

# MAINE STATE LEGISLATURE

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(EMERGENCY)  
FIRST SPECIAL SESSION

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ONE HUNDRED AND SEVENTH LEGISLATURE

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**Legislative Document**

**No. 2003**

H. P. 1838

House of Representatives, January 19, 1976

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

EDWIN H. PERT, Clerk

Presented by Mr. MacLeod of Bar Harbor.

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**STATE OF MAINE**

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SIX

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**AN ACT Creating the Winter Harbor Utilities District.**

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

Whereas, the present water system is inadequate and in need of immediate improvement and repair to protect the quality of the water service and the health and well-being of the inhabitants of Winter Harbor; and

Whereas, an adequate supply of pure water is essential to the health and well-being of the inhabitants of the Town of Winter Harbor; and

Whereas, it is desirable that a public district be formed in Winter Harbor to be able to take over a private water company forthwith in order to supply water service to the people of the area and also to provide for sewerage treatment for the area; and

Whereas, it is vital that this be done at once for the benefit of the people of the area; 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; incorporation; purposes.** The inhabitants and territory within the Town of Winter Harbor, in the County of Hancock, are created a body politic and corporate under the name of "Winter Harbor Utilities District." The purposes of said district shall be generally to construct, maintain, operate and provide a water system for domestic, commercial, sanitary and municipal purposes including the extinguishment of fires, and a system of sewerage, sewage and storm water disposal and sewage treatment; to provide for removal and treatment of sewage when, as and if such treatment becomes necessary; and generally to construct, maintain, operate and provide a water system and a system of sewers, sewage and storm water disposal and sewage treatment for public purposes and for the health, comfort and convenience of the inhabitants of the district.

**Sec. 2. Authority to construct and maintain.** Within said territory and wherever its plant, properties, franchises, rights and privileges may be located or in effect within the territory of any adjoining municipality, the Winter Harbor Utilities District is authorized to lay pipes, drains, sewers, mains and conduits and to take up, replace, repair and maintain the same or to contract for the same to be done, in, along and through any public or private ways, public grounds or lands of any person or corporation as hereafter provided; to construct and maintain dams, reservoirs, aqueducts, standpipes, pumping stations, sewage treatment works, catch basins, flush tanks and all other appliances for collecting, holding, purifying, distributing and disposing of water, sewage, and of surface and waste water; to install hydrants, drains, manholes, pumps and all other appurtenances necessary and convenient for the operation of water and sewerage systems; and generally to do any and all things necessary or incidental to accomplish the purposes of this Act.

**Sec. 3. Authority to acquire and hold property; eminent domain.** By acceptance of this Act as hereinafter provided, title to all public sewers in the Town of Winter Harbor, if any, wherever the same may be located shall forthwith pass to and be vested in said district.

The district is authorized and empowered to acquire and hold real estate and personal estate necessary and convenient for the aforesaid purposes, and is expressly granted the right of eminent domain. This district is authorized to take, use and hold by purchase, lease or the exercise of eminent domain, as hereinafter provided, or otherwise any land or interest therein, and any pond, stream, surface or ground waters and sewer rights necessary for erecting and maintaining dams, plants and works, for flowage, for power, for pumping, for supplying water through its mains and sewerage system, for reservoirs for preserving the purity of the water and watershed, for laying and maintaining mains, aqueducts and other structures, for taking, distributing, discharging and disposing of water and sewerage, for forming basins, reservoirs and outlets in a sewerage system, for erection of buildings for pumping works for use therein, for laying pipes and sewers and maintaining same, and for laying and maintaining conduits for carrying, collecting, discharging and disposing of sewerage matters and waters, for filtering, rectifying, treating and disposal plants, works and facilities, for such other objects

necessary, convenient and proper for the purposes of its incorporation, and for right-of-way or roadways to the sources of supply, dams, power stations, reservoirs, mains, aqueducts, structures, plants, works, facilities and lands. Nothing herein contained shall be construed as authorizing said water and sewer 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. 4. Procedure as to the exercise of right of eminent domain.** In exercising any rights of eminent domain that are herein conferred upon said district, the district shall file for record in the registry of deeds in the County of Hancock 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; whereon possession may be had of all such lands or interest therein so taken, but title thereto shall not vest in said district until payment therefor.

