

# MAINE STATE LEGISLATURE

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**ENERGY, UTILITIES AND TECHNOLOGY**

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**STATE OF MAINE**

6

**SENATE**

7

**131ST LEGISLATURE**

8

**SECOND REGULAR SESSION**

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COMMITTEE AMENDMENT "A" to S.P. 986, L.D. 2270, "An Act to Create the Lincoln Mill Facilities District"

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Amend the bill in the emergency preamble in the 4th paragraph in the first and 2nd lines (page 1, lines 10 and 11 in L.D.) by striking out the following: "facilities and infrastructure"

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Amend the bill in the emergency preamble in the 4th paragraph in the last line (page 1, line 13 in L.D.) by striking out the following: "facilities and infrastructure"

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Amend the bill in the emergency preamble in the 5th paragraph in the 2nd line (page 1, line 15 in L.D.) by striking out the following: "facilities and infrastructure"

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Amend the bill in the emergency preamble in the 5th paragraph in the last line (page 1, line 18 in L.D.) by striking out the following: "facilities and infrastructure"

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Amend the bill in the emergency preamble in the 6th paragraph in the 3rd line (page 1, line 21 in L.D.) by striking out the following: "facilities and infrastructure"

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Amend the bill in the emergency preamble in the 7th paragraph in the first and 2nd lines (page 1, lines 23 and 24 in L.D.) by striking out the following: "facilities and infrastructure"

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Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting the following:

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**'Sec. 1. Territorial limits; name.** The Lincoln Mill Facilities District is established in the following territory, which includes the so-called Lincoln Paper and Tissue mill site: all the property other than the properties described in subsection 1 within the portion of the Town of Lincoln bounded on the southwesterly side by Park Avenue running northwesterly to the Town of Lincoln's transfer station and to the property of the Lincoln Regional Airport and then along and around the airport property boundary to the Penobscot River, encompassing the airport property; on the northwesterly side by the Penobscot River; on the northeasterly side by and along the northeasterly Lincoln Paper and Tissue mill site and Town of Lincoln property boundary that runs parallel to Haynes Street and an extension

**COMMITTEE AMENDMENT**

1 thereof to the Penobscot River; on the easterly side by the railroad track that runs parallel  
2 to Main Street; and on the southeasterly side by United States Route 2.

3 1. The territory does not include the following properties within the Town of Lincoln  
4 designated as: 43, 49, 55, 93 and 95 West Broadway; 2 - 4, 6 - 9, 11 and 13 - 18 Katahdin  
5 Avenue; 1 - 2, 4 - 8, 10 - 13 and 15 Spring Street; and 25 and 29 Park Avenue as of the  
6 effective date of this Act.

7 **Sec. 2. Purpose.** The district is authorized to provide infrastructure and related  
8 services to properties and persons within its territorial limits. The district may also provide  
9 infrastructure and related services to properties and persons outside of the district territory  
10 upon petition by the property owner or person to the district subject to the limitations in  
11 this section.

12 If the infrastructure and related services petitioned for are not public utility services  
13 and are in a geographic area in which another entity is authorized to provide such  
14 infrastructure and related services, the infrastructure and related services provided by the  
15 district may not materially conflict with the infrastructure and related services provided by  
16 the other entity or the growth boundaries planned by the other entity.

17 If the infrastructure and related services petitioned for are public utility services and  
18 are in a geographic area in which a public utility is providing or is authorized to provide  
19 such infrastructure and related services, the district's provision of infrastructure and related  
20 services must comply with applicable provisions of the Maine Revised Statutes, Title 35-A.

21 **Sec. 3. Definitions.** As used in this Act, unless the context otherwise indicates, the  
22 following terms have the following meanings.

23 1. **Bond.** "Bond" means a bond or note or other evidence of indebtedness authorized  
24 under this Act, whether issued under or pursuant to a bond resolution, trust indenture, loan  
25 or other security agreement, including revenue bond financing.

26 2. **District.** "District" means the Lincoln Mill Facilities District as established in this  
27 Act.

28 3. **Infrastructure and related services.** "Infrastructure and related services" means  
29 services that include wastewater treatment, including sewer and sanitary services, for  
30 commercial and industrial users; water service for industrial purposes, including cooling  
31 water, but not for municipal or domestic use; and services incidental to providing and  
32 facilities and infrastructure necessary to provide such wastewater treatment and water  
33 service.

