

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

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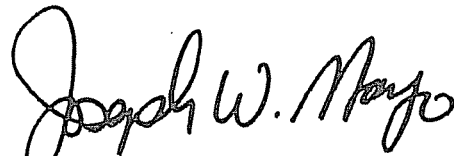
H.P. 1220

House of Representatives, January 5, 1994

An Act to Enhance Assessment and Collection Powers of the Boothbay Harbor Sewer District.

(EMERGENCY)

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.


JOSEPH W. MAYO, Clerk

Presented by Representative HEINO of Boothbay.
Cosponsored by Senator BEGLEY of Lincoln and
Representative: CLARK of Millinocket, Senator: VOSE of Washington.

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

4 Whereas, the Boothbay Harbor Sewer District is a
6 quasi-municipal corporation organized and existing under the laws
of the State; and

8 Whereas, certain residences and businesses in the Adams Pond
10 watershed region of the Town of Boothbay have private, on-site,
sewer disposal systems which have failed or are inadequate; and

12 Whereas, the Boothbay Harbor Sewer District has received
14 funding to extend its sewer system to serve certain properties
located in the Adams Pond watershed region of the Town of
16 Boothbay; and

18 Whereas, the Town of Boothbay and the Boothbay Harbor Sewer
District believe it is in their best interests to extend the
20 territory of the Boothbay Harbor Sewer District to serve a
portion of the Town of Boothbay; and

22 Whereas, the Boothbay Harbor Sewer District wishes to
24 streamline the method by which it enforces liens against property
for unpaid rates and charges; and

26 Whereas, in the judgment of the Legislature, these facts
28 create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
30 necessary for the preservation of the public peace, health and
safety; now, therefore,

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

34 **Sec. 1. P&SL 1961, c. 161, §1 is amended to read:**

36 **Sec. 1. Territorial limits; incorporation.** The territory, and the
38 inhabitants therein, of the Town of Boothbay Harbor in the County
of Lincoln and the territory, and the inhabitants therein, of
40 that part of the Town of Boothbay, in the County of Lincoln,
42 which is bounded and described as follows: Beginning at a point
44 in the middle of the intersection of Dover Road and State Route
46 27; thence easterly a distance of 2,000 feet, more or less, to a
48 point; thence southwesterly a distance of 10,000 feet, more or
less, to the Boothbay Harbor town line; thence westerly along
said town line a distance of 6,000 feet, more or less, to a
point; thence northerly a distance of 9,000 feet, more or less,
to a point; thence easterly a distance of 5,200 feet, more or
less, to the point of beginning, shall constitute a public
50 sewerage district and a body politic and corporate under the name
of "Boothbay Harbor Sewer District." The purpose of said
52 district, subject to the provisions of section 10 hereof, shall

2 be to take over, control, operate and manage the sewers now owned
4 by the Town of Boothbay Harbor with all appurtenances thereto; to
6 extend, increase, enlarge and improve said sewers; to extend the
8 present system or systems so as to furnish sewerage facilities to
10 parts of the district not now served with such facilities; to
12 provide for removal and treatment of sewage when, as and if such
treatment becomes necessary; and generally to construct,
maintain, operate and provide a system of sewerage, sewage
disposal and sewage treatment for public purposes and for the
health, welfare, comfort and convenience of the inhabitants of
the district.

14 **Sec. 2. P&SL 1961, c. 161, §25** is repealed and the following
enacted in its place:

16 **Sec. 25. Lien for payment of rates.** The district has a lien to
18 secure the payment of rates established and due under section 19
20 that takes precedence over all other claims on the real estate
served or benefited by the sewers of the district, except claims
for municipal taxes on real estate.

