

MAINE STATE LEGISLATURE

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N I N E T Y - T H I R D L E G I S L A T U R E

Legislative Document

No. 627

H. P. 945

House of Representatives, February 6, 1947.

Referred to Committee on Public Utilities. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Chase of Cape Elizabeth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-SEVEN

AN ACT to Incorporate the Cape Cottage Woods Sewerage District.

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

Sec. 1. Cape Cottage Woods Sewerage District, incorporated. That part of the territory of the town of Cape Elizabeth in the county of Cumberland and embraced within the following limits, to wit:

Beginning 200 feet southerly from the intersection of the southerly side of Wood Road with the westerly side of Cottage Road; thence at right angles with said westerly side of Cottage Road, 3,000 feet; thence at right angles and running in a general northerly direction to the southerly side line of Oakhurst Road; thence easterly along the southerly side line of Oakhurst Road to the westerly side line of Cottage Road; thence southerly along the westerly side line of said cottage road to the point of beginning; and the inhabitants within said territory, shall constitute a body politic and corporate, under the name of Cape Cottage Woods Sewerage District, for the purpose of providing a system of sewerage and drainage for public purposes and for the health, comfort and convenience of the inhabitants of said district.

Sec. 2. Powers of district; property exempt from taxation. Said district is hereby authorized and empowered to accept, by action of its trustees

hereinafter mentioned, from the inhabitants of the town of Cape Elizabeth, and said inhabitants of the town of Cape Elizabeth are hereby authorized to convey, by deed signed by its selectmen, duly authorized by the legal voters qualified by law to vote and voting at a legally called and conducted town meeting, any and all right, title and interest which said inhabitants of the town of Cape Elizabeth may have in and to the drains and sewers now located within the limits of said district, but any amounts owed by said inhabitants of the town of Cape Elizabeth upon said sewers and drains, or any interest now or hereafter due on any amounts owed by said inhabitants of the town of Cape Elizabeth, shall be paid by said inhabitants of the town of Cape Elizabeth, and any assessments or amounts, now or hereafter due said inhabitants of the town of Cape Elizabeth, by reason, or on account of any sewer or drain heretofore built by said inhabitants of the town of Cape Elizabeth, shall be paid to said inhabitants of the town of Cape Elizabeth. Said district is further authorized and empowered to take and hold by purchase, lease or the exercise of the right of eminent domain, which right of eminent domain is expressly granted to said district, or otherwise, personal property, land or real estate, or easements therein, necessary for forming basins or outlets, for laying pipes and maintaining the same, and for laying and maintaining conduits for carrying and collecting, discharging and disposing of sewerage matters and waters, and for all other objects and purposes necessary, convenient, and proper for the purposes of this act.

The property of said district, wherever located, shall be exempt from taxation.

Sec. 3. Power to lay and maintain pipes, etc. Said district may lay pipes and conduits, take up, repair and maintain the same, or may contract for the same to be done, in and through the streets of the town of Cape Elizabeth, within said district, and in and through ways and highways, public and private, located in said district, and through land of any corporation, firm, or individual, as hereinafter provided, and under any railroad in manner prescribed by law, to and into Casco Bay, or any part thereof, adjacent to the territory of said district, or to and into any drain or sewer now or hereafter built which empties into said Casco Bay, or any part thereof, the discharge therefrom to be at such point or points in said Casco Bay as shall be most convenient and reasonable for said district, and convey through the same sewerage, surface water and the natural flow of existing water courses, and secure and maintain basins, reservoirs and outlets; may construct, maintain, renew and repair flush tanks, manholes, catch-basins, and such other appliances for collecting, holding, distributing and disposing of sewerage matters and water as may be necessary and

proper; and in general to do any and all other acts or things necessary, convenient and proper for the purposes of this act.

Provided, however, that said district shall not construct any system of drainage or sewerage, without first having submitted its plans to the public utilities commission and obtained its approval therefor, under power vested in said commission by section 13 of chapter 40 of the revised statutes.