34 4. **Operating revenues.** "Operating revenues" means funds available to the district  
35 from fees, fares, royalties, sales, rental or sale of property and miscellaneous revenue and  
36 interest not otherwise pledged or dedicated.

37 5. **Real or personal property.** "Real or personal property" means those properties and  
38 assets existing within or properties served by the district.

39 6. **Reconstruction.** "Reconstruction" means any activities undertaken to maintain or  
40 improve the infrastructure and facilities of the district, or any part of those facilities, as  
41 modern, safe and efficient facilities and includes, but is not limited to, any rebuilding,  
42 redesign, improvement or enlargement of the real properties or environmental mitigation  
43 activities within the district.

# COMMITTEE AMENDMENT

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**Sec. 4. Powers.** The district may:

- 2           **1. Sue and be sued.** Sue and be sued;
- 3           **2. Bylaws or rules.** Adopt bylaws or rules consistent with this Act for the governance  
4 of its affairs and the operation of its facilities and as necessary to carry out the provisions  
5 of this Act;
- 6           **3. General powers.** Exercise all of the general powers of corporations under the  
7 Maine Revised Statutes, Title 13-C, section 302;
- 8           **4. Public safety.** Provide for the public safety by imposing appropriate rules,  
9 regulating appropriate use of the facilities and enforcing laws and rules as they apply to the  
10 use of the facilities operated by the district;
- 11           **5. Fees, charges, rents and sales.** Charge and collect fees, charges and rents for  
12 services, sell any products or by-products derived from or related to the provision of  
13 infrastructure and related services and use the proceeds of those fees, charges, rents and  
14 sales for the purposes provided in this Act, both subject to and in accordance with any  
15 agreement with bondholders that may be made as provided in this Act;
- 16           **6. Licenses and permits.** Apply for licenses and permits required to provide  
17 infrastructure and related services authorized by this Act;
- 18           **7. Land and facilities.** Own land, and own, construct, manage and maintain  
19 associated facilities, necessary for the provision of infrastructure and related services. The  
20 district may transfer properties and issue easements required for those facilities and may  
21 own properties and facilities jointly or in common with other public and private entities;
- 22           **8. Government contracts.** Contract with the Federal Government or its  
23 instrumentalities or agencies, the State or its agencies, instrumentalities or municipalities,  
24 public bodies, private corporations, partnerships, associations and individuals in  
25 furtherance of and to carry out the purposes of this Act;
- 26           **9. Financial assistance.** Borrow money and apply for and accept advances, loans,  
27 grants, contributions and other forms of financial assistance from the Federal Government,  
28 the State, municipalities, quasi-municipal entities or other public bodies or from other  
29 sources, public or private, for the purposes of this Act, give any security that is required  
30 and enter into and carry out contracts in connection with that financial assistance;
- 31           **10. Bonds.** Enter into loan or security agreements with lending institutions for the  
32 issuance of bonds and exercise with respect to those loan or security agreements the powers  
33 under this Act for the issuance of bonds;
- 34           **11. Operating revenues; facilities.** Provide from operating revenues for the  
35 ownership, maintenance, construction or reconstruction or operation of facilities to ensure  
36 the public safety for which the district has not otherwise provided; and
- 37           **12. Other actions.** Take other lawful actions necessary and incidental to these powers.

38           **Sec. 5. Trustees, appointment; tenure of office; vacancies; first meeting**  
39 **and organization of board; transition provisions; annual report.** The affairs of  
40 the district are managed by a board of trustees composed of 5 trustees who are chosen as  
41 provided in this section.

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The trustees of the first board of trustees are appointed to initial terms, and thereafter trustees are appointed, by the town council of the Town of Lincoln, with one council member serving as a direct representative of the Town of Lincoln. Trustees need not be residents of the Town of Lincoln except for the trustee serving as a direct representative of the council. Each trustee is initially appointed to a one-year, 2-year, 3-year, 4-year or 5-year term in order to create staggered terms for the full board of trustees. Vacancies are filled by appointment by the council for the unexpired term.