22 **1. Treasurer; collect rates.** The treasurer of the district
24 has full and complete authority and power to collect the rates,
tolls, rents and other charges established under section 19 and
26 the rates, tolls, rents and other charges are committed to the
treasurer. The treasurer may, after demand for payment, sue in
28 the name of the district in a civil action for a rate, toll, rent
or other charge remaining unpaid in a court of competent
30 jurisdiction. In addition to other methods established by law
for the collection of rates, tolls, rents and other charges and
32 without waiver of the right to sue for the rates, tolls, rents
and other charges, the lien created by this section may be
34 enforced in the following manner: The treasurer, when a rate,
toll, rent or other charge has been committed to the treasurer
36 for collection, may, after the expiration of 3 months and within
one year after the date when the rate, toll, rent or other charge
38 was due and payable, give or cause to be given to the owner of
the real estate, or leave or cause to be left at the owner's last
40 known residence, or send by certified mail, return receipt
requested, to the owner's last known address a notice in writing
42 signed by the treasurer or bearing the treasurer's facsimile
signature, stating the amount of the rate, toll, rent or other
44 charge, describing the real estate upon which the lien is
claimed, stating that a lien is claimed on the real estate to
46 secure the payment of the rate, toll, rent or other charge and
demanding payment within 30 days after the service or mailing of
48 the notice, together with \$3.00 for the treasurer for making the
demand plus the certified mail, return receipt requested, fee.

50 After the expiration of 30 days and within one year after the
date the rate, toll, rent or other charge was due, the treasurer
52 shall record in the Registry of Deeds of Lincoln

2 County a sewer lien certificate signed by the treasurer, or
4 bearing the treasurer's facsimile signature, setting forth the
6 amount of the rate, toll, rent or other charge, describing the
8 real estate on which the lien is claimed and stating that a lien
10 is claimed on the real estate to secure payment of the rate,
12 toll, rent or other charge and that a notice and demand for
14 payment of the rate, toll, rent or other charge have been made in
accordance with the provisions of this section and that the rate,
toll, rent or other charge remains unpaid. When the undivided
real estate of a deceased ratepayer has been charged to the
decedent's heirs or devisees without designating one of them by
name, it is sufficient to record in the registry a sewer lien
certificate in the name of the heirs or the devisees of said
decedent without designating them by name.

16 At the time the sewer lien certificate is recorded in the
18 registry of deeds, the treasurer shall file in the office of the
20 district a true copy of the sewer lien certificate and mail a
22 true copy of the sewer lien certificate by certified mail, return
24 receipt requested, to each record holder of a mortgage on the
real estate, to the mortgagee's last known address. If the
record owner of real estate has not been charged with the rate,
toll, rent or other charge, the treasurer shall send by certified
mail, return receipt requested, a true copy of the sewer lien
certificate to the record owner.

26 The costs to be paid by the ratepayer are the sum of the fees to
28 record and discharge the lien as established by the Maine Revised
30 Statutes, Title 33, section 751, plus \$13.00, plus the fee to
32 send a notice 30 to 45 days prior to the foreclosure date of the
34 sewer lien mortgage as described in subsection 2 and all
certified mail, return receipt requested, fees paid. Upon
redemption, the district shall prepare and record a discharge of
the sewer lien mortgage.

36 2. Filing of sewer lien. The filing of the sewer lien
38 certificate in the registry of deeds creates a sewer lien
40 mortgage on the real estate described in the certificate to the
42 district that has priority over all other mortgages, liens,
44 attachments and encumbrances of any nature, except liens,
attachments and claims for taxes, and gives to the district all
the rights usually possessed by mortgagees, except that the
district as mortgagee does not have a right to possession of said
real estate until the right of redemption has expired.

46 The filing of the sewer lien certificate in the registry of deeds
48 is sufficient notice of the existence of the sewer lien mortgage.

50 In the event that the rate, toll, rent or other charge, together
52 with interest and costs, is paid within the period of redemption,
the treasurer of the district shall prepare and record a
discharge of the sewer lien mortgage in the same manner as is now
provided for the discharge of real estate mortgages.

