

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 982

H.P. 692

House of Representatives, February 24, 2005

An Act To Revise the Charter of the Kennebunk Sewer District

Reference to the Committee on Utilities and Energy suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BABBIDGE of Kennebunk.
Cosponsored by Senator SULLIVAN of York and
Representatives: BURNS of Berwick, COLLINS of Wells, DAIGLE of Arundel, DAVIS of
Falmouth, MAKAS of Lewiston, O'BRIEN of Lewiston, SEAVEY of Kennebunkport,
WHEELER of Kittery.

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

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Sec. 1. Territorial limits; corporate name; purposes. The inhabitants and territorial limits within that part of the Town of Kennebunk situated between the Atlantic Ocean and the southeasterly side of the Maine Turnpike and the territory of the Town of Kennebunk situated on the northwesterly side of the Maine Turnpike and described on the October 2004 Town of Kennebunk tax maps as follows: Map 020, Lot 001; P/O Map 020, Lot 002; Map 027, Lot 014; Map 020, Lot 018; P/O 018, Lot 071; P/O 018, Lot 067; Map 018, Lot 072; P/O 028, Lot 005; Map 027, Lot 005; Map 027, Lot 004; Map 027, Lot 011; P/O 029, Lot 010; P/O 021, Lot 098; Map 020, Lot 001; Map 020, Lot 002; Map 027, Lot 022; Map 027, Lot 020; Map 027, Lot 019; Map 020, Lot 003; Map 020, Lot 024 are made and declared to be a public sewerage district and a quasi-municipal corporation under the name "Kennebunk Sewer District" and is a system of public sewerage constructed, maintained and operated for the public health and welfare and for the benefits of the inhabitants and property in the district served by the sewerage facilities, in the manner and with the rights, duties and immunities as described in this Act and all applicable statutes.

The district is authorized to provide services outside the territory of the district to school buildings and facilities owned by Maine School Administrative District No. 71 and to municipal buildings and facilities owned by the Town of Kennebunk and may own such easements, rights of way, sewer lines and other facilities as are necessary or convenient to provide that service, but the cost of locating and constructing sewer facilities located outside the boundaries of the district for that purpose are borne entirely by Maine School Administrative District No. 71 or the Town of Kennebunk and any sewer facilities located outside the boundaries of the district for that purpose may be used only by Maine School Administrative District No. 71 and the Town of Kennebunk.

Sec. 2. Authority to construct and maintain. Inside the territory and outside the territory to serve buildings and facilities owned by Maine School Administrative District No. 71 and the Town of Kennebunk, the district has the authority to lay pipes, drains, sewers and conduits, and to take up, repair and maintain the pipes, drains, sewers and conduits or to contract for the pipes, drains, sewers and conduits to be done, in, along and through any public or private ways and public grounds, and in, along and through lands of any person or corporation, to and into tidal waters, rivers, watercourses and treatment works or into any drain or sewer now or hereafter built that empties into tidal waters, rivers, watercourses and treatment works. The discharge from the pipes, drains, sewers and conduits must be at

2 such points consistent with the requirements of public health as
found convenient and reasonable for the district and the flow of
4 existing watercourses. The district shall construct and maintain
treatment works, pumping stations, basins, reservoirs, flush
6 tanks and such other appliances for collecting, holding,
purifying, distributing and disposing of sewerage matter and
8 commercial and industrial waste and of storm and surface water,
as may be necessary or proper. The district has the authority to
do any or all other things necessary or incidental to accomplish
10 the purposes of the district. The district has the authority to
enter into a lease, leaseback and sale and sale and leaseback
12 with respect to some or all of the district's real or personal
property and to take all other action necessary or desirable,
14 including, but not limited to, the granting of mortgages or liens
to effectuate the transaction.

16

Sec. 3. Election of trustees; terms of office; meetings. All affairs
18 of the district are managed by a board of trustees composed of 5
members who must be residents of the district and elected as
20 provided in this Act. The trustees holding office on the
effective date of this Act shall continue to hold office until
22 their terms expire. At each annual municipal election of the
Town of Kennebunk, the voters of the district shall elect a
24 trustee for the term of 5 years. If the Town of Kennebunk does
not hold an annual election, the district shall arrange for an
26 annual election to fill the trustee position that ends in that
year and to fill any vacancy in the office of trustee. The
28 trustees are nominated and elected under the same procedure as
provided for the municipal officers of the town. If a vacancy
30 arises in the membership of the board of trustees, the vacant
office must be filled by the municipal officers until the next
32 regular municipal election at which a trustee is elected to the
unexpired term. All trustees are eligible for reelection, but
34 municipal officers of the Town of Kennebunk are not eligible for
nomination or election as trustees.

36

After each annual municipal election of the Town of
38 Kennebunk, the trustees shall organize by electing a chair,
vice-chair, treasurer and clerk. The trustees may adopt a
40 corporate seal and, when necessary, may choose other needful
officers and agents for the proper conduct and management of the
42 affairs of the district and fix any compensation for such
officers or agents, who serve at the pleasure of the board. The
44 treasurer shall furnish bond or insurance in such a sum and with
such sureties as the trustees approve, the cost of the bond or
46 insurance to be paid by the district. The trustees serve with
such compensation as they determine, subject to the approval of a
48 majority of the municipal officers of the Town of Kennebunk.

2 The trustees are sworn to the faithful performance of their
duties, which include the duties of any member who serves as
4 clerk or clerk pro tem.

6 At the close of each fiscal year, the trustees shall make a
detailed report of their activities, of the receipts and
8 expenditures of the district, of its financial and physical
condition and of other matters and things pertaining to the
10 district and shall file the report with the municipal authorities
for inclusion in the report of the Town of Kennebunk.

