

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1375

S. P. 452

In Senate, March 12, 1971

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

HARRY N. STARBRANCH, Secretary

Presented by Senator Chick of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

**AN ACT to Authorize the Hallowell Water District to Collect and
Treat Sewage.**

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

Whereas, appropriate facilities are necessary to collect and treat the sewage of Hallowell in order to prevent pollution in the Kennebec River; and

Whereas, it is imperative that action be taken at the earliest moment to comply with state and federal laws; 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. Hallowell Water District authorized to engage in sewer collection, treatment and disposal. The Hallowell Water District, a quasi-municipal corporation organized and existing pursuant to Chapter 75 of the private and special laws of 1921, as amended, is authorized whenever the trustees deem it necessary to construct, maintain, operate and provide a sewage system for the collection, treatment and disposal of all sewage and storm and surface water drainage within the area of the district.

Sec. 2. Power of Hallowell Water District. In addition to its existing powers the district is authorized to take, collect, hold, transmit, treat, purify,

discharge and dispose of all sewage within said area. All incidental powers, rights and privileges necessary to the accomplishment of the objects set forth in this Act are granted to said district.

Sec. 3. Authority to construct and maintain. The district is authorized to lay in, along, under and through the streets, roads, ways and highways and tidal waters, lakes, ponds, rivers and water courses in said area and across private lands therein, and to maintain, repair and replace all such pipes, lines, drains, conduits, interceptor lines, trunk sewers, outfalls, outlets, fixtures and appurtenances and to construct, operate, maintain and replace such collection, disposal, treatment and purification facilities and appurtenances, as may be necessary and convenient for the district in carrying out the foregoing powers. The division of responsibility between this district and the city as to maintenance of facilities in streets shall be at the top of the manhole and catch basin covers, with the city to be responsible for the area above the same.

The district is declared to be a public service corporation as the term is used in the Maine Revised Statutes of 1964, Title 30, section 4953, subsection 6.

Sec. 4. Excavation and repair work, property to be left in good condition. Whenever the district shall enter, dig up or excavate any street, way or highway, or other land for sewer purposes, it shall cause the same to be done with as little obstruction as possible to the public travel and shall at its own expense, without unnecessary delay, cause the earth and pavement removed by it to be replaced in proper condition.

Sec. 5. Authority to acquire and hold property; eminent domain. The district is authorized and empowered to acquire and hold real and personal property necessary or convenient for the purposes of this Act.

The district is authorized and empowered to exercise the right of eminent domain in the area of the district as provided in this Act, to acquire and hold for such purposes either by purchase or exercise of its right of eminent domain any land, real estate, easements or interest therein or water rights, and interests therein for the purposes of any sewers, trunk sewers, drains, reservoirs, interceptor lines, pumping stations, treatment and disposal facilities, outfalls and all such other equipment, appliances, appurtenances and property used or useful for the collection, transmission, holding, treatment, purification, discharge and disposition of all waste water and sewage.

In exercising its right of eminent domain, the said district shall follow the procedures as established in said chapter 75 of the private and special laws of 1921, as amended. Nothing contained in this Act shall be construed as authorizing the district to take by right of eminent domain any of the property or facilities of any municipal or quasi-municipal corporation used or acquired for future use by the owner thereof in the performance of a public duty, unless expressly authorized by special Act of the Legislature.

Sec. 6. Crossing a public utility. In case of a crossing of any land or interest in land owned by a company operating any public utility, unless written consent is given by such company as to place, manner and conditions

of the crossing, within 30 days after such consent is requested in writing by the 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 company shall be done under the supervision and to the satisfaction of such company, or as prescribed by the Public Utilities Commission, but at the expense of the district.

Sec. 7. Title to present sewers. Upon the acceptance of this Act as provided, title to all public drains and sewers of the City of Hallowell shall pass to and vest in said district without payment therefor, and said district shall maintain and operate the same.

Sec. 8. Governmental grants and loans. The district is authorized to enter into agreements with federal, state and local governments or any agency thereof, or any corporation, commission or board authorized by federal, state or local governments to grant or loan money to or otherwise assist in the financing of projects for accomplishing the purposes of this Act, and to accept grants and borrow money from any such government, agency, corporation, commission or board as may be necessary or desirable for such purposes.

