

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 938

H. P. 814 House of Representatives, February 23, 1981
Reported by Representative Davies from the Committee on Public Utilities. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Reported from the Joint Standing Committee on Public Utilities under Joint Rule 18, pursuant to 1979 H. P. 2030. Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Provide More Public Accountability for Sewer and Sanitary Districts.

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

Sec. 1. 38 MRSA § 1062, 2nd ¶, as amended by PL 1971, c. 618, § 12, is further amended to read:

A sanitary district may only be formed where the Board of Environmental Protection finds that there is a need throughout a part or all of the territory embraced within the proposed district for the accomplishment of the purpose of providing an adequate, efficient system and means of collecting, conveying, pumping, treating and disposing of domestic sewage and industrial wastes within the proposed district ~~and that such purposes cannot be effectively accomplished throughout a part or all of the territory of the proposed district by an existing public agency or agencies~~ and that such purposes can be effectively accomplished therein on an equitable basis by a sanitary district if created and that the creation and maintenance of such a district will be administratively feasible and in furtherance of the public health, safety and welfare.

Sec. 2. 38 MRSA § 1101, sub-§ 1-A is enacted to read:

1-A. Application by referendum. Residents of a municipality or municipalities, or portions thereof, that desire to form a sanitary district may petition the

municipal officers to file an application for a sanitary district with the Board of Environmental Protection. The petition shall contain a description of the territory of the proposed district.

Upon receipt of a written petition signed by at least 10% of the number of voters voting for the gubernatorial candidates at the last statewide election in that proposed district, the municipal officers shall submit the question to the voters of the proposed district at the next general, primary or special election within the proposed district. The referendum question shall read as follows:

Shall the municipal officers representing the proposed sanitary district, consisting of (describe the territory of the proposed district), file an application for a sanitary district with the Board of Environmental Protection on behalf of the residents of the proposed district?

If the referendum question is approved by a majority of the legal voters voting at the election, provided that the total number of votes cast for and against the referendum question equaled or exceeded 20% of the total number of votes cast in the proposed district in the last gubernatorial election, the municipal officers representing the residents of the proposed sanitary district shall file an application for that proposed district in accordance with subsection 1.

Sec. 3. 38 MRSA § 1104, as enacted by PL 1965, c. 310, is repealed and the following enacted in its place:

§ 1104. Trustees

1. **Authorization.** All of the affairs of a sanitary district shall be managed by a board of trustees which shall consist of not less than 3 trustees, or not less than 5 trustees in sanitary districts encompassing more than one municipality or encompassing one or more municipalities and residents of unorganized territory. The exact number of trustees shall be determined in accordance with section 1101. A sanitary district may alter the number of trustees by submitting the proposed alteration to the voters in the same manner as provided in section 1101, subsection 7. No municipality nor unorganized territory within any sanitary district may have less than one trustee.

2. **Recall.** Trustees may be recalled under the following provisions.

A. The qualified electors of the sanitary district may petition for the recall of any trustee after the first year of the term for which the trustee is elected by filing a petition with the municipal clerk, or the county commissioners in the case of unorganized territory, demanding the recall of the trustee. A trustee may be subject to recall for misfeasance, malfeasance or nonfeasance in office, gross dereliction or neglect of official duty or incompetency causing him to be unfit to hold office. The petition shall be signed by electors of the political subdivision which that trustee represents equal to at least 25% of the vote cast for the office of Governor at the last gubernatorial election within the political subdivision of the trustee being recalled. The recall petition shall state the reason for which removal is sought.

B. Within 3 days after the petition is offered for filing, the official with whom the petition is left shall determine by careful examination whether the petition is sufficient and so state in a certificate attached to the petition. If the petition is found to be insufficient, the certificate shall state the particulars creating the insufficiency. The petition may be amended to correct any insufficiency within 5 days following the affixing of the original certificate. Within 2 days after the offering of the amended petition for filing, it shall again be carefully examined to determine sufficiency and a certificate stating the findings shall be attached. Immediately upon finding an original or amended petition sufficient, the official shall file the petition and call a special election to be held not less than 40 days nor more than 45 days from the filing date. The official shall notify the trustee, against whom the recall petition is filed, of the special election.