12 **Sec. 4. Meetings of district.** The trustees of the district may
call meetings of the district at any time. Notice of the
14 meeting, signed by the chair or clerk of the board, must be
conspicuously posted at the Kennebunk Town Hall not less than 7
16 days before the meeting and must state the business to be
transacted at the meeting.

18 On written petition of 25% of the voters of the district,
20 the trustees shall call a meeting of the district within 60 days.

22 All persons resident in the district and qualified to vote
for Governor under the laws of this State are entitled to vote in
24 any meeting of the district.

26 **Sec. 5. Meetings of trustees.** The trustees of the district may
call meetings of the board of trustees at any time. Notice of
28 the regularly scheduled meetings of the board, signed by the
chair or clerk of the board, must be posted at the offices of the
30 district and the Kennebunk Town Hall not less than 7 days before
the meeting and must state the business to be transacted at any
32 such meeting.

34 Special meetings of the board may be called as are regularly
scheduled meetings, but on one day's notice.

36 In the event of an emergency meeting, local representatives
38 of the media must be notified of the meeting, whenever
practical. Notification must include time and location and must
40 be in the same manner as used to notify the members of the
board. The minutes of an emergency meeting must state the reason
42 for the meeting.

44 **Sec. 6. Registration of voters of district.** The preparation and
correction of lists of the persons qualified to vote in the
46 district is the responsibility of the registrar of the Town of
Kennebunk as defined in the Maine Revised Statutes, Title 21-A,
48 section 1, subsection 38 and must be performed under the same
procedure governing the preparation and correction of

2 lists of persons qualified to vote in town elections. All
meetings of the district are presided over by a moderator chosen
4 in the same manner and with the same authority as moderators of
town meetings.

6 **Sec. 7. Recall.** The trustees may be recalled in accordance
with the following provision.

8
10 1. The qualified electors of the district may petition for
the recall of a trustee after the first year of the term for
12 which the trustee is elected by filing a petition with the
municipal clerk demanding the recall of the trustee. A trustee
14 may be subject to recall for misfeasance, malfeasance or
nonfeasance in office. The petition must be signed by electors
16 equal to at least 25% of the vote cast for the office of Governor
at the last gubernatorial election within the district. The
recall petition must state the reason for removal.

18
20 2. Within 3 business days after the petition is offered for
filing, the municipal clerk shall determine by careful
22 examination whether the petition is sufficient and so state in a
certificate attached to the petition. If the petition is found
24 to be insufficient, the certificate must state the particulars
creating the insufficiency. The petition may be amended to
26 correct an insufficiency within 5 days following the affixing of
the original certificate. Within 2 days after the offering of
28 the amended petition for filing, the petition must again be
carefully examined to determine sufficiency and a certificate
30 stating the findings must be attached. Immediately upon finding
an original or amended petition sufficient, the municipal clerk
32 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
34 date. The municipal clerk shall notify the trustee against whom
the recall petition is filed of the special election.

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

44
46 4. The trustee against whom a recall petition has been
filed shall continue to perform the duties of the trustee's
48 office until the result of the special election is officially
declared. The person receiving the highest number of votes at
the special election is declared elected for the remainder of the

2 term. If the incumbent receives the highest number of votes, the
3 incumbent continues in office. If another candidate receives the
4 highest number of votes, the other person succeeds the incumbent
5 within 10 days after receiving notification.

6 5. After one recall petition and special election, no
7 further recall petition may be filed against the same trustee
8 during the term for which the trustee was elected.

10 **Sec. 8. Right of eminent domain.** The authority and procedures
11 for the exercise of eminent domain by the district must conform
12 to the Maine Revised Statutes, Title 38, sections 1152, 1152-A,
13 1153 and 1154. The district may not take by right of eminent
14 domain any of the property or facilities of any other public
15 utility used or acquired for future use by the public utility in
16 the performance of a public duty, unless expressly authorized by
17 a special act of the Legislature.

18 **Sec. 9. Crossing other public utility.** If a sewer line of the
19 district crosses the property or line of another public utility,
20 unless consent is given by the other public utility as to the
21 place, manner and conditions of the crossing within 30 days after
22 consent is requested by the district, the Public Utilities
23 Commission shall determine the place, manner and conditions of
24 the crossings. Any work on the property of that public utility
25 must be done under the supervision and to the satisfaction of the
26 public utility, but at the expense of the district. If a sewer
27 line of the district as provided in this section crosses the
28 property or line of a railroad corporation, the procedure is the
29 same as stated in this section, except that the Department of
30 Transportation is substituted for the Public Utilities Commission.

32 **Sec. 10. Rights and obligations of abutters and others to enter.** A
33 person may not connect a private sewer to a district sewer until:

36 1. The private sewer has been inspected by a designated
37 agent of the district and that agent has certified in writing
38 that the private sewer has been constructed in compliance with
39 and meets all requirements and conditions of the district's
40 regulations;

42 2. The person has paid or has made arrangements acceptable
43 to the district to pay all assessments, impact fees or other
44 charges the district imposes when a private sewer is connected to
45 any of the district sewers; and

46 3. The person has obtained a permit in writing permitting

2 the connection from the trustees. Before a permit is issued, the
3 clerk or the clerk's designee for the district shall record the
4 permit in the district's records.

6 Every building in the district intended for human habitation
7 or occupancy or with facilities for discharge or disposal of
8 sewage or commercial or industrial waste accessible to a sewer of
9 the district must, in the most direct manner possible, connect to
10 the district sewer within 90 days after receiving from the
11 district a request to connect or within such further time as the
12 trustees of the district may grant. Whenever feasible, each
13 building must have a separate connection to the district's
14 sewer. A building is considered accessible to a sewer of the
15 district if the building is at any point within 200 feet of a
16 district sewer or if any private sewer or drain directly or
17 indirectly connected to the building or carrying wastewater or
18 commercial or industrial waste from the building comes within 200
19 feet of a district sewer. This section does not require the
20 owner of a building to acquire any real property or easement for
21 the sole purpose of making the connection.

