

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 482

H. P. 360

House of Representatives, January 28, 1971

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

BERTHA W. JOHNSON, Clerk

Presented by Mr. Keyte of Dexter.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Creating the Dexter Utility District.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Town of Dexter is in great need of installation of a sewer treatment plant and the improvement of its water and sewer system; and

Whereas, it is essential that maximum federal and state matching funds be available for such sewer treatment plant; and

Whereas, it is imperative that such sewer treatment plant be commenced at the earliest possible opportunity to minimize pollution problems on Sebasticook Stream and to meet the requirements and regulations of the Environmental Improvement Commission; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine, and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. Territorial limits; corporate name and purpose. The inhabitants of and territory within the Town of Dexter in the County of Penobscot shall be and hereby are constituted a body politic and corporate under the name of the "Dexter Utility District", for the purpose of supplying the inhabitants and others in the district and the Town of Dexter with pure water for domestic, commercial, sanitary, industrial, agricultural and municipal purposes,

and with suitable and adequate sewerage facilities for domestic, commercial and industrial wastes, other than for storm or surface water, as hereinafter provided.

Sec. 2. Powers of Dexter Utility District. Said Dexter Utility District is authorized for the purposes of its incorporation to take, collect, store, flow, use, divert, distribute and convey to the Town of Dexter or any part thereof water from any lake, pond, stream or river, or from any surface or underground brook, spring or vein of water, natural or artificial, in the town and it is also authorized to locate, construct and maintain aqueducts, pipes, conduits, dams, wells, reservoirs, standpipes, hydrants, pumping stations, drains, treatment plants and other necessary structures and equipment therefor, and do anything necessary to furnish water and sewerage facilities for public purposes and for public health, comfort and convenience of the inhabitants and others of the district, or to contract to do any and all of the foregoing things.

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

Sec. 3. Authorized to lay mains, pipes, conduits, etc., through public ways and across private lands. The district is authorized to lay in and through the streets, roads, ways and highways of the Town of Dexter, and across private lands therein, and to maintain, repair and replace all such pipes, mains, drains, conduits, aqueducts and fixtures and appurtenances as may be necessary and convenient for its corporate purposes, and whenever said district shall lay any pipes, mains, drains, conduits, aqueducts and fixtures or appurtenances in any street, road, way or highway, it shall cause the same to be done with as little obstruction as practicable to the public travel, and shall at its own expense, without unnecessary delay, cause the earth and pavement removed by it to be replaced in proper condition.

Sec. 4. Rights of eminent domain. The said district, for the purposes of its incorporation, is authorized to take and hold, as for public uses, real estate and personal estate, and any interest therein, necessary or convenient for such purposes, by purchase, lease or otherwise and is expressly authorized to exercise the right of eminent domain, as hereinafter provided, to acquire for such purposes any land or interest therein or water rights necessary for erecting and maintaining dams, plants and works, for flowage, for power, for pumping, for supplying water through its mains, for reservoirs, for preserving the purity of the water and watershed, for laying and maintaining aqueducts and other structures for taking, distributing, discharging and disposing of water and for rights-of-way or roadways to its sources of supply, dams, power stations, reservoirs, mains, aqueducts, structures and lands.

The district may, for the purposes outlined in this Act, do any and all things necessary to provide a sewerage system for public purposes and for the health, comfort and convenience of the inhabitants of said district either by construction, eminent domain or purchase of any existing facilities. The said district is authorized, for the purposes of its incorporation, to erect and maintain all dams, reservoirs and structures necessary and convenient for

its corporate purposes. 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 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. 5. Procedure in exercising rights of eminent domain; assessment of damages; appeal procedure. In exercising any rights of eminent domain that are conferred upon said district, the district shall file for record in the registry of deeds in Penobscot County plans of the location of lands or interest therein to be taken, with an appropriate description and the names of the owners thereof, if known. When for any reason the district fails to acquire property which it is authorized to take and which is described in such location, or if the location so recorded is defective or uncertain, it may, at any time, correct and perfect such location and file a new description thereof; and in such case, the district is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the district shall not be liable for any act which would have been justified if the original taking had been lawful. No entry shall be made on any private lands, except to make surveys, until the expiration of 10 days from such filing; whereupon possession may be had of all such lands or interest therein so taken, but title thereto shall not vest in said district until paid for.

If any person sustaining damages by any taking as aforesaid shall not agree with the trustees of said district upon the sum to be paid therefor, either party, upon petition to the county commissioners of Penobscot County, may have said damages assessed by them. The procedure and all subsequent proceedings and the rights of appeal thereon shall be had under the same restrictions, conditions and limitations as are or may be prescribed in the case of damages by laying out of highways.

Sec. 6. Procedure if public utility must be crossed. In case of crossing of any public utility, unless consent is given by the company owning and 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 upon petition by the district 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, or as prescribed by the Public Utilities Commission, but at the expense of the district.

