

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

(Transmitted by Director of Legislative Research pursuant to joint order)

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

Legislative Document

No. 967

H. P. 1659

House of Representatives, February 23, 1949.

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

HARVEY R. PEASE, Clerk.

Presented by Mr. Hobbs of South Berwick.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-NINE

AN ACT Creating the South Berwick Sewer District.

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

Sec. 1. Territorial limits. That part of the town of South Berwick, in the county of York, and the inhabitants therein, which is bounded and described as follows: Beginning on the Maine bank of Piscataqua river at the common corner of property of Central Maine Power Company about 400 feet southeast of power plant of said power company and the corner of the "Old Fall Wharf Property", so called, now the property of the South Berwick Sewer Company, Inc. as shown by deed dated August 25, 1948 from Lena L. Watts, as recorded Jan. 14, 1949 in book 1101, page 553, in York county registry of deeds, thence in a northerly direction following banks of Piscataqua and Salmon Falls rivers to Boston and Maine railroad bridge, thence along line of said Boston and Maine railroad right-of-way to highway No. 103, from highway No. 103 easterly along line of Boston and Maine siding and continuing along abandoned road bed as far as they constitute the South Berwick and Berwick town line; thence following the abandoned railroad bed to Agamenticus road; thence southwesterly down said road and Portland street to Highland avenue, thence following Highland avenue to Berwick academy property; thence across this and other

properties, in a straight line, to the north corner of "Old Post Road" so called, now known as Wadleigh's lane; thence, along said lane or post road to highway No. 103 at "Wiggin's Corner", so called; thence southerly along route No. 103 to Great Works bridge and river; thence along Great Works river to the Piscataqua river at "Leighs Mills" so called; thence along course of Piscataqua to river to point of beginning; is hereby created a body politic and corporate under the name of the "South Berwick Sewerage District," hereinafter called the district, for the purpose of providing and maintaining within the district a sewer system, drains, sewerage facilities, and sewerage disposal plants when, as and if such disposal plants become necessary, for public purposes and for the health, comfort and convenience of the inhabitants of said district.

Sec. 2. Powers. The district is hereby authorized as and for public uses, for the purposes aforesaid, to acquire and hold by purchase, lease, the exercise of the right of eminent domain or otherwise, land, real estate, rights, easements or interests therein, located within the district or elsewhere, and personal property.

It is also empowered through its trustees to make contracts with persons or corporations for the collection, discharge and disposal of sewerage and other waste matter. It may discharge sewerage in the Piscataqua and Salmon Falls rivers at points most reasonable and convenient for said district, and said district is hereby invested with all the powers, rights, privileges and immunities incident to similar corporations, or necessary for the accomplishments of these purposes.

Sec. 3. Procedure as to exercise of eminent domain. In exercising any rights of eminent domain that are herein conferred upon said district, or any rights of eminent domain through or under the franchise of the South Berwick Sewer Company by it acquired, the district shall file for record in the registry of deeds in said county, plans of the location of lands or interest therein to be taken, with an accurate description and the names of the owners thereof, if known. When, for any reason, the district fails to acquire property which it is authorized to take, and which is described in such location, or if the location so recorded is defective or uncertain, it may, at any time correct and perfect such 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 shall not be liable for any act which would have been justified, if the original taking had been lawful. The district and its authorized agents and employees may enter

upon any lands, waters and premises in the town of South Berwick for the purpose of making surveys, soundings, drillings and examinations, as it may deem necessary or convenient for the purpose of this act, and such entry shall not be deemed a trespass.

Sec. 4. Adjustment of damages. If any person sustaining damages by any taking as aforesaid shall not agree with the trustees of said district upon the sum to be paid therefor, either party, upon petition to the county commissioners of York county, may have said damages assessed by them; the procedure and all subsequent proceedings and the rights of appeal thereon shall be had under the same restrictions, conditions and limitations as are or may be prescribed in the case of damages by laying out highways.

Sec. 5. Authorized to lay mains, pipes, conduits, etc. through public ways and across private lands. The said district is hereby authorized to lay in and through the streets, roads, ways and highways, and across private lands, and to maintain, repair and replace all such pipes, mains, conduits, aqueducts and fixtures as may be necessary and convenient for its corporate purposes and whenever said district shall lay any pipes or aqueducts in any streets, road, way or highway, it shall cause the same to be done with as little obstruction as practicable to the public travel, and shall at its own expense without unnecessary delay cause the earth and pavement removed by it to be replaced in proper condition.