22 Existing buildings that are already served by a private
23 sewer system are not required to connect with any sewer or drain
24 of the district as long as the private sewer or drainage system
25 functions in a satisfactory and sanitary manner and does not
26 violate any law or applicable ordinance or any applicable
27 requirements of the Maine State Plumbing Code, as determined by
28 the municipal plumbing inspector, the plumbing inspector's
29 alternate or, in the event that both are trustees or employees of
30 the district, the Department of Health and Human Services, Bureau
31 of Health, Division of Health Engineering.

32 **Sec. 11. Contracts authorized.** The district is authorized to
33 contract with persons, corporations, districts, the Town of
34 Kennebunk and other municipalities, both inside and outside the
35 boundaries of the district, and with the State Government and
36 Federal Government or any agency of either, to provide for
37 disposal of sewage and commercial and industrial wastewater
38 through the district's system and through the system owned by any
39 such person, corporation, district or other municipality. Every
40 other district and municipality of the State may contract with
41 the district for the collection, distribution, treatment and
42 disposal of sewage and commercial and industrial wastewater, and
43 for those purposes any such municipality may raise money as for
44 other municipal charges.

46 **Sec. 12. Condition for carrying out work.** When the district
47 enters, digs up or excavates a public way or other land for the
48 purpose of laying its sewers, drains or pipes or

2 constructing or maintaining manholes or catch basins or their
3 appurtenances or for any other purpose, the work must be done
4 expeditiously. Upon completion of the work, the district shall
5 restore the way or land to the condition it was in prior to the
6 work or to a condition equally as good. Whenever the character
7 of the work is such that it endangers travel on a public way, the
8 municipal officers of the Town of Kennebunk may order a temporary
9 closing of the way and of any intersecting way upon request of
10 the district. The way must remain closed to public travel until
11 the municipal officers determine it restored to a condition safe
12 for traffic.

13 **Sec. 13. Enforcement of laws and rules.** The district manager,
14 engineer or other official designated by district rule with the
15 authority to enforce the provisions of this Act or the rules
16 adopted under this Act may:

17 1. With the consent of the owner, occupant or agent or
18 pursuant to an administrative inspection warrant issued by a
19 District Court Judge as provided in the Maine Rules of Civil
20 Procedure, Rule 80E, enter at reasonable hours any property or
21 building to inspect the property or building for compliance with
22 the district's rules. A district official's entry onto property
23 under this paragraph is not a trespass;

24 2. Issue a summons to any person who violates this Act or
25 any district rule; and

26 3. Represent the district in District Court in the
27 prosecution of alleged violations of this Act or any district
28 rule.

29 A person, including without limitation a landowner, the
30 landowner's agent or a contractor, who violates a provision of
31 this Act or a district rule or injures the district's property by
32 discharging or otherwise permitting an offensive or injurious
33 material or matter to enter the district's system is liable for a
34 minimum civil penalty of \$100 and a maximum civil penalty of
35 \$2,500 per day for each violation; damages to compensate the
36 district for injury to its property; the expenses, including a
37 reasonable amount for administration and overhead, the district
38 incurs to abate the violation; a temporary restraining order, to
39 enjoin, correct or abate the violation; and an award of
40 reasonable attorney's fees, expert fees, interest and costs.

41 All proceedings arising under this Act or the district's
42 rules are brought in the name of the district in the District
43 Court. All fines, damages and awards of expenses for the cost to
44 abate a violation, awards of attorney's fees, expert fees, costs
45 and interest must be paid to and are the property of the district.

2 The district may seek in a civil action injunctive relief
4 from an industrial user that violates any pretreatment standard
6 or requirement administered by the district. The district may
seek a civil penalty of up to \$1,000 a day for each violation by
an industrial user of the pretreatment standard or requirement.

8 **Sec. 14. Property tax exemption.** The property and franchises
of the district are forever exempt from taxation.

10 **Sec. 15. Bonds and notes.** The district may authorize bonds
12 and notes.

14 1. The district may provide by resolution of its board of
16 trustees, without district vote, except as provided in section
18 16, for the borrowing of money and the issuance from time to time
of bonds, subject to the debt limitation set in this section, for
any of its corporate purposes, including, but not limited to:

20 A. Paying and refunding its indebtedness;

22 B. Paying any necessary expenses and liabilities, whether
24 incurred by the district or the Town of Kennebunk, the
district being authorized to reimburse the Town of Kennebunk
for any such expenses incurred or paid by it;

26 C. Paying costs directly or indirectly associated with
28 acquiring properties, paying damages, laying sewers, drains
and conduits, constructing, maintaining and operating sewage
30 and treatment plants or systems and making renewals,
additions, extensions and improvements to the same and
32 covering interest payments during the period of construction
and for the period after construction as the trustees may
34 determine; and

36 D. Providing reserves for debt service, repairs and
38 replacements or other capital or current expenses as may be
required by a trust agreement or resolution securing bonds.

40 Bonds may be issued as general obligations of the district or as
42 special obligations payable solely from particular funds. The
total outstanding and unpaid indebtedness of the district may not
44 at any one time exceed the sum of \$16,000,000. The principal of
and premium if any and interest on all bonds are payable solely
46 from the funds provided for that purpose from revenues.
"Revenues" means and includes the proceeds of bonds, all
48 revenues, rates, fees, entrance charges, assessments, rents and
other receipts derived by the district from the operation of its
sewer system and other properties, including, but not limited to,

2 investment earnings and the proceeds of insurance, condemnation
and sale of or other disposition of properties. All bonds issued
4 by the district are legal obligations of the district. Bonds may
be issued without obtaining the consent of a commission, board,
6 bureau or agency of the State or the Town of Kennebunk and
without any proceedings, limitations or conditions to meet other
8 than those specifically required under this Act. Bonds issued
under this Act do not constitute a debt or liability of the State
10 or the Town of Kennebunk or a pledge of the faith and credit of
the State or the municipality, but the bonds are payable solely
12 from the funds provided for that purpose, and a statement to that
effect must be recited on the face of the bonds.