As soon as convenient after their appointments, the first board of trustees shall hold a meeting at some convenient place in the Town of Lincoln, to be called by any trustee thereof in writing, designating the time and place and delivered to the other 4 trustees, not less than 7 days before the meeting. The board shall then organize by electing from their own members a chair and a clerk. The board shall choose a treasurer of the district, adopt a corporate seal and bylaws and perform other acts within the powers delegated to the board by law. The board may choose and fix the compensation of any other necessary officers and agents, who serve at the pleasure of the board. The treasurer shall furnish bond in such sum and with such sureties as the trustees approve, the cost thereof to be paid by the district. Members of the board are eligible to serve in any office of the board. The board may employ an executive director, technical experts and other agents and employees, permanent and temporary, that the board requires and may determine their qualifications, duties and compensation. For required legal services, the board may employ or retain the board's own counsel and legal staff.

The trustees must be sworn in to faithfully perform their duties, which include the duties of a member who serves as clerk or clerk pro tem. The trustees shall make and publish an annual report, including a report of the treasurer.

After the appointment of the first board of trustees, subsequent trustees are appointed by the council to 5-year terms in accordance with this section.

**Sec. 6. Property tax-exempt.** The property, rights and franchises of the district are forever exempt from taxation.

**Sec. 7. Authorization to borrow money and to issue bonds and notes.** For accomplishing the purposes of this Act, the district, by resolution of the board of trustees, is hereby authorized to borrow money temporarily and to issue its negotiable notes and, for the purpose of renewing and refunding the indebtedness so created, of paying necessary expenses and liabilities incurred under the provisions of this Act, including organizational and other necessary expenses and liabilities, and in acquiring properties, paying damages, laying sewers, drains and conduits, constructing, maintaining and operating a sewage plant or system and making renewals, extensions, additions and improvements to the same, and to cover interest payments during the period of construction. The district, by resolution of the board, is also hereby authorized to issue bonds, notes or other evidence of indebtedness of the district in one series, or in separate series, in an amount or amounts at such rates of interest and on such terms and conditions as the board determines. The bonds, notes and other evidence of indebtedness are legal obligations of the district and may be secured by the revenues of and properties owned by the district and must bear the seal of the district and must be signed by the treasurer of the district and countersigned by the chair of the board, and any attached interest coupons must bear the facsimile of the signature of the treasurer. The district may refund and reissue in one series, or in separate series, its bonds,

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notes and other evidence of indebtedness, and each authorized issue constitutes a separate loan. All bonds issued by the district are legal investments for savings banks in the State and are tax-exempt.

**Sec. 8. Rates and tolls; application of revenues.** Except as otherwise established through a specific infrastructure, services or comparable agreement with the district, all persons and corporations, whether public, private or municipal, shall pay to the treasurer of the district the entrance rates, tolls, rents and charges and other lawful charges established by the trustees for the wastewater treatment, including sewer and sanitary services, and water services used, or to which such beneficial services are available with respect to their lots or parcels of land, and, in determining real estate interests, the term "real estate" as defined in the general laws of the State pertaining to sewer and sanitary districts may be applied by the trustees.

The entrance rates, tolls, rents and charges and other lawful charges for infrastructure and related services may be so established as to provide revenue for the following purposes:

**1. Expenses.** To pay expenses for operating and maintaining the sewer and water system; and

**2. Principal and interest; reserves.** To provide for the payment of the principal and interest on the indebtedness created by the district and to create such reserves as may be necessary for the operation of the district.

**Sec. 9. Lien for payment of rates.** Except as otherwise established through a specific infrastructure, services or comparable agreement with the district, there is a lien to secure the payment of rates, tolls, rents and charges established under section 8 and legally assessed on real estate within the district, which takes precedence over all other claims on such real estate, excepting only claims for taxes.

The treasurer of the district may sue for and collect the rates, tolls, rents and charges, all of which must be committed to the treasurer.

