

# **WALDOBORO UTILITY DISTRICT**

**WORKING COPY OF**

## **DISTRICT CHARTER**

**APPROVED BY THE VOTERS OF WALDOBORO**

**JULY 1, 1963**

### **SECTION 100**

**NOTE:** This Charter, Chapter 146 of the Private and Special Laws of Maine, has been amended several times by the Maine Legislature and the voters of Waldoboro including: 1964, 1981, 1988, 1991, 1993, 1994, 1997, 1998 and 2005. All of the above amendments have been incorporated into this working copy. The Legislature has also changed the Sewer District enabling law and added several provisions affecting the charter, these are included herein. This copy has been reformatted to combine sections on similar subjects. The note in italics at the end of each section refers to the location in the M.R.S.A..

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## SECTION 101 - BOUNDARY, PURPOSE & AUTHORITY

### 101.1 Incorporation

The territory and the inhabitants of the Town of Waldoboro in the County of Lincoln, constitute a body politic and corporate under the name of "Waldoboro Utility District". The purpose of said district, subject to the provisions of section 101.3 shall be to take over control, operate and manage the sewers now owned by the Town of Waldoboro with all appurtenances to the sewers; to extend, increase, enlarge, and improve said sewers; to extend the present system or systems so as to furnish sewerage facilities to parts of the town not now served with such facilities; to provide for removal and treatment of sewage when, as and if such treatment becomes necessary; and generally to construct, maintain, operate and provide a system of sewerage, sewage disposal and sewage treatment for public purposes and for the health, welfare, comfort and convenience of the inhabitants of the district. *(Sec. 1, M.R.S.A. Chapter 146)*

### 101.2 Authority to construct and maintain

Within said territory and the territory of any adjoining municipality said Waldoboro Utility District is hereby authorized to lay pipes, drains, sewers and conduits, and to take up, repair and maintain the same or to contract for the same to be done, in, along and through any public or private ways and public grounds and in, along and through, lands of any person or corporation as provided in this charter, to and into tidal waters, rivers, watercourses or treatment works, or to or into any drain or sewer which empties into tidal waters, rivers, water courses, or treatment works, the discharge from drain or sewer to be at such points consistent with the requirements of public health found to be convenient and reasonable for said district and the flow of existing water courses; to construct and maintain treatment works, pumping stations,

basins, reservoirs, flush tanks and such other appliances for collecting, holding purifying, distributing and disposing of sewage matter and industrial waste and, subject to the provisions of section 101.3 of surface and waste water, all as may be necessary or proper; and in general, do any or all other things necessary or incidental to accomplish the purposes of this act. *(Sec. 2, M.R.S.A. Chapter 146)*

**101.3 Construction of this act; bylaws and regulations authorized, incidental powers and rights.**

This act shall be construed as authorizing a charge by said district for the use of sewers, sewer systems, and treatment works in addition to any other assessments now lawfully imposed by general law. The trustees may adopt such rules and regulations as may be necessary or convenient to carry out the provisions of this act. All incidental powers, rights, and privileges necessary to the accomplishments of the main objects of this act as set fore herein are granted in said district; including the right of the trustees to determine when and where sewage facilities are most needed, and when and how sewers shall be built.

*(Sec. 25, M.R.S.A. Chapter 146)*

**101.4 Contracts with municipalities authorized.**

The said district is authorized to contract with persons, corporations, district and other municipality, both inside and outside the boundaries of the district, including the Town of Waldoboro, to provide for disposal of sewage and commercial and industrial wastes through the district's system and through the system of any such person, corporation, district or other municipality; and said Town of Waldoboro is authorized to contract with said district for the collection, distribution and disposal of sewage, surface water and other waste matter, and for said purposes, said town may raise money for other municipal charges.

*(Sec. 8, M.R.S.A. Chapter 146)*

### **101.5 Surface water facilities; joint facilities; separation of same**

Any other provision of this act to the contrary notwithstanding, the said district shall be under no duty or obligation to construct maintain, improve, extend or provide drains, pipes, catch basins or any other facilities for storm or surface water drainage, and all drain pipes, catch basins or other facilities owned by said Town of Waldoboro and used exclusively for storm or surface water drainage shall remain the property of said town, and no such drain, pipe, catch basin or other facility shall be transferred to the district to be thereafter maintained and operated by the district without the joint approval of the councilmen of said Town of Waldoboro and the trustees of said district. Any sewer or drain owned by said Town of Waldoboro at the time of acceptance of this act and used for both sanitary sewage disposal and storm and surface water drainage shall pass to and be vested in said district and said district shall be entitled to charge said town for the use of the same storm or surface water drainage at such rates as the trustees may determine; provided, however, that no additional catch basins or other facilities draining into any such combined sewer or drain shall be constructed without approval of said trustees. If and when the district shall construct and provide a sewer or drain which permits separation of sanitary sewage previously disposed of through any such combined sewer or drain, the said district by vote of the trustees, thereof, shall transfer and convey back to said Town of Waldoboro the facilities for storm and surface water drainage. (Sec. 10, M.R.S.A. Chapter 146)

