

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIRST LEGISLATURE

Legislative Document

No. 699

H. P. 497

House of Representatives, January 24, 1963

Referred to Committee on Public Utilities. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Roberts of So. Berwick.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-THREE

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

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

Sec. 1. Territorial limits; corporate name; purposes. The inhabitants and territory within the Town of Berwick in the County of York shall be, and hereby are, created a body politic under the corporate name of the "Berwick Sewerage District," hereinafter called the district, for the purposes of providing and maintaining within the district the existing sewers and such additions thereto as are necessary for the adequate operation of said system, and the district is hereby authorized to construct, maintain and operate such systems of sewage and sewage disposal, and to lay, make and maintain such common sewers as the board of trustees may, from time to time, deem necessary for the disposing of its sewage. Said district is hereby invested with all powers, rights, privileges and immunities incident to similar corporations or necessary for the accomplishment of these purposes.

Sec. 2. Its powers. The district is hereby authorized for the purposes aforesaid to take over and hold the sewers and other assets of the existing sewerage system of the Town of Berwick, and to acquire and hold by purchase, lease, the exercise of the right of eminent domain, or otherwise, land, real estate, rights, easements or interests therein, located within the district or elsewhere, and personal property. It also is empowered through its trustees to make contracts with persons or corporations for the collection, discharge and disposal of sewage and other waste matter.

Sec. 3. Liability for damages. The district shall be liable for all the damages that shall be sustained by any person in his property by the taking of any lands, rights, easements or interest therein, whatsoever, or by entering on or excavating

through any land. If any person sustaining damage as aforesaid and the district shall not mutually agree upon the sum to be paid therefor, such person may cause his damage to be ascertained in the same manner and under the same conditions, restrictions and limitations as are or may be prescribed in the case of damages resulting from the location of town ways.

Sec. 4. Power to lay and maintain sewers; liability for injuries. The district is hereby authorized to lay in and through streets and highways, under any water course, way or public and private railroad, in the manner prescribed by law, within and outside the district, and to remove and replace such pipes, aqueducts and fixtures as may be necessary for the objects above set forth, and whenever the district shall lay, remove or replace any pipes, aqueducts or fixtures in any street or highway, it shall cause the work to be done with as little obstruction as possible to the public travel, and shall at its own expense, without unnecessary delay, cause the earth and pavement to be replaced in proper condition. The district shall be liable to any person injured by any fault of the district or its agent, or any defects in the highway occasioned by the construction of the work, or during the repair of same, and also liable to said person or persons, who are injured through the carelessness of the employees of the district.

Sec. 5. Offenses and penalties. Any person who shall place or leave any offensive or injurious matter or material on or in the conduits, catch-basins or receptacles of the district contrary to the regulations, or shall willfully injure any conduit, pipe, reservoir, manhole, outlet, engine, pump or other property held, owned or used by the district for the purposes of this act, shall pay the total amount of the damages to the district to be recovered in any proper action; and such person, on conviction of either of the acts of willful injury aforesaid, shall be punished by a fine not exceeding \$200 and by imprisonment not exceeding one year.

Sec. 6. Officers. The affairs of the district shall be managed by a board of trustees, which shall be the members of the board of selectmen of the Town of Berwick.

As soon as convenient after ratification of this act by the voters of Berwick, the trustees shall hold a meeting at some convenient place in the district, to be called by any member thereof in writing, designating the time and place, and delivered in hand to the 4 other members not less than 2 full days before the meeting; provided, however, that they may meet by agreement without such notice. They shall then organize by the election of a chairman and other needed officers from their own number, adopt a corporate seal and bylaws.

A trustee or any inhabitant of said district may serve as treasurer and shall furnish bond in such sum and with such sureties as they may approve. Members of the board shall be eligible to any office under the board, but shall not receive any compensation therefor except as trustee, with the exception that whoever serves as treasurer shall receive a salary to be determined by said board of trustees. The compensation of the trustees shall be the sum of \$5 for each called meeting. Each member shall be sworn in for faithful performance of his duty.

The trustees may establish reasonable rules, regulations and bylaws for the use of sewers and fix and collect the fees to be paid for entering the same and

also the semi-annual rentals for the use thereof. The trustees also shall prepare, publish and make available for any interested inhabitants of the district an annual report and financial statement of the affairs of the district for the calendar year just preceding, such report and statement to be so prepared, published and made available as soon as practicable after the close of the calendar year.