14 2. The district may also provide by resolution of its board
of trustees, without district vote, for the issuance from time to
16 time of notes in anticipation of bonds authorized under this
section and of notes in anticipation of the revenues to be
18 collected or received in any year or in anticipation of the
receipt of federal or state grants or other aid. The issuance of
20 these notes is governed by the applicable provisions of this
section relating to the issuance of bonds, except that notes in
22 anticipation of revenue must mature no later than one year from
their respective dates and notes issued in anticipation of
24 federal or state grants or other aid and renewals must mature no
later than the expected date of receipt of those grants or aid.
26 Notes in anticipation of revenue issued to mature less than one
year from their dates may be renewed from time to time by the
28 issuance of other notes, except that the period from the date of
an original note to the maturity of any note issued to renew or
30 pay the same or the interest on the note may not exceed one year.

32 The district is authorized to enter into agreements with the
State or the United States, or any agency of either, or any
34 municipality, corporation, commission or board authorized to
grant or loan money to or otherwise assist in the financing of
36 projects of the type the district is authorized to carry out and
to accept grants and borrow money from the government, agency,
38 municipality, corporation, commission or board necessary or
desirable to accomplish the purposes of the district.

40 3. The bonds issued under this section must be dated,
42 mature at a time or times not exceeding 40 years from their date
or dates and bear interest at a rate or rates determined by the
44 board of trustees. The bonds may be made redeemable before
maturity, at the option of the district, at a price or prices and
46 under any terms and conditions as may be fixed by the board of
trustees prior to the issuance of the bonds. The board of
48 trustees shall determine the form of the bonds, including any
interest coupons to be attached to the bonds, and the manner of

2 execution of the bonds and shall fix the denomination or
denominations of the bonds and the place or places of payment of
4 principal and interest, which may be at any bank or trust company
inside or outside the State. Bonds are executed in the name of
6 the district by the manual or facsimile signature of the officer
or officers authorized in the resolution to execute the bonds.
8 One signature on each bond must be a manual signature. Coupons,
if any, attached to the bonds must be executed with the facsimile
10 signature of the officer or officers of the district designated
in the resolution. If the officer whose signature or a facsimile
12 of whose signature appears on any bonds or coupons ceases to be
an officer before the delivery of the bonds, the signature or its
14 facsimile is valid and sufficient for all purposes as if the
officer had remained in office until the delivery.
16 Notwithstanding any of the other provisions in this Act or any
recitals on any bonds issued under this section, all bonds are
18 deemed to be negotiable instruments under the laws of this
State. The bonds may be issued in coupon or registered form, or
20 both, as the board of trustees may determine. Provision may be
made for the registration of any coupon bonds as to principal
22 alone and as to both principal and interest and for the
reconversion into coupon bonds of any bonds registered as to both
24 principal and interest. The board of trustees may sell bonds in
that manner, either at public or private sale at a price as it
26 determines to be in the best interest of the district. The
proceeds of the bonds of each issue must be used solely for the
28 purpose for which those bonds are authorized and must be
disbursed in such a manner and under such restrictions as the
30 board of trustees provides in the resolution authorizing the
issuance of the bonds or in the trust agreement securing the
32 bonds. The resolution providing for the issuance of bonds and
any trust agreement securing the bonds may contain such
34 limitations upon the issuance of additional bonds as the board of
trustees determines proper. The additional bonds must be issued
36 under such restrictions and limitations prescribed by that
resolution or trust agreement. Prior to the preparation of
38 definitive bonds, the board of trustees may, under like
restrictions, issue interim receipts or temporary bonds, with or
40 without coupons, exchangeable for definitive bonds when those
bonds are executed and are available for delivery. The board of
42 trustees may provide for the replacement of any bond that is
mutilated, destroyed or lost.

44 4. In the discretion of the board of trustees, any issue of
bonds may be secured by a trust agreement by and between the
46 district and a corporate trustee that may be any trust company
inside or outside the State.

48 The resolution authorizing the issuance of the bonds or the trust

2 agreement may pledge or assign, in whole or in part, the revenues
and other money held or to be received by the district and any
4 account and contract or other rights to receive the same, whether
then existing or coming into existence and whether then held or
6 acquired by the district, and the proceeds from the bonds, but
the resolution or trust agreement may not convey or mortgage the
8 sewer system or any other properties of the district. The
resolution may also contain provisions for protecting and
10 enforcing the rights and remedies of the bondholders that are
reasonable and proper and not in violation of law, including, but
12 not limited to, covenants setting forth the duties of the
district and the board of trustees in relation to the
14 acquisition, construction, reconstruction, improvement, repair,
maintenance, operation and assurance of its sewer system or any
of its other properties; the fixing and revising of rates, fees
16 and charges; the application of the proceeds of bonds; the
custody, safeguarding and application of revenues; the defining
18 of defaults and providing for remedies in the event of defaults,
which may include the acceleration of maturities; the
20 establishment of reserves; and the making and amending of
contracts. The resolution or trust agreement may set forth the
22 rights and remedies of the bondholders and of the corporate
trustee, if any, and may restrict the individual right of action
24 by bondholders as is customary in trust agreements or trust
indentures securing bonds or debentures of corporations. In
26 addition, the resolution or trust agreement may contain such
other provisions as the board of trustees determines reasonable
28 and proper for the security of the bondholders. All expenses
incurred in carrying out the resolution or trust agreement may be
30 treated as a part of the cost of operation. The pledge by any
resolution or trust agreement is valid and binding and is deemed
32 continuously perfected for the purposes of the Uniform Commercial
Code from the time when the pledge is made. All revenues, money,
34 rights and proceeds so pledged and received by the district are
immediately subject to the lien of the pledge without any
36 physical delivery or segregation of the pledge or further action
under the Uniform Commercial Code or otherwise. The lien of the
38 pledge is valid and binding against all parties having claims of
any kind in tort, contract or otherwise against the district
40 irrespective of whether those parties have notice of the lien of
the pledge.