Sec. 9. Books and accounts and allocation of charges between water system and sewer system. The trustees shall maintain separate records and accounts for the sewer system constructed or acquired pursuant to this Act, and shall allocate joint expenses, charges and receipts as between the water system and the sewer system constructed or acquired pursuant to this Act, all in accordance with generally accepted accounting practices and procedures.

Sec. 10. Right to inspect; rules and regulations, injunctive relief. The officers or agents of the district shall have the right to enter all premises from which any sewer or drain is connected with any part of the system or with any sewage system connecting with the system of the district, at all reasonable hours, for inspection of plumbing and sewage fixtures, to ascertain the quantity and character of sewage discharged and the manner of discharge; and to enforce this Act and the rules and regulations prescribed by the trustees of the district.

The trustees shall, for the proper and reasonable operation of the sewer system constructed or acquired pursuant to this Act, adopt reasonable rules and regulations relative to the sewage system, including without limitation regulations as to the quantity and character of any sewage, drainage or other wastes discharged into any sewage system connecting with the system of the district, but such regulations shall at least meet the minimum standards prescribed by the Maine Environmental Improvement Commission. Rules and regulations adopted by the trustees shall be published, from time to time, in suitable form.

The trustees may require pretreatment of wastes discharged into its system or into any system connecting with its system if the trustees determine such wastes may interfere or damage such sewer system.

In addition to any other remedy, the Superior Court shall have jurisdiction upon a complaint filed by the district to restrain or enjoin any person, firm,

corporation or municipality from committing any act which may damage or impair its sewer system or which is prohibited by any rule or regulation of the district. It is the intention of the Legislature that the district may seek the injunction set forth in this section without first resorting to any other form of proceedings or procedure as a condition precedent to the granting of such injunction.

Sec. 11. Property tax exempt. Wherever located, the property, both real and personal, rights and franchises used in connection with the sewer system constructed or acquired pursuant to this Act shall be forever exempt from all forms of taxation.

Sec. 12. Authorized to borrow money; to issue bonds and notes for sewer purposes. The district, through its trustees and without vote of its inhabitants, is authorized to issue from time to time bonds or notes of the district to pay the costs of capital outlay incurred by the district in connection with accomplishing the purposes as contained in this Act, including any necessary expenses and liabilities in acquiring properties, renovating properties, laying pipes, conduits, drains, interceptor lines, trunk sewers, construction of treatment plants, laboratories and other sewer facilities; making renewals, additions, extensions and improvements to the same; and for the establishment of reasonable reserve for future payments of debt service which reserve shall not exceed for any issue of bonds or notes, the amount of interest and principal payable on account of such issue averaged for each year except the last in which principal of such issue is payable, and for the interest during the period of construction and for a period not exceeding one year thereafter. Bonds or notes issued pursuant to this Act shall be issued in such amount or amounts as the district, acting through its trustees and without vote of its inhabitants, may determine; and the district may refund any such bonds or notes. Said bonds or notes shall be issued to mature serially, in annual installments, the first of which shall be payable not later than 5 years from the date of such bonds or notes and the last of which shall be payable not later than 40 years from said date, as the trustees shall determine; or may be issued for a term of years not exceeding 40 years; or in a combination to mature serially and for a term of years not exceeding 40 years, all as the trustees shall determine. Said bonds may be callable with or without premium. Said bonds or notes shall contain such terms and conditions, bear such rate or rates of interest, be sold in such manner, at public or private sale, at par, at a discount or at a premium, all as the trustees shall determine.

If the trustees vote to issue bonds or notes pursuant to this Act, the trustees may authorize the issuance, in the name of the district, of temporary notes for a period of not more than 3 years in anticipation of the money to be received from the sale of such bonds or notes. The time within which such temporary notes shall be payable need not be included in determining the period for which said bonds or notes may be issued.

Temporary notes issued under this section for a shorter period than the maximum permitted may be renewed by the issue of other temporary notes maturing within the required period; provided that the period from the date of issue of the original temporary note to the date of maturity of the

renewal note shall not exceed the maximum period for which the **original** temporary note may have been issued. Such temporary notes or renewal notes may be sold at discount or with interest payable at, or on and before maturity.

The district may refund and reissue from time to time in one or in separate series the bonds or notes issued pursuant to this Act. All such bonds, notes or other evidences of indebtedness shall have inscribed upon their face "Hallowell Water District" and shall be executed as the board of trustees shall determine.