Sec. 7. May hold property; right of eminent domain. Said district is hereby authorized and empowered to accept, by action of its trustees hereinafter mentioned, from the inhabitants of the Town of Berwick, and said Town of Berwick is hereby authorized to convey, by deed signed by a majority of the selectmen of said Town of Berwick, duly authorized by the inhabitants of the Town of Berwick, to said district, any and all right, title and interest which said town may have in and to the drains and sewers now located within the limits of said district, any amounts now owned by said Town of Berwick upon said sewers, and any interest now or hereafter due on any amounts owed by said town; shall be paid by the district, and any assessments or amounts, now or hereafter due said town, by reason or on account of any sewer or drain heretofore built by said town, shall be paid to said district. Said district is further authorized and empowered to take and hold by purchase, lease or the exercise of the right of eminent domain, which right of eminent domain is expressly granted to said district, or otherwise, personal property, land or real estate, or easements therein, necessary for forming basins or outlets, for laying pipes and maintaining the same, and for laying and maintaining conduits for carrying and collecting, discharging and disposing of sewerage matters and waters, and for all other objects and purposes necessary, convenient and proper for the purposes of this act. The property of said district, wherever located, shall be exempt from taxation.

In case of any crossing of any public utility, unless consent is given by the company owning or operating such public utility as to place, manner and conditions of the crossing within 30 days after such consent is requested by said district, the Public Utilities Commission shall determine the place, manner and conditions of such crossing, and all work on the property of such public utility shall be done under the supervision and to the satisfaction of such public utility, but at the expense of the district.

Provided, however, nothing herein contained shall be construed as authorizing said district to take by right of eminent domain any of the property or facilities of any other public service corporation or district used or acquired for future use by the owner thereof in the performance of a public duty unless expressly authorized herein or by subsequent act of the Legislature.

Sec. 8. Right of abutters to enter the sewer. The district, at all times, shall be bound to permit the owners of all premises abutting upon its lines and pipes and conduits to enter the same with all proper sewage, upon conformity to the rules and regulations of the district, and payment of the rates, prices and rentals established therefor.

Sec. 9. Authorized to issue notes and bonds; form of bond; legal investment for savings banks. To procure funds for the purposes of this act and for such other expenses as may be necessary for the carrying out of said purposes, said

district, without district vote, but by action of its board of trustees, is authorized to issue its notes and bonds in one series, or in separate series from time to time, to an amount not exceeding the sum of \$700,000. Said bonds shall be a legal obligation of said district, shall be a legal investment for savings banks in the State of Maine, and shall be tax exempt. Each bond or note shall have inscribed on its face the words, "BERWICK SEWERAGE DISTRICT BOND" or "BERWICK SEWERAGE DISTRICT NOTE," as the case may be, and shall bear interest at such rates as the trustees shall determine. If said bonds be issued from time to time, each authorized issue shall constitute a separate loan. Each loan may be payable in approximately equal annual serial installments, or made to run for such period as said trustees shall determine, but no series shall run for a longer period than 40 years from its date, and bonds and notes may be issued as aforesaid for the purpose of paying and refunding bonds or notes theretofore issued, provided that the total amount of bonds and notes at any one time outstanding shall not exceed the aforesaid sum of \$700,000. All bonds or notes issued by said district shall bear the district seal, and shall be signed by the treasurer, and countersigned by the chairman of said district, and if coupon bonds be issued, each coupon shall bear the facsimile signature of the treasurer.

Sec. 10. Sinking fund provided for; issue of refunding bonds authorized. In case any of said bonds are made to run for a period of years, a sinking fund shall be established by the trustees of said district for the purpose of redeeming said term bonds when they become due, and not less than 2% of the aggregate principal of the outstanding sinking fund bonds, issued on account of or in behalf of said sewerage district as aforesaid, shall be turned into said sinking fund each year, to provide for the final extinguishment of said district funded debt.

The money set aside for the sinking fund shall be devoted to the retirement of said notes and bonds, and shall be used for no other purpose, and shall be invested in such securities as savings banks are allowed to hold.

All sums of money received or recovered by said trustees by reason of any assessment upon the persons or property of individuals in said district shall be added to said sinking fund, or used for the payment of notes or temporary loans.

Whenever any bonds of said district become due, or can be purchased by said trustees on favorable terms, said trustees shall, if sufficient funds have accumulated in said sinking fund, redeem or purchase said bonds, and cancel them. In no case shall bonds so cancelled or redeemed be reissued.