42
44 The resolution authorizing the issuance of bonds under this Act,
or any trust agreement securing those bonds, may provide that all
46 or a sufficient amount of revenues, after providing for the
payment of the cost of repair, maintenance and operation and
48 reserves for the payment as may be provided in the resolution or
trust agreement, is set aside at such regular intervals as may be
provided in the resolution or trust agreement and deposited in

2 the credit of a fund for the payment of the interest on and the
principal of bonds issued under this chapter as the principal
4 becomes due and the redemption price or purchase price of bonds
retired by call or purchase. The use and disposition of money to
6 the credit of the fund is subject to such regulations as may be
provided in the resolution authorizing the issuance of the bonds
8 or in the trust agreement securing the bonds and, except as may
otherwise be provided in the resolution or trust agreement, the
10 fund is a fund for the benefit of all bonds without distinction
or priority of one over another.

12 5. Notwithstanding any other provision of law, all money
received pursuant to the authority provided under this Act is
14 deemed to be trust funds, to be held and applied solely as
provided in this Act. The resolution authorizing the issuance of
16 bonds or the trust agreement securing the bonds must provide that
any officer to whom, or bank, trust company or other fiscal agent
18 to which, the money is paid acts as trustee of the money and
shall hold and apply the same for the purposes of this Act,
20 subject to such regulations as may be provided in the resolution
or trust agreement or as may be required under this Act.

22 6. A holder of bonds issued under this Act or of any of the
coupons appertaining to the bonds or a corporate trustee under
24 any trust agreement, except to the extent the rights given may be
restricted by the resolution authorizing the issuance of those
26 bonds or trust agreement, may, either at law or in equity, by
suit, action, mandamus or other proceeding, including proceedings
28 for the appointment of a receiver to take possession and control
of the properties of the district, protect and enforce any and
30 all rights under the laws of the State or granted under this Act
or under the resolution or trust agreement. The holder of bonds
32 and the trustee under any trust agreement may enforce and compel
the performance of any duty required by this Act or by the
34 resolution or trust agreement to be performed by the district or
by any officer of the district, including the fixing, charging
36 and collecting of rates, fees and charges for the use of or for
the services and facilities furnished by the district.

40 7. The board of trustees by resolution, without district
vote, may issue refunding bonds for the purpose of paying any of
42 its bonds at maturity or upon acceleration or redemption. The
refunding bonds may be issued at such time prior to the maturity
44 or redemption of the refunded bonds as the board of trustees
determines to be in the public interest. The refunding bonds may
46 be issued in sufficient amounts to pay or provide the principal
of the bonds being refunded, together with any redemption premium
48 on the bonds, any interest accrued or to accrue to the date of
payment of those bonds, the expenses of issue of the refunding

2 bonds, the expenses of redeeming the bonds being refunded and
such reserves for debt service or other capital or current
4 expenses from the proceeds of such refunding bonds as may be
required by a trust agreement or resolution securing bonds. The
6 issuance of refunding bonds, the maturities and other details of
the refunding bonds, the security for refunding the bonds, the
8 rights of the holders of the refunding bonds and the rights,
duties and obligations of the district in respect of the same are
governed by the applicable provisions of this section relating to
10 the issuance of bonds other than refunding bonds.

12 8. All bonds, notes or other evidences of indebtedness
issued under this Act, their transfer and the income from the
14 bonds, notes or other evidences of indebtedness, including any
profit made on the sale of bonds, notes or other evidences of
16 indebtedness, must at all times be free from taxation within the
State.

18 **Sec. 16. Certain bond issues; special meeting; vote.** If the
20 trustees vote to authorize bonds or notes for any of the
corporate purposes of the sewer district, excluding notes payable
22 within one year, notes in anticipation of bonds authorized
pursuant to this Act, notes in anticipation of the revenues to be
24 collected or received in any year and notes in anticipation of
the receipt of approved federal or state grants, the authorized
26 amount of which singly or in aggregate included in any one
financing is \$150,000 or more, the trustees must call a special
28 district meeting for the purpose of permitting the collection of
testimony from the public concerning the purpose and the amount
30 of debt so authorized. Notice of the special district meeting,
stating the approximate amount of the debt and the purpose for
32 which it is being issued, must be published not less than 7 full
days prior to the date of the meeting in a newspaper having
34 general circulation in the district and must be mailed to each
ratepayer in the district not later than the date of the
36 publication. A debt may not be incurred under the vote of the
trustees until the expiration of 7 full days following the date
38 of the special district meeting.

40 Except for debt to fund that part of any project that has
been approved for grant financing by the State Government or
42 Federal Government to meet the requirements of the United States
Clean Water Act and the Maine Revised Statutes, Title 38, chapter
44 12, including any related facilities not eligible for that
financing but essential to the operation of the approved project
46 as an integral system, for debts in excess of the amount
specified in this section, the following petition and referendum
48 procedure applies. If, on or before the 7th day following the
date of the special district meeting, a petition signed by at

2 least 5%, but not fewer than 50, of the registered voters of the
3 district is filed with the clerk of the district requesting
4 reference of the vote of the trustees to referendum, the clerk of
5 the district shall call and hold a special election of the voters
6 of the district for the purpose of submitting to referendum vote
7 a question of approving the vote of the trustees. The vote of
8 the trustees is suspended until it has received approval by vote
9 of a majority of the voters of the district voting on the
10 question at the special election.