2 If the sewer lien mortgage, together with interest and costs, is
4 not paid within 18 months after the date of the filing of the
sewer lien certificate in the registry of deeds, the sewer lien
mortgage is foreclosed and the right of redemption expires.

6 The treasurer of the district shall notify the party named on the
8 sewer lien mortgage and every record holder of a mortgage on the
real estate not more than 45 days nor less than 30 days before
10 the foreclosure date of the sewer lien mortgage. The notice must
12 be in writing and must inform the person named on the sewer lien
14 mortgage and each record holder of a mortgage on the real estate
16 of the impending automatic foreclosure and the date of the
18 foreclosure. The notice may be served by leaving a copy at the
20 party's and each record holder's last known address or by mailing
22 a copy by certified mail, return receipt requested, to the
24 party's and each record holder's last known address. The
district is entitled to receive \$3.00 plus all certified mail,
return receipt requested, fees. These costs must be added to and
become a part of the sewer rate, toll, rent or other charge. If
notice is not given in the time period specified in this section
to the party named on the sewer lien mortgage or to a record
holder of a mortgage, the person not receiving timely notice has
30 days to redeem the sewer lien mortgage after the treasurer
provides notice in the manner specified in this section.

26 Beginning with rates, tolls, rents or other charges that are
28 assessed after January 1, 1994, the notice of impending automatic
foreclosure is as follows:

30 BOOTHBAY HARBOR SEWER DISTRICT
32 NOTICE OF IMPENDING AUTOMATIC FORECLOSURE
Private and Special Law 1961, chapter 161

34 IMPORTANT: DO NOT
36 DISREGARD THIS NOTICE.
38 YOU WILL LOSE YOUR
40 PROPERTY UNLESS YOU PAY
YOUR 19.... SEWER
CHARGES, INTEREST AND
COSTS.

42 To:

44 You are the party named on a sewer lien certificate filed on
46, 19.... and recorded in Book....., Page.....
in the Lincoln County Registry of Deeds. This filing has created
48 a sewer lien mortgage on the real estate described in the sewer
lien certificate.

50 On, 19...., the sewer lien mortgage is
considered foreclosed and your right to recover your property by

2 paying the rates, tolls, rents and other charges that are owed
3 expires.

4 IF THE SEWER LIEN FORECLOSES,
5 THE BOOTHBAY HARBOR SEWER DISTRICT
6 WILL OWN YOUR PROPERTY.

8 If you can not pay the rates, tolls, rents or other charges
9 you owe, please contact the district to discuss this notice.

12
13 Treasurer
14 Boothbay Harbor Sewer
15 District

16 3. Expiration of redemption period. After the expiration
17 of the 18-month redemption period, if the real estate was not
18 assessed to the owner or the person claiming under the owner and
19 if the notice provided for the mortgagee and the owner was not
20 given as provided in this section, the owner has 3 months after
21 receiving actual knowledge of the recording of the sewer lien
22 certificate to redeem the real estate by paying the amount due,
23 together with interest and costs. Upon payment of the full
24 amount due, the district shall discharge the sewer lien mortgage.

26 The sewer lien mortgage is prima facie evidence in all courts in
27 all proceedings by and against the district and its successors
28 and assigns, of the truth of the statements contained in the
29 sewer lien mortgage and, after the redemption period has expired,
30 of the title of regularity and validity of all proceedings with
31 reference to the acquisition of title by the sewer lien mortgage
32 and the foreclosure of the sewer lien mortgage.

34 If the person against whom the rate, toll, rent or other charge
35 is assessed dies after the rate, toll, rent or other charge is
36 committed and prior to the expiration of the 18-month foreclosure
37 period and that person leaves a will, the probate judge of the
38 county where the will is offered upon petition of a devisee may
39 grant a period of redemption not to exceed 60 days following the
40 final allowance or disallowance of the will. Notice of the
41 petition must be given to the district and a certified copy of
42 the court order must be filed in the registry of deeds of the
43 county where the property is located.