**Sec. 5. Liability for damages.** If any person, sustaining damages by any taking as aforesaid, shall not agree with said district upon the sum to be paid therefor, either party upon petition to the county commissioners of Hancock County may have said damages assessed by them, the procedure and all subsequent proceedings and rights of appeal thereon shall be had under the same restrictions, conditions and limitations as are or may be by law prescribed in the case of damages by laying out of highways.

**Sec. 6. Procedure if public utility must be crossed.** In case of any crossing of any public utility, unless consent is given by the company owning or operating such public utility as to place, manner and conditions of the crossing within 30 days after such consent is requested by said district, the Public Utilities Commission shall determine the place, manner and conditions of such crossing; and all work on the property of such public utility shall be done under the supervision and to the satisfaction of such public utility, but at the expense of the district.

**Sec. 7. Excavation or repair work, closing of ways.** Whenever said district shall enter, dig up or excavate any public way or other land for the purpose of laying its water mains, sewers, drains or pipes, constructing man-holes or catch basins or their appurtenances, or maintaining the same, or for any other purpose, the work shall be expeditiously done with the least possible interruption, and on completion of the work the district shall restore said way or land to the condition it was in prior to such work, or by a condition equally as good.

Whenever the character of the work is such as to endanger travel on any public way, the municipal officers of the Town of Winter Harbor may order a temporary closing of such way, and of any intersecting way, upon request of said district, and the way shall remain closed to public travel until said municipal officers deem it is restored to a condition safe for traffic.

**Sec. 8. Authorized to acquire certain property of Winter Harbor Water Company.** The said district, through its trustees, is hereby authorized upon receipt of approval of the Public Utilities Commission as provided in the Revised Statutes of 1964, Title 35, chapter 11 to acquire by purchase all or part of the plant, properties, franchises, rights and privileges owned by Winter Harbor Water Company, including lands, waters, water rights, reservoirs, pipes, machinery, fixtures, hydrants, tools and apparatus and appliances used or usable in supplying water in said district; and said company is hereby authorized upon receipt of approval of the Public Utilities Commission as provided in this section to sell, transfer and convey its said plants, properties, franchises, rights and privileges to said district.

**Sec. 9. Procedure in case trustees and Winter Harbor Water Company fail to agree on terms of purchase.** In case the said trustees fail to agree with the Winter Harbor Water Company upon terms of purchase, then said district, through its trustees aforesaid, is hereby authorized to take said properties, interest and franchise of said Winter Harbor Water Company as set forth in section 8, in the manner hereinafter provided wherein the Winter Harbor Water Company and its mortgagees, if any, or those having an interest in any realty which is of record, shall be the parties defendant. Said district, through its trustees, is hereby authorized to file a petition in the clerk's office of the Superior Court for the County of Hancock, addressed to any justice thereof who, after notice to said defendant aforesaid, shall, after hearing and within 45 days after the filing of said petition, appoint 3 disinterested appraisers for the purpose of fixing the valuations of the plant, property and franchises of said Winter Harbor Water Company described in section 8. The court may order under proper terms the production for inspection and viewing by the trustees or the said appraisers of all books and papers and real and personal property pertaining to the issue on petition for same by the petitioner unless same are voluntarily produced. The said appraisers shall have the power to administer oaths. The appraisers so appointed shall, after due notice and hearing, fix the valuation as of the date of filing said petition of said plants, properties and franchises at what they were fairly and equitably worth so that said company shall receive just compensation for same. The report of said appraisers or of a majority of them, together with the report of a stenographer certified by said appraisers as correct, shall be filed in said clerk's office within 3 months after their appointment, unless extended by the court, and any Justice of the Superior Court may, after notice and hearing, confirm or reject the same or recommit it if justice so requires. Upon the confirmation of said report, the court so sitting shall thereupon make final decree upon the entire matter, including the application of the purchase money and transfer of the property, jurisdiction over which is hereby conferred, and with the power to enforce said decree as in equity cases. All findings of fact by said court and the appraisers shall be final, but