11 **Sec. 17. Rates.** All persons, firms and corporations, whether
12 public, private or municipal, shall pay to the treasurer of the
13 district the rates, tolls, rents, entrance charges, impact fees
14 and other lawful charges established by the trustees for the
15 sewer or drainage service used or available with respect to their
16 real estate. The rates include rates for the district's
17 readiness to serve charged owners of real estate abutting on or
18 accessible to sewers or drains of the district but not actually
19 connected to the district, whether or not such real estate is
20 improved. For the purposes of this Act, "other lawful charges"
21 and "other charges" include interest on delinquent accounts at a
22 rate not to exceed the highest lawful rate set by the Treasurer
23 of State for municipal taxes.

24 Rates, tolls, rents, impact fees and entrance charges must
25 be uniform within the district when both the cost to the district
26 of installation and maintenance of sewers or their appurtenances
27 and the cost of service are substantially uniform. Nothing
28 precludes the district from establishing a rate, toll, rent,
29 impact fee or entrance charge higher than the regular rates,
30 tolls, rents, impact fees and entrance charges in sections where,
31 for any reason, the cost to the district of construction and
32 maintenance, or the cost of service, exceeds the average. The
33 higher rates, tolls, rents, impact fees and entrance charges must
34 be uniform throughout the sections where they apply.

35 Prior to the adoption of a new rate schedule, the trustees
36 shall hold a public hearing regarding the proposed rate
37 schedule. The trustees shall publish the proposed rates and
38 notice of the hearing not less than once in a newspaper having a
39 general circulation in the district not less than 7 days prior to
40 the hearing. The district shall mail to each ratepayer a notice
41 of the public hearing and the proposed new rate at least 14 days
42 prior to the hearing.

43 The sewer rates, tolls, rents, impact fees, entrance charges
44 and other lawful charges established by the board of trustees in
45 accordance with this Act must be fixed and adjusted with respect
46 to the sewer service provided.

2 to the aggregate of the rates, tolls, rents, impact fees and
entrance charges so as to produce revenue at least sufficient,
4 together with any other money available to produce revenue, to:

6 1. Pay the current expenses of operating and maintaining
the sewerage, drainage and treatment system of the district;

8 2. Pay the principal of and premium if any and interest on
10 all bonds and notes issued by the district as they become due and
payable;

12 3. Create and maintain such reserves as may be required by
14 the trustees or any trust agreement or resolution securing bonds
and notes;

16 4. Provide funds for paying the cost of all necessary
18 repairs, replacements and renewals of the sewerage, drainage and
treatment systems of the district;

20 5. Payment of obligations. Pay or provide for any amounts
22 that the district may be obligated to pay or provide for by law
or contract, including any resolution or contract with or for the
24 benefit of the holders of its bonds and notes; and

26 6. Provide revenue in order to pay all or part of the
present or projected cost to improve, enlarge or expand the
28 district's system, including payment of interest accruing on any
indebtedness for such purposes.

30 **Sec. 18. Assessments.** When the district formed under this Act
32 has constructed and completed a common sewer, the trustees may,
in order to defray a portion of the expense of the construction
34 of a sewer, determine what lots or parcels of land are benefited
by the sewer and estimate and assess upon the lots and parcels of
36 land, and against the owners of the lots and parcels of land, or
person in possession or against whom taxes are assessed, whether
38 the person to whom the assessment is made is the owner, tenant,
lessee or agent and whether the same is occupied or not, a sum
not exceeding the benefit as the trustees may determine just and
40 equitable towards defraying the expense of constructing and
completing the sewer, together with such sewage disposal units
42 and appurtenances as may be necessary. The assessments may not
exceed the cost of the sewer and sewage disposal units. The
44 trustees shall file with the clerk of the district the location
of the sewer and sewage disposal unit, with a profile description
46 of the same, a statement of the amount assessed upon each lot or
parcel of land so assessed, a description of each lot or parcel
48 and the name of the owner of the lots or parcels of land or
person against whom the assessment

2 is made. The clerk of the district shall record that information
3 in a book kept for that purpose. Within 10 days after the
4 filing, each person assessed must be notified of the assessment
5 by having an authentic copy of the assessment, with an order of
6 notice signed by the clerk of the district, stating the time and
7 place for a hearing upon the subject matter of the assessments,
8 given to each person so assessed or left at the person's usual
9 place of abode in the district. If the person has no place of
10 abode in the district, then the notice must be given or left at
11 the abode of the person's tenant or lessee if the person has one
12 in the district. If the person has no tenant or lessee in the
13 district, then notice must be posted in some conspicuous place in
14 the vicinity of the lot or parcel of land so assessed at least 30
15 days before the hearing. The notice may be given by publishing
16 it once a week for 3 successive weeks in any newspaper of general
17 circulation in the district, the first publication to be at least
18 30 days before the hearing. A return made upon a copy of the
19 notice by a constable in a municipality within the district or by
20 a sheriff or deputy sheriff or the production of the newspaper
21 containing the notice is conclusive evidence that the notice has
22 been given. At the hearing, the trustees have the authority to
23 revise, increase or diminish any of the assessments, and all
24 revisions, increases or diminutions must be in writing and
recorded by the clerk of the district.

26 **Sec. 19. Appeal on assessment.** A person aggrieved by a
27 decision of the trustees as it relates to an assessment for sewer
28 construction has the same rights of appeal as are provided in the
29 case of laying out town ways.