### **101.6 Excavation or repair work, closing of ways.**

Whenever said district shall enter, dig up or excavate any public way or other land for the purpose of laying its sewers, drains, or pipes, constructing manholes or catch basins or their appurtenances, or maintaining the same, or for any other

purpose, the work shall be expeditiously done with the least possible interruption and on completion of the work the district shall restore said way or land to the condition it was in prior to such work, or to a condition equally as good. Whenever the character of the work is such as to endanger travel on any public way, the municipal officers of the Town of Waldoboro may order a temporary closing of such way and of any intersecting way, upon request of said district, and the way shall remain closed to public travel until said municipal officers deem it is restored to a condition safe for traffic. (Sec. 9, M.R.S.A. Chapter 146)

#### **101.7 Conflict with existing statutes**

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 1954, chapters 44 and 79 any acts amendatory thereof or additional thereto. (Sec. 26, M.R.S.A. Chapter 146)

#### **101.8 Expansion of district boundaries**

Amendments to expand the boundaries of a sewer district must be approved by the voters of the district prior to consideration by the Legislature. (M.R.S.A., Title 38, Chapter 12, § 1252, ¶ 4)

#### **101.9 Coordination with municipal planning**

To facilitate coordination of municipal planning and sewer extension planning:

- A. The trustees of a sewer district shall cooperate with municipal officials in the development of municipal growth management and other land use plans and ordinances; and

B. Municipal officers shall cooperate with the trustees of a sewer district during the consideration of development applications that may affect the operations of the district. *(M.R.S.A., Title 38, Chapter 12, § 1252, ¶ 9)*

**101.10 Lease of property**

A sewer district may enter into a lease and leaseback transaction with respect to some or all of its real estate or personal property, other than land, and may take all other actions necessary or desirable, including, but not limited to, the granting of mortgages and liens, to effectuate the transaction. For purposes of this subsection, "lease" includes a lease of any length, including leases that may be defined as sales for income tax purposes. *(M.R.S.A., Title 38, Chapter 12, § 1252, ¶ 10)*

## SECTION 102 – EMINENT DOMAIN

### **102.1 Authority to acquire and hold property; right of eminent domain conferred.**

Upon acceptance of this act as hereafter provided, and subject to the provisions of section 10 hereof, title to all public sewers in the Town of Waldoboro shall forthwith pass to and be vested in said district, and said district thereafter shall maintain and operate the same. The said district is hereby authorized and empowered to acquire and hold real and personal property necessary or convenient for the purposes of this act and is hereby expressly granted the right of eminent domain, and for the purposes of this act is authorized to take and hold, either by exercising its right of eminent domain, or by purchase, lease or otherwise, as for public uses any land, real estate, easements or interests therein, and any sewers, drains, or conduits and any sewer or drainage rights necessary for constructing, establishing, maintaining and operating sewers, drains reservoirs, flush tanks, manholes, catch basins, treatment works, pumping stations and other appliances and property used or useful for collecting, holding, purifying, distributing and disposing of sewage matter and industrial waste and surface and waste waters. *(Sec. 3, M.R.S.A. Chapter 146)*

### **102.2 Procedure under eminent domain.**

In exercising from time to time the right of eminent domain hereby conferred upon it, said district by its board of trustees, shall file in the office of the county commissioners of Lincoln County and cause to be recorded in the Registry of Deeds in said county plans of the location of all lands, real estate easements or interests therein and sewers, drains or conduits and any sewer or drainage rights to be taken, with an appropriate description and the names of the owners thereof, if known. When for any reason the district fails to acquire property

which it is authorized to take and which is described in such location, or if the locations so recorded is defective and 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 acts 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 said lands, real estate, easements or interests therein and other property and rights as aforesaid to be taken, but title thereto shall not vest in said district until payment therefore. (Sec. 4, M.R.S.A. Chapter 146)

### **102.3 Assessment of damages by county commissioners; procedure on appeals.**

If any person sustaining damages by any taking as aforesaid shall not agree with said district upon the sum to be paid therefore, either party, upon petition to the county commissioners of Lincoln 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 the laying out of highways. (Sec. 5, M.R.S.A. Chapter 146)

### **102.4 Limitations on crossing a public utility.**

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

crossings; 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. 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 service corporation or district 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. 6, M.R.S.A. Chapter 146)

