

# MAINE STATE LEGISLATURE

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**Legislative Document**

**No. 712**

H. P. 1127

House of Representatives, February 14, 1951

Referred to the Committee on Public Utilities, sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mrs. Hanson of Lebanon.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FIFTY-ONE

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**AN ACT to Incorporate the Wells Beach Sewer District.**

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

**Sec. 1. Territorial limits; corporate name; purposes.** The inhabitants of and the territory within that part of the town of Wells in the county of York, which is bounded and described as follows: north by a point in the Kennebunk-Wells town-line where the mouth of Merriland (or Little) river joins the ocean; east by the Atlantic ocean; south by the Ogunquit Village Corporation line; west by a line starting at the mouth of the aforesaid Merriland river and thence in a southwesterly direction through the marsh to the easterly bridge of the bridges which are on the road leading from Route 1 to Drakes Island; thence in a westerly direction following the water course which runs under said bridge to its intersection with Gooch brook; thence easterly by Gooch brook to its intersection with Doctor's creek and the Webhannet river; thence southerly along the Webhannet river to the Mile Road bridge; thence in a straight line southerly across the marsh to the intersection of the Annie Gray road and the Eldridge road; thence in another straight line also southerly to the Furbish road bridge; thence southerly along the Abrams river to

the Ogunquit Village Corporation line; shall constitute a body politic and corporate under the name of "Wells Beach Sewer District," for the purpose of providing and maintaining a system of sanitary and storm sewerage, including drains, sewers, pumping stations, disposal plants and such other appurtenances as may appear necessary for public purposes and for the health, comfort and convenience of the inhabitants of said district, and for insuring the purity of the bathing waters along the beaches in said district.

**Sec. 2. General powers of the district.** Said district, by its commissioners, is hereby authorized 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, for the purposes of forming basins, reservoirs and outlets, erecting buildings for pumping stations and sewage treatment, laying pipes and maintaining same, laying and maintaining conduits for carrying and collecting, discharging and disposing of sewage matter and rain water, and for other purposes necessary, convenient and proper to effectuate the purposes of this act.

Provided, however, nothing herein contained shall be construed as authorizing said sewer district to take by right of eminent domain any of the property or facilities of any other public service corporation or district used or acquired for future use by the owner thereof in the performance of a public duty, unless expressly authorized thereto herein or by subsequent act of the legislature.

It is also empowered, through its commissioners, to make contracts with persons or corporations, including towns and village corporations for the collection, discharge and disposal of sewage, surface water and other waste matter. It is also hereby invested with all the powers, rights, privileges and immunities incident to similar corporations, or necessary for the accomplishment of the aforesaid purposes.

**Sec. 3. Particular powers enumerated; approval of public utilities commission.** The district is hereby authorized to lay in and through streets and highways, across private lands, under any water course, public or private way or railroad, in the manner prescribed by law, within and outside the district, and to remove and replace such pipes, aqueducts and fixtures as may be necessary for the objects above set forth; to cross any water pipe, gas pipe, electric conduit, drain or sewer, or if necessary, to change its direction in such a manner as not to obstruct its use by the construction of any of the works of said district, either during such construction or after the same has been completed, or while the same shall be

undergoing repairs or extensions are being made; and whenever the district shall lay, remove or replace any pipes, aqueducts or fixtures in any street or highway, it shall cause the work to be done with as little obstruction as possible to the public travel, and shall at its own expense without unnecessary delay cause the earth and pavement to be replaced in proper condition.

The district is further authorized to secure and maintain basins, reservoirs and outlets; to build and maintain pumping stations and buildings convenient for same; to construct and maintain treatment plants, flush tanks, manholes, storm water inlets and such usual appliances for collecting, holding, distributing and disposing of sewage and storm water; to supply water for such flush tanks and for flushing said system of sewers and for other purposes for which said district may deem the same desirable; to install all pipes and necessary structures and appliances to this end.

The district is hereby authorized to establish, through and by its commissioners, regulations for the use of sewers and to fix and collect the prices to be paid for entering same, and also the service charges for the use thereof; to enter into contract with persons, corporations, municipalities or other governmental units outside the boundaries of the district to care for sewage or drainage through the district's system; and in general to do any other acts or things necessary, convenient and proper to be done for the purpose 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.

**Sec. 4. Procedure in crossing a public utility.** 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 such consent is requested by said district, the public utilities commission shall determine the place, manner and conditions 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 said district.

