

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SECOND LEGISLATURE

Legislative Document

No. 1449

H. P. 1073

House of Representatives, April 7, 1965

Reported by Mr. D'Alfonso from Committee on Public Utilities. Printed under Joint Rules No. 10.

JEROME G. PLANTE, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-FIVE

AN ACT to Incorporate the Kittery Sewer District.

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

Sec. 1. Territorial limits; name; purposes. All of the territory of the Town of Kittery, in the County of York, excluding that property known as Admiralty Village and those properties served by the Admiralty Village sewerage system, and the inhabitants within said territory, shall constitute a body politic and corporate, under the name of "Kittery Sewer District," for the purpose of providing a system of sewerage for public purposes and for the health, comfort and convenience of the inhabitants of said district.

Sec. 2. Authority to acquire and hold property; right of eminent domain conferred. For the purpose of providing a system of sewers for the comfort, convenience and health of the inhabitants of said district, the said district, by its trustees, is hereby authorized and empowered to acquire and hold real estate and personal estate necessary and convenient for the purposes aforesaid, and 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 and facilities for treatment and for pumping works, and for laying pipes and maintaining same and for laying and maintaining conduits for carrying and collecting discharging and disposing of sewerage matter and waters and for other objects necessary, convenient and proper for the purposes of this Act. 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 thereto herein or by subsequent Act of the Legislature.

Sec. 3. Procedure in exercise of right of eminent domain and crossing public utilities. The trustees of 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 said hearing having been given by publication in 2 weekly papers published in the County of York, for 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, and upon the signing of said record by said trustees, and the filing of the same in the registry of deeds for the County of York, said trustees 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 trustees, so far 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.

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 utilities shall be done under the supervision and to the satisfaction of such public utility, but at the expense of the district.

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 to and into any stream or water course within the Town of Kittery, the discharge therefrom to be such point or points in any stream or water course as shall be most reasonable and convenient for said district, and convey through the same, sewerage, 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 flush tanks, manholes, lamp-holes, and such usual appliances for treatment, collecting, holding, distributing and disposing of sewerage matters; may provide water for such treatment works 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 trustees regulations for the use of sewers and fix and collect the prices to be paid for entering same, and also the annual rentals for the use thereof; 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 by law, and to cross any drain or sewer, or, if necessary, to change its direction in such a manner as not to obstruct the use thereof, and to enter and dig up any such streets, road or way, for the purpose of laying pipes beneath the surface thereof, for placing manholes or other fixtures and for maintaining or repairing the same, and in general to do any other acts or things necessary, convenient and proper to be done for the purpose of this Act. Said district shall not construct any system of sewerage, without first having submitted its plans to the Public

Utilities Commission and obtained its approval therefor, under power vested in said commission.

Sec. 5. Revised Statutes of 1964, Title 30, c. 237, made applicable; trustees and other officers to have same powers as municipal officers; other powers of trustees. In respect to the manner of constructing sewers in said district, the assessment of abutting owners for the cost of the same and the collection of said assessments, the issuing of permits and in respect to all other matters covered by the sections herein referred to, the trustees of said district shall be governed by the provisions of the Revised Statutes of 1964, Title 30, Chapter 237, and all Acts amendatory thereof, and the district is hereby granted the same power and authority in said premises as have the municipal officers of cities and towns in like cases, and the words "town clerk," in said sections, shall be construed to mean the clerk of said district, and the inhabitants of said district shall have the same rights and privileges, and be subject to the same regulations and restrictions, as are now granted to and imposed upon individuals under said sections. In the application of said Title 30, Chapter 237, the trustees of the said district shall perform all the acts and duties and be subject to all responsibilities of municipal officers, as is provided by said sections. Said trustees shall have the power to determine when and where in said district sewerage facilities are most needed, and how said sewers shall be built; where, when, and what repairs, renewals, and extensions are necessary, and how the same shall be built, and their decision in such matters, except as is otherwise provided in the sections above referred to, shall be final. It is provided, however, that the municipal officers of said town may make written recommendation to the trustees of said district regarding sewerage necessities in said district.