any party aggrieved may take exceptions as to any matters of law, the same to be accompanied by so much of the case as may be necessary to a clear understanding of the question raised thereby. Such exceptions shall be claimed on the docket within 10 days after such final decree is signed, entered and filed and notice thereof has been given by the clerk to the parties and said exceptions so claimed shall be made up, allowed and filed within said time unless further time is granted by the court or by agreement of parties. They shall be entered at the next term of the law court to be held after the filing of such exceptions and there heard, unless otherwise agreed, or the law court for good cause shall order further time for hearing thereon. On payment or tender by said district of the amount determined by the final decree and the performance of all other terms and conditions imposed by said court, the said plant, properties and franchises of Winter Harbor Water Company, as described in section 8, shall become vested in this district.

If said district fails to file its petition to take by eminent domain before December 31, 1977, said plant, properties, franchises, rights and privileges owned by Winter Harbor Water Company, then the authority granted by this section shall cease.

**Sec. 10. Sanitary provisions and penalty for violation.** Any person who shall place for discharge any offensive or injurious matter or material on or into the reservoirs, aqueducts, water mains or water supply, or into the conduits, catch basins or receptacles of said district contrary to its regulations, or shall willfully injure any aqueduct, water main, hydrant, conduit, pipe, reservoir, flush tank, catch basin, inlet, manhole, outlet, engine, pump or other property held, owned or used by said district for the purpose 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, and any person who violates the provisions of section 11 or 12 shall be punished by a fine of not more than \$200, or by imprisonment for not more than one year, or by both.

**Sec. 11. 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 sewerage 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. 12. Buildings to connect with sewer if available.** Every building in the district intended for industrial, business or recreational use or for human habitation or occupancy which is located within 100 feet of a public sewer on property abutting on a street or way 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 person against whom taxes on the premises are assessed in the most direct manner possible, within 90 days after receiving request therefor from the district, or within such further time as the trustees of the district may grant, and, if feasible, with a separate connection for each house or building; provided, however, that existing buildings which are already served by a satis-

factory private sewer system which meets and continues to meet in the judgment of the trustees the applicable requirements of the state plumbing code and all applicable laws and ordinances shall not be required to connect with the public sewer.

**Sec. 13. Rights and obligations of abutters or others to enter.** Any person may enter his private drain into any sewer of the district while the same is under construction and before completion of said sewer at the point of entry, and before an entrance charge is established, on obtaining a permit in writing from the trustees; but after the sewer is completed to the point of entry and an entrance charge established on that location, no person shall enter his private drain into such sewer until he has paid the entrance charge and obtained a permit in writing from the trustees as aforesaid. All such permits shall be recorded by the clerk of the district in its records before the same are issued.

**Sec. 14. Trustees and officers; tenure of office; election to office; organization; vacancies; compensation.** All of the affairs of said district shall be managed by a board of 3 trustees, residents therein, who shall be chosen as hereinafter provided.

As soon as may be after acceptance of this Act, the municipal officers of the Town of Winter Harbor shall appoint 3 trustees of said district to hold office as follows: One to serve until the first annual meeting of said town following the acceptance of this Act; one to serve until the 2nd annual meeting of said town following such acceptance; and one to serve until the 3rd annual meeting of said town following such acceptance. At each annual meeting of said town, beginning with the first annual meeting after acceptance of this Act, one trustee shall be elected by ballot as hereafter provided to serve until the annual meeting of said town occurring 3 years thereafter until his successor is elected and qualified. When any trustee ceases to be a resident of said district, he vacates his office as trustee. All trustees, if residents of said district, shall be eligible for reelection or reappointment as hereafter provided.

