

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

**Legislative Document**

**No. 832**

H. P. 676

House of Representatives, February 28, 1979

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

EDWIN H. PERT, Clerk

Presented by Mr. Rolde of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

**AN ACT to Revise the Charter of the York Sewer District.**

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

P. & S. L. 1951, c. 63, as last amended by P. & S. L. 1971, c. 160, is repealed and the following enacted in its place:

**Sec. 1. Territorial limits; corporate name, purposes.** The territorial limits of the Town of York and the people within those limits are hereby made and declared to be a public sewerage district and a quasi-municipal corporation under the name of "York Sewer District" and shall be a system of public sewerage constructed, maintained and operated for the public health and welfare and for the benefit of those inhabitants and of the property therein served by that sewerage facility, in the manner, with the rights, duties and immunities hereinafter in this Act set forth.

**Sec. 2. Authority to construct and maintain.** Within that territory the York Sewer District is hereby authorized to lay pipes, drains, sewers and conduits, and to take up, repair and maintain them or to contract for the same to be done, in and along the public ways, and public grounds and through lands of any person or corporation as hereinafter provided, to and into tidal waters or treatment plants or to or into any drain or sewer now or hereafter built which empties into tidal waters or into any treatment plant, the discharge therefrom to be at such points

consistent with the requirements of public health as shall be found convenient and reasonable for the district and the flow of existing water courses; also to construct and maintain treatment plants, pumping stations, basins, reservoirs, flush tanks and such other appliances for collecting, holding, purifying, distributing and disposing of sewage matter and surface or waste waters as may be necessary and proper; and in general, do any or all things incidental to accomplish the purposes of this Act.

Sec. 3. Election of trustees; term of office; meetings; bylaws; compensation; annual reports. All the affairs of the district shall be managed by a board of trustees composed of 5 members who shall be residents of the Town of York and elected as hereinafter provided. The trustees of the district holding office at the effective date of this Act shall continue to hold office until their terms expire. At each annual municipal election of the Town of York, the voters shall choose a trustee of the district for a term of 5 years. These trustees shall be nominated and elected under the same procedure as provided for the municipal officers of the town. In the event a vacancy arises in the membership of the board of trustees, the vacant office shall be filled by the municipal officers until the next regular municipal election at which a trustee shall be elected to fill the unexpired term. All trustees shall be eligible for reelection, but municipal officers in the Town of York shall not be eligible for nomination or election as trustees.

After each annual municipal election of the Town of York, the trustees shall organize by the election of a chairman, vice-chairman, treasurer and clerk. The trustees may adopt a corporate seal, and, when necessary, may choose other needful officers and agents for the proper conducting and management of the affairs of the district. They may also ordain and establish such bylaws as are necessary for the district. The trustees may procure an office and incur such expenses as may be necessary. The trustees, as such, shall receive such compensation, not in excess of \$500 per year, as they may determine; but the treasurer may be allowed such additional compensation as the trustees shall determine. At the close of each fiscal year, the trustees shall make a detailed report of their doings, of the receipts and expenditures of the sewer district, of its financial and physical condition and of such other matters and things pertaining to the district and shall show the inhabitants thereof how the trustees are fulfilling the duties and obligations of their trust. This report shall be made and filed with the municipal officers.

Sec. 4. Right of eminent domain conferred. The York Sewer District is hereby expressly granted the right of eminent domain, and for the purposes of this Act is authorized to take and hold, either by exercising its right of eminent domain, or by purchase, lease or otherwise, as for public uses, any land, easements or interests therein, and any sewers or sewer rights necessary for constructing, establishing, maintaining and operating sewers, reservoirs, flush tanks, pumping stations and other appliances and property, used or usable, for collecting, holding, purifying and disposal of sewage matter and waste waters.