In addition to other methods previously established by law for the collection of the rates, tolls, rents and charges, the lien created pursuant to this section may be enforced pursuant to this section, as long as in making the assessment there is a description of the real estate served by the several sewers of the district sufficiently accurate to identify the real estate against which any of the several rates, tolls, rents and charges may be levied. When a rate, toll, rent or charge has been committed to the treasurer for collection, the treasurer may, after the expiration of 8 months and within one year after date of commitment, in the case of a person residing in the town where the rate, toll, rent or charge is assessed, give to the person against whom the same is assessed, or leave at the person's last and usual place of abode, a notice in writing signed by the treasurer stating the amount of the rate, toll, rent or charge and describing the real estate on which it is assessed, alleging that a lien is claimed on the real estate to secure the payment of the rate, toll, rent or charge and demanding its payment within 10 days after the service of the notice. After the expiration of the 10 days and within 2 days thereafter in the case of a resident of the town where the rate, toll, rent or charge is assessed and in all other cases within one year from the date of commitment of the rate, toll, rent or charge to the treasurer, the treasurer shall record in the registry of deeds of Penobscot County a certificate signed by the treasurer setting forth the amount of such rate, toll, rent or charge, a description of the real estate on which the same is assessed and an allegation that a lien is claimed on the real estate to

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secure the payment of the rate, toll, rent or charge, that a demand for payment of the same has been made in accordance with the provisions of this Act and that the rate, toll, rent or charge remains unpaid. In all cases, except in the case of a resident of the town where the rate, toll, rent or charge is assessed, the certificate so filed need not contain the allegation that payment of the rate, toll, rent or charge has been demanded. At the time of the recording of the certificate in the registry of deeds pursuant to this section, the treasurer shall file in the office of the district a true copy of the certificate and also mail by registered letter to each record holder of a mortgage on the real estate, addressed to each at the record holder's last and usual place of abode, a true copy of the certificate. The fee to be charged for such notice and filing is \$1 plus the fee of the registry of deeds for the filing; these fees become an expense of the person owing the rate, toll, rent or charge. The filing of a certificate in the registry of deeds pursuant to this section creates a mortgage on the real estate to the district having priority over all other mortgages, liens, attachments and encumbrances of any nature, except liens, attachments and claims for taxes, and gives to the district all the rights usually incident to a mortgage, except that the mortgagee does not have any right of possession of the real estate until the right of redemption under this section has expired.

If the mortgage, together with interest and costs, is not paid within 18 months after the date of filing of the certificate in the registry of deeds pursuant to this section, the mortgage is foreclosed and the right of redemption expires.

The filing of the certificate in the registry of deeds is sufficient notice of the existence of the mortgage provided for in this section.

If the rate, toll, rent or charge with interest and costs is paid within the period of redemption provided for in this section, the treasurer of the district shall discharge the mortgage in the same manner as is provided for discharge of real estate mortgages.

**Sec. 10. Use of operating revenues.** Operating revenues may be used pursuant to this section.

**1. Principal use of revenues.** Operating revenues must be used principally to support facilities owned or operated by the district.

**2. Permitted liability limited.** Except as otherwise established through an agreement to provide funds outside of this Act, the expenses incurred in carrying out this Act must be paid solely from funds provided pursuant to this Act, and no liability or obligation may be incurred pursuant to this Act beyond the extent to which money has been provided pursuant to this Act or as otherwise authorized by an agreement to provide funds outside of this Act.

**Sec. 11. Property of district.** The district holds property pursuant to this section.

**1. Lease or sale.** Property may be leased or sold to accomplish the purpose or reuse of the district as determined appropriate by the district. Resources acquired as a result of the lease or sale of property become operating revenues or assets of the district.

**2. Entry upon lands.** The district and its authorized agents and employees may enter upon lands, waters and premises in the district for the purpose of making surveys, soundings, drillings and examinations that the district determines necessary or convenient for the purposes of this Act. The entry is not a trespass, but the district is liable for damages the entry creates.

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**3. Authority for transfers of interest in land to district.** Notwithstanding any provision of law to the contrary, upon district request, on reasonable and fair terms and conditions and without the necessity for advertisement, order of court or action or formality other than the regular and formal action of the authorities concerned and those of counties, municipalities, public agencies or instrumentalities of the State, public service corporations, special districts and private entities, a county, municipality, public agency or instrumentality of the State, public service corporation, special district or private entity may lease, lend, grant or convey to the district real or personal property or rights in that property that may be necessary or convenient for the effectuation of the authorized purposes of the district, including real or personal property or rights in that property already devoted to public or private use. As used in this subsection, "public service corporation" includes a public utility as defined in the Maine Revised Statutes, Title 35-A, section 102, subsection 13 and a corporation as defined in Title 13-C, section 102, subsection 4.