Sec. 4. Liability for damages to property. Said district shall be liable to pay all damages that shall be sustained by any person or corporation in his or its property by the taking of any personal property, real estate or easement, under the provisions of this act. If any person or corporation sustaining damages, as aforesaid, and the district shall not mutually agree upon the sum to be paid therefor, such person or corporation may cause his or its damages to be ascertained in the same manner and under the same conditions and limitations as are by law prescribed in the case of damages resulting from the laying out of town ways.

Sec. 5. Rights of abutters to enter sewers. Said district at all times, after it shall commence receiving pay for the facilities supplied by it, shall be bound to permit the owners of all premises abutting upon its lines of pipes and conduits, to enter the same with all proper sewerage upon conformity with the rules and regulations of said district and payment of the prices and rentals established therefor.

Sec. 6. Offenses and penalties. Any person who shall place or leave any offensive or injurious matter or material on or in the conduits, catch-basins, or receptacles of said district contrary to its regulations, or shall wilfully injure any conduit, pipe, reservoir, flush tank, catch-basin, man-hole, outlet, engine, pump or other property held, owned or used by said district for the purposes of this act, shall pay twice the amount of the damages to said district to be recovered in any proper action; and such person on conviction of either of said acts of wilful injury aforesaid, shall be punished by a fine not exceeding \$200, and by imprisonment not exceeding 1 year.

Sec. 7. Liability for personal injuries, etc. Said district shall be liable to any person injured by any fault of said district or its agents, or any defects in the highway occasioned by the construction of its sewer system during said construction or after the same has been completed, or while the same shall be undergoing repairs or extensions are being made. Said district shall also be liable to the inhabitants of the town of Cape Elizabeth for any and all costs, damages and expenses which said inhabitants for the

town of Cape Elizabeth may suffer or be put to, by reason of the default, neglect, negligence or carelessness of said district or of any of its officers, servants or agents in creating, maintaining or repairing said sewer system.

Sec. 8. Same responsibilities as municipal officers in certain instances.

Sections 136 to 141, inclusive, of chapter 84 of the revised statutes shall apply to sewers and drains constructed hereunder by said district and the acceptance of this charter by the legal voters within the limits of said district, as is hereinafter provided, shall constitute an acceptance of said sections, as an acceptance is prescribed and contemplated by section 142 of said chapter 84. In the application of said sections 136 through 141, the trustees of said district shall perform all acts and duties and be subject to all responsibilities of municipal officers as prescribed by said sections.

Sec. 9. Rates, use of proceeds. All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rates established by said trustees for the entrance and use of said sewer system, and said rates shall be uniform within the territory served by said district. Said rates shall be so established by said trustees as to provide revenue for the following purposes :

I. To pay the current running expenses for maintaining said sewerage and drainage system and provide for such extensions and renewals as may become necessary in the ordinary course of business, but not including extraordinary or unusual extension for which bond issues may be deemed advisable by the trustees.

II. To provide for payment of the interest on the indebtedness of the district incurred on account of or in behalf of the creation, installation, construction, management, maintenance or improvement of said sewerage system.

III. To provide a sum each year equal to or not less than 1% nor more than 5% of the aggregate principal of outstanding notes and bonds issued on account of or in behalf of said sewer and drainage system as aforesaid, which sums shall be turned into a sinking fund to provide for the final extinguishment of said sewerage system funded debt. The money set aside for the sinking fund shall be devoted to the retirement of said notes and bonds or invested in such securities as savings banks are allowed to hold. The treasurer is authorized and empowered to create a fund to be known as the "Cape Cottage Woods Sewerage District Loan Sinking Fund", and to keep and deposit therein all moneys and securities received each year under subsection III of section 9 of this act. And no part of said fund shall at any time be available for or be used for any other purpose than to

extinguish said sewer district funded debt, until said debt shall have been extinguished.