Sec. 7. Trustees; how elected; meetings; officers. All the affairs of said district shall be managed by a board of trustees composed of 5 members who shall be bona fide residents of the Town of Dexter and who shall be chosen as hereinafter provided.

As soon as may be after the acceptance of this Act as hereinafter provided, the selectmen of the Town of Dexter shall appoint 5 trustees of said district to hold office as follows: 2 to serve until the first annual town meeting of the Town of Dexter following the acceptance of this Act; 2 to serve until the 2nd annual town meeting of said town following such acceptance; and one to serve until the 3rd annual town meeting of said town following such accept-

ance. At each annual town meeting of said town, beginning with the first annual town meeting following the acceptance of this Act, the number of trustees whose terms expire at such annual town meeting shall be elected by the town in the manner of voting followed at the town meeting for the election of selectmen, to serve until the annual town meeting occurring 3 years thereafter and until their successors are elected and qualified.

Whenever any trustee ceases to be a resident of said district, he vacates the office of trustees. All trustees, if resident of said district, shall be eligible for reelection. Vacancies in the office of trustee shall be filled by the selectmen until the next annual town meeting of the Town of Dexter, and at such annual town meeting the unexpired portion of said term, if any, shall be filled in the same manner as the trustees are elected.

As soon as convenient after their appointment, the first board of 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 that they may meet by agreement without such notice. They shall then organize by electing from their own number a chairman and a clerk and, not necessarily from their own number, a treasurer. They shall adopt a corporate seal and may adopt bylaws and perform any other acts within the powers delegated to them by law.

Following each annual town meeting of said Town of Dexter, the trustees shall elect from their own number a chairman and a clerk and, not necessarily from their own number, a treasurer to serve until the next annual town meeting of said Town of Dexter and until their respective successors are elected and qualified.

The trustees from time to time may choose and employ and fix the compensation of any other necessary officers and agents, who shall serve at their pleasure. The treasurer shall furnish bond in such sum and with such sureties as the trustees shall approve, the cost thereof to be paid by the district. Members of the board of trustees shall be eligible to any office under the board. The trustees, as such, shall receive as compensation for their services, an amount to be determined by them not to exceed \$300 each per year; but the treasurer may be allowed such compensation as the trustees shall determine.

The trustees shall be sworn to the faithful performance of their duties as such, which shall include the duties of any member who shall serve as clerk or clerk pro tem.

Sec. 8. Annual report. The trustees shall make and publish an annual report, including, with limitation, a profit and loss statement and a balance sheet, and such report may be included in, and published as part of, the annual town report.

Sec. 9. District and town authorized to make and assume contracts. Said district, through its trustees, is authorized to contract with persons and corporations, including the Town of Dexter, and said Town of Dexter is authorized to contract with it, for the supply of water for municipal purposes and for the use of sewerage and drainage facilities.

All valid contracts between the Town of Dexter and other towns, persons or corporations for supplying water or sewerage services within the Town of Dexter which are in effect on the date of transfer by the Town of Dexter to the district of its plant, properties, rights and privileges used or useful in providing a water supply and sewerage system in the Town of Dexter shall be assumed and carried out by the said Dexter Utility District.

Sec. 10. Authorized to acquire property of the Town of Dexter devoted to water supply or sewerage system purposes. Said district, through its trustees, is authorized to acquire by purchase or upon conveyance all or part of any property owned by the Town of Dexter, located in the Town of Dexter, including without limitation all lands, waters, water rights, reservoirs, pipes, machinery, plants, drains, fixtures, hydrants, tools and all apparatus and appliances used or usable in supplying water and sewerage facilities in the Town of Dexter; and the consideration to be paid therefor shall be the assumption by the district of all of the outstanding debts, obligations and liabilities of the Town of Dexter associated with the operation of its water supply and sewerage system and any of the properties transferred to said district hereunder including, without limitation, the assumption by said district of the liability represented by the \$29,000 aggregate principal amount of outstanding Town of Dexter 4.5% Water Works Notes of 1968.

The Town of Dexter, through its selectmen, without town vote, is authorized to sell, transfer and convey its said properties to said district in consideration of the assumption by said district of the outstanding debts, obligations and liabilities of the Town of Dexter associated with the operation of its water supply and sewerage system and any of the properties transferred to the district hereunder including, without limitation, the liability represented by the \$29,000 aggregate principal amount of outstanding Town of Dexter 4.5% Water Works Notes of 1968.

Nothing contained herein shall prohibit the district from making contracts with the Town of Dexter for the construction, operation and maintenance of facilities by the district for collecting, conveying and disposing of storm and surface waters within the public ways.