## **SECTION 103 - REQUIRED CONNECTION, USE OF SEWER & ACCESS TO PREMISES**

### **103.1 Buildings to connect with sewer if available.**

Every building in the district intended for human habitation or occupancy which is located within 100 feet of a public sewer on property abutting on a street or way in which there is a public sewer, or any such building within 100 feet of a public sewer, shall have a house drainage system which shall be caused to be connected with the sewer by the owner or person against whom taxes on the premises are assessed in the most direct manner possible, within 90 days after receiving request therefore from the district, or within such further time as the trustees of the district may grant and, if feasible, with a separate connection for each house or building; provided, however, that existing buildings which are already served by a satisfactory private sewer system which meets and continues to meet in the judgment of the trustees the applicable requirements of the state plumbing code and all applicable laws and ordinances shall not be required to connect with the public sewer. *(Sec. 12, M.R.S.A. Chapter 146)*

### **103.2 Procedure for connection to sewer.**

A person may enter that person's private sewer into a sewer of the district upon obtaining a permit in writing from the trustees and upon paying entrance charges as established by the district. *(Sec. 7, M.R.S.A. Chapter 146)*

### **103.3 Sanitary provisions and penalty for violations.**

Any person who shall place, discharge or leave any offensive or injurious matter or material on or in the conduits, catch basins or receptacles of said district contrary to its regulation, or shall willfully injure any conduit, pipe, reservoir, flush tank, catch basin, manhole, 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 any of said acts or willful injury aforesaid and any; person who violates the provisions of sections 103.1 or 103.4 hereof, shall be punished by a fine not exceeding \$200 or by imprisonment not exceeding one year, or by both. *(Sec. 13, M.R.S.A. Chapter 146)*

#### **103.4 Free access to premises.**

The officers or agents of the district shall have free access to all premises served by its sewers, at all reasonable hours, for inspection of plumbing and sewage fixtures, to ascertain the quality and quantity of sewage discharged and the manner of discharge, and to enforce the provisions of this chapter and the rules and regulations prescribed by the trustees hereunder. *(Sec. 11, M.R.S.A. Chapter 146)*

#### **103.5 Connection of private sewers**

Existing buildings which are already served by a private sewer system are not required to connect with any sewer or drain of the district as long as the private sewer or drainage system functions in a satisfactory and sanitary manner and does not violate any law or ordinance applicable thereto or any applicable requirements of the State of Maine Plumbing Code, as determined by the municipal plumbing inspector, his alternate, or in the event that both are trustees of the district, the Division of Health Engineering. *(M.R.S.A., Title 38, Chapter 12, § 1252, ¶ 3)*

#### **103.6 Enforcement power**

A sewer district may seek in a civil action injunctive relief from an industrial user that violates any pretreatment standard or requirement administered by the district. The district may seek a civil penalty of up to \$1,000 a day for each violation by an industrial user of a pretreatment standard or requirement. *(M.R.S.A., Title 38, Chapter 12, § 1252, ¶ 8)*

## SECTION 104 - TRUSTEES & DISTRICT MEETINGS

### 104.1 Trustees and officers; tenure of office

All of the affairs of said district are managed by a board of 5 trustees, who must be residents of the Town of Waldoboro and who are chosen as provided in this section. The 3 trustees serving on October 1, 1993 serve to the completion of their current terms. A vacancy in any of these offices is filled for the balance of the term as provided in this section. Successors are elected to 3-year terms as provided in this section. At the next annual meeting of the town after October 1, 1993, 2 additional trustees are elected, one to serve until the annual meeting of the town occurring 2 years after the election of the trustee and until the trustee's successor is elected and qualified and the other to serve until the annual meeting of the town occurring 3 years after the election of the trustee and until the trustee's successor is elected and qualified. Successors are elected to 3-year terms as provided in this section. At each annual meeting of said town, one or more trustees are elected by ballot as provided in this section. When any trustee ceases to be a resident of said district, the trustee vacates the trustee's office as trustee. All trustees, if residents of said district are eligible for reelection or reappointment as provided in this section. *(Part of Sec. 14, M.R.S.A. Chapter 146)*