The nomination of all candidates for trustee to be elected as provided by this Act shall be by nomination papers signed in the aggregate for each candidate by not less than 25 nor more than 50 qualified voters resident in said district. Each voter signing a nomination paper shall make his signature in person, and each voter may subscribe to as many nominations as there are trustees to be elected in said district and no more. Such nomination papers, before being filed, shall be submitted to the town clerk of the Town of Winter Harbor, who shall forthwith certify thereon that number of the signatures which are names of qualified voters resident in said district; one of the signers to each such separate paper shall swear to the truth thereon, and the certificate of such oath shall be annexed to or made upon the nomination papers. Such nomination papers shall be filed with the town clerk of the Town of Winter Harbor not less than 14 days, exclusive of Sundays, previous to the day of such election. With such nomination papers shall also be filed the consent in writing of the person or persons nominated. All nomination papers, being filed and being in apparent conformity with the foregoing provisions, shall be deemed to be valid; and if not in apparent conformity they may be reasonably amended under oath. In case any candidate who has been duly

nominated under the provisions hereof shall die before the day of election, or shall withdraw in writing, or shall remove his place of residence from said district, the vacancy may be supplied in the manner herein provided for such nominations, except that the time limit for filing such nomination papers shall not apply. The name so supplied for the vacancy shall, if the ballots have not been printed, be placed on the ballots instead of the original nomination; or if the ballots have been printed, new ballots containing the new nomination shall, if practical, be furnished, or slips containing the new nomination shall be printed under the direction of the town clerk which shall be pasted upon said ballots and over the name of the candidate whose nomination has been vacated as aforesaid, and thereafter shall become part of said ballots as if originally printed thereon. The ballot in said district shall contain the names of all candidates so nominated in such district alphabetically arranged, printed in one column under the heading "For Trustee of the Winter Harbor Utilities District." Above such heading shall be printed "Vote for . . . . . (the number to be elected to be inserted therein). Make a cross or a check mark to the right of the name(s) voted for." 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, by writing, insert the name of any person or persons for whom he desires to vote. In preparing his ballot the voter shall make a cross (X) or a check mark (✓) against and to the right of such names on said ballot as he desires to vote for, not to exceed the number of trustees so to be elected in said district. At each annual meeting of said Town of Winter Harbor, balloting for trustee of said district shall take place concurrently with balloting for the municipal officers of said town, but separate ballots shall be provided for the balloting for trustee of the district as hereinbefore provided. The result of such election shall be declared by the selectmen of said Town of Winter Harbor and due certificate thereof filed with the town clerk and the clerk of the district. The district shall reimburse the town for the expense of any district election.

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 2 members not less than 2 full days before the meeting; provided, however, that they may meet by agreement without such notice. At this original meeting the trustees shall organize by electing from their own members a chairman, a treasurer and a clerk and adopting a corporate seal. The trustees may adopt and establish bylaws, consistent with the laws of the State of Maine and necessary for their own convenience and the proper management of the affairs of the district, and perform any other acts within the powers delegated to them by law.

Within one week after each annual election, the trustees shall meet for the purpose of electing a chairman, treasurer and clerk to serve for the ensuing year and until their 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 serve without compensation; 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. They shall make and publish an annual report, including a report of the treasurer, and such report may be included in, and published as part of, the town report.

Vacancies in the office of trustee from whatever cause shall be filled by appointment by the remaining trustees until the next annual election. If at any annual election there shall exist a vacancy in an unexpired term, and the voters of the district shall cast their ballots as hereinbefore prescribed, voting for as many candidates as there are offices to be filled.

**Sec. 15. Special meetings; qualifications of voters of district.** Special meetings of the district may be called by the board of trustees at any time, and notice of special meetings, stating the place and time thereof and the business to be transacted thereat, shall be signed by the chairman or clerk of the board of trustees and shall be conspicuously posted in at least 2 public places within the district, not less than 7 days inclusive of Sundays, before the meeting. Any such meeting may be adjourned from time to time by vote of the qualified voters present thereat, though not less than a quorum, and without notice of the time and place of the adjourned session, other than announcement at the meeting. Twenty-five persons qualified to vote in such meetings shall constitute a quorum. 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. 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 water and 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 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. 16. Authorized to borrow money, to issue bonds and notes.** For accomplishing the purpose of this Act, said district, by vote of its board of trustees, without district vote except as hereinafter provided, is authorized to borrow money temporarily and to issue therefor its negotiable notes; and for the purpose of renewing and refunding the indebtedness so created, or paying any necessary expenses and liabilities incurred under the provisions of this Act, and in acquiring properties, paying damages, laying pipes, mains, sewers, drains and conduits, purchasing, constructing, maintaining and operating a water system and a sewerage system and making renewals, additions, extensions and improvements to such system and to cover interest payments