**Sec. 12. Right of eminent domain conferred.** The district is expressly granted the right of eminent domain and for the purposes of this Act is authorized to take and hold, either by exercising its right of eminent domain or by purchase, lease or otherwise, as for public uses any land, easements or interests in land or easements and any rights necessary for constructing, establishing, maintaining, operating or providing any infrastructure or related services authorized by this Act.

**Sec. 13. Procedure under eminent domain.** In exercising the right of eminent domain, the district by its board of trustees shall file in the office of the county commissioners of Penobscot County and cause to be recorded in the registry of deeds in Penobscot County plans of the location of all lands or interests in lands or sewers or sewer rights to be taken, with an appropriate description and the names of the owners thereof, if known. When, for any reason, the district fails to acquire property that it is authorized to take and that is described in such a location, or if the location so recorded is defective and uncertain, it may, at any time, correct and perfect the location and file a new description thereof, and in such case the district is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the district is not liable for any acts that would have been justified if the original taking had been lawful. Entry may not be made on any private lands, except to make surveys, until the expiration of 10 days from such filing, whereupon possession may be had of all of those lands or interests in those lands or property or rights to be taken, but title to lands or interest in those lands or property or rights does not vest in the district until payment for the land or interest in land or property or rights.

**Sec. 14. Assessment of damages by county commissioners; procedure on appeals.** If a person sustaining damages by any taking pursuant to this Act does not agree with the district upon the sum to be paid for damages, either party, upon petition to the county commissioners of Penobscot County within 60 days of the offer for damages, may have the damages assessed by them; the procedure and all subsequent proceedings and right of appeal must be had under the same restrictions, conditions and limitations as are or may be by law prescribed in the case of damages by the laying out of highways.

**Sec. 15. Limitations on crossing public utility or sewer or sanitary district.** In case of a crossing of a public utility, unless consent is given by the company or entity owning or operating the public utility as to place, manner and conditions of the crossing within 30 days after consent is requested by the district, the Public Utilities Commission



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3 may determine the place, manner and conditions of the crossing and all work on the  
4 property of the public utility must be done under the supervision and to the satisfaction of  
5 the public utility, but at the expense of the district. This section may not be construed to  
6 authorize the district to take by right of eminent domain any of the property or facilities of  
7 any other public utility used or acquired for future use by the owner of that public utility in  
8 the performance of a public duty unless expressly authorized pursuant to this Act or by  
9 subsequent act of the Legislature.

10 In the case of a crossing of the property of another entity providing sewer or sanitary  
11 services, unless consent is given by the company or entity providing such services as to  
12 place, manner and conditions of the crossing within 30 days after consent is requested by  
13 the district, the parties shall submit the dispute for arbitration. The parties may agree on an  
14 arbitrator or, in the event that the parties cannot agree, a panel of 3 arbitrators shall  
15 determine the dispute. The panel of 3 arbitrators must include an arbitrator selected by each  
16 of the parties from the panels of arbitrators offered by the Administrative Office of the  
17 Courts, Court Alternative Dispute Resolution Service created in the Maine Revised  
18 Statutes, Title 4, section 18-B or by the American Arbitration Association or its successor  
19 organization and a 3rd arbitrator selected by the 2 arbitrators selected by the parties. The  
20 arbitration must be conducted in accordance with the rules of the American Arbitration  
21 Association or its successor organization for the conduct of commercial arbitration  
22 proceedings. Both parties are bound by the decision of the arbitrator, and costs associated  
23 with the arbitration must be shared equally between the parties. Either party may appeal  
24 the decision of the arbitrator, to the Superior Court. The arbitrator shall determine the  
25 place, manner and conditions of the crossing. All work on the property of another entity  
26 providing sewer or sanitary services must be done under the supervision and to the  
27 satisfaction of that entity, but at the expense of the district.

28 **Sec. 16. Excavation or repair work, closing of ways.** Whenever the district  
29 enters, digs up or excavates a public way or other land for the purpose of laying its sewers  
30 or pipes, constructing manholes or catch basins or their appurtenances or maintaining the  
31 same or for any other purpose, the work must be expeditiously done with the least possible  
32 interruption and, on completion of the work, the district shall restore the public way or land  
33 to the condition it was in prior to the work or to a condition equally as good.