### 104.2 Election to office

The nomination of all candidates for trustee to be elected as provided by this act must be by nomination papers signed in the aggregate for each candidate by not less than 25 nor more than 50 qualified voters resident in said district. Nomination papers must be made available by the municipal clerk to prospective candidates during the 40 days prior to the final date of filing and, before issuance, the town clerk may complete each sheet by filling in the name of the candidate, the title and term of office which is being sought. Each voter who

signs a nomination paper shall add the voter's place of residence with the street and number, if any. The voter may subscribe only to as many nomination papers for each office as there are vacancies to be filled. All nomination papers must be filed with the clerk during business hours on or before the 35<sup>th</sup> day next prior to the day of election. With the nomination papers, there must be filed the consent in writing of the persons proposed as candidates, agreeing to accept the nomination if nominated, not to withdraw and if elected at the municipal election to qualify as the quasi-municipal officer. When filed, the nomination papers must be made available by the clerk to public inspection under supervision. The clerk shall keep them in the office for 6 months. In case any candidate who has been duly nominated under the provisions of this section dies before the day of election, or withdraws in writing, or the candidate moves from said district, the vacancy may be supplied in the manner provided for such nominations except that the time limit for filing such nomination papers does not apply. The name so supplied for the vacancy, if the ballots have not been printed, is placed on the ballots instead of the original nomination; or if the ballots have been printed; new ballots containing the new nomination, if practical, are furnished, or slips containing the new nomination are printed under the direction of the town clerk which are pasted upon said ballots and over the name of the candidate who's nomination has been vacated and becomes part of said ballots as if originally printed on the ballot. The ballot in said district must contain names of all candidates so nominated in such district alphabetically arranged, printed in one column under the heading "For Trustee of the Waldoboro Utility District" Above such heading must be printed vote for \_\_\_\_\_(the number to be elected to be inserted). Make a cross or a check mark to the right of the name(s) voted for. As many blank spaces must be left after the names of the candidates as there are trustees to be elected in which the voter may, by writing, insert the name of any person or persons for whom the voter desires to vote. In preparing the voter's ballot the voter shall

mark a cross (X) or a check mark (✓) against and to the right of such names on said ballot as the voter desires to vote for, not to exceed the number of trustees so to be elected in said district. At each annual meeting of said Town of Waldoboro, balloting for trustee of said district takes place concurrently with balloting for the municipal officers of said town, but separate ballots are provided for trustee of the district as provided for in this section. The result of such election is declared by the municipal officers of said Town of Waldoboro and due certificate of the result filed with the town clerk and the clerk of the district. The district shall reimburse the town for the expense of any district election. (*Part of Sec. 14, M.R.S.A. Chapter 146*)

### **104.3 Organization**

The trustees may adopt and establish bylaws, consistent with the laws of the State and necessary for their own convenience and for 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 chair, 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 of the bond to be paid by the district. Members of the board of trustees are eligible to any office under the board.

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

such report may be included in, and published as part of the town report. *(Part of Sec. 14, M.R.S.A. Chapter 146)*

#### **104.4 Trustee' Compensation**

The trustees are entitled to receive as compensation for their services an amount to be determined by them and approved by the municipal officers as required by M.R.S.A., Title 38, § 1252, ¶ 5. The treasurer may be allowed such compensation as the trustees shall determine. *(Part of Sec. 14, M.R.S.A. Chapter 146)*

The trustees shall receive compensation as recommended by them and approved by majority vote of the municipal officers in the municipalities representing a majority of the population within the district, including compensation for any duties they perform as officers as well as for their duties as trustees. Certification thereof shall be recorded with the Secretary of State and recorded in the bylaws. Their compensation for duties as trustees shall be on the basis of such specified amount as may be specified in the bylaws, for each meeting actually attended and reimbursement for travel and expenses, with the total not to exceed such specific amount as may be specified in the bylaws. Compensation schedules in effect on January 1, 1982 shall continue in effect until changed. *(M.R.S.A., Title 38, Chapter 12, § 1252, ¶ 5)*

#### **104.5 Vacancies**

Vacancies in the office of trustee from whatever cause are filled by appointment by the remaining trustees until the next annual election. If at any annual election there exists a vacancy in an unexpired term, a trustee is elected to fill such vacancy for such unexpired term, and the voters of the district shall cast the ballots as prescribed in this section, voting for as many candidates as there are offices to be filled. *(Part of Sec. 14, M.R.S.A. Chapter 146)*

B.S.

**Valmore G Blastow Jr.**

From: "Eaton Peabody" <mclisham@eatonpeabody.com>  
 To: <vblastow@midcoast.com>  
 Sent: Wednesday, May 16, 2007 4:04 PM  
 Subject: Law Court Rules that "Three" Means "Three"

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May 2007

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**Law Court Rules that "Three"  
Means "Three"**

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• **Law Court Rules that "Three" Means "Three"**

On April 26, 2007, Maine's Supreme Court held that where a municipal board is required by statute, charter or ordinance to have a certain number of members and there is a vacancy, the board is not legally constituted and lacks authority to act. Stevenson v. Town of Kennebunk, 2007 ME 55. In Stevenson, a taxpayer appealed an assessment to the Kennebunk board of Assessment Review, which was required by town charter to consist of three members. Prior to hearing the abatement request, a vacancy occurred and the Board of Assessment Review had only two members to consider the abatement request. The taxpayers requested a continuance until a new member could be appointed, but the two remaining board members denied the request for continuance. On appeal, the Law Court held that where a municipal board is required by statute, charter or ordinance to have a certain number of members and a vacancy exists, the board lacks authority to act and any actions it undertakes are a nullity. The lack of authority to act is jurisdictional and cannot be waived by the parties; even if the parties agree to a Board acting with less than the required number of members, the board still lacks authority to act.