44 A discharge of the sewer lien mortgage given after the right of
45 redemption has expired, which discharge has been recorded in the
46 registry of deeds for more than one year, terminates all title
47 the district derived from the sewer lien mortgage or any other
48 recorded sewer lien mortgage for which the right of redemption
49 expired 10 years or more prior to the foreclosure date of this
50 discharged sewer lien mortgage, unless the district has conveyed
51 interest based upon the title acquired from an affected sewer
52 interest.

2 lien mortgage. This paragraph applies to discharges of sewer
3 lien mortgages given after September 16, 1961.

4 **Sec. 3. Emergency clause; referendum; effective date.** In view of
5 the emergency cited in the preamble, except as otherwise provided
6 in this section, sections 1 and 2 of this Act take effect when
7 approved only for the purpose of permitting their submission to
8 the legal voters of the Boothbay Harbor Sewer district, resident
9 in the district, at a district referendum to be called and held
10 for the purpose by June 1, 1994. The referendum must be called,
11 advertised and conducted according to the Maine Revised Statutes,
12 Title 30-A, section 2354; provided, however, that the municipal
13 officers of the Town of Boothbay Harbor are not required to
14 prepare for posting, nor the town clerk to post, a new list of
15 voters and, for the purpose of registration of voters, the board
16 of voter registration must be in session on the secular day next
17 preceding the referendum. The district shall prepare the
18 required ballots on which the subject matter of section 1 of this
19 Act must be reduced to substantially the following question,
20 referred to in this section as "Question A":

22 Question A. "Do you favor revising the charter of the
23 Boothbay Harbor Sewer District to expand the territory of
24 the district to include a portion of the Adams Pond
25 watershed region of the Town of Boothbay?"

26
27 The subject matter of section 2 of this Act must be reduced
28 to substantially the following question, referred to in this
29 section as "Question B":

30
31 Question B. "Do you favor revising the charter of the
32 Boothbay Harbor Sewer District to permit the district to
33 enforce sewer liens on real property in the manner permitted
34 to municipalities for enforcing tax liens on real property?"

35
36 The voters shall indicate by a cross or check mark placed
37 against the word "Yes" or "No" their opinion of the same.
38 Section 1 of this Act takes effect immediately upon acceptance of
39 Question A by a majority of the legal voters voting at the
40 referendum, except that, if a vote is held in conformity with the
41 provisions of this section prior to the approval of this Act, and
42 a majority of the legal voters voting at the referendum vote in
43 favor of Question A, section 1 of this Act takes effect upon
44 approval of the Act. Section 2 of this Act takes effect
45 immediately upon acceptance of Question B by a majority of the
46 legal voters voting at the referendum, except that, if a vote is
47 held in conformity with the provisions of this section prior to
48 the approval of this Act, and a majority of the legal voters
49 voting at the referendum vote in favor of Question B, section 2
50 of this Act takes effect upon approval of the Act.

2 The result of the vote must be declared by the board of
trustees of the district and due certificate of the result must
4 be filed with the town clerk and the Secretary of State.

6 **Sec. 4. Local referendum impact.** Notwithstanding the Maine
Revised Statutes, Title 30-A, section 5685, additional costs, if
8 any, imposed on a municipality by the provisions of this Act
providing for a local referendum are not funded by the State.

10
12 **STATEMENT OF FACT**

14 This bill enlarges the territorial limits of the Boothbay
Harbor Sewer District by authorizing the district to acquire,
construct, maintain and operate a sewer system to serve a portion
16 of the Adams Pond watershed in the Town of Boothbay.

18 This bill further revises the charter of the Boothbay Harbor
Sewer District by extending to the district the same collection
20 enforcement powers that are available to municipalities for
purposes of property tax collection.
22

24

26 This document has not yet been reviewed to determine the
28 need for cross-reference, stylistic and other technical
amendments to conform existing law to current drafting standards.