

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SECOND LEGISLATURE

Legislative Document

No. 177

H. P. 154

House of Representatives, January 14, 1965

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

JEROME G. PLANTE, Clerk

Presented by Mr. Libhart of Brewer.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-FIVE

AN ACT to Create the Brewer Sewerage District.

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

Sec. 1. Incorporation. The territory and people comprising the City of Brewer shall constitute a body politic and corporate under the name of the "Brewer Sewerage District." The purpose of said district shall be to take over, control, manage and operate the sewers now owned by the City of Brewer with all appurtenances thereto; to extend, increase, enlarge and improve said drains and sewers; to extend the present systems so as to furnish sewerage facilities to portions of the city not now served with such facilities; to provide for surface treatment of sewage in whole or in part before discharging it into rivers when, as and if such treatment becomes necessary; and generally to provide a system of sanitary sewerage and storm water drainage for public purposes and for the health and comfort and convenience of the inhabitants of said district.

Sec. 2. Authority to acquire and hold property; right of eminent domain conferred. Upon acceptance of this Act as hereinafter provided, title to all public drains and sewers in the City of Brewer shall pass to and vest in said district, and said district shall maintain and operate same. For the purpose of providing a system of sewers and drainage for the comfort, convenience and health of the inhabitants of said district, the said district is hereby authorized and empowered to acquire and hold real estate and personal estate necessary and convenient for the purposes aforesaid subject to all duties and obligations of the City of Brewer with respect thereto, which duties and obligations are to be assumed by said district. The district is hereby authorized to take and hold by purchase, lease or the exercise of the right of eminent domain, as hereinafter provided, or otherwise, any land or real estate or easement therein necessary for forming basins, reservoirs and outlets; for erection of buildings for pumping

works and sewage treatment and for laying pipes and maintaining same and for laying and maintaining conduits for carrying and collecting, discharging and disposing of sewage matter and rain water and for other objects necessary, convenient and proper for the purpose of this Act, and all of such property, wherever located, shall be exempt from taxation.

Provided, however, nothing herein contained shall be construed as authorizing said sewerage 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 thereto herein or by subsequent Act of the Legislature.

Sec. 3. Procedure in exercise of right of eminent domain. The commissioners hereinafter provided for said district may exercise the right of eminent domain vested in said district for the purposes of this Act after hearing, notice of the time and place of the said hearing having been given by publication in the Bangor Daily News or other newspaper of general circulation in Penobscot County once a week for 2 successive weeks, the last publication to be at least 2 weeks previous to the time appointed for said hearing, and the clerk of said district shall keep a record of their proceedings, and their determination and decision, which shall set forth a description of the land or easement taken, and the owners, if known, and the amount of damages awarded therefor. In lieu of the notice for publication hereinbefore defined, said notice may be served in hand by an officer duly qualified to serve civil process in this State on the record owner or owners of the premises involved, the same to be served at least 14 days prior to the time appointed for said hearing. Upon the signing of said record of said commissioners, and the filing of the same in the registry of deeds for the County of Penobscot, said commissioners may enter upon such land and take possession of the same or an easement therein, as the case may be, for the purposes of this Act. Any person aggrieved by the decision of said commissioners, as it relates to the damages for land or easements therein so taken, shall have the same rights of appeal as are provided in the case of the laying out of town ways.

Sec. 4. Right to lay pipes and other particular rights enumerated. Said district may lay pipes and construct conduits in manner aforesaid in and through said district and convey through the same sewage, surface water and the natural flowage of existing water courses, and secure and maintain basins, reservoirs and outlets; may build and maintain pumping stations and buildings convenient for same; may construct and maintain treatment plants, flush tanks, manholes, storm water inlets and such usual appliances for collecting, holding, distributing and disposing of sewage and storm water; may supply water for such flush tanks and for flushing said system of sewers and for any other purposes for which said district may deem the same desirable, and install all pipes and necessary structures and appliances to this end; may establish through and by its commissioners regulations for the use of sewers and fix and collect the prices to be paid for entering same and also the service charges for the use thereof; may enter into contract with persons, corporations or municipalities outside the boundaries of the district to care for sewage or drainage through the district's system; and said district is hereby authorized, for the purposes aforesaid, to lay down, in and through the streets, highways and land of said district and take up, replace and repair all such conduits, pipes and fixtures as may be necessary or desirable for

the objects of its incorporation; to carry and lay conduits and pipes under any water course, way, public or private, or railroad, in the manner prescribed herein and to cross any water pipe, gas pipe, electric conduit, drain or sewer, or, if necessary, to change its direction in such a manner as not to obstruct its use by the construction of any of the works of said district, either during such construction or after the same has been completed, or while the same shall be undergoing repairs or extensions are being made; and said district shall be liable to the City of Brewer, public utilities and private persons for any and all costs, damages and expenses which each may suffer or be put to by reason of the default, neglect, negligence or carelessness of said district or any of its officers, servants or agents in creating, maintaining, repairing or extending said sewerage system. The commissioners of said district may purchase all maps, plans and files relating to sewers and drainage which are in the possession of the city of Brewer. 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 such 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.