Despite the sweeping import of the Law Court's decision in Stevenson, Maine municipalities can continue their operations in the short term and long term through a number of simple steps. Municipalities with matters pending before boards experiencing a vacancy should postpone those matters until a new member is appointed. Even if no matters are pending, municipalities should fill any vacancies promptly to avoid jurisdictional questions. See 30-A M.R.S.A. § 2602(2) (establishing the authority of municipal officers to fill a vacancy in a town office other than that of a selectmen or a school committee); and 20-A M.R.S.A. § 1254 (concerning vacancies on MSAD boards). Where a statute or charter provides authority to appoint alternate members, municipalities should appoint alternates as a regular practice. Currently Maine's statutes only authorize municipalities to appoint alternate members to a Board of Assessment Review (30-A

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M.R.S.A. § 2526(6)). See also 30-A M.R.S.A. § 2691(2)(A) (no authority to appoint alternates to a Board of Appeals) and 30-A M.R.S.A. § 4301(12) (no provision for alternate members to a planning board). However, we anticipate the possibility of legislative changes in the wake of Stevenson to provide greater flexibility in this area.

The Law Court's decision in Stevenson also leaves open the possibility to avoid the impact of this decision through a town charter or through ordinance. 2007 ME 55, ¶ 9. Municipalities seeking to avoid the draconian consequences of this decision should consider adopting quorum language in their charter or adopting a municipal quorum ordinance. Such a measure would establish quorum requirements, allowing a municipal board to act with less than the full number of members. For permit applications, such a measure could provide that the board could act unless the applicant or opponents request a continuance. Appropriate charter amendments or a quorum ordinance will provide municipalities the flexibility to continue operations on boards experiencing a vacancy.

Eaton Peabody attorneys are available to assist municipalities in understanding the import of the Law Court's decision in Stevenson v. Town of Kennebunk and in adding charter language or adopting an ordinance to address quorum requirements for local boards.

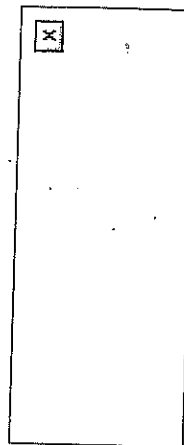
This email alert was prepared by Erik M. Stumpf, Esq. and Michael R. Clisham, Esq.

For further information on any of the included topics please contact the Municipal Law and Finance Practice Group at 207-991-0111, or at [mclisham@eatonpeabody.com](mailto:mclisham@eatonpeabody.com).

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[mclisham@eatonpeabody.com](mailto:mclisham@eatonpeabody.com)  
<http://www.eatonpeabody.com>

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**104.6 Special meetings; qualifications of voters of district.**

Special meetings of the district may be called by the board of trustees at any time, and notice of special meetings stating the place and time thereof and the business to be transacted thereat, shall be signed by the chairman or clerk of the board of trustees and shall be conspicuously posted in at least 2 public places throughout the district, not less than 7 days, exclusive of Sundays, before the meeting. Any such meeting may be adjourned from time to time by vote of qualified voters present thereat, though less than a quorum, and without notice of the time and place of the adjourned session, other than announcement at the meeting.

Twenty-five persons qualified to vote in such meetings shall constitute a quorum. 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. 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 the district, including the meeting for acceptance of this charter. *(Sec. 15, M.R.S.A. Chapter 146)*

## SECTION 105 - FUNDING & TAX EXEMPTION

### 105.1. Property tax exempt.

The property, both real and personal, rights and franchises of said district shall be forever exempt for taxation. (*Sec. 16, M.R.S.A. Chapter 146*)

### 105.2 Authorized to borrow money to issue bonds and notes.

For accomplishing the purposes of this Act, the district, by resolutions of its board of trustees, without district vote, is authorized to borrow money temporarily and to issue for the money its negotiable notes, and for the purpose of renewing and refunding the indebtedness so created, of paying any necessary expenses and liabilities incurred under the provisions of this Act, including organizational and other necessary expenses and liabilities incurred by the district or the Town of Waldoboro, the district being authorized to reimburse the Town of Waldoboro for any such expense incurred or paid by the town, and in acquiring properties, paying damages, laying sewers, drains and conduits, constructing, maintaining and operating a sewage plant or system and making renewals, additions, extensions and improvements to them, and to cover interest payments during the period of construction, the Waldoboro Utility District by resolutions of its board of trustees, without district vote, is also authorized to issue, from time to time, bonds, notes or other evidences of indebtedness of the district in one series, or in separate series, in such amount or amounts, bearing interest at such rate or rates, and having such terms and provisions as the trustees shall determine; except that the total indebtedness of the district at any one time outstanding may not exceed the sum of \$2,000,000 and that any single expenditure that exceeds \$100,000 must be approved by district vote. The bonds, notes and evidences of indebtedness may be issued to mature serially or made to run for such periods as the trustees may determine, but the bonds, notes

