, together with any moneys available from other sources, for the fulfillment of any covenant or agreement which has been made by the municipality with the holders of any bonds or notes with respect to the operation of such sewerage system.

Sec. 13. Order to connect; appeal. The sewer authority may order the owner of any building to which a sewerage system is available to connect such building with the system. No such order shall be issued until after a public hearing with respect thereto after due notice in writing to such property owner. Any owner aggrieved by such an order may appeal to the Superior Court for the county or judicial district wherein the municipality is located. Such appeal shall

be brought to the next return day of said court, and within 21 days after the order is made. The judgment of the court shall be final. If any owner fails to comply with an order to connect, the sewer authority shall cause the connection to be made and shall assess the expense thereof against such owner.

Sec. 14. Delinquent charge for connection or use; lien. Any charge for connection with or for the use of a sewerage system, not paid within 30 days of the due date, shall thereupon be delinquent and shall bear interest from the due date at the rate and in the manner provided by law for delinquent property taxes. Each addition of interest shall be collectible as a part of such connection or use charge. Any such unpaid connection or use charge shall constitute a lien upon the real estate against which such charge was levied from the date it became delinquent. Each such lien may be continued, recorded and released in the manner provided by law for continuing, recording and releasing property tax liens. Each such lien shall take precedence over all other liens and encumbrances except taxes and may be foreclosed in the same manner as a lien for property taxes. The municipality may by ordinance designate the tax collector or any other person as collector of sewerage system connection and use charges and such collector of sewerage system connection and use charges may collect such charges in accordance with the general law for the collection of property taxes. The municipality may recover any such charges in a civil action against any person liable therefor. For the purpose of establishing or revising such connection or use charges and for the purpose of collecting such charges any municipality may enter into agreements with any water company or municipal water department furnishing water in such municipality for the purchase from such water company or municipal water department of information or services and such agreement may designate such water company or municipal water department as a billing or collecting agent of the collector of sewerage system connection and use charges in the municipality. Any water company or municipal water department may enter into and fulfill any such agreements and may utilize for the collection of such charges any of the methods utilized by it for the collection of its water charges.

Sec. 15. Bonds. Whenever a municipality has authorized the acquisition or construction of all or any part of a sewerage system and has made an appropriation or has incurred debt therefor, it may issue bonds or notes which are secured as to both principal and interest by:

- I. The full faith and credit of the municipality.
- II. A pledge of revenues to be derived from sewerage system use charges, or
- III. A pledge of revenues to be derived from sewerage system connection or use charges or benefit assessments or both and also by the full faith and credit of the municipality.

The body having power to make annual appropriations for the municipality shall determine the amount of each issue of bonds or notes and may determine or may authorize an officer or board or commission of the municipality to determine the form of such bonds or notes, their date, the dates of principal and interest



payments, the manner of issuing such bonds or notes and by whom such bonds or notes shall be signed or countersigned and, except as otherwise provided herein, all other particulars thereof. Such body may determine the rate or rates of interest for each issue of bonds or notes or may provide that the rate or rates of interest shall be determined by an officer or board or commission of the municipality upon the receipt of bids to purchase such bonds or notes but such rate shall not exceed five per cent per annum. Bonds may be coupon or registered bonds. If coupon bonds, they may be registerable as to principal only or as to both principal and interest. Notes which mature not later than one year from their date may be sold at discount and the amount of the discount shall be treated as interest paid in advance. Any premium received for sale of bonds or notes, less the cost of preparing, issuing and marketing them, shall be applied to the payment of the principal of the first bonds or notes of that particular issue to mature, and contributions from other sources for payment of such bonds or notes shall be reduced correspondingly.