Where the character of the work of said district is such as to endanger travel on any street or way, said City of Brewer shall direct the temporary closing of such streets or ways, and of intersecting streets or ways, upon request of said district, and such streets or ways shall remain closed to public traffic until the works of said district is completed and the surfaces of said streets or ways are restored to a proper condition, as hereinbefore set forth.

Sec. 5. Abutting owners have right to enter. Said district, at all times after it shall commence receiving pay for the facilities supplied by it, shall be bound to permit the owners of all premises abutting upon its lines of pipes and conduits to enter the same with all proper sewage, upon conformity to the rules and regulations of said Brewer Sewerage District and payments of the prices, assessments and rental established therefor.

Sec. 6. Excavations and repair work, property to be left in good condition; liability for damages; closing of streets. Whenever said district shall enter, dig up or excavate any street, way or highway, or other land, within said district, for the purpose of laying pipes or conduits, constructing manholes or catch-basins, or for the purpose of taking up, repairing, extending or maintaining any sewer, drain, manhole, catch basin or other structure, or for any other purpose, said street, highway, way or other land shall, at the completion of the work of said district, be returned to the condition said street, way, highway or other land was in prior to the work of said district or to a condition equally as good, and said district shall be liable to any person, firm or corporation injured or damaged by any default of said district or its servants or agents, or by reason of any defect in any way, street or highway occasioned by the construction of any of the works of said district, either during such construction or after the same has been completed, or while the same shall be undergoing repairs or extensions are being made; and said district shall be liable to the City of Brewer for any and all costs, damages and expenses which said city may suffer, or be

put to, by reason or the default, neglect, negligence or carelessness of said district or any of its officers, servants or agents, in creating, maintaining, repairing or extending said sewerage system.

Where the character of the work of said district is such as to endanger travel on any street or way, said City of Brewer shall direct the temporary closing of such streets or ways, and of intersecting streets or ways, upon request of said district, and such streets or way shall remain closed to public traffic until the work of said district is completed, and the surfaces of said streets or ways are restored to a proper condition, as hereinbefore set forth.

Sec. 7. Extensions. The district shall have the right to determine whether extensions to its system shall be made, subject to the authority of local and state health officials, the Water Improvement Commission and the Public Utilities Commission. It shall have the power to make assessments for the cost of such extensions and charges for the use thereof.

Sec. 8. Assessment against lot benefited. When the district has constructed and completed a public drain or common sewer, the commissioners shall determine what lots or parcels of land are benefited by such drain or sewer, and shall estimate and assess upon such lots and parcels of land, and against the owner thereof, or person in possession, whether said person to whom the assessment is so made shall be the owner, tenant, lessee or agent, and whether the same is occupied or not, such sum not exceeding such benefit as they may deem just and equitable towards defraying the expenses of constructing and completing such drain or sewer, together with such sewage disposal units and appurtenances as may be necessary, the whole of such assessments not to exceed $\frac{2}{3}$ of the cost of such drain or sewer and sewage disposal units. The commissioners shall file with the clerk of the district the location of such drain or sewer and sewage disposal unit, with a profile description of the same, and a statement of the amount assessed upon each lot or parcel of land so assessed, a description of each lot or parcel, and the name of the owner of such lots or parcels of land or person against whom said assessment shall be made, and the clerk of such district shall record the same in a book kept for that purpose, and within 10 days after filing such notice, each person so assessed shall be notified of such assessment by having an authentic copy of said assessment, with an order of notice signed by the clerk of said district, stating the time and place for a hearing upon the subject matter of said assessments, given to each person so assessed or left at his usual place of abode in said district; if he has no place of abode in said district, then such notice shall be given or left at the abode of his tenant or lessee if he has one in said district; if he has no such tenant or lessee in said district, then by posting the same notice in some conspicuous place in the vicinity of the lot or parcel of land so assessed, at least 30 days before said hearing, or such notice may be given by publishing the same once a week for 3 successive weeks in any newspaper published in said district, the first publication to be at least 30 days before said hearing; a return made upon a copy of such notice by any constable in said city or the production of the paper containing such notice shall be conclusive evidence that said notice has been given, and upon such hearing the commissioners shall have power to revise, increase or diminish any of such assessments, and all such revisions, increase or diminution shall be in writing and recorded by such clerk.