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.

All such bonds, notes and evidences of indebtedness issued by said district pursuant to this Act shall be legal investments for savings banks in the State of Maine, and shall be tax exempt.

Unless and until such time as a governmental agency of the State of Maine shall be given general jurisdiction to oversee the borrowing activities of sewer districts, the district is authorized to issue bonds, notes and evidences of indebtedness pursuant to this Act without the approval of any governmental agency.

Sec. 13. Contracts with municipalities authorized. The district is authorized to contract with persons, firms and corporations whether public, private or municipal located within the area of the district or adjacent thereto to provide for collection and disposal of sewage; and any town wholly or partly in said district is authorized to contract with the district for the collection, treatment and disposal of sewage. This district may contract with any other sewer or sanitary district adjacent to its area for the latter to treat and dispose of its sewage and any such other sewer or sanitary district is authorized to do so.

Sec. 14. Rates; application of revenues. All persons, firms and corporations, whether public, private or municipal, shall pay to the district the rates, rents, entrance charges and other lawful charges established by the trustees for the sewer or drainage service used or available with respect to their real estate, which rates shall include rates for the district's readiness to serve, charged against owners of real estate, abutting on or accessible to sewers or drains of the district, but not actually connected thereto, whether or not such real estate is improved.

Rates, rents and entrance charges shall be uniform within the district whenever the cost to the district of installation and maintenance of sewers or their appurtenances and the cost of service is substantially uniform; but nothing in this Act shall preclude the district from establishing a higher rate, rent or entrance charge than the regular rates, rents and entrance charges in sections where, for any reason, the cost to the district of construction and maintenance,

or the cost of service, exceeds the average, but such higher rates, rents and entrance charges shall be uniform throughout the sections where they apply.

The sewer rates, rents and entrance charges shall be so established, after taking into account any reimbursements from the water system of the district as hereinafter set forth, as to provide revenue for the following purposes:

1. To pay the current expenses for operating and maintaining the sewer system constructed or acquired pursuant to this Act;
2. To provide for the payment of interest on the indebtedness created by the district, pursuant to this Act;
3. To provide each year a sum equal to not less than 2% nor more than 5% of the entire indebtedness created by said district pursuant to this Act, which sum shall be turned into a separate sinking fund and there kept together with any earnings on said sinking fund, to provide for the extinguishment of said indebtedness. The money set aside for such sinking fund shall be devoted to the retirement of the obligations of such district incurred for the purposes of this Act, and invested in such securities as savings banks in this State are now or hereafter allowed to hold;
4. If any surplus remains at the end of the year, it may be turned into such sinking fund.

Sec. 15. Assessment against lot benefited. When the district has constructed and completed a sewer, the trustees may, if they so determine, in order to defray a portion of the expense thereof, determine what lots or parcels of land are benefited by such sewer, and estimate and assess upon such lots and parcels of land, and against the owner thereof, or person in possession or against whom taxes thereon are assessed, whether said person to whom the assessment is 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 suitable towards defraying the expenses of constructing and completing such sewer, together with such appurtenances as may be necessary, the whole of such assessments not to exceed $\frac{1}{2}$ of the cost of such sewer and appurtenances. The trustees shall file with the clerk of the district the location of such 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 the district shall record the same in a book kept for that purpose, and within 10 days after such filing 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 and if he has no place of abode in the 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 said 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 of general circulation in the town in which the lot so assessed is located, the first publication to be at least 30 days before the hearing; a return made upon a copy of such notice by any constable of the town in which the land is located or the production of the paper containing such notice shall be conclusive evidence that said notice has been given, and upon such hearing the trustees shall have power to revise, increase or diminish any of such assessments and all such revisions, increases or diminutions shall be in writing and recorded by the clerk of the district.

Sec. 16. Right of appeal. Any person aggrieved by the decision of said trustees as it relates to any assessment for sewer construction performed shall have the same rights of appeal as are provided in the case of laying out of town ways.