Sec. 16. Public sale of bonds; notice. Bonds or notes issued under this chapter shall be sold by the municipality at public sale upon sealed proposals but at not less than par and accrued interest, except that any issue of notes which matures in its entirety within one year from the date of issue may be sold at private sale. Notice of such public sale shall be published at least 7 days in advance thereof in a recognized publication carrying municipal bond notices and devoted primarily to financial news or to the subject of state and municipal bonds and likewise in a newspaper having a circulation within the municipality. The notice of sale shall describe the bonds or notes and shall set forth the terms and conditions of the sale. Such notice may provide that all the bonds or notes shall bear a single rate of interest or may permit bidders to name not more than three different rates of interest for different maturities, provided no such rate shall be greater than 5%. Such notice shall provide that, unless all bids are rejected, the bonds or notes shall be awarded to the bidder offering to purchase them at the lowest net cost to the municipality. Such net cost shall be computed as to each bid by adding the total interest which will be paid under the terms of the bid after deducting from such total interest any premiums offered. If all bids are rejected, the bonds or notes may be re-offered by the municipality in accordance with the above provisions for public sale or the bonds or notes may be sold by the municipality at private sale. The proceeds arising from the sale of any bonds or notes issued under the authority of this chapter shall be delivered to the treasurer of the municipality and kept by him in accounts separate from other funds of the municipality. Said proceeds shall be expended only for the purposes and subject to this chapter, provided the proceeds of sale of any serial bonds or notes shall first be applied to the payment of such temporary notes as have been issued in anticipation of such issue.

Sec. 17. Full faith and credit. Bonds or notes issued under the authority of this chapter, except those which are secured only by sewerage system use charges, shall be obligatory upon the municipality and the inhabitants and property thereof according to the tenor and purport of the same and the full faith and credit of the municipality shall be pledged to the payment thereof, whether or not such pledge is stated in the bonds or notes or in the vote authorizing

their issuance, and thereafter the municipality shall appropriate in each year during which any such bonds or notes are outstanding, and there shall be available on or before the date when the same are payable, an amount of money which, together with other revenue available for such purpose, shall be sufficient to pay the principal and interest on such bonds or notes payable in that year, and there shall be included in the tax levy for each such year an amount which, together with other revenues available for such purpose, shall be sufficient to meet such appropriation.

Sec. 18. Signatures of officers on date of execution binding. Any bonds or notes issued under this chapter, if properly executed and signed by officers of a municipality in office on the date of execution, shall be valid and binding according to their terms notwithstanding that before the delivery thereof and payment therefor such officers have ceased to be officers of the municipality.

Sec. 19. Form; maturity. Bonds issued under this chapter shall be in serial form maturing in annual instalments, and no instalment of any series shall exceed by more than 50% any prior instalment of such series. The first instalment of any such series of bonds, other than bonds secured solely by a pledge of revenue to be derived from sewerage system use charges, shall mature not more than 2 years and the last instalment not more than 30 years from the date of issue of each series or, if any notes have been issued in anticipation thereof or are to be paid from the proceeds thereof, from the date of issue of the first such note. The first instalment of any series of bonds issued under this chapter which are secured solely by a pledge of revenues to be derived from sewerage system use charges shall mature not more than four years and the last instalment shall mature not more than 30 years from the date of the issue of such series or, if any notes have been issued in anticipation thereof or are to be paid from the proceeds thereof, from the date of issue of the first such note.

Sec. 20. Temporary notes. Any municipality which has authorized the acquisition or construction of all or of any part of a sewerage system and which has made an appropriation therefor may borrow temporarily upon the credit of the municipality such sum or sums as may be necessary for such acquisition or construction and may issue temporary notes for any such loan, including temporary notes issued in anticipation of the sale of bonds to be secured by the full faith and credit of the municipality, by the pledge of revenues to be derived from sewerage system use charges or by both the full faith and credit of the municipality and the pledge of revenues to be derived from sewerage system use charges. Each issue of any such temporary notes shall constitute a separate loan and may be for a period of not more than 2 years, except that any temporary notes issued in anticipation of the sale of bonds to be secured solely by the pledge of revenues to be derived from sewerage system use charges may be for a period of not more than 4 years. Such temporary notes may be renewed from time to time by the issue of other temporary notes, provided the period from the date of issue of the original notes to the date of maturity of the last renewal notes shall not be more than 2 or 4 years, as the case may be. The interest or discount on such temporary notes, including renewals thereof, and the expense of preparing, issuing and marketing the same, may be included as a cost of the

acquisition or construction of a sewerage system and may either be borrowed temporarily under this section or funded by the issue of serial bonds or notes under this chapter. Temporary notes may be issued under the authority of this section in anticipation of proceeds to be derived from the sale of bonds notwithstanding that, at the time of issuing such temporary notes, the municipality has not actually authorized the issue of such bonds.