Sec. 9. Right of appeal. Any person, aggrieved by the decision of said commissioners as it relates to the assessment for sewer construction, shall have the same rights of appeal as are provided in the case of laying out of town ways.

Sec. 10. Assessments; lien; sheriff's sale. All assessments made under the provisions of section 8 shall create a lien upon each and every lot or parcel of land so assessed and the buildings upon the same, which lien shall take effect when the commissioners file with the clerk the completed assessment and shall continue one year thereafter; and within 10 days after the date of hearing on said assessment the clerk shall make out a list of all such assessments, the amount of each and the name of the person against whom the same is assessed, and he shall certify the list and deliver it to the treasurer of said district; if said assessments are not paid within 3 months from the date thereof, the treasurer may bring a civil action for the collection of said assessment in the name of the district against the person against whom said assessment is made. Such action shall be begun by writ of attachment commanding the officer serving it to specially attach the real estate upon which the lien is claimed, which shall be served as other writs of attachment to enforce liens on real estate. The declaration in such action shall contain a statement of such assessment, a description of the real estate against which the assessment is made, and an allegation that a lien is claimed on said real estate to secure the payment of the assessment. If no service is made upon the defendant or if it shall appear that any other persons are interested in such real estate, the court shall order such further notice of such action as appears proper, and shall allow such other persons to become parties thereto. If it shall appear upon trial of such action that such assessment was legally made against said real estate, and is unpaid, and that there is an existing lien on said real estate for the payment of such assessment, judgment shall be rendered for such assessment, interest and costs against the defendants and against the real estate upon which the assessment was made, and execution issued thereon to be enforced by sale of such real estate in the manner provided for a sale or execution of real estate attached on original writs. Provided that in making said sale the officer shall follow the procedure in selling and conveying and there shall be the same rights of redemption as are provided in the Revised Statutes of 1964, Title 36, section 941.

Sec. 11. Additional method of collection of assessments. If assessments under the provisions of section 8 are not paid, and said district does not proceed to collect paid assessments by a sheriff's sale of the real estate upon which such assessments are made under section 10, or does not collect or is in any manner delayed or defeated in collecting such assessments by a sheriff's sale of said real estate under section 10, then the said district, in the name of said district, may maintain an action against the party so assessed for the amount of said assessment, as for money paid, laid out and expended, in any court competent to try the same, and in such action may recover the amount of such action with 10% interest on the same from the date of said assessment and costs.

Sec. 12. Assessments paid by other than owner, how recovered. When any such assessment under the provisions of section 8 shall be paid by any person against whom such assessment has been made, who is not the owner of such lot or parcel of land, then the person so paying the same shall have a lien upon such lot or parcel of land with the buildings thereon for the amount of said assess-

ment so paid by said person, and incidental charges, which lien shall continue for one year and which lien may be enforced in a civil action, and by attachment in the way and manner provided for the enforcement of liens upon buildings and lots.

Sec. 13. Sanitary provisions and penalty for violation. Any person who violates the provisions of this section or sections 14 and 15, or who shall place or discharge any offensive or injurious matter or material on or into the conduits, catch basins or receptacles of said district contrary to its regulations, or shall willfully injure any conduit, pipe, reservoir, flush tank, catch basin, inlet, man-hole, outlet, engine, pump or other property held, owned or used by said district for the purposes of this Act, shall be liable to pay twice the amount of the damages to said district, to be recovered in any proper action; and such person, on conviction of either of said Acts of willful injury aforesaid, shall be punished by a fine not exceeding \$200, or by imprisonment not exceeding 6 months, or by both.

Sec. 14. Free access to premises. The officers or agents of the district shall have free access to all premises served by its sewers, at all reasonable hours to permit the inspection of plumbing and sewerage fixtures, to ascertain the amount of sewage discharged and the manner of discharge and to enforce the provisions of this charter and the rules and regulations which may be prescribed hereunder.

Sec. 15. Buildings to connect with sewer if available. Every building in the district intended for human habitation or occupancy on premises abutting on a street in which there is a public sewer or any such building within 100 feet of a public sewer shall have a house drainage system which shall be caused to be connected with the sewer by the owner or agent of the premises in the most direct manner possible, and, if feasible, with a separate connection for each house or building, except that existing buildings which are already served by a satisfactory private sewage disposal system which meets and continues to meet the requirements of section 122 (b) of the state plumbing code shall not be required to connect with the public sewer.