**Sec. 5. Condemnation proceedings.** In exercising from time to time the right of eminent domain, the district, by its board of trustees, shall file in the office of the county commissioners of York County and cause to be recorded in the registry of deeds in that county plans of the location of all lands or interests thereon or sewers or sewerage rights to be taken with an appropriate description and the names of the owners thereof, if known, and shall notify, in the manner provided for service of process by the Maine Rules of Civil Procedure, all known owners of the property to be taken of the proposed condemnation action. When, for any reason, the district fails to acquire property which it is authorized to take and which is described in that location, or, if the location so recorded is defective and uncertain, it may, at any time, correct and perfect that location and file a new description thereof; and in that 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 acts 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 that filing, whereupon possession may be had of all lands or interests therein or property or rights to be taken, but title thereto shall not vest in the district until payment therefor.

**Sec. 6. Assessment of damages by county commissioners; procedure on appeals.** If any person sustaining damages by any taking as aforesaid shall not agree with the district upon the sum to be paid therefor, either party, upon petition to the County Commissioners of York County, may have those damages assessed by them; the procedure and all subsequent proceedings and right of appeal thereon shall be had under the same restrictions, conditions and limitation as are or may be by law prescribed in the case of damages by the laying out of highways by the county commissioners.

**Sec. 7. Limitations on crossing a public utility.** In case of any crossing of any public utility, unless consent is given by the company owning or operating that public utility as to the place, manner and conditions of the crossing within 30 days after that consent is requested by the district, the Public Utilities Commission shall determine the place, manner and conditions of that crossing; and all work on the property of that public utility shall be done under the supervision and to the satisfaction of the public utility, but at the expense of the district. However, nothing herein contained shall be construed as authorizing the 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 herein or by any subsequent act of the Legislature.

**Sec. 8. Rights and obligations of abutters or others to enter.** Any person may enter his private sewer into any sewer of the district while the same is under construction and before completion, and before assessments for an entrance charge are made, on obtaining a permit in writing from the trustees; but after the sewer is completed and the assessments made, no person shall enter his private

sewer into that sewer until he has paid his assessment 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 they are issued.

Every building in the district intended for human habitation or occupancy or with facilities for discharge or disposal of sewage or commercial or industrial waste, which is accessible to a sewer or drain of the district, shall have a sanitary sewer or drainage system which shall be caused to be connected with the sewer or drain of the district by the owner or person against whom taxes on the premises are assessed, in the most direct manner possible, within 90 days after receiving a request therefore 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 such building. A building shall be deemed to be accessible to a sewer or drain of the district for the purposes of this section if such building, or any private sewer or drain directly or indirectly connected thereto or carrying sewage or commercial or industrial waste therefrom shall at any point be or come within 100 feet of a sewer or drain of the district; provided that nothing in this section shall require the owner of any such building to acquire any real property or easement therein for the sole purpose of making that connection.

The officers or agents of the district shall have free access to all premises served by its sewers, at all reasonable hours, for inspection of plumbing and sewage fixtures, to ascertain the quality and quantity of sewage discharge and the manner of discharge, and to enforce the provisions of this chapter and the rules and regulations prescribed by the trustees of the district.

Sec. 9. Contracts authorized. The district is authorized to contract with persons, corporations, districts and other municipalities, both inside and outside the boundaries of the district, and with the State of Maine and the United States Government or any agency of either, to provide for disposal of sewage and commercial and industrial waste water through the district's system and through the system of any such person, corporation, district or other municipality; and every other district and municipality of the State of Maine is authorized to contract with the sanitary district for the collection, distribution, treatment and disposal of sewage and commercial and industrial waste water, and for those purposes any such municipality may raise money as for other municipal charges.

Sec. 10. Excavation or repair work; closing of ways. Whenever the district enters, digs up or excavates any public way or other land for the purpose of laying its sewers or pipes, constructing manholes 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 the way or land to the condition it was in prior to that work, or to 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 York may order a temporary closing of that way, and of any intersecting way, upon request of the district, and the way

shall remain closed to public travel until the municipal officers deem it is restored to a condition safe for traffic.