Sec. 6. Trustees authorized to employ engineers and construction organizations to make contracts. In prosecuting the work contemplated by this Act, said trustees may engage the services of engineers and contractors and laborers; may purchase all necessary material and supplies, and construct said 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 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 or other structure.

Sec. 7. Trustees not to be interested in contracts of said district. It is further provided that no person, while he is a trustee of said district, shall be interested, either directly or indirectly, in any contract or agreement for the construction of any sewer 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 trustees, such entering or taking is necessary for the purposes of said district.

Sec. 8. 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 good, and said district shall be liable to any person, firm or corporation injured or damaged by any fault 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 Town of Kittery for any and all costs, damages and expenses which said town 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.

Where the character of the work of said district is such as to endanger travel on any street or way, said Town of Kittery 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 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. 9. 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 sewerage upon conformity to the rules and regulations of said Kittery Sewer District and payment of the prices and rentals established therefor.

Sec. 10. Sanitary provisions and penalty for violation. Any person who shall place or leave any offensive or injurious matter or material on or in the conduits, pumping or treatment facilities or receptacles of said district contrary to its regulations, or shall willfully injure any conduit, pipe, reservoir, manhole, lamp-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 and by imprisonment not exceeding one year.

Sec. 11. Trustees; election of; tenure of office; vacancies; first meeting and organization of board; annual report. All the affairs of said district shall be managed by a board of 5 trustees, residents therein, who shall be elected by written ballot by plurality vote of the persons therein legally qualified to vote in town meetings. They shall hold office for the term of 3 years and until their respective successors are chosen and qualified; except, however, as hereinafter provided. Vacancies shall be filled for the unexpired term as hereinafter in this section provided.

All nominations of candidates so to be voted for shall be made by nomination papers signed in the aggregate for each candidate by no less than 15 qualified voters of said district. Each voter signing a nomination paper shall make his signature in person, and add to it his place of residence, and each voter may sub-

scribe to as many nomination papers as there are trustees to be elected in said district, and no more. Such nomination papers shall, before being filed, be submitted to the town clerk of said Town of Kittery, who shall forthwith certify thereon what number of the signatures are names of qualified voters in said district. One of the signers to each such separate paper shall swear to the truth thereof, and the certificate of such oath shall be annexed to, or made upon, the nomination papers. Such nomination papers shall be filed with said town clerk at least 7 days, exclusive of Sundays, previous to the day of such election. With such nomination papers shall also be filed, in writing, the consent of the person or persons nominated.

All nomination papers filed, which are in apparent conformity with the foregoing provisions, shall be deemed to be valid; and if not in apparent conformity, they may be seasonably amended, under oath.

The ballot in said district for the election of trustees shall contain the names of all candidates so nominated in said district, printed in one column, under the heading "For Trustees of the Kittery Sewer District," and at the first election above such heading shall be printed: "Vote for one for one year, 2 for 2 years and 2 for 3 years," which shall be changed to conform to the necessities of each election thereafter, depending upon the number of trustees to be elected. As many blank spaces shall be left after the names of the candidates as there are trustees to be elected, in which the voter may insert the name of any person for whom he desires to vote. In preparing his ballot, the voter shall mark a cross or check mark against and to the right of such names on said ballots as he desires to vote for, not to exceed the number of trustees so to be elected in said district. The result of such election shall be declared by the municipal officers of the Town of Kittery, and due certificate thereof filed with the town clerk.

The first board of trustees shall be elected at the meeting called for the acceptance of this Act, one to serve until the first annual meeting of the district, 2 until the 2nd and 2 until the 3rd such meeting. Thereafterward, one or 2 members, as the case may be, shall be chosen at each annual meeting to serve for the term of 3 years. If a vacancy occurs in said board more than 3 months before the date of the next succeeding annual meeting, a special meeting shall be called to fill the vacancy, and all vacancies existing at the date of an annual meeting shall then be filled.