Sec. 11. Rates. All individuals, firms and corporations, whether public or private or municipal, shall pay to the treasurer of said district semiannually the rates established by the board of trustees for the services used or available to them. The sewer rates may include rates for the district's readiness to serve charge against owners or persons in possession or against whom the taxes are assessed, of all buildings or premises intended for human habitation or occupancy, whether the same are occupied or not, which abut on a street or location through which said district has constructed a sewer line, or the property line of which is within 100 feet of a sewer line constructed by said district, although said premises are not actually connected thereto. Rates shall be equitable within the district, as determined by the board of trustees. The sewer rates shall be so established as to provide revenue for the following purposes:

I. To pay the current expenses for operating and maintaining the sewage system and such other contingencies as might be reasonably anticipated.

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

III. To provide each year a sum equal to not less than $\frac{1}{2}$ of 1%, nor more than 5% of the entire indebtedness created by the district, which sum shall be turned into a sinking fund, and there kept to provide for the extinguishment of said indebtedness. The money set aside for the sinking fund shall be devoted to the retirement of the obligations of the district, or invested in such securities as savings banks are allowed to hold.

IV. If any surplus remains, at the end of the year, it may be turned into the sinking fund.

Sec. 12. Lien for payment or rates. There shall be a lien on real estate served by the sewers of the district, or as to which such service is available, to secure payment of the rates and charges established and due under section 11, which shall take precedence over all other claims on such real estate, excepting only claims for taxes. Real estate for the purpose of this act shall bear the same definition as given in the Revised Statutes of 1954, chapter 91-A, section 4, as amended.

The treasurer of the district shall have the full and complete authority and power to collect the rates, and charges established under section 11. The treasurer may, after demand for payment, sue in the name of the district for any rate or charge now remaining due and unpaid or hereafter becoming due and unpaid in any court of competent jurisdiction, and no trial justice or judge of any court before whom such suit is brought shall be incompetent to try the same by reason of his residence in the district. The treasurer may also sue for any rates or charges which shall become due after this section becomes effective and which shall remain due and unpaid for a period of 90 days or more thereafter and shall include in the amount sued for all reasonable costs of collection and attorney's fees incurred by the district in effecting collection of such rates and charges. Within 60 days after this section shall become effective, all billings of said district shall have clearly printed on them excerpts of this section for the information of all users of the district's services.

In addition to other methods established by law for the collection of rates and charges and without waiver of the right to sue for the same as aforesaid, the lien hereby created may be enforced as hereafter in this section provided. The treasurer, when a rate or other charge has become due and payable, may, after expiration of 3 months and within one year after the date when the same became due and payable, in the case of a person resident within the district, give to such person, or leave at his last and usual place of abode, a notice in writing signed by the treasurer stating the amount of such rate or charge, describing, but only sufficiently to identify the same, the real estate upon which the lien is claimed, and stating that a lien is claimed on said real estate to secure the payment of said rate or charge, and demanding payment of said rate or charge within 30 days after the service of such notice as aforesaid. In the case of a nonresident of the district, the aforesaid notice shall be given by registered

mail addressed to his last known address or by publication in a newspaper of general circulation within the district once a week for 2 successive weeks, and shall demand payment within 30 days after the mailing thereof or the first publication of notice thereof as aforesaid. After the expiration of said period of 30 days and within one year thereafter, the treasurer may record in the registry of deeds of York County a certificate signed by the treasurer, setting forth the amount of such rate or charge, describing, but only sufficiently to identify the same, the real estate on which the lien is claimed, and stating that a lien is claimed on such real estate to secure the payment of said rate, or charge, and that a notice and demand for payment of the same has been given or made in accordance with the provision of this section, and stating further that said rate or charge remains unpaid. At the time of recording any such certificate in the registry of deeds as heretofore provided, the treasurer shall file in the office of the district a true copy of such certificate, and shall mail a true copy thereof by registered mail to each record holder of any mortgage on such real estate, addressed to such record holder at his last and usual place of abode. The fee to be charged by the district to the ratepayer for such notice and filing and recording shall not exceed \$1.50, and the fee to be charged to the district by the register of deeds for such filing and recording shall not exceed 50c.