Sec. 11. Authorized to receive governmental aid, to borrow money, to issue bonds and notes. 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 vote of the inhabitants, is authorized to receive both state and federal aid grants; to borrow money temporarily and to issue therefor its negotiable notes, and for the purpose of renewing and refunding the indebtedness so created, of paying any necessary expenses and liabilities incurred under the provisions of this Act, including organizational and other necessary expenses and liabilities, whether incurred by the district or the Town of Dexter, the district being authorized to reimburse said Town of Dexter for any such expense incurred by it and in acquiring properties, paying damages, laying pipes, mains, drains, aqueducts and conduits, constructing, maintaining and operating a water plant or system and a sewerage plant or system and making renewals, additions, extensions and improvements to the same and to cover interest payments during the

period of construction. Said district, through its trustees, without the vote of its inhabitants, is also authorized to issue, from time to time, bonds, notes or other evidences of indebtedness of the district in one series, or in separate series, in such amount or amounts, bearing interest at such rate or rates, selling at par, at a discount or at premium and having such other terms and provisions as the trustees shall determine.

Said bonds, notes and evidences of indebtedness may be issued to mature serially or made to run for such periods as the trustees may determine. Bonds, notes or evidences of indebtedness may be issued with or without provision for calling the same prior to maturity, and if callable, may be made callable at par or at such premium as the trustees may determine. All bonds, notes or other evidences of indebtedness shall have inscribed upon their face the words "Dexter Utility District", shall be signed by the treasurer and countersigned by the chairman of the board of trustees of the district, and if coupon bonds are issued, the interest coupons attached thereto shall bear the facsimile signature of the treasurer.

All such bonds, notes and evidences of indebtedness so issued by the district shall be legal obligations of the district, which is declared to be a quasi-municipal corporation within the meaning of the Revised Statutes of 1964, Title 30, section 5053, and all provisions of said section shall be applicable thereto.

The district may refund and reissue, from time to time, in one or in separate series, its bonds, notes and other evidences of indebtedness, and each authorized issue shall constitute a separate loan. All bonds, notes and evidences of indebtedness issued by said district shall be legal investments for savings banks in the State of Maine.

Sec. 12. Property tax exempt. The property, both real and personal, rights and franchises of said district, shall be forever exempt from taxation in the Town of Dexter.

Sec. 13. Rates, application of revenue, sinking fund. All individuals, firms and corporations, whether private or public, shall pay to the treasurer of said district the rates established by said board of trustees for the services used by them, and said rates shall be uniform within the territory supplied by the district, and the water rates shall be subject to the approval of the Public Utilities Commission.

Said water and sewer rates shall be so established as to provide revenue for the following purposes:

1. **Current expenses.** To pay the current expenses for operating and maintaining the water and sewerage systems and disposal facilities and to provide for such extensions and renewals as may become necessary.

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

3. **Sinking fund.** To provide each year a sum equal to not less than 1% nor more than 5% of the entire indebtedness created or assumed by the dis-

tract, 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, a fiduciary or trustees in the State of Maine are now or hereafter allowed to hold. 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.

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

Sec. 14. Lien to secure payment of rates; procedure. There shall be a lien on real estate served by the sewers of the district to secure the payment of rates established and due under the provisions of section 13, which shall take precedence of all 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 certified or registered mail or by publication in a newspaper published in the Town of Dexter 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 or certified mail

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 \$6 and the fee to be charged by the register of deeds for such filing shall not exceed \$3.

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 12 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 provided for discharge of real estate mortgages.

Sec. 15. Existing statutes not affected; rights conferred subject to provisions of law. Nothing herein contained is intended to repeal, or shall be construed as repealing, the whole or any part of any existing statute, and all the 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 and additional thereto.

Sec. 16. Act void unless property of Town of Dexter is acquired. If said district, pursuant to the provisions hereof, shall fail to purchase and acquire, before October 1, 1972, the plant, properties, franchises, rights and privileges owned by the Town of Dexter and used or usable in supplying water and sewerage facilities in the Town of Dexter, then this Act shall become null and void on said date.

Emergency clause; effective date; referendum; certificate to Secretary of State. In view of the emergency cited in the preamble, this Act shall take effect when approved, only for the purpose of permitting its submission to the legal voters of the Town of Dexter at a special election or elections called and held for the purpose. The dates of said elections shall be determined by said municipal officers, but such election shall not be later than the first day of December, 1971. Such special elections shall be called, advertised and conducted according to the law relating to municipal election; provided, however, the registrar of voters shall not be required to prepare nor the town clerk to post a new list of voters; and for this purpose the registrar of voters shall be in session on the first secular day next preceding said election. 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 Creating the Dexter Utility District, passed by the 105th 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.

The result of the vote in said district shall be declared by the municipal officers of the Town of Dexter and due certificate thereof filed by the town clerk with the Secretary of State, and if said result so filed shows that a majority of the vote is for approval of this Act, it shall take complete effect; provided that the total number of votes cast for and against the acceptance of this Act equals or exceeds 20% of the total vote for all candidates for Governor cast in said district at the next previous gubernatorial election, but if the total number of votes so cast at any such election shall be less than such 20%, such fact shall not prohibit a subsequent election or elections for such purpose held before July 1, 1972.

STATEMENT OF FACT

The purpose of this bill is to establish a water and sewer district to enable the Town of Dexter and its inhabitants to build a sewer treatment plant and to have centralized administration of its water and sewer systems.