**Sec. 11. Violations.** Any person who shall place, discharge or leave any offensive or injurious matter or material on or in the conduits, catch basins or receptacles of the district contrary to its regulations, or shall willfully injure any conduit, pipe, reservoir, flush tank, catch basin, manhole, outlet, engine, pump or other property held, owned or used by the district shall be liable to pay twice the amount of the damages to the district, to be recovered in any proper action; and that person and any person who violates section 8 shall be guilty of a Class E crime.

**Sec. 12. Property tax exempt.** The property, rights and franchises of the district shall be forever exempt from taxation.

**Sec. 13. Bonds.** The district, for the purposes of accomplishing its objectives, of paying and refunding its indebtedness, of paying any necessary expenses and liabilities incurred under this chapter, including organizational and other necessary expenses and liabilities whether incurred by the district or any municipality therein, or any person residing in unorganized territory encompassed by the district, the district being authorized to reimburse any municipality therein or any person residing in unorganized territory encompassed by the district for any such expenses incurred or paid by it or him, and in acquiring properties, paying damages, laying sewers, drains and conduits, constructing, maintaining and operating sewage and treatment plants, or systems, and making renewals, additions, extensions and improvements to the same, and to cover interest payments during the period of construction, by resolutions of its board of trustees, without district vote is authorized to borrow money and issue, from time to time, bonds, notes or other evidences of indebtedness of the district in one series, or in separate series, in such amount or amounts, bearing interest at such rate or rates, and having such terms and provisions as the trustees shall determine; provided the total outstanding indebtedness of the district shall at no time exceed the sum of \$2,000,000. Any such bonds, notes and evidences of indebtedness may be issued to mature serially or made to run for such periods as the trustees may determine. Bonds, notes or evidence of indebtedness may be issued with or without provisions for calling the same prior to maturity, and if callable, may be made callable at par or at such premium as the trustees may determine. All bonds, notes or other evidences of indebtedness shall 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 obligation of the district, and the district is declared to be a quasi-municipal corporation within the meaning of the Maine Revised Statutes Title 30, section 5053. Subject to the foregoing provisions of the section, the district may, from time to time, issue in one series or in separate series, 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 the district shall be legal investments for savings banks in the State of Maine and shall be tax exempt.

The district is authorized and empowered to enter into agreements with the State of Maine or United States Government, or any agency of either, or any municipality, corporation, commission or board authorized 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, municipality, corporation, commission or board as may be necessary or desirable to accomplish the purposes of the district.

**Sec. 14. Rates and other charges.** All persons and corporations, whether public, private or municipal, shall pay to the treasurer of the district the entrance charges, rates, tolls, rents and other lawful charges established by the trustees for the sewer or drainage service used or available to them, 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 thereunto, whether or not the real estate is improved. The words "other lawful charges" or "other charges" shall include, but not be limited to, interest on delinquent accounts at a rate not to exceed the highest lawful rate set by the Treasurer of State for municipal taxes.

Rates, tolls, rents and entrance charges shall be uniform within the territory supplied by the district whenever the 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, toll, rent or entrance charge than the regular rates, tolls, rents and charges in sections where, for any reason, the cost of construction and maintenance, or the cost of service, exceeds the cost of construction and maintenance, or the cost of service, exceeds the average, but these higher rates, tolls, rents and 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:

1. **Current expenses.** To pay the current expenses for operating and maintaining the sewerage, drainage and treatment system of the district;
2. **Payment of interest and principal.** To provide for the payment of the interest and principal on the indebtedness created by the district;
3. **Sinking fund.** To provide each year a sum equal to not less than 1% nor more than 5% of the entire indebtedness created by the district, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of the indebtedness. Money set aside for the sinking fund shall be devoted to the retirement of the obligations of the sewer district, or invested in such securities as savings banks in this State are allowed to hold; and