Sec. 6. Procedure in crossing public utilities. In case of any crossing of any public utility, unless consent is given by the company owning or operating such public utility as to place, manner and conditions of the crossing within 30 days after consent is requested by said district, the public utilities commission shall determine the place, manner and condition of such crossing; and all work on the property of such public utility shall be done under the supervision and to the satisfaction of such public utility, but at the expense of the district.

Sec. 7. Authorized to acquire property and franchise of the South Berwick Sewer Company. Said district is hereby authorized and empowered to acquire by purchase or by the exercise of the right of eminent domain, the entire plant, pipes, mains, property, franchises, rights, privileges and assets owned, used or exercised by the South Berwick Sewer Company. If, and when so acquired, the said district in addition to the powers conferred by this act shall have and enjoy and be entitled to exercise all of the rights, privileges and franchises of said South Berwick Sewer Company, and may do and perform any and all of the acts and things author-

ized by the original charter of the said South Berwick Sewer Company, in so far as they are not inconsistent with the provisions of this act. In case said trustees fail to agree with the South Berwick Sewer Company upon the terms of purchase of the above mentioned property on or before January 1, 1951, said district through its trustees aforesaid is hereby authorized to take the entire plant, pipes, mains, property, franchises, rights, privileges and assets, as for public use by petition therefor in the manner hereinafter provided. And said district, through its trustees, is hereby authorized on or before July 1, 1951 to file a petition in the clerk's office of the superior court in the county of York, in term time or in vacation, addressed to any justice of said court who, after due notice to the said South Berwick Sewer Company and its mortgagees, if any, shall, after hearing and within 30 days after the date at which said petition is returnable, appoint 3 disinterested appraisers, one of whom shall be learned in the law, and none of whom shall be residents of the town of South Berwick, for the purpose of fixing a valuation of said plant, pipes, mains, property, franchises, rights, privileges and assets. At the hearing aforesaid, said justice, upon motion of the petitioner, may order the production and filing in court for the inspection of the petitioner of all books and papers pertinent to the issue and necessary for a full understanding of the matter to be heard by said appraisers, the terms and conditions of such producing and filing of books and papers to be determined by the justice in his order therefor, and the justice at said hearing may make upon motion of either party, such other orders as may be deemed reasonable and proper in the premises, and all of such orders may be enforced from time to time by any justice of the superior court, either in term time or vacation. The appraisers so appointed shall, after notice and hearing, fix the valuation of said plant, pipes, mains, property, franchises, rights, privileges and assets, at what they are fairly and equitably worth, so that the said South Berwick Sewer Company shall receive just compensation for all and the same, and the said appraisers shall have the power of compelling attendance of witnesses, and the production of all books, accounts and papers pertinent to the issue and necessary for a full understanding by them of the matter in question, and may administer oaths; and any witnesses or person in charge of such books, accounts and papers refusing to attend or to produce the same shall be subject to the same penalties and proceedings, so far as applicable, as witnesses summoned to attend the superior court. Depositions may be taken as in civil actions. The 1st day of January, 1951, shall be the date as of which the valuation aforesaid shall be fixed, from which date interest on said award shall run, and all rents and profits accruing thereafter shall belong to said district. The report of said apprais-

ers or a majority of them shall be filed in said clerk's office, in term time or in vacation as soon as may be after their appointment, and the justice of said court may, after notice and hearing, confirm or reject the same or re-commit it if justice so requires. Upon the confirmation of said report the court so sitting shall thereupon after hearing make final decree upon the entire matter, including the application of the purchase money and transfer of property, jurisdiction over which is hereby conferred, and with the power to enforce said decree as in equity cases. All findings of fact by said court shall be final, but any party aggrieved may take exceptions as to any ruling of law so made, the same to be accompanied by so much of the case as may be necessary to a clear understanding of the question raised thereby. Such exception shall be claimed on the docket within 10 days after such final decree is signed, entered and filed, and notice thereof has been given to the parties or their counsel, and said exception so claimed shall be made up, allowed and filed within said time, unless further time is granted by the court or by agreement of the parties. They shall be entered at the next term of the law court to be held after the filing and entry of said decree and there heard unless otherwise agreed; or the law court for good cause shall order further time for hearing thereon. Before said plant, pipes, mains, property, franchises, rights, privileges and assets are transferred in accordance with such final decree and before payment therefor as hereinbefore provided, such justice shall, upon motion of either party, after notice and hearing, take account of all receipts and expenditures properly had or incurred by the South Berwick Sewer Company, from and after said 1st day of January, 1951, and all net rents and profits accruing thereafter, and shall order the net balance to be added to or deducted from the amount to be paid under such final decree, as the case may be. All findings of fact by such justice at such hearing shall be final. On payment or tender by said district of the amount so determined and the performances of all the other terms and conditions so imposed by said court, the entire plant, mains, property, franchises, rights, privileges and assets of the South Berwick Sewer Company used and usable in disposing of sewage in the town of South Berwick shall become vested in said district. Either party may file and prosecute motions and petitions relating to the premises at any state of the proceedings, and the proceedings shall not be discontinued except upon consent of both parties.