34 When the work endangers travel on a public way, the municipal officers of the Town  
35 of Lincoln may order a temporary closing of the public way and of any intersecting way  
36 upon request of the district, and the way must remain closed to public travel until the  
37 municipal officers consider it restored to a condition safe for traffic.

38 **Sec. 17. Sanitary provisions and penalty for violations.** Except as otherwise  
39 established through a specific infrastructure, service or other comparable agreement with  
40 the district, a person who places or leaves any offensive or injurious matter or material on  
41 or in the conduits, catch basins or receptacles of the district contrary to its regulations or  
42 willfully injures any conduit, pipe, reservoir, flush tank, catch basin, manhole, outlet,  
43 engine, pump or other property held, owned or used by the district for the purposes of this  
44 Act is liable to pay twice the amount of the damages to the district, to be recovered in a  
45 proper action.

46 **Sec. 18. Water services.** In providing water services authorized under this Act, the  
47 district is authorized to contract for, own and lay pipes, pumps, drains and other facilities

1 and provide and make arrangements for water for common use within the district, except  
2 **ROS** that the district may not provide water for municipal or domestic use.

3 **Sec. 19. Wastewater, sewer and sanitary services.** In providing wastewater  
4 services for commercial and industrial users authorized under this Act, the district is  
5 authorized to contract for, own and lay pipes, pumps and drains and design, construct,  
6 improve, repair, maintain, operate, provide and make arrangements for wastewater  
7 treatment facilities and services, including sewer and sanitary services. The district may  
8 not provide wastewater services, including sewer and sanitary services, for domestic  
9 sewage.

10 **Sec. 20. Incidental services.** The district is authorized to contract for, own,  
11 construct, repair, maintain, operate, provide and make arrangements for infrastructure and  
12 related services incidental to and comparable to those authorized by this Act to any  
13 customer the district is authorized to serve, including buildings and facilities on the Lincoln  
14 Paper and Tissue mill site as needed, and is authorized to construct roads for common use  
15 within the district.

16 **Sec. 21. Provisions applicable to all sewer districts not applicable.** To the  
17 extent that any part of the district's charter is not in conformity with the following  
18 provisions of the Maine Revised Statutes in Title 38, the applicable provisions of this Act  
19 apply and the provisions of Title 38, section 1036, subsection 7; section 1037; section 1040;  
20 section 1042; section 1045; section 1046, subsections 1 and 4; and section 1048, subsection  
21 1, paragraph B and subsection 5 do not apply.

22 **Sec. 22. Dissolution provision.** Upon dissolution or liquidation of the district, and  
23 upon acceptance by the municipal officers of the Town of Lincoln of that dissolution or  
24 liquidation, title to all of the district's property vests in the Town of Lincoln as the  
25 municipality participating in the efforts of the district.'

26 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
27 number to read consecutively.

28 **SUMMARY**

29 This amendment replaces the bill, keeping the substance of the bill but making the  
30 following changes to the bill.

- 31 1. It excludes certain properties from the district territory.
- 32 2. It establishes provisions governing providing infrastructure and related services  
33 outside of the district territory.
- 34 3. It removes the requirement that 4 of the trustees be business representatives and  
35 provides that the trustees may not meet without notice.
- 36 4. It clarifies that bonds, notes and other evidence of indebtedness are legal obligations  
37 of the district and may be secured by revenues of or properties owned by the district.
- 38 5. It provides that a petition to the county commissioners of Penobscot County  
39 regarding a taking by eminent domain must be filed with the county commissioners within  
40 60 days of the offer for damages.

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6. It establishes requirements for the crossing of property of another entity providing sewer or sanitary services.

7. It adds a provision clarifying the authority of the district to provide wastewater services for commercial and industrial users and specifies that, to the extent that any part of the district's charter is not in conformity with certain provisions of the Maine Revised Statutes, the district's charter provisions apply.

8. It removes provisions providing the district with the authority to provide electric services, broadband, data and telecommunications services, gas services and thermal energy services.

9. It updates the terms used in the bill for consistency and clarity.