As soon as convenient after said first election, 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 other 4 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 clerk from their own number, adopt a corporate seal and bylaws, and perform any other acts within the powers delegated to them by law. When necessary they may choose a treasurer and other needful officers and agents who shall serve at their pleasure. The treasurer 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 trustees, unless authorized by vote of the district. The compensation of the trustees shall be \$50 each per year unless otherwise provided by vote of the district.

The trustees shall be sworn to the faithful performance of their duties as such, which shall include the duties of any member as clerk or clerk pro tem. They shall make and publish an annual report including a report of the treasurer.

Sec. 12. Annual meeting 2nd Monday in March; qualification of voters of district. The annual meeting of the district shall be held in the district on the 2nd Monday of March in each year at such hour and place as may be designated by resolution of the board of trustees as provided in the bylaws. Notice thereof, signed by the chairman or clerk of the board, shall be conspicuously posted in 2 public places within the district, not less than 7 days before the meeting. Special meetings may be called by the board in like manner at any time, and notice of special meetings shall state the business to be transacted thereat. Eleven persons qualified to vote in such meetings shall constitute a quorum. If for any reason an annual meeting is not held on the above date, a meeting in lieu thereof may be called in like manner to be held within 3 months from said date.

All persons resident in said district and qualified to vote for Governor under the laws of this State shall be entitled to vote in any meeting of the district, including the meeting for acceptance of this charter.

Sec. 13. Trustees granted certain powers of selectmen. After the meeting for acceptance of this charter, the trustees shall have the same powers and perform the same duties as otherwise are exercised and performed by the selectmen of towns in correcting and preparing lists of the persons qualified to vote in said district, and for that purpose they shall be in session at the office of the said sewer district between the hours of 10 o'clock in the forenoon and 12 o'clock noon of the secular day next before the date of every meeting; and 2 hours next before the opening of the meeting; and notice thereof shall be given in the call for the meeting. All meetings of the district shall be presided over by a moderator chosen in the same manner and with the same authority as moderators of town meetings.

Sec. 14. District and town authorized to make contracts. Said district through its trustees is authorized to contract with persons and corporations including the Town of Kittery, and said Town of Kittery is authorized to contract with it for the collection, discharge and disposition of sewage or other waste matter.

Sec. 15. Authorized to acquire sewerage systems owned by the Town of Kittery or by any other corporation, individual or group of individuals; right of eminent domain conferred. Said sewer district is hereby authorized and empowered to acquire by purchase or by the exercise of the right of eminent domain, which right is hereby expressly delegated to said district for said purpose, the entire plant and property of the sewage systems owned by the Town of Kittery or by any other corporation, individual or group of individuals; and the Town of Kittery is hereby authorized and empowered to sell its said sewage plants and system to said district; provided the voters in said town shall at a town meeting legally called, notified and held, legally vote to do so.

Sec. 16. Property tax exempt. The property, rights and franchises of said district shall be forever exempt from taxation.

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 trustees, 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 \$1,250,000. Said notes and 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 exempt from all present taxes. Each bond or note shall have inscribed on its face the words "Kittery Sewer District Bond" or "Kittery Sewer 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 shall be payable in annual amounts of principal, beginning not more than one year from its date and made to run for such period as said trustees 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 board of trustees 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, with or without providing for the payment of a premium of not exceeding 5% of the principal upon such call. Said notes and bonds shall be legal obligations 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. The said notes and bonds shall be legal investments for savings banks.

Sec. 18. 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 3% 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 person 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 canceled 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 district.

Sec. 19. Rates; application of revenue; sinking fund; incidental powers granted. 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 trustees to pay for the cost of the sewer system and for the service used by them; and said rates shall not be discriminatory within the territory supplied by the district. Said rates shall be so established as to provide revenue for the following purposes:

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

II. Payment of Interest. To provide for the payment of the interest on the indebtedness created or assumed by the district.