Provided, however, nothing herein contained shall be construed as authorizing said district to take by right of eminent domain any of the property or facilities of any other public utility used or acquired for future use by the owner thereof in the performance of a public duty, unless expressly authorized herein or by subsequent act of the legislature.

**Sec. 5. Procedure in eminent domain proceedings.** The commissioners of said district may exercise the right of eminent domain vested in said district for the purposes of this act after hearing, notice of the time and place of said hearing having been given by publication in 2 newspapers published in the county of York for 2 weeks previous to the time appointed for said hearing. The clerk of said district shall keep a record of their proceedings, and their determination and decision, which shall set forth a description of the land, interest or easement taken, and the owners, if known, and the amount of damages awarded therefor.

Upon the signing of said record by the commissioners and the filing of the same in the registry of deeds for the county of York, said commissioners may enter upon such land and take possession of the same or of an interest or easement therein, as the case may be, for the purposes of this act. Any person aggrieved by the decision of said commissioners, so far as it relates to the damages for land, interests or easements so taken, shall have the same rights of appeal as are provided in the case of the laying out of town ways.

**Sec. 6. Liability for injuries; excavations and repair work; street closings.** Whenever said district shall enter, dig up or excavate any street, way, highway or other land within said district for the purpose of laying pipes or conduits, constructing manholes or catch-basins, or for the purpose of taking up, repairing, extending or maintaining any sewer, drain, manhole, catch-basin or other structure, or for any other purpose, said street, highway, way or other land shall, at the completion of the work of said district, be returned to the condition said street, way, highway or other land was in prior to the work of said district, or to a condition equally as good, and said district shall be liable to any person, firm or corporation injured or damaged by any fault of said district or its servants or agents, or by reason of any defect in any way, street or highway occasioned by the construction of any of the works of said district, either during such construction or after the same has been completed, or while the same shall be undergoing repairs or extensions are being made; and said district shall be liable to the town of Wells for any and all costs, damages and expenses which said town may suffer, or be put to, by reason of the default, neglect, negligence or carelessness of said district or any of its officers, servants or agents in creating, maintaining, repairing or extending said sewerage system.

Where the character of the work of said district is such as to endanger travel on any street or way, said town of Wells shall direct the temporary

closing of such streets or ways, and of intersecting streets or ways, upon request of said district, and such streets or ways shall remain closed to public traffic until the work of said district is completed and the surfaces of said streets or ways are restored to a proper condition, as hereinbefore set forth.

**Sec. 7. Abutters' right and obligation to enter sewer.** The district shall at all times be bound to permit the owners of premises abutting upon, or within 100 feet of, 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 person in possession, or person against whom property taxes are assessed, of all buildings or premises intended for human habitation, occupancy or use, abutting on, or whose property line is within 100 feet of, a street or location in which there is a public sewer, shall connect with said sewer in the most direct manner possible within 90 days of receiving notice thereof from said district.

**Sec. 8. 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, lamphole, outlet, engine, pump or other property held, owned or used by said district for the purposes of this act, shall be liable to 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 or wilful injury aforesaid, shall be punished by a fine not exceeding \$200 and by imprisonment not exceeding 1 year.

**Sec. 9. Officers; how chosen; term of office; powers and duties of commissioners; superintendent; treasurer.** The affairs of the district shall be under the supervision of a board of 3 commissioners, all of whom shall be property owners and residents within said district and legal voters of the town of Wells, who shall be appointed by the municipal officers of said town of Wells.

The term of office for the 1st board of commissioners shall expire on March 31 following their appointment. Subsequently commissioners shall be appointed for 1-year terms, or until their successors are chosen and qualified, and shall serve without pay. The municipal officers shall fill any vacancy by appointment of a commissioner for the unexpired term. If a commissioner should cease to be a property owner and resident of

the district, he must cease thereupon to be a commissioner. Commissioners and their appointees shall be sworn to the faithful performance of their respective duties.

The 1st board of commissioners shall organize at a meeting called by the municipal officers, within a week after acceptance of this act as hereinafter provided, and shall thereupon choose from their number a chairman and a clerk, and adopt a corporate seal. Subsequent meetings may be called by the president or clerk of said board by written notice to the other commissioners and to the superintendent of said district, hereinafter provided. Subsequent boards shall organize at a meeting called by the municipal officers in the 1st week of April.

The commissioners shall make such reasonable rules, regulations and by-laws pertaining to the conduct of the affairs of the district as are, in their opinion, necessary and proper, and as are not in conflict with this act or the general statutes.