Sec. 8. Bonds and notes. For accomplishing of the purposes of this act, the district is hereby authorized and empowered through its trustees to issue notes, bonds or other evidence of indebtedness to an amount sufficient to procure funds, not exceeding \$100,000, to pay the expenses incurred in the creation of said district, in reimbursing the South Berwick Sewer

Company in acquiring its aforesaid property, privileges and franchises, and for carrying out the provisions of this act, the construction of its plant or plants, properties and franchises, and for further extensions, additions or improvements of the same, whether done at one time or from time to time, and to refund the same as they fall due. Said notes, bonds or other evidences of indebtedness 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 49 of the revised statutes of 1944, and all the provisions of said section and acts amendatory thereof shall be applicable thereto. Said bonds, notes, or other evidences of indebtedness shall be a legal investment for savings banks, and shall be exempt from taxation. 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 the rates.

Sec. 9. Officers. The affairs of the district shall be managed by a board of trustees, 3 in number, residents and qualified voters of the district, who shall be elected by ballot of the voters of the district legally qualified to vote in the town of South Berwick elections. They shall hold office for a term of 3 years and until their respective successors are chosen and qualified, except as hereinafter provided. The 1st board of trustees shall be elected either at a special election of the district to be called by the municipal officers before the next annual election for the government of the town of South Berwick, or at that said succeeding annual election. The candidate receiving the greatest number of votes shall be elected a trustee for a term of 3 years; the candidate receiving the 2nd greatest number shall be elected a trustee for 2 years; and the candidate receiving the 3rd greatest, a trustee for 1 year. After the initial election of trustees, 1 member shall be chosen at each annual town election to serve for a term of 3 years ending on the 1st day of April of the 3rd year, or until a successor has been chosen. Any qualified voter of the South Berwick Sewerage District may become a candidate for the office of trustee and have his name appear on the South Berwick Sewerage District ballot by signing and presenting a petition to the town clerk signed by 25 qualified voters of the district as provided in the Maine election laws. If a vacancy occurs more than 3 months before the next annual election, the municipal officers shall make an appointment to fill the vacancy, and all vacancies shall be filled at the annual election.

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 2 other members not less than 2 full days before the meeting; provided, however, that they may meet by agreement without such notice. They shall then organize by the election of a chairman and other needed officers from their own number, adopt a corporate seal and by-laws.

Trustee serving as 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 trustee. The compensation of the trustees shall be \$50 per year. Each member shall be sworn in for faithful performance of his duty. The board shall publish an annual report, including a report of the treasurer. The trustees shall have the power of preparing and correcting a list of the persons qualified to vote in the district. The annual meeting of the district shall be held in the district on the 3rd Monday of January of each year at such hour and place as may be designated by trustees. Notice signed by chairman or clerk shall be conspicuously posted in 2 public places within the district 7 days before meeting. Special meetings may be called by the board in like manner at any time. The trustees may establish reasonable rules, regulations and by-laws for the use of sewers and fix and collect the fees to be paid for entering the same and also the annual rentals for the use thereof.

Sec. 10. Rates; application of revenues. All individuals, firms and corporations, whether public, private or municipal, shall pay to the treasurer of said district the rates established by the trustees for the services used or made available to them. The rates may include rates for the district's readiness to serve, charged against owners, or persons in possession or against whom the taxes are assessed, of all buildings, or premises, intended for human habitation or occupancy, whether the same are occupied or not, which abut on a street, or location, through which said district has constructed a sewer line, or the property line of which is within 100 feet of a sewer line constructed by said district, although said premises are not actually connected thereunto. Rates shall be uniform within the district, and the rates, rules and regulations of the district shall be subject to the approval of the public utilities commission. The rates shall be so established as to provide revenue for the following purposes:

- I. To pay the current running expenses for operating and maintaining the sewerage system, including provision for depreciation.
- II. To provide for the payment of interest on the indebtedness created by the district.

