

Chapter 11

Utilities District

XI. Utilities District

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Chapter 11

Utilities District

Section 11-101 Purpose

This utilities district is created in order to insure the healthy quality of the Town's water supply. The district is also to provide safe and efficient water service and to operate this water system in such a way as shall benefit the health and well-being of the inhabitants of Winter Harbor.

Section 11-102 Authority

This district is created according to Title 35 MRSA 261.

Section 11-103 Preamble

Whereas, the present water system is inadequate and in need of immediate improvement and repair to protect the quality of the water service and the health and well-being of the inhabitants of Winter Harbor; and

Whereas, an adequate supply of pure water is essential to the health and well-being of the inhabitants of the Town of Winter Harbor; and

Whereas, it is desirable that a public district be formed in Winter Harbor to be able to take over a private water company forthwith in order to supply water service to the people of the area and also to provide for sewerage treatment for the area; and

Whereas, it is vital that this be done at once for the benefit of the people of the area; and

Whereas, legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, this act is adopted.

Section 11-104 Territorial Limits; Incorporation; Purposes

The inhabitants and territory within the Town of Winter Harbor, in the County of Hancock, are created a body politic and corporate under the name of "Winter Harbor Utilities District." The purposes of said district shall be generally to construct, maintain, operate and provide a water system for domestic, commercial, sanitary and municipal purposes including the extinguishment of fires, and a system of sewerage, sewage and storm water disposal and sewage treatment; to provide for removal and treatment of sewage when, as and if such treatment becomes necessary; and generally to construct, maintain, operate and

charging and disposing of sewerage matters and waters, for filtering, rectifying, treating and disposal plants, works and facilities, for such other objects necessary, convenient and proper for the purposes of its incorporation, and for right-of-way or roadways to the sources of supply, dams, power stations, reservoirs, mains, aqueducts, structures, plants, works, facilities and lands. Nothing herein contained shall be construed as authorizing said water and 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.

Section 11-107 Procedure of Right of Eminent Domain

In exercising any rights of eminent domain that are herein conferred upon said district, the district shall file for record in the registry of deeds in the County of Hancock plans of the location of lands or interest therein 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 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. No entry shall 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 such lands or interest therein so taken, but title thereto shall not vest in said district until payment therefor.

Section 11-108 Liability for Damages

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

Section 11-109 Procedure if Public Utility Must Be Crossed

In case of any crossing of any public utility, unless consent is given by the company owning or operating such public utility

Said district, through its trustees, is hereby authorized to file a petition in the clerk's office of the Superior Court for the County of Hancock, addressed to any justice thereof who, after notice to said defendant aforesaid, shall, after hearing and within 45 days after the filing of said petition, appoint 3 disinterested appraisers for the purpose of fixing the valuations of the plant, property and franchises of said Winter Harbor Water Company described in section 11-111. The court may order under proper terms the production for inspection and viewing by the trustees or the said appraisers of all books and papers and real and personal property pertaining to the issue on petition for same by the petitioner unless same are voluntarily produced. The said appraisers shall have the power to administer oaths. The appraisers so appointed shall, after due notice and hearing, fix the valuation, as of a proper date, of said plants, properties and franchises at what they were fairly and equitably worth so that said company shall receive just compensation for same. The report of said appraisers or of a majority of them, together with the report of a stenographer certified by said appraisers as correct, shall be filed in said clerk's office within 3 months after their appointment, unless extended by the court, and any Justice of the Superior Court may, after notice and hearing, confirm or reject the same or recommit it if justice so requires. Upon the confirmation of said report, the court so sitting shall thereupon make final decree upon the entire matter, including the application of the purchase money and transfer of the 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 and the appraisers shall be final, but any party aggrieved may take exceptions as to any matters of law, 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 exceptions shall be claimed on the docket within 10 days after such final decree is signed, entered and filed and notice thereof has been given by the clerk to the parties and said exceptions so claimed shall be made up, allowed and filed within said time unless further time is granted by the court or by agreement of parties. They shall be entered at the next term of the law court to be held after the filing of such exceptions and there heard, unless otherwise agreed, or the law court for good cause shall order further time for hearing thereon. On payment or tender by said district of the amount determined by the final decree and the performance of all other terms and conditions imposed by said court, the said plant, properties and franchises of Winter Harbor Water Company, as described in section 11-111, shall become vested in this district.