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

Sec. 15. Assessments. 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 are benefited by that sewer, and estimate and assess upon those lots and parcels of land, and against the owner thereof, or person in possession or against whom taxes thereon are assessed, whether the person to whom the assessment is so made is the owner, tenant, lessee or agent, and whether the same is occupied or not, such sum not exceeding that benefit as they may deem just and equitable towards defraying the expense of constructing and completing the sewer, together with such sewerage disposal units and appurtenances as may be necessary. The trustees shall file with the clerk of the district the location of the sewer and sewerage 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 the 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 that filing, each person so assessed shall be notified of the assessment by having an authentic copy of the assessment, with an order of notice signed by the clerk of the district, stating the time and place for a hearing upon the subject matter of the assessments, given to each person so assessed or left at his usual place of abode in the district; if he has no place of abode in the district, then the notice shall be given or left at the abode of his tenant or lessee if he has one in the district; if he has no such tenant or lessee in the district, then by posting the notice in some conspicuous place in the vicinity of the lot or parcel of land so assessed, at least 30 days before the hearing, or that notice may be given by publishing the same once a week for 3 successive weeks in any newspaper of general circulation in the district, the first publication to be at least 30 days before the hearing; a return made upon a copy of that notice by any constable in any municipality within the district or by any sheriff or deputy sheriff or the production of the newspaper containing the notice shall be conclusive evidence that the notice has been given, and upon that hearing the trustees shall have power to revise, increase or diminish any of those assessments, and all such revisions, increases or diminutions shall be in writing and recorded by the clerk of the district.

Any person aggrieved by the decision of the trustees as it relates to any assessment for sewer construction under this section shall have the same rights of appeal as are provided in the case of laying out of town ways.

Sec. 16. Lien for unpaid assessments. 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 the assessment the clerk of the district shall make out a list of all those 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 the assessments are not paid within 3 months from the date thereof, the treasurer may bring a civil action for the collection of the assessment in the name of the district against the person against whom the assessment is made and for the enforcement of the lien. The complaint in that action shall contain a statement of the assessment, a description of the real estate against which the assessment is made, and an allegation that a lien is claimed on that 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 the real estate, the court shall order such further notice of that action as appears proper, and shall allow such other person to become parties thereto. If it shall appear upon trial of that action that the assessment was legally made against that real estate, and is unpaid, and that there is an existing lien on the real estate for the payment of that assessment, judgment shall be rendered for the 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 that estate in the manner provided for a sale on execution of real estate attached on original process; provided that in making the sale the officer shall follow the procedure in selling and conveying, and there shall be the same rights of redemption, as provided in the Maine Revised Statutes, Title 36, section 941.

**Sec. 17. Civil action for unpaid assessments.** If assessments under section 15 are not paid, and any such district does not proceed to collect unpaid assessments by proceedings as prescribed in section 16, or does not collect or is in any manner delayed or defeated in collecting those assessments by proceedings under section 16, then the district in its name may maintain a civil action against the party so assessed for the amount of that assessment, as for money paid, laid out and expended, in any court of competent jurisdiction, and in that suit may recover the amount of such assessment with 10% interest on the same from the date of that assessment and costs.

**Sec. 18. Assessment paid by persons other than owner.** When any assessment under section 15 is paid by any person against whom that assessment has been made, who is not the owner of that lot or parcel of land, then the person so paying the same shall have a lien upon that lot or parcel of land with the buildings thereon for the amount of that assessment so paid by that person, and incidental charges, which lien shall continue for one year and which lien may be enforced in a civil action 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 Maine Revised Statutes, Title 10.

**Sec. 19. Collection of unpaid 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 that 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 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, 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, give to the owner of the real estate served, or leave at his last and usual place of abode, or send by certified mail, return receipt requested, to his last known address, a notice in writing signed by the treasurer stating the amount of that rate, toll, rent or other charge describing the real estate upon which the lien is claimed and stating that a lien is claimed on the real estate to secure the payment of the rate, toll, rent or other charge and demanding the payment of the rate, toll, rent or other charge within 30 days after service or mailing, with \$1 for the treasurer for mailing the notice together with the certified mail, return receipt requested, fee. For the purpose of this section, a mobile home is defined as real estate. After the expiration of that 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 that 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 that 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 provided, the treasurer shall file in the office of the district a true copy of the certificate and shall mail a true copy thereof by certified mail, return receipt requested to each record holder of any mortgage on that real estate, addressed to the record holder at his last and usual place of abode. The fee to be charged by the district to the rate payer for that notice and filing shall not exceed the amount authorized by Maine Revised Statutes, Title 33, section 751, subsection 12, concerning district liens.