Sec. 16. Management. All the affairs of said district shall be managed by a board of 3 commissioners, resident therein, who shall be appointed by the mayor of the City of Brewer, with the approval of a majority of the city council. In the first appointment of commissioners hereunder, one shall be selected for a term of one year, one for 2 years and one for 3 years. At the expiration of the term of each member, a new member of the board shall be appointed by the mayor, with the approval of the majority of the city council, for a term of 3 years. In case of a vacancy arising from death or other cause, the mayor may appoint, with the approval of a majority of the city council, a new member to fill out the unexpired term. As soon as convenient after the first members of the board have been appointed they shall hold a meeting at the city rooms in the City of Brewer and organize by the election from the members of a chairman, clerk and treasurer, who shall furnish bond in such form as the commissioners may fix, and by the election of such other officers and agents as they deem necessary, which other officers and agents shall serve at the pleasure of said commissioners. The term of any commissioner shall continue until his successor is appointed and qualified.

In prosecuting the work contemplated by this Act, said commissioners may engage the services of engineers and laborers; may purchase all necessary ma-

terial and supplies, and construct said drains and sewers under their own supervision, or they may, if they deem it advantageous, contract with some responsible person, firm or corporation for the construction of said drains and sewers, but said district shall in no case be released from liability, by reason of having contracted with any person, firm or corporation, as provided above for the construction of any sewer, drain or other structure. They shall also adopt a corporate seal and all bylaws and regulations necessary. The commissioners shall meet monthly, and specially as may be necessary, and each shall receive such compensation for each regular or special meeting attended as may be set by the city council. They shall publish an annual report. It is further provided that no person, while he is a commissioner of said district, shall be interested, either directly or indirectly, in any contract or agreement for the construction of any sewer, drain or other structure, in said district, entered into by said district. This provision, however, shall not prevent said district from entering upon, or taking land, or any easement therein, of any officer of said district, while he is such an officer, and awarding damages therefor, if, in the opinion of said commissioners, such entering or taking is necessary for the purposes of said district.

Sec. 17. Authority to borrow money. For accomplishing the purposes of this Act and for such other expenses as may be necessary for the carrying out of said purposes, said district, through its commissioners, without district vote, is authorized to issue its notes and bonds in one series or in separate series from time to time and to make subsequent renewals of the same in whole or in part to an amount not exceeding the sum of \$2,000,000. Said notes and bonds shall be a legal obligation of said district, which is hereby declared to be a quasi-municipal corporation within the meaning of the Revised Statutes of 1964, Title 30, section 5053 and all the provisions of said section are applicable thereto; shall be a legal investment for savings banks in the State of Maine; and shall be exempt from all present taxes. Each bond or note shall have inscribed on its face the words "Brewer Sewerage District Bond" or "Brewer Sewerage District Note", as the case may be, and shall bear interest at such rates as the commissioners shall determine. If said bonds or notes be issued from time to time, each authorized issue shall constitute a separate loan. Each loan payable in annual amounts of principal, beginning not more than one year from its date and made to run for such period as said commissioners shall determine.

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 the commissioners of said district, and if coupon bonds be issued, each coupon shall bear the facsimile signature of the treasurer.

All bonds issued by said district may be issued with or without provisions for calling the same for payment before maturity, and in case of such call provisions, the premium, if there be one, shall not exceed 5% of the principal upon such call.

Sec. 18. Sinking fund provided for; issue of refunding bonds authorized; distribution of surplus. In case any of said bonds or notes are made to run for a period of years, a sinking fund shall be established by the commissioners of said district for the purpose of redeeming said bonds or notes when they become due, and not less than 1% of the aggregate principal of the outstanding sinking fund bonds or notes 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 purposes, and shall be invested in such securities as savings banks are allowed to hold.

Whenever any bonds of said district become due, or can be purchased by said commissioners on favorable terms, said commissioners 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.

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

Distribution of surplus shall be at the discretion of the commissioners.