IV. If any surplus remains at the end of the year, it may be turned into the sinking fund.

Sec. 10. Lien for payment of rates; procedure. There shall be a lien to secure the payment of sewer rates legally assessed on real estate within the Cape Cottage Woods Sewerage District, which shall take precedence of all other claims on said real estate and interests therein, excepting only claims for taxes. Real estate for the purpose of this act shall bear the same definition as is given in section 3 of chapter 81 of the revised statutes.

The treasurer of said sewer district shall have the authority and power to collect said sewer rates, and all rates shall be committed to him.

In addition to other methods previously established by law for the collection of said rates, the lien herein created may be enforced in the following manner, provided, however, that in making the assessment for sewer services there shall be a description of the real estate served by the several sewers of said district, sufficiently accurate to identify the real estate against which any of the several rates may be charged; the treasurer when a rate has been committed to him for collection may, after the expiration of 8 months and within 1 year after date of commitment to him of said rate, give to the person against whom said rate is assessed, or leave at his last and usual place of abode, or send by registered mail to his last known place of abode, a notice in writing signed by said treasurer stating the amount of such rate, describing the real estate on which the rate is assessed, alleging that a lien is claimed on said real estate to secure the payment of the rate and demanding the payment of said rate within 10 days after the service or mailing of such notice.

If such person against whom such rate is assessed shall die before such demand is made on him, such demand may be made upon the executor or administrator of his estate or upon any of his heirs or devisees. After the expiration of said 10 days and within 10 days thereafter, the treasurer shall record in the registry of deeds for Cumberland county, a certificate signed by him setting forth the amount of such rate, a description of the real estate on which the rate is assessed and an allegation that a lien is claimed on said real estate to secure the payment of said rate, that a demand for payment of said rate has been made in accordance with the provisions of this act and that said rate remains unpaid. When the rate has been assessed to heirs or devisees of a decedent without designating any of them by name

it will be sufficient to record the certificate in said registry in the name of the heirs or devisees without designating them by name. At the time of the recording of the certificate in the registry of deeds as herein provided, in all cases the treasurer shall file in the office of said sewer district a true copy of said certificate and also at the time of recording as aforesaid, the treasurer shall mail by registered letter to each record holder of a mortgage on said real estate, addressed to him at his place of last and usual abode, a true copy of said certificate. If the rate has not been assessed to the record owner of the real estate the treasurer shall send by registered mail at the time of recording, a true copy of said certificate to the record owner. The fee to be charged to the rate payer for such notice and filing shall be \$1 together with the cost of registered mail and 50c to be charged by the register of deeds.

The filing of the aforesaid certificate, in the registry of deeds as aforesaid shall be deemed to create and shall create a mortgage on said real estate to the said sewer district having priority over all other mortgages, liens, attachments and encumbrances of any nature, except liens, attachments and claims for taxes, and shall give to said sewer district all the rights usually incident to a mortgagee, except that the mortgagee shall not have any right to possession of said real estate until the right of redemption herein provided for shall have expired.

If said mortgage, together with interest at 6% per annum from the time of filing in the registry, and costs, shall not have been paid within 18 months after the date of filing of said certificate in the registry of deeds as herein provided, the said mortgage shall be deemed to have been foreclosed and the right of redemption to have expired.

The filing of said certificate in said registry of deeds shall be sufficient notice of the existence of the mortgage herein provided for.

In the event that said rate, interest and costs shall be paid within the period of redemption herein provided for, the treasurer of said sewer district shall discharge said mortgage in the same manner as is now provided for discharge of real estate mortgages.

After the foreclosure of such mortgage and the expiration of the right of redemption therefrom has expired, the record holder of a mortgage on said real estate or his assignee and the record owner if the sewer rate has not been assessed to him or the person claiming under him, in the event the notice provided herein for such record holder of a mortgage and such record owner has not been given as provided herein, shall have the right to redeem the said real estate at any time within 3 months after receiving

actual knowledge of the recording of the certificate by payment or tender of the mortgage, together with interest and costs and the registry fee for recording and discharging said mortgage, which shall be discharged by the treasurer at the time of redemption in manner provided for the discharge of mortgages of real estate.