C. The trustee against whom the recall petition is filed shall be a candidate at the special election without nomination, unless he resigns within 10 days after the original filing of the petition. There shall be no primary. Candidates for the office may be nominated under the usual procedure of nomination for a primary election by filing nomination papers, not later than 5 p.m., 4 weeks preceding the election and have their names placed on the ballot at the special election.

D. The official against whom a recall petition has been filed shall continue to perform the duties of his office until the result of the special election is officially declared. The person receiving the highest number of votes at the special election shall be declared elected for the remainder of the term. If the incumbent receives the highest number of votes, he shall continue in office. If another receives the highest number of votes, he shall succeed the incumbent, if he qualifies, within 10 days after receiving notification.

E. After one recall petition and special election, no further recall petition may be filed against the same official during the term for which he was elected.

Sec. 4. 38 MRSA § 1152-A is enacted to read:

§ 1152-A. Procedure in exercise of right of eminent domain

The right of eminent domain granted in section 1152 may only be exercised after complying with the following procedures.

1. Notice to owner. Notice is provided to the owner as follows.

A. The owner or owners of record shall be served notice of:

- (1)** The determination of the trustees to exercise the right of eminent domain;
- (2)** A description of the land or easement to be taken;
- (3)** The amount of damages to be awarded for the land or easement taken; and
- (4)** Notice of the time and place of the hearing provided in subsection 3.

B. Notice may be made:

- (1) By personal service in hand by an officer duly qualified to serve civil process in this State; or
- (2) By certified mail, return receipt requested, to his last known address.

C. Alternate notice. If the owner or owners are not known or if they cannot be notified by personal service or certified mail, notice may be given by publication in the same manner as provided in subsection 3.

2. Notice to tenant. Notice shall be made to any tenants in the same manner as for the owner.

3. Hearing. A hearing shall be held on the proposed exercise of the right of eminent domain. Notice of the hearing shall be made by publication in a newspaper of general circulation in the area of the taking and shall be given once a week for 2 successive weeks, the last publication to be at least 2 weeks prior to the time appointed in the hearing. The hearing notice shall include:

- A. The time and place of the hearing;
- B. A description of the land or easement taken; and
- C. The owners, if known.

Sec. 5. 38 MRSA § 1160, 2nd sentence, as enacted by PL 1965, c. 310, is amended to read:

Existing buildings which are already served by a private sewer or drainage system shall not be required to connect with any ~~such~~ sewer or drain of the district so long as ~~in the judgment of the trustees, such~~ the private sewer or drainage system functions in a satisfactory and sanitary manner, and does not violate any law or ordinance applicable thereto or any applicable requirement of the State Plumbing Code.

Sec. 6. 38 MRSA § 1162 is enacted to read:

§ 1162. Expansion of sanitary district boundaries

A sanitary district may expand the boundaries of the sanitary district in the same manner as is provided for the formation of the sanitary district in section 1101.

Sec. 7. 38 MRSA § 1201, sub-§ 1, first ¶, as enacted by PL 1979, c. 696, § 1, is amended to read:

Any sanitary district formed under this chapter may provide, **subject to the limit on total indebtedness as established by section 1201-A**, by resolution of its board of trustees, without district vote, for the borrowing of money and the issuance from time to time of bonds for any of its corporate purposes, including, but not limited to:

Sec. 8. 38 MRSA § 1201-A is enacted to read:

§ 1201-A. Total indebtedness outstanding

The total indebtedness of the district outstanding at any one time shall not exceed a sum which has been determined by the voters of the district. If any district has not determined a limit on the total indebtedness of the district by January 1, 1982, a limit shall be established, until such time as it is amended by the voters, not to exceed the current debt of the district as of June 30, 1981, plus 10%.

