

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 968

H. P. 928

House of Representatives, March 17, 1977

Reported by Mr. Smith from Committee on Public Utilities and printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Clarify the Borrowing Capacity of the Fort Fairfield Utilities District and to Provide for the Imposition of Liens to Secure Payment of Sewer Rates of the District.

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

Whereas, the Fort Fairfield Utilities District and The Great Atlantic & Pacific Tea Company have entered into an agreement for the construction, operation and maintenance of a municipal and industrial waste treatment facility in the Town of Fort Fairfield under the auspices of United States Public Law 92-500 (Federal Water Pollution Control Act), the same being funded in part with federal funds, in part with State of Maine funds and in part with funds to be raised by said district; and

Whereas, the district's application for said project has been approved by the Environmental Protection Agency of the United States and the Department of Environmental Protection of the State of Maine and said construction is now in process; and

Whereas, in order to insure the completion and success of said municipal-industrial waste treatment facility, it is necessary for the Fort Fairfield Utilities District to produce sufficient moneys with which to provide for interim financing for construction costs and other related costs; and

Whereas, the district's charter provides for a debt limit of \$3,000,000 and it is deemed by bond counsel that it is necessary and appropriate to have the charter clarified so as to make it certain that said debt limit refers to the amount of indebtedness which at one time may be outstanding in an amount not to exceed said \$3,000,000 and the need for such clarification is pressing; and

Whereas, the district does not now have in its charter any provisions for imposing liens upon real estate served by its sewers to secure payment of rates and such need for such power to impose liens constitutes an immediate necessity so that the district will have such lien powers as soon as possible; 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 1947, c. 148, § 12, 1st sentence, as last amended by P & SL 1973, c. 179, is further amended to read:

For accomplishing the purposes of this Act, said district, through its trustees, is authorized to borrow money temporarily in an amount not to exceed \$3,000,000, at any one time in the aggregate outstanding, and to issue therefor the interest-bearing negotiable notes of the district, and for the purpose of refunding the indebtedness so created, of paying any necessary expenses and liabilities incurred under this Act, including the expenses incurred in the creation of the district, in reimbursing said town, in acquiring the aforesaid properties, privileges and franchises of the Frontier Water Company and the Fore Fairfield Sewer Company and the individual owners of other private sewers and the Fort Fairfield Light and Power Company, by purchase or otherwise, of securing sources of supply, taking water and land, paying damages, laying pipes, erecting poles and wires, constructing and maintaining and operating a water, sewerage and drainage, and light and power distribution system, and making extensions, additions and improvements to the same, the said district, through its trustees, may from time to time issue bonds of the district to an amount necessary in the judgment of the trustees therefor, maturing at one time or in uniform or varying installments with or without call provisions and at or without any premium.

Sec. 2. P & SL 1947, c. 148, § 15, as amended by P & SL 1973, c. 179, § 2, is repealed and the following enacted in its place:

Sec. 15. Rates and lawful charges; application of revenue; sinking fund. All persons, firms and corporations, whether public, private or municipal, shall pay to the treasurer of the district formed under this chapter the rates, tolls, rents, entrance charges and other lawful charges established by the trustees for the water, sewer, drainage or other service used or available with respect to their real estate, which rates shall include rates for such 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, tolls, 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 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 sewer rates, tolls, rents and entrance charges shall be so established as to provide revenue for the following purposes:

I. Current operating expenses. To pay the current expenses for operating and maintaining the water, light, power, sewerage, drainage and treatment systems of the district;

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

III. Moneys for sinking fund. To provide each year a sum equal to not less than 1% nor more than 5% of the entire indebtedness created or assumed by the district, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of said indebtedness. The money set aside for the sinking fund shall be devoted to the retirement of the obligations of the district or invested in such securities as savings banks are allowed to hold; provided, however, that the trustees, may, in their discretion and in lieu of the establishment of a sinking fund, issue the bonds of the district so that not less than 1% of the amount of the bonds so issued shall mature and be retired each year.

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

Sec. 3. P & SL 1947, c. 148, § 22 is enacted to read:

Sec. 22. Collection of unpaid rates and other lawful charges. There shall be a lien on real estate served or benefited directly or indirectly by the sewers of the district formed under this chapter to secure the payment of rates established and due under section 15 which shall take precedence over all other claims on such real estate, excepting only claims for taxes.

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 15 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, toll, 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, 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 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 the 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 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 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 shall record in the registry of deeds of the county in which the property of such person is located 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 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 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 rate payer for such notice and filing shall not exceed \$2.

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 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 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 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 provided for discharge of real estate mortgages.

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 amendment is to make the Private and Special Law governing the Fort Fairfield Utilities District which was created in 1947 consistent with the Maine Sanitary District Enabling Act of 1965. This amendment does not confirm any additional or different powers upon the Fort Fairfield Utilities District than the powers granted by the Maine Revised Statutes, Title 38, chapter 11, to Maine Sanitary Districts.