The filing of the aforesaid certificate in the registry of deeds as aforesaid shall be deemed to create, and shall create a mortgage on the real estate therein described to the district, which shall have priority over all other mortgages, liens, attachments and encumbrances of any nature except liens, attachments and claims for taxes, and shall give to the district all the rights usually possessed by a mortgagee, except that the district as mortgagee shall not have any right of possession of said real estate until the right of redemption hereafter provided for shall have expired. If the mortgage, together with interests and costs, shall not have been paid within 18 months after the date of filing of said certificate in the registry of deeds as herein provided, the mortgage shall be deemed to have been foreclosed and the right of redemption to have expired. The filing of the certificate in the registry of deeds shall be sufficient notice of the existence of the mortgage hereby provided for. In the event that said rate or charge, together with interest and costs as aforesaid shall be paid within 18 months after the filing of said certificate in the registry of deeds, the treasurer of the District shall discharge the mortgage in the same manner as is provided for discharge of real estate mortgages.

Sec. 13. Assessment against lot benefited. Where, upon petition of the owners or persons in possession of at least 51% of the front footage of lots or parcels of land to be benefited, the district, through its board of trustees, has voted to construct and has constructed and completed within its geographical limits, a sanitary sewerage line together with its appurtenances and connections, being a lateral line or a main or sub-main, so called, and expressly excluding from the operation of this section interceptors, outfall sewers or truck lines, and such sanitary sewerage line being where such a line did not previously exist, the trustees of said district shall determine what lots or parcels of land have benefited by such line, together with its appurtenances and connections, and the trustees shall then proceed to cause a part of the cost of such construction and completion, not exceeding $\frac{1}{2}$ of the whole cost, to be apportioned and

assessed upon the lots or parcels so benefited, whether such parcel or lot is occupied or not and against the owner thereof or person in possession.

At the time that construction of such line has been fully completed and all costs therefor have been submitted to the district, notification of the assessment and the amount thereof shall be mailed by the district to the owners or persons in possession petitioning for such line or connecting with such line. Notification of the assessment and the amount thereof shall be mailed by the district to all other owners or persons in possession to be benefited by such line at such time as such other owners or persons in possessions shall make connection therewith.

Sec. 14. Quasi-municipal corporation. The district is hereby declared to be a quasi-municipal corporation within the meaning of the Revised Statutes of 1954, chapter 90-A, section 23, and all of the provisions of said section shall be applicable thereto.

Sec. 15. Separability. In the event that any sections or portions of this act shall be held to be unconstitutional or otherwise ineffective and null and void by a court of competent jurisdiction, the remaining sections and portions thereof shall be separated from those held to be unconstitutional and null and void and shall continue to be operative.

Sec. 16. Amendment procedure. Future amendments to this charter shall be first inserted in appropriate articles in the town warrant and submitted for action to the duly elected and qualified town meeting members at any duly called town meeting of the Town of Berwick, whether annual or special, and if accepted by a majority at such meeting, shall then be submitted to the next session of the Legislature, to become effective 90 days after adjournment of the Legislature to which the amendments have been submitted. The Legislature, however, may first initiate amendments to this charter by favorable action thereon, which amendments shall then be submitted to the town meeting members at the next annual or special town meeting of the Town of Berwick, and shall become effective if accepted by a majority at such meeting.

Local referendum; effective date; certificate to Secretary of State. This act shall take effect 90 days after the adjournment of the Legislature only for the purpose of permitting its submission to the legal voters of the Town of Berwick present and voting for or against the acceptance of the district as herein-after provided for at a regular town meeting or at a special town meeting held prior to January 1, 1965, called and held at the regular voting places of the town by the officers of the Town of Berwick authorized to call such meetings. This act shall take effect for all the purposes hereof immediately upon its acceptance by a majority vote of the legal voters voting at said meeting, but only if the total number of votes cast for and against the acceptance of this act in said election equals or exceeds 20% of the total vote for all candidates for Governor cast in said town at the previous gubernatorial election. Such election shall be called, advertised and conducted according to the law relating to municipal elections, provided, however, that the board of registration of voters shall be in session the 3 secular days preceding such election, the first 2 days thereof to be devoted to registration of voters and the last day to enable the board to verify the corrections of said lists and to complete and close up their records of said sessions.

The town clerk shall reduce the subject matter of this act to the following question: "Shall the Act Creating a Sewer District in the Town of Berwick, passed by the 101st Legislature, be accepted?" The voters shall indicate by a cross or check mark placed against the words "Yes" or "No" their opinion of the same. A check list shall be used at such election. The result shall be declared by the municipal officers of the Town of Berwick and due certificate thereof filed with the Secretary of State by the clerk of said town.