and evidences of indebtedness may not run for a longer period than 40 years from the date of original issue of the bonds, notes and evidences of indebtedness. Bonds, notes, or evidences of indebtedness may be issued with or without provision for calling them prior to maturity and, if callable, may be made callable at par or at such premium as the trustees may determine. All bonds, notes and evidences of indebtedness must have inscribed upon their face the words "Waldoboro Utility District", and be signed by the treasurer and countersigned by the chair of the board of trustees of the district and, if coupon bonds are issued, the interest coupons attached to the coupon bonds must bear the facsimile of the signature of the treasurer. All bonds, notes and evidences of indebtedness issued by the district are legal obligations of the district, which is a quasi-municipal corporation as defined in the Maine Revised Statutes, Title 30-A, section 2351, and all provisions of that section are applicable. The district may issue in one series or in separate series its bonds, notes and evidences of indebtedness for the purpose of paying, redeeming or refunding outstanding bonds, notes or evidences of indebtedness, and each authorized issue constitutes a separate loan. All bonds, notes and evidences of indebtedness issued by the district are legal investments for savings banks in the State and are tax exempt. The district is authorized and empowered to enter into agreements with the State or Federal Government, or any agency of either, or any corporation, commission or board authorized by the State or Federal Government to grant or loan money to or otherwise assist in the financing of projects such as the district is authorized to carry out and to accept grants and borrow money from any government agency, corporation, commission or board as may be necessary or desirable to enforce this Act. (Sec. 17, M.R.S.A. Chapter 146)

**105.3 Town of Waldoboro authorized to raise money to contribute to the district.**

Notwithstanding the creation of the Waldoboro Utility District as a separate entity, the Town of Waldoboro is hereby authorized from time to time to raise and appropriate money for the purpose of providing financial assistance to that district, provided that the amount of the contribution has been voted by the inhabitants of the Town of Waldoboro at any annual or special town meeting, and provided that any payments to the sinking fund from all sources shall be restricted to the levels set forth in Section 106.1. (*Sec. 27, M.R.S.A. Chapter 146*)

**105.4 Mutual funds**

A sewer district may invest its funds, including sinking funds, reserve funds and trust funds, to the extent that the terms of any instrument creating the funds do not prohibit the investment, in shares of any investment company registered under the federal Investment Company Act of 1940, whose shares are registered under the United States Security Act of 1933, only if the investments of the investment company are limited to obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States or repurchase agreements secured by obligations of the United States. This section is in addition to, and not in limitation of, any power of a sewer district to invest its funds. (*M.R.S.A., Title 38, Chapter 12, § 1255*)

## SECTION 106 - RATES, TOLLS & LIENS

### 106.1 Adoption of new rates

Prior to the adoption of a new rate schedule, the trustees shall hold a public hearing regarding the proposed rate schedule. The trustees shall publish the proposed rates and notice of the hearing not less than 7 days prior to the hearing. The district shall mail to each ratepayer a notice of the public hearing and the proposed new rate at least 14 days prior to the hearing. *(M.R.S.A., Title 38, Chapter 12, § 1252, ¶ 1)*

The adoption of rate schedules is governed by the requirements of the Maine Revised Statutes, Title 38, section 1252, subsection 1. *(Sec. 18, M.R.S.A. Chapter 146)*

### 106.2 Rates & Tolls; application of revenues.

All persons, firms and corporations, whether public, private or municipal shall pay to the treasurer of said district the rates, tolls, rents entrance charges and other lawful charges established by the trustees for the sewer or drainage service used or available with respect to their real estate, which rates shall include rates for the district's readiness to serve charged against owners of real estate, abutting on or accessible to, sewers or drains of the district, but not actually connected thereto, whether or not such real estate is improved.

Rates, tolls, rents and entrance charges shall be uniform within the district, whenever the cost to the district of installation of sewers and their appurtenances and the cost of service is substantially uniform; but nothing in this act shall preclude the district from establishing a higher rate, toll rent or entrance charge than the regular rates, tolls, rents and entrance charges in sections where, for any

reason the cost to the district of construction and maintenance, or the cost of service, exceeds the average, but such higher rates, tolls, rents and entrance charges shall be uniform throughout the sections where they apply.