The mortgage shall be prima facie evidence in all courts in all proceedings by and against the Cape Cottage Woods Sewerage District, its successors and assigns, of the truth of the statements therein and after the period of redemption has expired, of the title of the district to the real estate therein described, and of the regularity and validity of all proceedings with reference to the acquisition of title by such mortgage and the foreclosure thereof.

Sec. 11. Miscellaneous powers. Said district is hereby vested with all incidental powers, rights and privileges necessary to the accomplishments of the main objects of this act.

Sec. 12. May issue notes or bonds; rate of interest, etc. For accomplishing the purposes of this act said district is hereby authorized and empowered through its trustees, to issue its notes, bonds and other evidences of indebtedness to an amount sufficient to procure funds to pay the expenses incurred in acquiring and constructing its plant or plants, properties and franchises and for further extensions, additions and improvements of the same, whether done at one time or from time to time, and to refund the same as they shall fall due and bearing interest at such rates as the trustees shall determine. Said notes, bonds and other evidences of indebtedness shall be designated "Cape Cottage Woods Sewerage Notes", or "Cape Cottage Woods Sewerage Bonds", as the case may be and shall be a legal obligation of said district which is hereby declared to be a quasi-municipal corporation within the meaning of section 132 of chapter 40 of the revised statutes. Said bonds shall be a legal investment for savings banks and shall be tax exempt. The trustees may also borrow on the notes of the district such sums as may be necessary to meet the current expenses of the district in anticipation of the collection of rates.

Sec. 13. Board of trustees, election, compensation; treasurer. All the affairs of said district shall be managed by a board of 3 trustees, residents or owners of the real estate therein, who shall be elected by ballot of the persons therein legally qualified to vote in town meetings. They shall hold office for the term of 3 years and until their respective successors are chosen and qualified except, however, as herein provided. Vacancies shall be filled for the unexpired term.

The first board of trustees shall be elected at the meeting called for the acceptance of this act, 1 to serve until the 1st annual meeting of the district, 1 until the 2nd and 1 until the 3rd such meeting. Thereafterward, 1 member shall be chosen at each annual meeting to serve for the term of 3 years. If a vacancy occurs in said board more than 3 months before the date of the next succeeding annual meeting, a special meeting shall be called to fill the vacancy and all vacancies existing at the date of an annual meeting shall then be filled.

As soon as convenient after said 1st election the trustees shall hold a meeting at some convenient place in the district to be called by any member thereof in writing designating the time and place and delivered in hand to the other 2 members not less than 2 full days before the meeting; provided, however, that they may meet by agreement without such notice. Then they organize by the election of a chairman, treasurer and clerk from their own number, adopt a corporate seal and by-laws, and perform any other acts within the powers delegated to them by law. When necessary they may choose other needful officers and agents who shall serve at their pleasure. The treasurer shall furnish bond in such sum and with such sureties as they may approve. Members of the board shall be eligible to any office under the board, but shall not receive any compensation therefor except as trustees unless authorized by vote of the district. The compensation of the trustees shall be \$100 each per annum unless otherwise provided by vote of the district.

The trustees shall be sworn to the faithful performance of their duties as such, which shall include the duties of any member as treasurer, clerk or clerk pro tem. They shall make and publish an annual report including a report of the treasurer.

Sec. 14. Annual meeting; quorum. The annual meeting of the district shall be held in the district on the 1st Monday in March in each year at such hour and place as may be designated by resolution of the board of trustees as provided in the by-laws. Notice thereof, signed by the chairman and/or clerk of the board, shall be conspicuously posted in 2 public places within the district, not less than 7 days before the meeting. Special meetings may be called by the board in like manner at any time, and notice of special meetings shall state the business to be transacted thereat. Eleven persons qualified to vote in such meetings shall constitute a quorum. If for any reason an annual meeting is not held on the above date, a meeting in lieu thereof may be called in like manner to be held within 3 months from said date.

