

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 840

H. P. 718

House of Representatives, March 9, 1977

On Motion of Mr. Kelleher of Bangor referred to the Committee on Public Utilities. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Bustin of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Amend the Charter of the Augusta Sanitary District.

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

Whereas, the current charter provisions of the Augusta Sanitary District provide one method of collection of construction assessment liens; and

Whereas, the procedure authorized by the charter requires the district to bring a civil action against a party so assessed within one year from the date of the acceptance of assessment by the commissioners of the district; and

Whereas, in order to preserve the aforesaid lien the district must complete the civil action and proceed to sell the premises subject to the assessment; and

Whereas, extensive expansion and construction of the present sanitary system within the jurisdiction of the district is contemplated within 6 months hereafter; and

Whereas, the limitations forced on the district by the current procedure authorized by its charter would cause an undue hardship upon the parties being served by the district; and

Whereas, the enactment of an alternative procedure for the perfection of an assessment lien similar to that procedure now authorized for rate liens would eliminate the necessity of initiating steps which may ultimately require the sale of premises to implement the collection of assessments; 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. P&SL, 1955, c. 139, § 10 is repealed and the following enacted in its place:

Sec. 10. Lien for unpaid assessments. All assessments made under the provisions of section 8 shall create a lien upon each and every lot or parcel of land so assessed and the buildings upon the same, which lien shall take effect when the commissioners file with the clerk the completed assessment and within 10 days after the date of hearing on said assessment, the clerk shall make out a list of all such assessments, the amount of each, and the name of the person against whom the same is assessed, and he shall certify the list and deliver it to the treasurer of said district. If said assessments are not paid within 3 months from the date thereof, the treasurer may proceed to collect the assessment in the following optional manners:

1. Option I. After the expiration of 3 months and within 18 months after the date said assessment is filed with the treasurer as aforesaid, in the case of a person resident in the town where assessed, the treasurer shall give to the person against whom the assessment is made, or leave at his last and usual place of abode, a notice in writing signed by the treasurer stating the amount of such assessment, 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 assessment and demanding the payment of the assessment within 10 days after the service of such notice. The treasurer in one notice may incorporate several delinquent rates which are in default at least 3 months and not over 18 months.

After the expiration of the 10 days and within 10 days thereafter, in the case of a resident of the district, and in all other cases within one year from the date, the treasurer shall record in the registry of deeds of Kennebec County a certificate signed by the treasurer 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 assessment, that a demand for the payment of the assessment has been made in accordance with the provisions of this section and that the assessment remains unpaid.

In the case of a nonresident of the district, the aforesaid notice of lien and demand for payment shall be given by registered or certified mail or by publication in a newspaper of general circulation within the district once a week for 2 successive weeks, and shall demand payment within 10 days after the date of mailing thereof or the date of last publication of notice thereof as aforesaid. After the expiration of the 10 days, the treasurer shall record the 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 afore-

said, the treasurer 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 assessed party for such notice and filing shall not exceed \$3 and the amount charged to the district for the recording of the certificate in the registry of deeds. Upon redemption, the district shall prepare and record a discharge of the sewer lien upon collecting from the assessed party the charge for recording such discharge.

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

2. Option II. After the expiration of 3 months after the date said assessment is filed with the treasurer as aforesaid, 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 and for the enforcement of said lien. The civil action may be commenced without the filing of a certificate of lien in the registry of deeds pursuant to Option I. 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 if it shall appear that any other persons are interested in such real estate, the court shall order such further notice of such action as appears proper, and shall allow such other persons to become parties thereto.

If it shall appear upon trial of such action that such assessment was legally made against said real estate, and is unpaid, and that there is an existing lien on said real estate for the payment of such assessment, judgment shall be rendered for such assessment, interest and costs 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 process. 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 Title 36, section 941.

Sec. 2. P&SL, 1955, c. 139, §§ 12 and 13 are amended to read:

Sec. 12. Assessments paid by other than owner, how recovered. When any such assessment under the provisions of section 8 shall be paid by any person against whom such assessment has been made, who is not the owner of such lot or parcel of land, then the person so paying the same shall have a lien upon such lot or parcel of land with the buildings thereon for the amount of said assessment so paid by said person, and incidental charges, ~~which lien shall continue for 1 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 provisions of chapter 178 of the revised statutes of 1954~~ in section 10.

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

Sec. 3. P&SL, 1955, c. 139, § 16, 2nd ¶, 3rd sentence, as last amended by P&SL 1973, c. 197, § 1, is repealed and the following enacted in its place:

The commissioners shall meet monthly, and specially as may be necessary, and each shall receive compensation for each regular or special meeting attended at a rate determined by the commissioners.

Sec. 4. P&SL, 1955, c. 139, § 17, 2nd sentence, as amended by P&SL, 1963, c. III, § 5, is repealed and the following enacted in its place:

Said notes and bonds shall be a legal obligation of said district, which is hereby declared to be a quasi-municipal corporation within the meaning of the Revised Statutes of 1964, Title 30, section 5053, and all the provisions of said section are applicable thereto; shall be a legal investment for savings banks in the State of Maine; and shall be exempt from all present taxes.

Sec. 5. P&SL, 1955, c. 139, § 19, sub-~~&&~~ I and II are amended to read:

I. To pay the current expenses ~~for~~ of operating and maintaining the sewerage, drainage and treatment system of said district.

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

Sec. 6. P&SL, 1955, c. 139, § 20, 1st ¶, last sentence is repealed and the following enacted in its place:

Real estate, for the purpose of this Act, shall bear the same definition as given in the Revised Statutes of 1964, Title 36, section 551.

Sec. 7. P&SL, 1955, c. 139, § 20, 3rd ¶, last sentence, as amended by P&SL, 1963, c. III, § 6, is repealed and the following enacted in its place:

The fee to be charged to the ratepayer for such notice and filing shall not exceed \$2 and the fee to be charged by the register of deeds for such filing shall conform to the existing lien recording fee.

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

STATEMENT OF FACT

The intent of this bill is to provide an alternative means whereby the Augusta Sanitary District can protect its construction costs by a more realistic lien procedure and to modernize several references and terms in the current charter. The present lien process limits the duration of the lien to one year and requires the commencement of a civil action to enforce same within that period of time. The proposed alternative procedure is designed to be identical to the current rate lien process now available to the district. The alternative procedure would eliminate the need of the district proceeding with a civil action and ultimate sale merely to preserve the lien. By enacting the alternate procedure, the district would have the protection of its lien and ultimate payment and the property owner would not be immediately faced with a civil action and potential sale of his property.