Sec. 9. 38 MRSA § 1202, as last amended by PL 1979, c. 696, § 4, is further amended by adding after the 2nd paragraph a new paragraph to read:

Prior to the adoption of a new rate schedule, the trustees shall hold a public hearing regarding the proposed rate schedule. The trustees shall publish the proposed rates and notice of the hearing not less than once in a newspaper having a general circulation in the district not less than 7 days prior to the hearing. After adoption of the rates, copies of the rates shall be printed and made available to ratepayers and prospective ratepayers of the district.

Sec. 10. 38 MRSA c. 12 is enacted to read:

**CHAPTER 12
SEWER DISTRICTS**

§ 1251. Purpose

The purpose of this chapter is to provide minimum guidelines to the sewer district chartered under private and special laws of the Legislature. These guidelines will provide more public participation and more accountability for sewer districts.

§ 1252. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Sewer district. "Sewer district" means any district created by the private and special laws of the State whose purposes include collection, conveying and treatment of sewage.

§ 1253. Statutory guidelines

The following minimum provisions apply to all sewer districts.

1. Trustees. The authorization and recall of trustees shall conform to section 1104.

2. Eminent domain. The authority and procedures for the exercise of eminent domain by sewer districts shall conform to sections 1152, 1152-A, 1153 and 1154. In addition, no sewer district may take by right of eminent domain any of the property or facilities of any other public utility used, or acquired for future use by

the owner thereof, in the performance of a public duty, unless expressly authorized by a special Act of the Legislature.

3. **Connection of private sewers.** Existing buildings which are already served by a private sewer system are not required to connect with any sewer or drain of the district as long as the private sewer or drainage system functions in a satisfactory and sanitary manner and does not violate any law or ordinance applicable thereto or any applicable requirements of the State Plumbing Code.

4. **Expansion of district boundaries.** Amendments to expand the boundaries of a sewer district must be approved by the voters of that district prior to consideration by the Legislature.

5. **Debt limit.** All sewer districts shall establish a limit on the total indebtedness outstanding at any one time. Amendments to that debt limit must be approved by the voters of a district prior to consideration by the Legislature. The debt limit for any sewer district whose members have not approved a limit on the total indebtedness outstanding by January 30, 1982, shall automatically be an amount equal to the total outstanding indebtedness as of June 30, 1981, plus 10%.

6. **Adoption of new rates.** Prior to the adoption of a new rate schedule, the trustees shall hold a public hearing regarding the proposed rate schedule. The trustees shall publish the proposed rates and notice of the hearing not less than once in a newspaper having a general circulation in the district not less than 7 days prior to the hearing. After adoption of the rates, copies of the rates shall be printed and made available to ratepayers and prospective ratepayers of the district.

§ 1254. Conformity with private and special laws

The provisions of this chapter apply to all sewer district charters as of January 30, 1982. Any part of a sewer district charter not in compliance with this chapter shall be considered to be repealed as of January 30, 1982.

Sec. 11. Effective date. This Act shall take effect 90 days after adjournment of the Legislature, except that section 3 shall not take effect until January 1, 1982.

STATEMENT OF FACT

This bill implements the legislative recommendations of the legislative study on sewerage and sanitary districts authorized by H. P. 2030 of the 109th Legislature. Those recommendations include:

1. Users in other kinds of entities providing sewer services should have the option of forming a sanitary district under Title 38;
2. Trustees should be made more accountable by requiring that they be elected, that they serve 3-year terms, that there be at least 3 trustees, at least one from each town and that there be provisions for the recall of trustees for serious cause;

3. Voter approval for district expansion;
4. Due process in eminent domain: Notice, hearing, filing and an appeal procedure;
5. Place the burden of proof on trustees before hookup can be required for a user of an existing system; and
6. Require a debt limit, amendable by referendum and legislative approval.