during any period of construction, said Winter Harbor Utilities District, by votes of its board of trustees, without district vote except as hereinafter provided, is also authorized to issue, from time to time, bonds, notes or other evidences of indebtedness of the district in such amount or amounts, bearing interest at such rate or rates, and having such terms and provisions as the trustees shall determine; provided, however, that the total indebtedness of said district at any one time outstanding shall not exceed the sum of \$500,000, and provided, further, that in the case of a vote by the trustees to authorize bonds or notes to pay for the acquisition of property, for the cost of a water system or sewerage system or part thereof, for renewals or additions or for other improvements in the nature of capital costs, the estimated cost of which, singly or in the aggregate included in any one financing is \$30,000 or more, but not for renewing or refunding existing indebtedness or to pay for maintenance, repairs or for current expenses, notice of the proposed debt and of the general purpose or purposes for which it was authorized shall be given by the clerk by publication at least once in a newspaper having a general circulation in the Town of Winter Harbor. No debt may be incurred under such vote of the trustees until the expiration of 7 full days following the date on which such notice was first published. Prior to the expiration of said period, the trustees may call a special district meeting for the purpose of permitting the voters of the district to express approval or disapproval of the amount of debt so authorized, and the trustees shall call such a special district meeting, if within 7 days following the publication of the said notice, there shall have been filed with the clerk of the district a petition or petitions signed by not less than 50 qualified voters of the district requesting that such a special meeting be called. If at such district meeting a majority of voters present and voting thereon expresses disapproval of the amount of debt authorized by the trustees, the said debt shall not be incurred and the vote of the trustees authorizing the same shall be void and of no effect. Said bonds, notes and evidences of indebtedness may be issued to mature serially in annual installments of not less than 1% of the face amount of the issue and beginning not later than 2 years from the date thereof, or may be issued with equal annual payments, applied first to interest and the balance to principal, or made to run for such periods as the trustees may determine, but no issue thereof shall run for a longer period than 40 years from the date of original issue thereof. 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 premium as the trustees may determine. All bonds, notes or other evidences of indebtedness shall have inscribed upon their face the words "Winter Harbor Utilities 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 of the 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 hereby declared to be a quasi-municipal corporation within the meaning of the Revised Statutes of 1964, Title 30, section 5053, and as amended, and all provisions of said section shall be applicable thereto. The said district may, from time to time, issue its bonds, notes and other evidences of indebtedness, for the purpose of paying, redeeming or

refunding outstanding bonds, notes or 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 and shall be tax exempt. The said district is authorized and empowered to enter into agreements with the State or Federal Government, or any agency of either, or any corporation, commission or board authorized by the State or Federal Government to grant or loan money to or otherwise assist in the financing of projects such as the district is authorized to carry out, and to accept grants and borrow money from any such government agency, corporation, commission or board as may be necessary or desirable to enforce the provisions of this Act. All notes and bonds with the maturity of more than one year shall be first approved by the Public Utilities Commission.

**Sec. 17. Sinking fund provided for.** 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 trustees of said district for the purpose of redeeming said bonds or notes when they become due and a sum equal to not less than 1% of the aggregate principal of the outstanding bonds or notes issued on account of or in behalf of said 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 trustees on favorable terms, said trustees may, 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 granted to said trustees.