If said district fails to file its petition to take by eminent domain before December 31, 1977, said plant, properties, franchises, rights and privileges owned by Winter Harbor Water Company, then the authority granted by this section shall cease.

point of entry and an entrance charge established on that location, no person shall enter his private drain into such sewer until he has paid the entrance charge and obtained a permit in writing from the trustees as aforesaid. All such permits shall be recorded by the clerk of the district in its records before the same are issued.

Section 11-117 Trustees and Officers

All of the affairs of said district shall be managed by a board of 3 trustees, residents therein, who shall be chosen as hereinafter provided.

As soon as may be after acceptance of this Act, the municipal officers of the Town of Winter Harbor shall appoint 3 trustees of said district to hold office as follows: One to serve until the first annual meeting of said town following the acceptance of this Act; one to serve until the 2nd annual meeting of said town following such acceptance; and one to serve until the 3rd annual meeting of said town following such acceptance. At each annual meeting of said town, beginning with the first annual meeting after acceptance of this Act, one trustee shall be elected by ballot to serve until the annual meeting of said town occurring 3 years thereafter until his successor is elected and qualified. When any trustee ceases to be a resident of said district, he vacates his office as trustee. All trustees, if residents of said district, shall be eligible for reelection or reappointment as hereafter provided.

As soon as convenient after their appointment, the first board of 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. At this original meeting the trustees shall organize by electing from their own members a chairman, a treasurer and a clerk and adopting a corporate seal. The trustees may adopt and establish bylaws, consistent with the laws of the State of Maine and necessary for their own convenience and the proper management of the affairs of the district, and perform any other acts within the powers delegated to them by law.

Within one week after each annual election, the trustees shall meet for the purpose of electing a chairman, treasurer and clerk to serve for the ensuing year and until their successors are elected and qualified. The trustees from time to time may choose and employ, and fix the compensation of, any other necessary officers and agents who shall serve at their pleasure. The treasurer shall furnish bond in such sum and with such sureties as the trustees shall approve, the cost thereof to be paid by the district.

vote of its board of trustees, without district vote except as hereinafter provided, is authorized to borrow money temporarily and to issue therefor its negotiable notes; and for the purpose of renewing and refunding the indebtedness so created, or paying any necessary expenses and liabilities incurred under the provisions of this Act, and in acquiring properties, paying damages, laying pipes, mains, sewers, drains and conduits, purchasing, constructing, maintaining and operating a water system and a sewerage system and making renewals, additions, extensions and improvements to such system and to cover interest payments during any period of construction, said Winter Harbor Utilities District, by votes of its board of trustees, without district vote except as hereinafter provided, is also authorized to issue, from time to time, bonds, notes or other evidences of indebtedness of the district in such amount or amounts, bearing interest at such rate or rates, and having such terms and provisions as the trustees shall determine; provided, however, that in the case of a vote by the trustees to authorize bonds or notes to pay for the acquisition of property, for the cost of a water system or sewerage system or part thereof, for renewal or additions or for other improvements in the nature of capital costs, the estimated cost of which, singly or in the aggregate included in any one financing is \$30,000 or more, but not for the acquisition of the property of the Winter Harbor Water Company hereinbefore provided or for renewing or refunding existing indebtedness or to pay for maintenance, repairs or for current expenses, notice of the proposed debt and of the general purpose or purposes for which it was authorized shall be given by the clerk by publication at least once in a newspaper having a general circulation in the Town of Winter Harbor. No debt may be incurred under such vote of the trustees until the expiration of 7 full days following the date on which such notice was first published. Prior to the expiration of said period, the trustees may call a special district meeting for the purpose of permitting the voters of the district to express approval or disapproval of the amount of debt so authorized, and the trustees shall call such a special district meeting, if within 7 days following the publication of the said notice, there shall have been filed with the clerk of the district a petition or petitions signed by not less than 50 qualified voters of the district requesting that such a special meeting be called. If at such district meeting a majority of voters present and voting thereon expresses disapproval of the amount of debt authorized by the trustees, the said debt shall not be incurred and the vote of the trustees authorizing the same shall be void and of no effect. Said bonds, notes and evidences of indebtedness may be issued to mature serially in annual installments of not less than 1% of the face amount of the issue and beginning not later than 2 years from the date thereof, or may be issued with equal annual payments, applied first to interest and the balance to principal, or made to run for such periods as the trustees may

Section 11-120 (Continued)

Whenever any bonds of said district become due, or can be purchased by said trustees on favorable terms, said trustees may, if sufficient funds have accumulated in said sinking fund, redeem or purchase said bonds, and cancel them. In no case shall bonds so cancelled or redeemed be reissued.