The sewer rates tolls, rents and entrance charges must be so established as to provide revenue for the following purposes:

- I. To pay the current expenses for operating and maintaining the sewerage system;
- 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 created by the district which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of said indebtedness. Money set aside for the sinking fund shall be devoted to the retirement of obligations of the utility district, and invested in such securities as savings banks in this State are allowed to hold;
- IV. If any surplus remains at the end of the year, it may be turned into the sinking fund.

*(Sec. 18, M.R.S.A. Chapter 146)*

### **106.3 Lien for payment of rates.**

There shall be a lien on real estate served or benefited by the sewers of the district to secure the payment of rates established and due under section 106.1 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 in the Maine Revised Statutes, Title 36, section 551.

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 106.1 and the same shall be committed to the treasurer. 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 charge remaining unpaid in any court of competent jurisdiction. In addition to other methods established by law for the collection of rates, tolls, rent or other charges, and without waiver of right to sue for the same, the lien hereby created may be enforced in the following manner.

The treasurer, when a rate, toll, rent, or other charge has been committed to the treasurer 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 the resident's last and usual place of abode, or give by registered or certified mail addressed to the residents last known address, 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 be made.

In the case of a nonresident of the district, the notice shall be given by registered mail addressed to the nonresident's 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 of the notice or the first publication of notice. After the expiration of said period of 30 days and within one year after the date the charge became due and payable, the treasurer may record in the Registry of Deeds of Lincoln County, a certificate signed by the treasurer setting forth the amount of such rate, toll, rent or other

charge, describing the real estate on which the lien is claimed and stating that a lien is claimed on the real estate to secure payment of said rate, toll, rent, or other charge and that a notice and demand for payment of the same has been given or made in accordance with the provisions of this section and stating further that such rate, toll, rent or other charge remains unpaid. At the time of the recording of any such certificate in the Registry of Deeds, the treasurer shall file in the office of the district a true copy of such certificate and shall mail a true copy by registered mail to each record holder of any mortgage on said real estate, addressed to such record holder at the record holder's last and usual place of abode.

The fee to be charged by the district to the rate payer for the notice and filing and for discharge of paid liens shall not exceed the cost to the district of those actions.

The filing of the certificate in the Registry of Deeds creates a mortgage on the real estate described in the certificate to the district which shall have priority over all other mortgages, liens, attachments, and encumbrances of any nature, except liens, attachments and claims for taxes, and gives to the district all the rights usually possessed by mortgages, except that the district as mortgagee does not have any right to possession of said real estate until the right of redemption has expired. If the mortgage, together with interest and costs, has not been paid within 18 months after the date of filing of said certificate in the Registry of Deeds, the mortgage is foreclosed and the right of redemption expired. The filing of the certificate in the Registry of Deeds, is sufficient notice of the existence of the mortgage. In the event that said rate, toll, rent, or other charge, with interest and costs, is paid within the period of redemption, the treasurer of the district shall discharge the mortgage in the same manner as provided for discharge of real estate mortgages. *(Sec. 24, M.R.S.A. Chapter 146)*

## SECTION 107 - ASSESSMENT AGAINST LOT FOR NEW SEWERS

### 107.1 Assessment against lot benefited.

When the district has constructed and completed a common sewer, the trustees may, if they so determine, in order to defray a portion of the expense of the sewer, determine what lots or parcels of land are benefited by such sewer, and estimate and assess upon such lots and parcels of land, and against the owner of the lots and parcels of land, or person in possession or against whom taxes are assessed, whether said person to whom the assessment is so made shall be the owner, tenant, lessee or agent and whether the same is occupied or not, such sum not exceeding such benefit as they may determine just and equitable towards defraying the expenses of constructing and completing such sewer, together with such sewage disposal units and appurtenances as may be necessary, the whole of such assessment not to exceed  $\frac{1}{2}$  of the cost of such sewer and sewage disposal units. The trustees shall file with the clerk of the district the location of such sewer and sewage disposal units, 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 the time and place for a hearing upon the subject matter of said assessments, given to each person so assessed or left at the person's usual place of abode in said district; if the person has no place of abode 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 Waldoboro 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. *(Sec. 19, M.R.S.A. Chapter 146)*

### **107.2 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 right of appeal as is provided in the case of laying out of town ways. *(Sec. 20, M.R.S.A. Chapter 146)*