**Sec. 18. Contracts authorized.** The district is authorized to contract with persons, corporations, districts and other municipalities, including the Town of Winter Harbor, to provide for the supplying of water or for the disposal of sewage, industrial waste, surface water and other waste matter, or both, through the water and sewerage systems, respectively, of the Winter Harbor Utilities District or through the appropriate system of any such person, corporation, district or other municipality; said Town of Winter Harbor is authorized to contract with the latter-named district for the supplying of water and for the disposal of sewage, industrial waste, surface water and other waste matter, and for said purposes, said town may raise money as for other municipal charges and may raise money for studies or costs in connection with purchasing or condemning the Winter Harbor Water Company.

**Sec. 19. Property tax exempt.** The real and personal property, rights and franchises of said district shall be forever exempt from taxation.

**Sec. 20. Water and sewer rates; application of revenue.** All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the separate water and sewer rates established by said board of trustees for the service or services used by them, and shall so pay the tolls, rents, entrance charges and other lawful charges established by the trustees for the sewer and drainage service used or available to their real estate. Such sewer rates may include rates for the district's readiness to serve, charged against owners of real estate on which is or are located a building or buildings whose drainage system should be connected to the district sewer system pursuant to section 12 hereof, although such buildings are not in fact connected. Rates, tolls, rents and entrance charges shall be uniform whenever the cost to the district of installation and maintenance of water mains and of sewers and their respective appurtenances and the cost of service is substantially uniform; but nothing in this Act shall preclude the district from establishing a higher rate, toll, rent or entrance charge than the regular rates, tolls, 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, tolls, rents and entrance charges shall be uniform throughout the sections where they apply.

The water and sewer rates, tolls, rents and entrance charges shall be so established as to provide revenue for the following purposes:

**A. Expenses.** To pay the current expenses for operating and maintaining the water and sewerage systems;

**B. Interest.** To provide for the payment of interest on the indebtedness created by the district;

**C. Sinking fund.** To provide each year a sum equal to not less than 1% nor more than 5% of the entire indebtedness created by said district, which sum shall be used to pay serial bonds or notes when due or be turned into a sinking fund and there kept to provide for the extinguishment of said indebtedness. Money set aside for the sinking fund shall be devoted to the retirement of the obligations of said water and sewer district, and invested in such securities as savings banks in this State are allowed to hold;

**D. Surplus.** If any surplus remains at the end of the year, it may be turned into the sinking fund or used for such other purposes of the district as the trustees may determine.

The water rates, tolls and rents shall be subject to the approval of the Public Utilities Commission.

**Sec. 21. Assessment against lot benefited.** When the district has constructed and completed a common 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, whether or not buildings or other structures are located thereon or whether or not they are otherwise improved, 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 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 sewer, together with such sewage disposal units and appurtenances as may be necessary, the whole of such assessments not to exceed  $\frac{1}{2}$  the cost of such sewer, sewage disposal units and appurtenances, respectively. 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 such 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 or notice signed by the clerk of said district, stating that 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 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 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 Town of Winter Harbor 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. 22. Right of appeal.** Any person aggrieved by the decision of said trustees as it relates to any assessment for sewer construction shall have the same rights of appeal as are provided in the case of laying out of town ways.

**Sec. 23. Assessments; lien; sheriff's sale.** All assessments made under section 21 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 said district. If said assessments are not paid within 3 months from the date hereof, the treasurer may bring an action of debt for the collection of said assessment in the name of the district against the person 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 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 issued thereon to be enforced by sale of such real estate in the manner provided for a sale on 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, as amended.

**Sec. 24. Additional method of collection of assessments.** If assessments under section 21 are not paid, and said district does not proceed to collect unpaid assessments by a sheriff's sale of the real estate upon which such assessments are made under section 23, or does not collect or in any manner delayed or defeated in collecting such assessments by a sheriff's sale of said real estate under section 23, then the treasurer, 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 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. 25. Assessments paid by other than owner; how recovered.** When any assessment under section 21 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 assessment so paid by said person, and incidental charges, which lien shall continue for one year and which lien may be enforced in an action of assumpsit as for money paid, laid out and expended, and by attachment in the way and manner provided for the enforcement of liens upon buildings and lots under the Revised Statutes of 1964, Title 10, section 3251, as amended.