30 **Sec. 20. Lien for unpaid assessments.** All assessments create a
31 lien upon each lot or parcel of land so assessed and the
32 buildings upon the same. The lien takes effect when the trustees
33 file with the clerk of the district the completed assessment and
34 continues for one year thereafter. Within 10 days after the date
35 of hearing on the assessment, the clerk of the district shall
36 make out a list of all assessments, the amount of each and the
37 names of the persons against whom those assessments are assessed,
38 and the clerk shall certify the list and deliver it to the
39 treasurer of the district. If the assessments are not paid
40 within 3 months from the date of notice, the treasurer may bring
41 a civil action for the collection of the assessments in the name
42 of the district against the persons against whom the assessments
43 are made and for the enforcement of the liens. The complaint in
44 an action must contain a statement of the assessment, a
45 description of the real estate against which the assessment is
46 made and an allegation that a lien is claimed on the real estate
47 to secure the payment of the assessment. If no service is made
48 upon the defendant or it appears that another person is

2 interested in the real estate, the court shall order further
notice of the action as appears proper and shall allow the other
4 person to become party to the action. If it appears upon trial
of the action that the assessment was legally made against the
6 real estate and is unpaid and that there is an existing lien on
the real estate for the payment of the assessment, judgment is
8 rendered for the assessment, interest and costs of suit against
the defendants and against the real estate upon which the
assessment was made. Execution must issue on the real estate to
10 be enforced by sale of the real estate in the manner provided for
a sale on execution of real estate attached on original process.
12 In making the sale, the officer shall follow the procedure in
selling and conveying and the same rights of redemption apply as
14 provided in the Maine Revised Statutes, Title 36, section 941.

16 **Sec. 21. Civil action for unpaid assessments.** If an assessment is
not paid and the district does not proceed to collect unpaid
18 assessments by proceedings as prescribed in section 20 or does
not collect or is in any manner delayed or defeated in collecting
20 the assessments by the proceedings, then the district in its name
may maintain a civil action against the party so assessed for the
22 amount of the assessment as for money paid, laid out and expended
in any court of competent jurisdiction. The district may recover
24 the amount of the assessment with 10% interest on the same from
the date of the assessment and costs.

26 **Sec. 22. Collection of unpaid rates.** There is a lien on real
estate served or benefited by the sewers of the district to
28 secure the payment of rates, tolls, rents, impact fees, entrance
charges and other charges established and due under this Act.
30 The lien takes precedence over all other claims on the real
estate excepting only claims for taxes.
32

34 The treasurer of the district has full and complete
authority and power to collect the rates, tolls, rents, impact
36 fees, entrance charges and other charges established under this
Act, and they must be committed to the treasurer. The treasurer
38 may, after demand for payment, sue in the name of the district in
a civil action for any rate, toll, rent, impact fee, entrance
40 charge or other charge remaining unpaid in any court of competent
jurisdiction. In addition to other methods established by law
42 for the collection of rates, tolls, rents, impact fees, entrance
charges and other charges, and without waiver of the right to sue
44 for the same, the lien created may be enforced in the following
manner. The treasurer, when a rate, toll, rent, impact fee,
46 entrance charge or other charge has been committed to the
treasurer for collection, may, after the expiration of 3 months
48 and within one year after the date when the same became due and

2 payable, give to the owner of the real estate served, or leave at
the owner's last and usual place of abode, or send by certified
4 mail, return receipt requested, to the owner's last known
address, a notice in writing signed by the treasurer or bearing
6 the treasurer's facsimile signature stating the amount of that
rate, toll, rent, impact fee or entrance charge or other charge.
8 The notice must describe the real estate upon which the lien is
claimed and state that a lien is claimed on the real estate to
10 secure the payment of the rate, toll, rent, impact fee, entrance
charge or other charge. The notice must demand the payment of
12 the rate, toll, rent, impact fee, entrance charge or other charge
within 30 days after service or mailing, with \$1 for the
14 treasurer for mailing the notice together with the certified
mail, return receipt requested, fee. The notice must contain a
16 statement that the district is willing to arrange installment
payments of the outstanding debt. For the purpose of this
18 section, a mobile home is considered real estate. After the
expiration of a period of 30 days and within one year thereafter,
20 the treasurer shall record in the registry of deeds in the county
in which the property of the person is located a certificate
22 signed by the treasurer setting forth the amount of the rate,
toll, rent, impact fee, entrance charge or other charge
24 describing the real estate on which the lien is claimed. The
certificate must state that a lien is claimed on the real estate
26 to secure payment of the rate, toll, rent, impact fee, entrance
charge or other charge; that a notice and demand for payment of
28 the same has been given or made in accordance with this section;
and that the rate, toll, rent, impact fee, entrance charge or
30 other charge remains unpaid. At the time of the recording of the
certificate in the registry of deeds as provided, the treasurer
32 shall file in the office of the district a true copy of the
certificate and shall mail a true copy of the certificate by
34 certified mail, return receipt requested, to each record holder
of any mortgage on the real estate at the record holder's last
and usual place of abode.

36
38 The filing of the certificate in the registry of deeds is
deemed to create, and creates, a mortgage on the real estate
40 described in the certificate to the district that has priority
over all other mortgages, liens, attachments and encumbrances of
42 any nature, except liens, attachments and claims for taxes. The
mortgage gives the district all the rights usually possessed by
44 mortgagees, except that the district as mortgagee does not have
any right to possession of the real estate until the right of
46 redemption provided for has expired. If the mortgage, together
with interest and costs, is not paid within 18 months after the
48 date of filing of the certificate in the registry of deeds as
provided, the mortgage is deemed to have been foreclosed and the
right of redemption to have expired. The filing of the

2 certificate in the registry of deeds is sufficient notice of the
3 existence of the mortgage provided for. If the rate, toll, rent,
4 impact fee, entrance charge or other charge, with interest and
5 costs, is paid within the period of redemption provided for, the
6 treasurer of the district shall discharge the mortgage in the
7 same manner as provided for the discharge of real estate
8 mortgages.

9
10 The costs to be paid by the owner of the real estate served
11 is the sum of the fees for receiving, recording and indexing the
12 lien, or its discharge, as established by the Maine Revised
13 Statutes, Title 33, section 751, plus \$13, plus all certified
14 mail, return receipt requested, fees.