The commissioners shall set the rates and fees and may issue notes and bonds, all as hereinafter provided. They shall provide for protection of the district from defalcation, embezzlement or loss of funds by any other cause, by requiring faithful performance bonds or insurance protection; and the premiums on same shall be paid by the district.

The commissioners shall also prepare and maintain a list of property owners qualified to vote in district meetings, hereinafter provided. This voting list shall be corrected as of April 1 each year, and may be corrected at such other times as the commissioners deem necessary.

The commissioners shall decide whether construction and maintenance work of the district will be done by an independent contractor or by force account.

Neither the commissioners nor their appointees shall be financially interested, either directly or indirectly, in any contract or agreement for the construction of any sewer, drain, or other structure in said district, entered into by said district. And the statutes generally forbidding selectmen of towns from profiting in their personal businesses from town contracts or purchases shall apply to said commissioners with respect to district contracts or purchases.

The commissioners shall determine when and where in said district sewerage facilities are most needed and how said sewers shall be built; where, when and what repairs, renewals and extensions are necessary, and

how the same shall be built; provided that their decision in such matters is subject to any action taken by a district meeting as hereinafter provided.

**(Superintendent)** The commissioners shall appoint, for an indefinite term, and may after 30 days' notice remove from office, a superintendent of said district who shall be responsible for the over-all management of the affairs of the district, including the construction and maintenance of the sewer system and the collection of rates, rentals and fees, and who need not be a property owner or resident of the district. The superintendent may also be the town manager or other employee of the town of Wells, but he shall not be engaged in any private business or income-producing occupation of any other nature, nor shall he be, or within the past 3 years have been, a district commissioner. His salary and terms of employment shall be set by the commissioners.

He shall authorize the payment of all proper bills incurred by the district, shall prepare the district budget and execute it after its adoption by the commissioners, shall make periodic financial and other reports to the commissioners and to the property owners of the district. He shall pay over monthly or oftener to the district treasurer all money collected by him for the district.

He shall appoint such employees and subordinate officers as are necessary to accomplish district purposes. He shall be the purchasing agent for the district.

**(Treasurer)** The commissioners shall also appoint for an indefinite term, and may remove after 30 days' notice, a district treasurer who may also be the town treasurer of the town of Wells and who may be a district commissioner, but who shall not also be the superintendent of said district, and who need not be either a property owner or a resident of the district. His salary and terms of employment shall be set by the commissioners. He shall be the custodian of all funds of the district and shall, upon authorization of the superintendent, pay all bills. He shall receive from the superintendent all moneys collected by said superintendent, shall give his receipt therefor and shall deposit them promptly in a bank to the credit of the district.

**Sec. 10. District meetings.** Upon petition of 10 property owners in the district, the commissioners shall be required to call a meeting of all the property owners of the district, each of whom shall have 1 vote in such matters as may be considered at said meeting.

Any action taken by such meeting shall be binding upon the commis-



sioners, provided it is not in conflict with the terms of this act or of the general statutes.

When a district meeting is, in their opinion, either necessary or desirable in order to ascertain the viewpoints of the property owners therein, the commissioners may call such a meeting without any petition from property owners.

Said meetings shall in general follow the rules and established custom, with respect to notice and procedure, as apply to town meetings in the town of Wells.

**Sec. 11. Authority to borrow money.** For accomplishing the purposes of this act and for such other expenses as may be necessary for the carrying out of said purposes, said district, through its commissioners, without district vote, is authorized to issue its notes and bonds in 1 series or in separate series from time to time and to make subsequent renewals of the same in whole or in part to an amount not exceeding the sum of \$500,000. Said notes and bonds 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 as amended, and all the provisions of said section are applicable thereto; shall be a legal investment for savings banks in the state of Maine; and shall be exempt from all present taxes. Each bond or note shall have inscribed on its face the words "WELLS BEACH SEWER DISTRICT BOND" or "WELLS BEACH SEWER DISTRICT NOTE," as the case may be, and shall bear interest at such rates as the commissioners shall determine. If said bonds or notes be issued from time to time, each authorized issue shall constitute a separate loan. Each loan shall be payable in equal annual amounts of principal, beginning not more than 1 year from its date, and shall be made to run for such period as the commissioners may determine, not exceeding 40 years.

All bonds or notes issued by said district shall bear the district seal, and shall be signed by the treasurer and countersigned by the chairman of the commissioners of said district, and if coupon bonds be issued, each coupon shall bear the facsimile signature of said treasurer and chairman.