Sec. 19. Rates; application of revenues; sinking fund. All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rates and assessments established by said commissioners to pay for the cost of the works and for the service used by them: and said rates shall not be discriminatory within the territory supplied by the district. Said rates may include a readiness to serve, charged against owners or persons in possession or against whom 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 through which the district has a sewerage main, or which abut a location through which the district has a sewerage main through which service of said buildings or premises is feasible, provided in either instance the property line of said premises is within 100 feet of such sewerage main but whether or not said premises are actually connected thereto. Said rates shall be so established as to provide revenue for the following purposes:

1. To pay the current expenses for operating and maintaining the sewerage system.

2. To provide for the payment of the interest on the indebtedness created or assumed by the district.

3. To provide each year a sum equal to not less than 1% of the entire indebtedness created or assumed by the district, which sum shall be turned into the sinking fund to provide for the extinguishment of said indebtedness. Provided, however, that the commissioners may, in their discretion and in lieu of the establishment of a sinking fund, issue the bonds of the district so that not less than 1% of the amount of the bonds so issued shall mature and be retired each year.

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

5. The commissioners, on written application stating the grounds therefor, may make such reasonable abatements as they think proper of any rates or assessments.

Sec. 20. Lien to secure payment of rates; procedure. There shall be a lien on real estate served by the several sewers of the district to secure the payment of rates established and due under the provisions of section 19 which shall take precedence of all other claims on such real estate, excepting only claims for taxes. Real estate, for the purposes of this Act, shall bear the same definition as given in the Revised Statutes of 1964, Title 36, section 551.

The treasurer of the district shall have the authority and power to collect the rates, and he is empowered to exercise the authority hereinafter set forth in enforcing the collection of any rates due and payable to the district.

In addition to other methods previously established by law for the collection of the rates, the lien herein created may be enforced in the following manner. The treasurer, when a rate has become due and payable, may, after the expiration of 3 months and within one year after the date said rate becomes due and payable, in the case of a person resident in the town where the rate is assessed, give to the person against whom the rate is assessed or leave at his last and usual place of abode, a notice in writing signed by the officer stating the amount of such rate, describing the real estate upon which the lien is claimed, alleging that a lien is claimed on the real estate to secure the payment of the rate and demanding the payment of the rate within 10 days after the service of such notice. After the expiration of the 10 days and within 10 days thereafter, in the case of a resident, and in all other cases within a year from the date, the treasurer shall record in the registry of deeds of Penobscot County a certificate signed by the officer setting forth the amount of such rate, a description of the real estate on which the lien is claimed and an allegation that a lien is claimed on the real estate to secure the payment of the rate, that a demand for payment of the rate has been made in accordance with the provisions of this section and that the rate remains unpaid. In the case of a nonresident, the aforesaid notice of lien and demand for payment shall be given by registered mail or by publication in a newspaper of general circulation published in Penobscot County once a week for 2 successive weeks, and after the expiration of 10 days from the date of mailing said notice or after the expiration of 10 days from the last publication of said notice and within 10 days after said expiration periods, the treasurer shall record said certificate. At the time of the recording of the certificate in the registry of deeds as herein provided, in all cases such treasurer shall file in the office of the district a true copy of the certificate and also at the time of recording as aforesaid, the officer shall mail by registered letter to each record holder of a mortgage on said real estate, addressed to him at his last and usual place of abode, a true copy of the certificate. The fee to be charged to the ratepayer for such notice and filing shall not exceed \$2 and the fee to be charged by the register of deeds for such filing 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 to the district, having 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 incident to a mortgagee, except that the mortgagee shall not have any right of possession of the real estate until the right of redemption herein provided for shall have expired.

If the mortgage, together with interest and costs, shall not have been paid

within 8 months after the date of filing of the 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 herein provided for.

In the event that the rate, interest and costs shall be paid within the period of redemption herein provided for, the treasurer of the district shall discharge the mortgage in the same manner as is now provided for discharge of real estate mortgages.

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 within said district, voting by ballot at an election to be specially called and held for the purpose within one year after the effective date of this Act. The municipal officers of the City of Brewer shall call said election, to be held upon a date to be specified in writing by them. Such election shall be called, advertised and conducted according to the law relating to municipal elections; provided, however that the registrar of voters shall not be required to prepare, nor the city clerk to post a new checklist of voters, and for the purpose of registration of voters the registrar of voters shall be in session the 2 secular days next preceding such election, the first day thereof to be devoted to the registration of voters and the last day to enable the registrar of voters to verify the corrections of said list and to complete and close up the records of said sessions. The city clerk shall reduce the subject matter of this Act to the following question: "Shall the Act to Create the Brewer Sewerage District, passed by the 102nd 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.

This Act shall take effect immediately upon its acceptance by at least a two-thirds vote of the legal voters voting at such election; provided that the total vote for and against the acceptance of this Act at said election equaled or exceeded two-thirds of the number of registered voters on the checklist of said district.

The result of the vote shall be declared by the municipal officers of the City of Brewer and due certificate thereof shall be filed by the city clerk with the Secretary of State.