Sec. 17. Assessments; lien; sheriff's sale. All assessments made under section 15 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 trustees file with the clerk of the district the completed assessment, and shall continue for one year thereafter; and within 10 days after the date of hearing on said assessment, the clerk of the district 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 the district; if said assessments are not paid within 3 months from the date hereof, 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 commanding the officer serving it to specially attach the real estate upon which the lien is claimed, which shall be served as other attachments to enforce liens on real estate. The complaint 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 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 of suit against the defendants and against the real estate upon which the assessment was made, and execution shall issue thereon to be enforced by sale of such real estate in the manner provided for a sale on execution of real estate; 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 provided in the Revised Statutes, Title 36, section 94I.

Sec. 18. Additional method of collection of assessments. If assessments under section 15 are not paid, and said district does not proceed to collect un-

paid assessments by a sheriff's sale of the real estate upon which such assessments are made under section 17, 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 17, then said district in its name 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 of competent jurisdiction, and in such suit may recover the amount of such assessment with 10% interest on the same from the date of said assessment and costs.

Sec. 19. Assessments paid by other than owner; how recovered. When any assessment under section 15 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 said lot or parcel of land with the buildings thereon for the amount of said assessment 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 under the Revised Statutes, Title 10.

Sec. 20. Lien for payment of rates. There shall be a lien on real estate served or benefited by the sewers of the district to secure the payment of rates established and due under section 14 which shall take precedence over all other claims on such real estate, excepting only claims for taxes. Real estate for the purposes of this Act shall have same definition as given in the Revised Statutes, Title 36, section 551.

The treasurer of the district shall have full and complete authority and power to collect the rates, rents and other charges established under section 14 and the same shall be committed to him. The treasurer may, after demand for payment, sue in the name of the district in a civil action for any rate, rent or other charge remaining unpaid in any court of competent jurisdiction. In addition to other methods established by law for the collection of rates, rents and other charges, and without waiver of the right to sue for the same as aforesaid, the lien hereby created may be enforced in the following manner. The treasurer, when a rate, rent or other charge has been committed to him for collection, may, after the expiration of 3 months and within one year after date when the same became due and payable, in the case of a person resident in the district give, or cause to be given to such person, or leave or cause to be left, at his last and usual place of abode, a notice in writing signed by the treasurer stating the amount of such rate, rent or other charge, describing the real estate upon which the lien is claimed, and stating that a lien is claimed on said real estate to secure the payment of said rate, rent or other charge and demanding within 30 days after the service of such notice payment as aforesaid. In the case of a nonresident of the district the aforesaid notice shall be given by registered or certified mail addressed to his last known address or by publication in a newspaper of general circulation within the town in which the land is located once a week for 2 successive weeks and shall demand payment within 30 days after the mailing thereof or the first publication of notice thereof as aforesaid. After the expiration of said period of 30 days and within one year thereafter, the treasurer may record in the

registry of deeds of Kennebec County a certificate signed by the treasurer setting forth the amount of such rate, rent or other charge, describing the real estate on which the lien is claimed, and stating that a lien is claimed on the real estate to secure payment of said rate, rent or other charge and that a notice and demand for payment of same has been given or made in accordance with this section and stating further that such rate, rent or other charge remains unpaid. At the time of the recording of any such certificate in the registry of deeds as provided, the treasurer shall file in the office of the district a true copy of such certificate and shall mail a true copy thereof by registered or certified mail to each record holder of any mortgage on said real estate, addressed to such record holder at his last and usual place of abode. The fee to be charged by the district to the ratepayer for such notice and filing shall not exceed \$3.50, and the fee to be charged to the district by the register of deeds for filing and recording shall not exceed \$3.

The filing of the aforesaid certificate in the registry of deeds shall be deemed to create, and shall create, a mortgage on the real estate therein described to the district which shall have priority over all other mortgages, liens, attachments and encumbrances of any nature, except liens, attachments and claims for taxes, and shall give to the district all the rights usually possessed by mortgages, except that the district as mortgagee shall not have any right to possession of said real estate until the right of redemption hereinafter 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 said certificate in the registry of deeds as provided, the mortgage shall be deemed to have been foreclosed and the right of redemption to have expired. The filing of the certificate in the registry of deeds shall be sufficient notice of the existence of the mortgage hereby provided for. In the event that said rate, rent or other charge, with interest and costs as aforesaid, 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.

This district shall have the right to enact a rule and regulation authorizing it to terminate a customer's water service in the event he is delinquent in his sewer charge.