### **107.3 Assessments; liens; sheriff's sale.**

All assessments made under section 107.1 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 after filing of the assessment; 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 assessments, the amount of each, and the name of the person against whom the same is assessed, and the clerk shall certify the list and deliver it to the treasurer of said district. If said assessments are not paid within 3 month from the date of delivery of the list the treasurer may bring an action of debt for the collection of said assessment in the name of the district against the person against whom said assessment is made. Such action shall be begun by writ of attachment commanding the officer serving it to specially attach the real estate upon which the lien is claimed, which shall be served as other

writs of attachment to enforce liens on real estate. The declaration in such action shall contain a statement of such assessment, a description of the real estate against which the assessment is made, and an allegation that a lien is claimed on said real estate to secure the payment of the assessment. If no service is made upon the defendant or it shall appear that any other persons are interested in such real estate, the court shall order such further notice of such action as appears proper, and shall allow such other persons to become parties to the action if it shall appear upon trial of such action that such assessment was legally made against said real estate and is unpaid and that there is an existing lien on said real estate for the payment of such assessment, judgment shall be rendered for such assessment, interest, and costs of suit against the defendants, and against the real estate upon which the assessment was made, an execution issued to be enforced by sale of such real estate in the manner provided for a sale on execution of real estate attached on original writs; provided, that in making said sale, the officer shall follow the procedure in selling and conveying and there shall be the same rights of redemption as are provided in the Maine Revised Statutes Title 36, chapter 105. *(Sec. 21, M.R.S.A. Chapter 146)*

#### **107.4 Additional method of collection assessments.**

If assessments under section 107.1 are not paid, and said district does not proceed to collect unpaid assessments by a sheriff's sale of the real estate upon which such assessments are made under section 107.3, or does not collect or is in any manner delayed or defeated in collecting such assessments by a sheriff's sale of said real estate under section 107.3, then the treasurer, in the name of said district, may maintain an action against the party so assessed for the amount of said assessment, as for money paid, laid out and expended, in any court of competent jurisdiction, and in such suit may recover the amount of such

assessment with 10% interest on the same from the date of said assessment and cost. *(Sec. 22, M.R.S.A. Chapter 146)*

**107.5 Assessments paid by other than owner, how recovered.**

When any assessment under the provisions of section 107.1 shall be paid by any person against whom such assessment has been made, who is not 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 1954, chapter 178. *(Sec. 23, M.R.S.A. Chapter 146)*

## SECTION 108 – SEWER EXTENSION APPROVAL

### 108.1 Municipal approval for sewer extension

*For a sewer extension within the municipality:*

A. A sewer district may not construct any sewer extension unless it acquires from the municipal officers or the designee of the municipal officers of any municipality through which the sewer extension will pass written assurance that:

- (1) Any development, lot or unit intended to be served by the sewer extension is in conformity with any adopted municipal plans and ordinances regulating land use; and
- (2) The sewer extension is consistent with adopted municipal plans and ordinances regulation land use.

If the municipal officers fail to issue a response to a written request from a district for written assurance within 45 calendar days of receiving the request in writing, the written assurance is deemed granted.

Not less than 7 days prior to the meeting at which the trustees will take final action on whether to proceed with the extension, the trustees of the district shall publish notice of the proposed extension in a newspaper having a general circulation that includes all municipalities through which the sewer extension will pass.

*For an intermunicipal sewer extension:*

B. For an intermunicipal sewer extension, when written assurance is denied by municipal officers pursuant to paragraph A, an aggrieved party may appeal, within 15 days of the decision, to the State Planning Office, referred to in this paragraph as the “office,” for a review of the municipal officers’ decision. Notwithstanding Title 5, chapter 375, subchapter IV, the following procedures apply to the review by the office.

- (1) The office may request any additional information from the sewer district, the municipality of the department. All information requested by the office must be submitted within 30 days of the request, unless an extension is granted by the office.
- (2) Within a reasonable time, the office shall hold a hearing. The office shall give at least 7 days' written notice of the hearing to the sewer district, the municipality and the party that requested the hearing. The hearing is informal and the office may receive any information it considers necessary.
- (3) Within 15 days of the hearing and within 60 days of the request for review, the office shall make a decision that must include findings of fact on whether the sewer extension proposal is inconsistent with adopted municipal plans and ordinances regulating land use. The decision of the office constitutes final agency action.
- (4) Notwithstanding paragraph A, if the office determined that the sewer extension proposal is not inconsistent with adopted municipal plans and ordinances regulating land use, the office shall issue written assurance that the proposal is consistent with adopted municipal plans and ordinances regulating land use, and the sewer district may construct the sewer extension.

*(M.R.S.A., Title 38, Chapter 12, § 1252, ¶ 7)*

## SECTION 109 - WALDOBORO WATER COMPANY

### **109.1 Authorized to acquire property and franchises of Waldoboro Water Company.**

The district, through its trustees, may acquire by purchase the entire plant, properties, franchises, rights and privileges owned by the Waldoboro Water Company, including all lands, waters, water rights, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances used or usable in supplying water in the area of the district. *(Sec. 28, M.R.S.A. Chapter 146)*