All persons resident in said district and qualified to vote for governor under the laws of this state shall be entitled to vote in any meeting of this district, including the meeting for acceptance of this charter.

Sec. 15. Who may vote at meetings of district; procedure at meetings. After the meeting for acceptance of this charter, the trustees shall have the same powers and perform the same duties as otherwise are exercised and performed by the selectmen of towns in correcting and preparing lists of the persons qualified to vote in said district, and for that purpose they shall be in session at the office of the sewer district between the hours of 10 o'clock A.M. and 12 o'clock M. of the secular day next preceding the date of every meeting; and 2 hours next before the opening of the meeting; and notice thereof shall be given in the call for the meeting. All meetings of the district shall be presided over by a moderator chosen in the same manner and with the same authority as moderators of town meetings.

Sec. 16. Sinking fund. The trustees of said district may determine the sum to be paid annually in the sinking fund, or if any of the bonds authorized by this act shall be issued to mature annually, what amount is required each year to meet sinking fund requirements and the bonds falling due, and what sum is required each year to meet the interest on said bonds, and any other necessary expenses of said district, and may each year, before the first day of April, issue their warrant, in the same form as the warrant of the state treasurer for taxes, with proper changes, to the assessors of the town of Cape Elizabeth, requiring them to assess the sum so determined upon the taxable polls and estates within said district, and to commit their assessment to the constable or collector of said town of Cape Elizabeth, who shall have all authority and powers to collect said taxes as is vested by law in him to collect state, county and municipal taxes.

On or before the 31st day of December of the year in which said tax is so levied, the treasurer of said town shall pay the amount of the tax so assessed to the treasurer of said district. In case of the failure on the part of the treasurer of said town to pay said sum, or in case of his failure to pay any part thereof, on or before said 31st day of December of the year in which said tax is so levied, the treasurer of said district may issue his warrant for the amount of said tax, or so much thereof as shall then remain unpaid, to the sheriff of Cumberland county, requiring him to levy by distress and sale on real and personal property of any of the inhabitants of said district, and the sheriff, or either of his deputies, shall execute said warrant, except as is otherwise provided herein.

The same authority as is vested in county officials for the collection of county taxes, under the provisions of the revised statutes, is hereby vested in the trustees of said district, in relation to the collection of taxes within said district.

Sec. 17. Effective date; referendum. This act shall take effect when approved by majority vote of the legal voters within said district voting by ballot at an election to be specially called by the municipal officers of the town of Cape Elizabeth and held for the purpose on or before September 1, A.D., 1947. Said municipal officers shall make and provide a separate list for such of the voters within said district as are resident therein and qualified to vote for governor and all warrants issued to said district shall be varied accordingly to show that only said voters therein are entitled to vote thereon. Such election shall be called, advertised and conducted according to the law relating to municipal elections, providing, however, that the selectmen shall not be required to prepare, or the town clerk to post, a new check list of voters, and for this purpose said board shall be in session the 2 secular days next preceding such election, the 1st day thereof to be devoted to the registration of voters and the 2nd day to enable the board to verify the correctness of said list and to complete and close the record of said sessions. The town clerk shall reduce the subject matter of this act to the following question: "Shall the act to incorporate the Cape Cottage Woods Sewerage District be accepted?" and the voters shall indicate by depositing a ballot in the ballot box with the word "Yes" or "No" on the same, their opinion of the same. The result shall be declared in open meeting and due certificates thereof filed by the town clerk with the secretary of state. If the majority of the votes cast shall be in the affirmative, said voters shall then proceed by written ballot to elect a board of trustees of said district as provided in section 13 of this act. Eleven qualified voters of said district shall constitute a quorum for the purposes of this election, but a less number may adjourn from time to time not exceeding 7 days at one time.