III. To provide each year a sum equal to not less than 1% nor more than 5% of the entire indebtedness of the district, which sum shall be turned into a sinking fund for the final extinguishment of the debt. The money so set aside shall be devoted to the retirement of the obligations of the district, or invested in securities lawful for savings banks. Provided, however, that the trustees may, in their discretion, and in lieu of the establishment of a sinking fund, issue bonds or notes, or other evidence of indebtedness of the district, so that not less than 1% of the bonds, notes or other evidence of indebtedness issued shall mature and be retired annually.

IV. If any surplus remains after the year's operation, this surplus may be added to the sinking fund.

Sec. 11. Lien for payment of rates. There shall be a lien to secure the payment of sewer rates legally assessed on real estate within the district, which shall take precedence of all other claims on said real estate and interests excepting only claims for taxes. Real estate, for the purpose of this act, shall bear the same definition as given in section 3 of chapter 81 of the revised statutes of 1944. The treasurer of the sewerage 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 the district, sufficiently accurate to identify the real estate against which any of the several rates may be charged; and 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 officer 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 of such notice. If an owner or occupant of real estate to whom said tax 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, said officer shall record in the registry of deeds of the county where said real estate is situated a certificate signed by said officer setting forth the amount of such rate, a de-

scription 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. In all cases such officer shall file in the office of the said sewerage district a true copy of said certificate and also at the time of recording as aforesaid the said officer shall mail by registered letter to each record holder of a mortgage on said real estate, addressed to him at his last and usual place of abode, a true copy of said certificate. The fee to be charged to the rate-payer for such notice and filing shall not exceed \$1 and the fee to be charged by the register of deeds for such filing shall not exceed 50c.

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 sewerage district in which the real estate is situated, having priority over all other mortgages, liens, attachments and encumbrances of any nature except liens, attachments and claims for taxes, and shall give to the sewerage district all the rights usually incident to a mortgagee.

If said mortgage, together with interest 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 sewerage district shall discharge said mortgage in the same manner as is now provided for discharge of real estate mortgages.

Sec. 12. Rights of abutters to enter sewer. The district at all times shall be bound to permit the owners of premises abutting upon its lines of pipes and conduits to enter the same with all proper sewage upon conformity to the rules and regulations of the district and payment of the rates, prices and rentals established therefor. The owner, or persons in possession, or against whom taxes are assessed, of all buildings or premises intended for human habitation or occupancy abutting on a street in which there is a public sewer or if the property line of the premises containing said building is within 100 feet of a public sewer, shall connect with said sewer in the most direct manner possible within 90 days of receiving notice thereof from the sewerage district.

Sec. 13. 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 the district contrary to the 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 the district for the purposes of this act, shall pay twice the amount of the damages to the district to be recovered in any proper action; and such person, on conviction of either of the acts of wilful injury aforesaid, shall be punished by a fine not exceeding \$200 and by imprisonment not exceeding 1 year.

Sec. 14. Tax exemption. The property of the district shall be exempt from taxation.

Sec. 15. Effective date; referendum. This act shall take effect 90 days after the adjournment of the legislature only for the purpose of permitting its submission to the legal voters of the town of South Berwick voting at the next regular state or town election held in the town of South Berwick, or at any special town meeting duly called and held for the purpose not later than 1 year after the effective date of this act. Such special election shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, that the board of registration in said town shall not be required to prepare for posting, nor the town clerk to post, a new list of voters, and for the purpose of registration of voters said board shall be in session 1 hour preceding such special meeting. The town clerk shall prepare the required ballots on which he shall reduce the subject matter of this act to the following question: "Shall the act Creating the South Berwick Sewer District be accepted?" and the voters shall indicate by a cross or check mark placed against the words "Yes" or "No" their opinion of the same. The result shall be declared by the municipal officers and due certificate thereof filed by the town clerk with the secretary of state.

This act shall take effect for all the purposes hereof immediately upon its acceptance by a majority of the legal voters voting at said meeting; provided, however, that the total number of votes cast for and against the acceptance of this act at said meeting equaled or exceeded 20% of the total vote for all candidates for governor cast in said town at the next previous gubernatorial election.