In case the amount in said sinking fund shall not be sufficient to pay the total amount of the bonds falling due at any one time, authority to issue new bonds sufficient to redeem so many of said bonds as cannot be redeemed from the sinking fund is granted to said trustees.

Section 11-121 Contracts Authorized

The district is authorized to contract with persons, corporations, districts and other municipalities, including the Town of Winter Harbor, to provide for the supplying of water or for the disposal of sewage, industrial waste, surface water and other waste matter, or both, through the water and sewerage systems, respectively, of the Winter Harbor Utilities District or through the appropriate system of any such person, corporation, district or other municipality; said Town of Winter Harbor is authorized to contract with the latter-named district for the supplying of water and for the disposal of sewage, industrial waste, surface water and other waste matter, and for said purposes, said town may raise money as for other municipal charges and may raise money for studies or costs in connection with purchasing or condemning the Winter Harbor Water Company.

Section 11-122 Property Tax Exempt

The real and personal property, rights and franchises of said district shall be forever exempt from taxation.

Section 11-123 Water and Sewer Rates; Application of Revenue

All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the separate water and sewer rates established by said board of trustees for the service or services used by them, and shall so pay the tolls, rents, entrance charges and other lawful charges established by the trustees for the sewer and drainage service used or available to their real estate. Such sewer rates may include rates for the district's readiness to serve, charged against owners of real estate on which is or are located a building or buildings whose drainage system should be connected to the district sewer system pursuant to section 11-115 hereof, although such buildings are not in fact connected. Rates, tolls, rents and entrance charges shall be uniform whenever the cost to the district of installation and maintenance of water mains and of sewers and their respective appurtenances

constructing and completing such sewer, together with such sewage disposal units and appurtenances as may be necessary, the whole of such assessments not to exceed $\frac{1}{2}$ the cost of such sewer, sewage disposal units and appurtenances, respectively. The trustees shall file with the clerk of the district the location of such sewer and sewage disposal unit, with a profile description of the same, and a statement of the amount assessed upon each lot or parcel of land so assessed, a description of each lot or parcel, and the name of the owner of such lots or parcels of land or person against whom said assessment shall be made, and the clerk of such district shall record the same in a book kept for that purpose, and within 10 days after such filing, each person so assessed shall be notified of such assessment by having an authentic copy of said assessment, with an order or notice signed by the clerk of said district, stating that the time and place for a hearing upon the subject matter of said assessments, given to each person so assessed or left at his usual place of abode in said district; if he has no place of abode in said district, then such notice shall be given or left at the abode of his tenant or lessee, if he has one in said district; if he has no such tenant or lessee in said district, then by posting said notice in some conspicuous place in the vicinity of the lot or parcel of land so assessed at least 30 days before said hearing, or such notice may be given by publishing the same once a week, for 3 successive weeks, in any newspaper of general circulation in said district, the first publication to be at least 30 days before said hearing. A return made upon a copy of such notice by any constable in said Town of Winter Harbor or the production of the paper containing such notice shall be conclusive evidence that said notice has been given, and upon such hearing the trustees shall have power to revise, increase or diminish any of such assessments, and all such revisions, increases or diminutions shall be in writing and recorded by the clerk of the district.

Section 11-125 Right of Appeal

Any person aggrieved by the decision of said trustees as it relates to any assessment for sewer construction shall have the same rights of appeal as are provided in the case of laying out of town ways.