15
16 The treasurer of the district shall notify the party named
17 on the sewer lien mortgage and each record holder of a mortgage
18 on the real estate not more than 45 days or less than 30 days
19 before the foreclosing date of the sewer lien mortgage in a
20 notice signed by the treasurer or bearing the treasurer's
21 facsimile signature. The notice of the impending automatic
22 foreclosure indicating the exact date of foreclosure must be left
23 at the holder's last and usual place of abode or sent by
24 certified mail, return receipt requested, to the holder's last
25 known address.

26 For sending this notice, the district is entitled to receive
27 \$3 plus all certified mail, return receipt requested, fees.
28 These costs must be added to and become a part of the amount
29 due. If notice is not given to the party named on the sewer lien
30 mortgage or to any record holder of a mortgage in the time period
31 specified in this section, the person not receiving timely notice
32 may redeem the sewer lien mortgage until 30 days after the
33 treasurer does provide notice in the manner specified in this
34 section. The notice of impending automatic foreclosure must be
35 substantially in the following form:

36
37 **STATE OF MAINE**
38 **KENNEBUNK SEWER DISTRICT**
39 **NOTICE OF IMPENDING AUTOMATIC FORECLOSURE**
40 **SEWER LIEN Title 38 M.R.S.A. Section 1208**

41 **IMPORTANT: DO NOT DISREGARD THIS NOTICE. YOU WILL LOSE YOUR**
42 **PROPERTY UNLESS YOU PAY THE CHARGES, COSTS AND INTEREST FOR WHICH**
43 **A LIEN ON YOUR PROPERTY HAS BEEN CREATED BY THE KENNEBUNK SEWER**
44 **DISTRICT.**

45 TO:

46
47 You are the party named on the Sewer Lien Certificate filed
48

2 on, 20.. and recorded in Book, Page in the
York County Registry of Deeds. This Kennebunk Sewer District
4 filing created a sewer lien mortgage on the real estate described
in the Sewer Lien Certificate.

6 On, 20.., the sewer lien mortgage will be foreclosed
and your right to redeem the mortgage and recover your property
8 by paying the District's charges and interest that are owed will
expire.

10 **IF THE LIEN FORECLOSES, THE KENNEBUNK SEWER DISTRICT WILL OWN**
12 **YOUR PROPERTY, SUBJECT ONLY TO MUNICIPAL TAX LIENS.**

14 If you cannot pay the outstanding charges, costs and
interest that are the subject of this notice or the subject of
16 installment payment arrangements that you have made with the
district, please contact me immediately to discuss this notice.

18

20 District Treasurer

22 The district shall pay the treasurer \$1 for the notice, \$1
for filing the lien certificate and the amount paid for certified
24 mail, return receipt requested, fees. The fees for recording the
lien certificate are paid by the district to the register of
26 deeds.

28 A discharge of the certificate given after expiration of the
right of redemption whom the discharge has been recorded in the
30 registry of deeds for more than one year terminates all title the
sewer district derived from that certificate or any other
32 recorded certificate for which the right of redemption expired 10
years or more prior to the foreclosure date of this discharge
34 lien, unless the sewer district has conveyed any interest based
upon the title acquired from any of the affected liens.

36 **Sec. 23. Supplementary charges.** The district is authorized to
38 impose charges, in addition to any other assessments now lawfully
imposed by general law, for the use of sewers, sewer systems and
40 treatment works. The trustees may adopt rules as may be
necessary or convenient to carry out the purposes of the
42 district. All incidental powers, rights and privileges necessary
to the accomplishment of the purposes of the district are granted
44 to the district and its trustees, including the right of its
trustees to determine when and where sewerage and treatment
46 facilities and disposal units are needed and when and where the
same are constructed.

48 **Sec. 24. Competitive bidding.** A contract in excess of

2 \$2,000 between the district and a contractor for the construction
of facilities located on private property for the exclusive use
4 of a private individual and for which the private individual is
required to pay the total cost directly to the district must be
6 awarded by a system of competitive bidding. Unless there are
valid reasons to the contrary, the contracts must be awarded to
the lowest responsible bidder.

8
Sec. 25. District personnel records. The personnel records of
10 the district are confidential to the same extent as municipal
records pursuant to the Maine Revised Statutes, Title 30-A,
12 section 2702, subsection 1. The records are reviewable by
employees of the district to the same extent and in the same
14 manner as provided for municipal personnel records pursuant to
the Maine Revised Statutes, Title 30-A, section 2702, subsection
16 2.

18 **Sec. 26. Sewer extension.** The district may not construct a
sewer extension unless the district complies with the provisions
20 of the Maine Revised Statutes, Title 38, section 1252, subsection
7.

22 **Sec. 27. P&SL 1955, c. 69,** as amended, is repealed.

24 **Sec. 28. Referendum; effective date.** This Act must be submitted
26 to the legal voters within the territory described in section 1
at the election called for that purpose after the effective date
28 of this Act. The election must be called, advertised and
conducted according to the law relating to municipal elections,
30 except that the registrar of voters is not required to prepare or
the town clerk to post a new list of voters. For the purpose of
32 registration of voters, the registrar of voters must be in
session on the secular day preceding the election. The subject
34 matter of this Act is reduced to the following question:

36 "Do you favor adopting the Kennebunk Sewer District charter,
2005 revision?"

38 The voters shall indicate by a cross or check mark placed
40 against the word "Yes" or "No" their opinion of the same.

42 The results must be declared by the municipal officers of
the Town of Kennebunk and due certificate of the results filed by
44 the town clerk with the Secretary of State.

46 This Act takes effect for all other purposes immediately

upon its approval by a majority of the legal voters voting at the
election.

2

4

SUMMARY

6

This bill revises the Kennebunk Sewer District Charter.