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 rights usually possessed by mortgagees, except that the district as mortgagee shall not have any right to possession of that real estate until the right of redemption hereinafter provided for shall have expired. If the mortgage, together with interest and costs, has not been paid within 18 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 hereby provided for. In the event that the 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.

**Sec. 20. Supplementary charges.** The district is authorized to impose charges, in addition to any other assessments now lawfully imposed by general law, for the use of sewers, sewer systems and treatment works, and the trustees may adopt such rules and regulations as may be necessary or convenient to carry out the purposes of the district. All incidental powers, rights and privileges necessary to the accomplishment of the purposes of the district are granted to the district and its trustees, including the right of its trustees to determine when and where sewerage and treatment facilities and disposal units are needed and when and where the same shall be constructed.

**Sec. 21. Municipal assistance.** When the municipal officers of the Town of York shall determine that the health and welfare of the inhabitants of the town require municipal contribution to the expense of operating the facilities of the district and of refunding the indebtedness of the district they may negotiate contracts with the trustees of the district to provide for annual payments by the municipality of a fixed percentage of the expense of operating the district and of refunding the indebtedness of the district for a period not to exceed 20 years. Any contract shall become effective upon ratification by a majority of the voters of the town at a regular or special election held therefor.

**Sec. 22. Competitive bidding.** Any contract in excess of \$2,000 between the district and a contractor for the construction of facilities located on private property for the exclusive use of a private individual and for which the private individual is required to pay the total cost directly to the district, shall be awarded by a system of competitive bidding. Unless there are valid reasons to the contrary, the contracts shall be awarded to the lowest responsible bidder.

**Sec. 23. Amendments.** Amendments to this charter may be framed and proposed:

1. By trustee resolution. By resolution of the trustees containing the full text of the proposed amendment and effective upon adoption; or

2. By town election. Upon adoption of a resolution of the trustees proposing an amendment to the charter, the municipal officers shall submit the proposed amendment to the voters of the town at an election. This election shall be announced by a notice containing the complete text of the proposed amendment and published in one or more newspapers of general circulation in the town at least 30 days prior to the date of election. The election shall be held not less than 60 nor more than 120 days after the adoption of the resolution or the final determination of sufficiency of the petition proposing the amendment. The form of the ballot shall be as specified by the general law for the amendment of municipal charters.

If a majority of the qualified voters of the town voting upon a proposed charter amendment vote in favor of it, the amendment shall become effective at the time fixed in the amendment or, if no time is therein fixed, 30 days after its adoption by the voters.

Sec. 24. Dissolution. The trustees of the district are authorized and empowered at any time to enter into negotiations with the Town of York for the purpose of dissolving the district and transferring its entire assets and liabilities to the Town of York. If an agreement to dissolve the district is reached with the municipal officers of the Town of York, the district may be dissolved upon the unanimous vote of the trustees, and upon a referendum vote being taken at the next annual municipal election in the Town of York. The town clerk of the Town of York shall reduce the subject matter to the following question: "Shall the York Sewer District be dissolved and all of its assets and liabilities assumed by, and become the responsibility of, the Town of York?" The voters shall indicate by a cross or check mark placed upon their ballots against the words "Yes" or "No" their opinion of the same. The result shall be declared by the municipal officers and due certificate thereof filed by the town clerk with the Secretary of State, and if the result so filed shows that a majority of the voters is for the approval of the dissolution of the York Sewer District, it shall take complete effect upon filing with the town clerk of an attested copy of the unanimous vote of the trustees of the district to dissolve the district according to the terms hereof; provided that the total vote cast for and against the dissolution of the York Sewer District equals, or exceeds, 25% of the total vote for all candidates for Governor cast at the last gubernatorial election.

#### STATEMENT OF FACT

The purpose of this bill is to update the charter of the York Sewer District which was first enacted in 1951.