Section 11-126 Assessments; Lien; Sheriff's Sale

All assessments made under section 11-124 shall create a lien upon each and every lot or parcel of land so assessed and the buildings upon the same, which lien shall take effect when the trustees file with the clerk of the district the completed assessment and shall continue for one year thereafter; and within 10 days after the date of hearing on said assessment, the clerk of the district shall make out a list of all such assess-

the owner of such lot or parcel of land, then the person so paying the same shall have a lien upon such lot or parcel of land with the buildings thereon for the amount of said assessment so paid by said person, and incidental charges, which lien shall continue for one year and which lien may be enforced in an action of assumpsit as for money paid, laid out and expended, and by attachment in the way and manner provided for the enforcement of liens upon buildings and lots under the Revised Statutes of 1964, Title 10, section 3251, as amended.

Section 11-129 Lien for Payment of Rates

There shall be a lien on real estate served or benefited by the sewer systems of the district to secure the payment of rates established and due under section 11-123 of this Act which shall take precedence of all other claims on such real estate, excepting only claims for taxes. Real estate for the purposes of this Act shall have the same definition as given in the Revised Statutes of 1964, Title 36, section 551, as amended.

The treasurer of the district shall have full and complete authority and power to collect the rates, tolls, rents and other charges established under section 11-123 and the same be committed to him. The treasurer may, after demand for payment, sue in the name of the district in an action of assumpsit for any rate, toll, rent or other charges remaining unpaid in any court of competent jurisdiction. In addition to other methods established by law for the collection of rates, tolls, rents and other charges, and without waiver of the right to sue for the same as aforesaid, the lien hereby created may be enforced in the following manner. The treasurer, when a sewer rate, toll, rent, or other charge has been committed to him for collection, may, after the expiration of 3 months and within one year after date when the same became due and payable, in the case of a person resident in the district, give, or cause to be given to such person, or leave or cause to be left at his last and usual place of abode, a notice in writing signed by the treasurer stating the amount of such rate, toll, rent or other charge, describing the real estate upon which the lien is claimed, and stating that a lien is claimed on said real estate to secure the payment of said rate, toll, rent or other charge and demanding within 30 days after the service of such notice payment as aforesaid. In the case of a non-resident of the district, the aforesaid notice shall be given by registered mail addressed to his last known address or by publication in a newspaper of general circulation within the district once a week for 2 successive weeks, and shall demand payment within 30 days after the mailing thereof or the first publication of notice thereof as aforesaid. After the expiration of said period of 30 days and within one year thereafter, the treasurer may record in the registry of deeds of Hancock County a certificate signed by the treasurer setting forth

to said district; including the right of the trustees to determine when and where sewerage facilities and additional water facilities are most needed, and when and how sewers and water mains shall be built.

Section 11-131 Existing Statutes Not Affected; Rights Conferred Subject to Provisions of Law

Nothing herein contained is intended to repeal or shall be construed as repealing the whole or any part of any existing statute, and all the rights and duties herein mentioned shall be exercised and performed in accordance with any applicable provisions of the Revised Statutes of 1964, Titles 35 and 38 and any Acts amendatory thereof or additional thereto.

Referendum; effective date. In view of the emergency cited in the preamble, this Act shall take effect when approved only for the purpose of permitting its submission to the legal voters of the district at a special election or elections called and held for the purpose. Said election shall be called by the municipal officers of the Town of Winter Harbor and shall be held at the regular voting places; the dates of said elections shall be determined by said municipal officers, but the first such meeting of said district shall not be later than the first day of 1977. Such special elections shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, the board of registration shall not be required to prepare nor the town clerk to post a new list of voters; and for this purpose said board of registration shall be in session on the 3 secular days next preceeding such elections, the first and 2nd days thereof to be devoted to registration of voters and the last day to enable the board to verify the corrections of said lists and to complete and close up their records of said session. The town clerk shall reduce the subject matter of this Act to the following question:

"Shall 'An Act to Incorporate the Winter Harbor Utilities District,' passed by the 107th Legislature, be accepted?" The voters shall indicate by a cross or check mark placed against the words "Yes" or "No" their opinion of the same. This Act shall take effect for all the purposes hereof immediately upon its acceptance by a majority of the legal voters of said district voting at such elections, but only if the total number of votes cast for and against the acceptance of this Act in said special elections equals or exceeds 20% of the total number of names on the check list of voters of said town provided for herein, which check list shall be used at such elections; but failure of approval by the necessary majority or percentage of voters shall not prevent subsequent elections.