III. Extensions and renewals. To pay for such extensions and renewals as may become necessary.

IV. Indebtedness. To provide each year a sum equal to not less than 3% 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 trustees 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.

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

All incidental powers, rights and privileges necessary to the accomplishment of the main object herein set forth are granted to said district.

Sec. 20. Lien for payment of rates. There shall be a lien to secure the payment of rates established under section 19 and legally assessed on real estate within the district, which shall take precedence of all other claims on such real estate, excepting only claims for taxes.

The treasurer of the district shall have the authority and power to sue for and collect the rates, which shall be committed to him. 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; provided, however, that in making the assessment there shall be a description of the real estate served by the several sewers of the district, sufficiently accurate to identify the real estate against which any of the several rates may be levied. The treasurer, when a rate has been committed to him for collection, may, after the expiration of 8 months and within one year after date of commitment to him, in the case of a person resident in the town where the rate is assessed, give to the person against whom the same 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 and describing the real estate on which it is assessed, alleging that a lien is claimed on the real estate to secure the payment thereof and demanding its payment 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 one year from the date of commitment of the rate to said

officer, the officer shall record in the registry of deeds of York County a certificate signed by him setting forth the amount of such rate, a description of the real estate on which the same is assessed 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 same has been made in accordance with the provisions of this Act and that the rate remains unpaid. In all cases, except in the case of a resident, the certificate so filed need not contain the allegation that payment of the rate has been demanded. At the time of the recording of the certificate in the registry of deeds as herein provided, the officer shall file in the office of the district a true copy of the certificate and also 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 for such notice and filing shall be \$1 and the fee of the register of deeds for such filing shall be \$1.50, which fees shall become an expense of the person owing the rate. The filing of the aforesaid certificate in the registry of deeds as aforesaid shall be deemed to 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 mortgage, 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 18 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, with 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.

Sec. 21. Saving clause. Nothing herein contained is intended to repeal, or shall be construed as repealing, the whole or any part of any existing statute, and all rights and duties herein mentioned shall be exercised and performed in accordance with all the applicable provisions of the Revised Statutes of 1964, Title 35 and all Acts amendatory thereof or additional thereto.

Sec. 22. Effective date; referendum; certificate to Secretary of State. This Act shall take effect 90 days after 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 120 days of the effective date of this Act. Said meeting shall be called by the municipal officers of the Town of Kittery and shall be held at the regular meeting place in the town. The date of said meeting shall be determined by the said municipal officers. The registrar of voters of the Town of Kittery shall prepare and furnish a checklist for the voters within said district as are then legal voters of said town. Such elections shall be called, advertised and conducted

according to the law relating to municipal elections. The registrar of voters shall be in session on the 3 secular days next preceding any such election, the first and 2nd days thereof to be devoted to registration of voters and the last day to enable the registrar to verify the correction of said list and to complete and close up his records of said session. The town clerk shall prepare the required ballots on which he shall reduce the subject matter of this Act to the following question: "Shall the Act to Incorporate the Kittery Sewer District, passed by the 102nd Legislature, be accepted?" The voters shall indicate by a cross or a check mark placed against the words "Yes" or "No" their opinion of the same.

This Act shall take effect for all the purposes hereof immediately upon its acceptance by a majority of the legal voters voting at such election; but only if the total number of votes cast for and against acceptance of this Act in said election equals or exceeds 10% of the total number of names on the checklist of the voters of said district, provided for herein, which checklist shall be used at such elections; but failure of approval by the necessary percentage of voters shall not prevent subsequent elections and failure of acceptance by the voters shall not prevent subsequent elections within the time limit herein stated. The result of such election shall be declared by the municipal officers of the Town of Kittery and due certificate thereof filed by the town clerk with the Secretary of State.