Sec. 21. Rights conferred subject to provisions of law; Public Utilities Commission supervision. All the rights and duties herein mentioned shall be exercised and performed in accordance with all the provisions of the Revised Statutes of 1964, Title 35, and all Acts amendatory thereof and additional thereto.

Sec. 22. P. & S. L. 1921, C. 75, § 1, repealed and replaced. Section 1 of chapter 75 of the private and special laws of 1921, as amended by section 1 of chapter 28 of the private and special laws of 1941, is repealed and replaced to read as follows:

Sec. 1. Territorial boundaries and corporate name. All the territory of the City of Hallowell and all that area in the Town of Farmingdale lying westerly of a line 1,000 feet easterly of and parallel to the Blaine Road be-

ginning at the Hallowell-Farmingdale Line and extending to a point 1,000 feet south of Bowman Street, and lying northerly of a line that begins at the southerly end of the first line and extends at right angles to the west line of Farmingdale, together with the people in said area, shall constitute a public municipal corporation under the name of the Hallowell Water District for the purpose of supplying the inhabitants of said area with pure water for domestic, sanitary and municipal purposes.

Sec. 23. P. & S. L., 1921, C. 75, § 2, amended. Section 2 of chapter 75 of the private and special laws of 1921, as amended by section 1 of chapter 50 of the private and special laws of 1925, is further amended to read as follows:

Sec. 2. Right conferred to take water from and increase storage of Jamie's and Hutchinson Ponds. The said district for the purposes of its incorporation, is hereby authorized to divert and use water from ~~Jimmie's pond~~ **Jamie's and Hutchinson Ponds**, so-called, situated in the Towns of Farmingdale and Manchester, and to increase the storage of said ~~pond ponds~~, to take and hold for public uses, by purchase, eminent domain or otherwise, any land or interest therein, or water rights necessary for erecting and maintaining dams, for flowage, for power for pumping its water supply through its mains, for reservoirs, for preserving the purity of the water and the water shed, 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 source of supply, its dams, power stations, reservoirs, mains, aqueducts, structures and lands.

Sec. 24. P. & S. L., 1921, C. 75, § 6, repealed and replaced. Section 6 of chapter 75 of the private and special laws of 1921 is hereby repealed and replaced as follows:

Sec. 6. Authorized to purchase water from other water district or corporation and to sell water. The said district through its trustees is hereby authorized to purchase or obtain a supply of pure water, when necessary, from any other water district, water company or source of supply and to sell water to any such district or company.

Sec. 25. P. & S. L., 1921, C. 75, § 10, amended. Section 10 of Chapter 75 of the private and special laws of 1921, as amended by section 2 of chapter 28 of the private and special laws of 1941, is further amended to read as follows:

Sec. 10. Affairs to be managed by board of trustees. All the affairs of said water district shall be managed by a board of trustees composed of 3 members to be appointed by the mayor and confirmed by the ~~board of aldermen~~ **city council** of the City of Hallowell within 30 days after this act takes effect, the first one so appointed to hold office for one year, the second for 2 years, and the third for 3 years from the time of the regular January meeting of the city government next ensuing after this act becomes effective. Thereafter, one member shall be so appointed and confirmed each year at the regular January meeting. In case of a vacancy by death, resignation or removal, a member shall be appointed and confirmed in like manner forthwith, to serve the remainder of the term in which the vacancy oc-

curs. ~~The member serving the last year of his period of appointment shall be chairman and the member serving next to the last year of his appointment shall be clerk.~~ All trustees shall serve until their successors are appointed and duly qualified and appointments and confirmations may be made later than the January meeting. The trustees shall annually elect one of their number chairman, another clerk and a person, who need not necessarily be a trustee, treasurer. The trustees shall adopt a corporate seal and such bylaws as are necessary for their own convenience and the proper management of the affairs of the district. Said trustees may hold their meetings in the city government rooms. The compensation of the trustees shall be at the rate of ~~\$5~~ \$20 for each meeting attended, providing, however, that the total compensation shall not exceed ~~\$100~~ \$400 each per annum. Said trustees shall be at all times subject to removal by the city government, for proper cause shown.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

The purpose of this bill is to authorize the Hallowell Water District to provide sewerage collection and treatment in the City of Hallowell. The Act also changes the area of the district slightly to take in a portion of Farmingdale and clarifies the qualification of trustees when an appointment has not been made on time, establishes a change in the method of electing officers of the district and provides for additional compensation.