Bonds may be issued by the district with or without provisions for calling the same for payment before maturity, and in case of such call provisions, the premium, if there be one, shall not exceed 5% of the principal upon such call.

The commissioners 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.

The district is not authorized to issue sinking fund notes or bonds, so-called, wherein a whole issue or a substantial part of same becomes due simultaneously several years after the date of issue.

In case the funds of the district shall at any time be insufficient to redeem bonds or notes as they come due, the district is authorized to redeem said bonds or notes by a refunding issue, but if such refunding is necessary the commissioners must thereupon review their rates to determine whether an adjustment in them would eliminate future refunding, and take such action thereon as is in their best judgment necessary and proper.

**Sec. 12. Rates; application of revenue.** All individuals, firms and corporations, whether public, private or municipal, shall pay to the treasurer of said district the rates established by the commissioners for the services used or made available to them. The rates may include rates for the district's readiness to serve charged against owners, persons in possession, or persons against whom property taxes are assessed, of all buildings or premises intended for human habitation, occupancy or use, whether the same are occupied or not, which abut on, or are within 100 feet of, a street or location through which said district has constructed a sewer line.

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 established so 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 incurred by the district;
- III. To provide each year a sum equal to not less than  $2\frac{1}{2}\%$  of the entire indebtedness of the district which sum shall be sufficient for and used to retire bonds and notes of the district as they mature annually;
- IV. If any surplus remains after the year's operations, this surplus shall be set aside in a reserve fund and invested in securities lawful for savings banks. If this reserve fund at the end of any fiscal year exceeds 5% of the entire indebtedness of the district, the commissioners shall consider an adjustment of the rates and take such action thereon as is

in their best judgment necessary and proper. Payments may be made from this reserve fund only for the retirement of debt, and for that purpose only when the operating revenues of the district are insufficient in any particular fiscal year.

**Sec. 13. Lien for payment of rates.** There shall be a lien to secure the payment of rates established under section 12 of this act and legally assessed on real estate within the district, which shall take precedence of all other claims on such real estate, 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.

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

In addition to other methods previously established by law for the collection of the rates, the lien herein created may be enforced in the following manner: provided, however, that in making the assessment 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; the superintendent, 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 the rate, in the case of a person resident in the town where the rate is assessed, give to the person against whom the rate is assessed, or leave at his last and usual place of abode, a notice in writing signed by the officer, stating the amount of such rate, describing the real estate on which the rate is assessed, alleging that a lien is claimed on the real estate to secure the payment of the rate within 10 days after the service of such notice. After the expiration of the 10 days, and within 10 days thereafter, in the case of a resident, and in all other cases within a year from the date of commitment of the rate to said officer, the officer shall record in the registry of deeds of York county a certificate signed by the officer 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 the real estate to secure the payment of the rate, that a demand for payment of the rate has been made in accordance with the provisions of this act and that the rate remains unpaid. In all cases, except in the case of a resident, the certificate so filed need not contain the allegation that payment of the rate has been demanded. At the time of the recording of the certificate in the registry of deeds as herein provided, in all cases such officer shall file in the office of the district a true copy of the certificate and also at the time of recording as aforesaid, the 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 the 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 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 shall give to the district all the rights usually incident to a mortgage, except that the mortgagee shall not have any right of possession of the real estate until the right of redemption herein provided for shall have expired.

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

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

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

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

**Sec. 15. Referendum.** This act shall take effect 90 days after the adjournment of the legislature only for the purpose of permitting its submission to the owners of property located within said district at a meeting specially called and held for the purpose within 60 days after the effective date of this act. The municipal officers of the town of Wells shall call said election, to be held upon a date to be specified by them in writing. Said municipal officers shall make and provide a separate check list including all property owners, both resident and non-resident, within the district, to be used at said election, and shall post it publicly within the district 7 days before said election. Such election shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, that the municipal officers shall not be required to prepare, nor the town clerk to post, a new list of voters; and for the purpose of correct-

ing the check list above-mentioned the municipal officers shall be in session the secular day next preceding such election.

The town clerk shall reduce the subject matter of this act to the following question: "Shall the Act to Incorporate the Wells Beach Sewer District be accepted?" and each property owner shall indicate his opinion thereon by marking his ballot in either the "Yes" square or the "No" square and depositing it in the ballot box. This act shall take effect immediately upon its acceptance by a majority vote of at least 20% of the property owners listed on the check list used at said election. The result shall be declared in open meeting and due certificate thereof filed by the town clerk with the secretary of state.