**Sec. 26. Lien for payment of rates.** There shall be a lien on real estate served or benefited by the sewer systems of the district to secure the payment of rates established and due under section 20 of this Act 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 have the same definition as given in the Revised Statutes of 1964, Title 36, section 551, as amended.

The treasurer of the district shall have full and complete authority and power to collect the rates, tolls, rents and other charges established under section 20 and the same shall be committed to him. The treasurer may, after demand for payment, sue in the name of the district in an action of assumpsit

for any rate, toll, rent or other charges remaining unpaid in any court of competent jurisdiction. In addition to other methods established by law for the collection of rates, tolls, 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 sewer rate, toll, 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, toll, 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, toll, rent or other charge and demanding within 30 days after the service of such notice payment as aforesaid. In the case of a non-resident of the district, the aforesaid notice shall be given by registered mail addressed to his last known address or by publication in a newspaper of general circulation within the district once a week for 2 successive weeks, and shall demand payment within 30 days after the mailing thereof or the first publication of notice thereof as aforesaid. After the expiration of said period of 30 days and within one year thereafter, the treasurer may record in the registry of deeds of Hancock County a certificate signed by the treasurer setting forth the amount of such rate, toll, 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, toll, rent or other charge and that a notice and demand for payment of the same has been given or made in accordance with the provisions of this section and stating further that such rate, toll, rent or other charge remains unpaid. At the time of the recording of any such certificate in the registry of deeds as heretofore provided, the treasurer shall file in the office of the district a true copy of such certificate and shall mail a true copy thereof by registered mail to each record holder of any mortgage on 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 \$1.50 and the fee to be charged to the district by the register of deeds for filing and recording shall not exceed \$1.

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

said, 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. 27. Construction of this Act; bylaws and regulations authorized; incidental powers and rights.** This Act shall be construed as authorizing a charge by said district for the use of its water system, sewers, sewer systems and treatment works in addition to any other assessments now lawfully imposed by general law. The trustees may adopt such rates and regulations as may be necessary or convenient to carry out the provisions of this Act. All incidental powers, rights and privileges necessary to the accomplishment of the main objects of this Act as set forth herein are granted to said district; including the right of the trustees to determine when and where sewerage facilities and additional water facilities are most needed, and when and how sewers and water mains shall be built.

**Sec. 20. 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 any applicable provisions of the Revised Statutes of 1964, Titles 35 and 38 and any Acts amendatory thereof or additional thereto.

**Referendum; effective date.** 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 district at a special election or elections called and held for the purpose. Said election shall be called by the municipal officers of the Town of Winter Harbor and shall be held at the regular voting places; the dates of said elections shall be determined by said municipal officers, but the first such meeting of said town shall not be later than the first day of January, 1977. Such special elections shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, the board of registration shall not be required to prepare nor the town clerk to post a new list of voters; and for this purpose said board of registration shall be in session on the 3 secular days next preceding such elections, the first and 2nd days thereof to be devoted to registration of voters and the last day to enable the board to verify the corrections of said lists and to complete and close up their records of said session. The town clerk shall reduce the subject matter of this Act to the following question:

“Shall ‘An Act to Incorporate the Winter Harbor Utility District,’ passed by the 107th 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 for all the purposes hereof immediately upon its acceptance by a majority of the legal voters of said district voting at such elections, but only if the total number of votes cast for and against the acceptance of this Act in said special elections equals or exceeds 20% of the total number of names on the check list of voters of said town provided for herein, which check list shall be used at such elections; but failure of approval by the necessary majority or percentage of voters shall not prevent subsequent elections.



The results of such elections shall be declared by the municipal officers of said town and due certificates thereof filed by the town clerk with the Secretary of State.

#### STATEMENT OF FACT

The purpose of the bill is to create a charter of a utilities district so that the people of Winter Harbor, if they desire, can purchase the water system in the town now owned by Winter Harbor Water Company, and also, if they see fit, use the utilities district charter for the purpose of handling a public sewerage system within the town.