

MAINE STATE LEGISLATURE

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(Emergency)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 2146

S.P. 824 In Senate, January 26, 1988
Approved for Introduction by a Majority of the Legislative
Council pursuant to Joint Rule 26.
Reference to the Committee on Utilities suggested and
ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator WEBSTER of Franklin.

Cosponsored by Representative ROTONDI of Athens.

STATE OF MAINE

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

1 AN ACT to Amend the Charter of the Jackman
2 Sewer District to Make the Provisions for
3 Collection of Unpaid Rates Conform to the
4 General Provisions for Collection of Unpaid
5 Rates by Sanitary Districts.
6

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

1 Whereas, the existing provision of the Jackman
2 Sewer District charter providing a lien for payment of
3 rates contains certain unconstitutional provisions; and

4 Whereas, it is imperative that action be taken at
5 the earliest possible moment to eliminate such
6 conditions; and

7 Whereas, in the judgment of the Legislature, these
8 facts create an emergency within the meaning of the
9 Constitution of Maine and require the following
10 legislation as immediately necessary for the
11 preservation of the public peace, health and safety;
12 now, therefore,

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

15 P&SL 1969, c. 88, §17, as amended by PL 1985, c.
16 30, is repealed and the following enacted in its place:

17 Sec. 17. Lien for payment of rates. There shall
18 be a lien to secure the payment of rates and other
19 lawful charges established under section 16 of this
20 Act and legally assessed on real estate served or
21 benefited by the sewers of the district, which shall
22 take precedence over all other claims on such real
23 estate, excepting only claims for taxes.

24 The treasurer of the district shall have full and
25 complete authority and power to collect the rates,
26 tolls, rents and other charges established under
27 section 16 and the same shall be committed to him.
28 The treasurer may sue, after demand for payment, in
29 the name of the district in a civil action for any
30 rate, toll, rent or other charge remaining unpaid in
31 any court of competent jurisdiction. In addition to
32 other methods established by law for the collection of
33 rates, tolls, rents and other charges, and without
34 waiver of the right to sue for the same as aforesaid,
35 the lien created in this section may be enforced in
36 the following manner. The treasurer, when a rate,
37 toll, rent or other charge has been committed to him
38 for collection, may, after the expiration of 3 months
39 and within one year after the date when the same

1 became due and payable, give to the owner of the real
2 estate served, or leave at his last and usual place of
3 abode, or send by certified mail, return receipt
4 requested, to his last known address, a notice in
5 writing signed by the treasurer or bearing his
6 facsimile signature, stating the amount of that rate,
7 toll, rent or other charge, describing the real estate
8 upon which the lien is claimed and stating that a lien
9 is claimed on the real estate to secure the payment of
10 the rate, toll, rent or other charge and demanding the
11 payment of the rate, toll, rent or other charge within
12 30 days after service or mailing, with \$1 for the
13 treasurer for mailing the notice, together with the
14 certified mail, return receipt requested fee. The
15 notice shall contain a statement that the district is
16 willing to arrange installment payments of the
17 outstanding debt. For the purpose of this section, a
18 mobile home is defined as real estate. After the
19 expiration of the period of 30 days and within one
20 year thereafter, the treasurer shall record in the
21 registry of deeds of Somerset County a certificate
22 signed by the treasurer setting forth the amount of
23 such rate, toll, rent or other charge, describing the
24 real estate on which the lien is claimed and stating
25 that a lien is claimed on the real estate to secure
26 payment of the rate, toll, rent or other charge and
27 that a notice and demand for payment of the same has
28 been given or made in accordance with this section and
29 stating further that the rate, toll, rent or other
30 charge remains unpaid. At the time of the recording
31 of any such certificate in the registry of deeds as
32 provided, the treasurer shall file in the office of
33 the district a true copy of the certificate and shall
34 mail a true copy by certified mail, return receipt
35 requested, to each record holder of any mortgage on
36 the real estate, addressed to the record holder at his
37 last and usual place of abode. The fee to be charged
38 by the district to the ratepayer for that notice and
39 filing shall not exceed the amount authorized by the
40 Maine Revised Statutes, Title 33, section 751,
41 subsection 12, concerning district liens.

42 The filing of the certificate in the registry of
43 deeds shall create a mortgage on the real estate
44 therein described to the district which shall have

1 priority over all other mortgages, liens, attachments
2 and encumbrances of any nature, except liens,
3 attachments and claims for taxes, and shall give to
4 the district all the rights usually possessed by
5 mortgagees, except that the district as mortgagee
6 shall not have any right to possession of the real
7 estate until the right of redemption provided for
8 shall have expired. If the mortgage, together with
9 interest and costs, has not been paid within 18 months
10 after the date of filing of the certificate in the
11 registry of deeds, as provided, the mortgage shall be
12 deemed to have been foreclosed and the right of
13 redemption to have expired. The filing of the
14 certificate in the registry of deeds shall be
15 sufficient notice of the existence of the mortgage
16 provided for. In the event that the rate, toll, rent
17 or other charge, with interest and costs, has been
18 paid within the period of redemption provided for, the
19 treasurer of the district shall discharge the mortgage
20 in the same manner as provided for discharge of real
21 estate mortgages.

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

25 **STATEMENT OF FACT**

26 Section 17 of the charter of the Jackman Sewer
27 District as originally enacted contains
28 unconstitutional provisions because of the
29 differential requirements for notice between residents
30 of the district and nonresidents of the district.

31 In Kramer v. Inhabitants of the Town of Linneus,
32 144 Me. 239 (1949), the Supreme Judicial Court held
33 that nonresident owners of real estate must receive
34 the same kind of notice of the running of lien claims
35 as is given to resident owners. This decision is
36 applicable to section 17 of the Jackman Sewer District
37 Charter.

38 In addition to amending the charter to bring it

1 into conformity with constitutional requirements, this
2 bill also makes the collection procedure identical to
3 that set forth in the Maine Revised Statutes, Title
4 38, section 1208, which sets forth the procedure for
5 collection of unpaid rates by sanitary districts
6 established under general law.

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