Sec. 21. Revenue bonds not included in debt limitation. Bonds and notes issued pursuant to this chapter and secured solely by a pledge of revenues to be derived from sewerage system use charges shall not be subject to any statutory limitation on the indebtedness of the municipality and such bonds and notes when issued shall not be included in computing the aggregate indebtedness of the municipality in respect to any such limitation. Any provision of any special act inconsistent with this section is repealed.

Sec. 22. Agreement with bondholders. In connection with any bonds or notes issued under this chapter, the municipality may, by resolution of the body having power to make appropriations for such municipality, covenant and agree with the holders thereof as to:

- I. The rates or charges to be imposed upon the users of such sewerage system, including the municipality, for connection with or the use of such system.
- II. The use and disposition of the revenue from such rates or charges.
- III. The creation and maintenance of special funds and the management, use and disposition thereof.
- IV. The purposes for which the proceeds of the sale of such bonds or notes may be used.
- V. The acts or conduct which shall constitute a default and the rights and liabilities of the holders arising upon such default.
- VI. The terms and conditions upon which bonds or notes issued under this chapter shall become or may be declared due before maturity and the terms and conditions upon which such declaration and its consequences may be waived.
- VII. The conditions upon which other or additional bonds or notes may be issued and secured by revenue from sewerage system use charges or benefit assessments or both.
- VIII. The insurance to be carried upon the sewerage system, or parts thereof, and the use and disposition of any insurance moneys.
- IX. The maintenance of books of account and the inspection and audit thereof.

Sec. 23. Use of funds. All benefit assessments and charges for connection with or use of the sewerage system, whether pledged for payment of bonds or

notes or otherwise, shall be kept separate from other funds of the municipality and shall be used for the sewerage system, including the payment of debt incurred for the sewerage system and interest thereon, and for no other purpose.

Sec. 24. Special fund. Any municipality which has issued bonds or notes in accordance with this chapter may by ordinance establish a special fund for payment of all or any part of such bonds or notes or interest thereon, may make and revise necessary rules and regulations not contrary to this chapter for the management of such special fund and may provide for payments into such special fund of all or any part of any charges for connection with or use of the sewerage system or from any other source. The municipality shall not withdraw any moneys from the fund except for such purpose and shall not alter any vote or agreement in respect to revenues to be paid into the fund until such bonds or notes have been paid in full or the special fund is sufficient to do so.

Sec. 25. Tax exemption. Each bond or note issued in accordance with this chapter shall be exempt, both as to principal and interest, from taxation.

Sec. 26. Application to existing systems. Any municipality, for all or any part of any existing sewerage system, may exercise any authority of this chapter pertaining to the operation of a sewerage system and may establish sewerage use charges, in the manner hereinbefore provided, to pay the cost of operation of such sewerage system or for the payment of all or any part of bonds or notes issued for the acquisition or construction of such sewerage system, including interest thereon.

Sec. 27. Power to be additional. Any power granted by this chapter shall be in addition to, and not in derogation of, any power granted to any municipality under any special act or of any general law.

Sec. 28. Joint operation of sewerage system. Any two or more municipalities may enter into and revise from time to time, and may fulfill, contracts jointly to acquire, construct or operate all or any part of a sewerage system. Any such agreement shall particularize:

- I. The portion or portions of the sewerage system to be jointly acquired, constructed or operated.
- II. The acts relating to acquiring, constructing or operating such portion or portions of the sewerage system to be performed jointly by the municipalities, and
- III. The method of apportioning the cost thereof.

Whenever any 2 or more municipalities have entered into such an agreement, the sewer authorities of such municipalities jointly shall have, for the portion or portions of the sewerage system and for the acts relating to acquisition, construction or operation of the sewerage system covered by the agreement, all of the authority conferred by this chapter on a municipality and each such municipality shall continue to have all other authority conferred by this chapter.

**Sec. 29. Contract for use of sewerage system. Any municipality, maintaining a sewerage system, may contract with any adjoining town or property owner therein for connection with and the use of such sewerage system.'**