

## 125th MAINE LEGISLATURE

### **FIRST REGULAR SESSION-2011**

**Legislative Document** 

No. 84

H.P. 72

House of Representatives, January 12, 2011

**An Act To Improve the Sewer District Rate Collection Procedures** 

(EMERGENCY)

Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

Heath & Puit
HEATHER J.R. PRIEST

Clerk

Presented by Representative FITTS of Pittsfield.

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, certain sewer districts have an immediate need to deal with delinquent accounts; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

#### Sec. 1. 38 MRSA §1258 is enacted to read:

#### §1258. Collection of unpaid rates

12.

- 1. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
- A. "Rates" means any rate, toll, rent or other charge established by a sewer district pursuant to its charter.
  - B. "Real estate" means an identified parcel of land and its improvements, if any, including, but not limited to, a mobile home.
- 2. Lien. There is a lien on real estate served or benefited by the sewers of the sewer district to secure the payment of the sewer district's rates. The lien established under this section takes precedence over all other claims on such real estate, except claims for taxes.
- 3. Collection. The treasurer of the sewer district may collect rates, and all rates must be committed to the treasurer. The treasurer may, after demand for payment, sue in the name of the sewer district in a civil action in any court of competent jurisdiction for any rates remaining unpaid. In addition to other methods established by law for the collection of rates and without waiver of the right to sue for the collection of rates, the lien created under subsection 2 may be enforced in the following manner.
  - A. When rates have been committed to the treasurer of the sewer district for collection, the treasurer may, after the expiration of 3 months and within one year after the date when the rates became due and payable, give to the owner of the real estate served, leave at the owner's last and usual place of abode or send by certified mail, return receipt requested, to the owner's last known address a notice in writing signed by the treasurer or bearing the treasurer's facsimile signature, stating the amount of the rates due, describing the real estate upon which the lien is claimed and stating that a lien is claimed on the real estate to secure the payment of the rates and demanding the payment of the rates within 30 days after service or mailing, with \$1 added to the demanded rate for the treasurer and an additional fee to cover mailing the notice by certified mail, return receipt requested. The notice must contain a statement that the sewer district is willing to arrange installment payments of the outstanding debt.

B. After the expiration of 30 days and within one year after giving notice pursuant to paragraph A, the treasurer of the sewer district shall record in the registry of deeds of the county in which the property of the person is located a certificate signed by the treasurer setting forth the amount of the rates due, 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 the rates and that a notice and demand for payment has been given or made in accordance with this section and stating further that the rates remain unpaid. At the time of the recording of the certificate in the registry of deeds, the treasurer shall file in the office of the sewer district a true copy of the certificate and shall mail a true copy of the certificate by certified mail, return receipt requested, to each record holder of any mortgage on the real estate, addressed to the record holder at the record holder's last and usual place of abode.

- C. The filing of the certificate in the registry of deeds creates a mortgage held by the sewer district on the real estate described in the certificate that has priority over all other mortgages, liens, attachments and encumbrances of any nature, except liens, attachments and claims for taxes, and gives to the sewer district all the rights usually possessed by mortgagees, except that the sewer district as mortgagee does not have any right to possession of that real estate until the right of redemption has expired.
- D. If the mortgage created under paragraph C, together with interest and costs, has not been paid within 18 months after the date of filing the certificate in the registry of deeds in accordance with paragraph B, the mortgage is foreclosed and the right of redemption expires. The filing of the certificate in the registry of deeds is sufficient notice of the existence of the mortgage. In the event that the rate, with interest and costs, is paid within the period of redemption, the treasurer of the sewer district shall discharge the mortgage in the same manner as provided for discharge of real estate mortgages.
- E. The owner of the real estate shall pay the sum of the fees for receiving, recording and indexing the lien, or its discharge, as established by Title 33, section 751, plus \$13, plus all certified mail, return receipt requested, fees.
- F. Not more than 45 days or less than 30 days before the foreclosing date of the mortgage created under paragraph C, the treasurer of the sewer district shall notify the party named on the mortgage and each record holder of a mortgage on the real estate in a writing signed by the treasurer or bearing the treasurer's facsimile signature and left at the holder's last and usual place of abode or sent by certified mail, return receipt requested, to the holder's last known address of the impending automatic foreclosure and indicating the exact date of foreclosure. For sending this notice, the sewer district is entitled to receive \$3 plus all certified mail, return receipt requested, fees, which must be added to and become a part of the amount due under paragraph E. If notice is not given in the time period specified in this paragraph, the person not receiving timely notice has up to 30 days after the treasurer provides notice as specified in this paragraph in which to redeem the mortgage. The notice of impending automatic foreclosure must be substantially in the following form:

# STATE OF MAINE .....SEWER DISTRICT

1	NOTICE OF IMPENDING AUTOMATIC FORECLOSURE
2	SEWER LIEN
3	M.R.S.A., Title 38, section 1258
4	<b>IMPORTANT: DO NOT DISREGARD THIS NOTICE</b>
5	YOU WILL LOSE YOUR PROPERTY UNLESS
6	YOU PAY THE CHARGES, COSTS AND INTEREST FOR WHICH
7	A LIEN ON YOUR PROPERTY HAS BEEN CREATED BY THE
8	SEWER DISTRICT.
9	TO:
10	IF THE LIEN FORECLOSES,
11	THE SEWER DISTRICT WILL OWN
12	YOUR PROPERTY, SUBJECT ONLY TO
13	MUNICIPAL TAX LIENS.
14	•••••••
15	District Treasurer
16	G. The sewer district shall pay the treasurer \$1 for the notice, \$1 for filing the lien
17	certificate and the amount paid for certified mail, return receipt requested, fees. The
18	fees for recording the lien certificate must be paid by the sewer district to the register
19	of deeds.
20	H. A discharge of the certificate given after the right of redemption has expired,
21	which discharge has been recorded in the registry of deeds for more than one year,
22	terminates all title of the sewer district derived from that certificate or any other
23	recorded certificate for which the right of redemption expired 10 years or more prior
24	to the foreclosure date of this discharge lien, unless the sewer district has conveyed
25	any interest based upon the title acquired from any of the affected liens.
26	4. Waiver of sewer district lien foreclosure. The treasurer of a sewer district,
27	when authorized by the trustees of the sewer district, may waive the foreclosure of a
28	mortgage created under subsection 3 by recording in the registry of deeds a waiver of
29	foreclosure before the right of redemption from the mortgage has expired. The mortgage
30	remains in full effect after the recording of a waiver. Other methods established by law
31	for the collection of any unpaid rates are not affected by the filing of a waiver under this
32	section.
33	The waiver of foreclosure must be substantially in the following form:
34	STATE OF MAINE SEWER DISTRICT
35	WAIVER OF AUTOMATIC FORECLOSURE
36	OF SEWER LIEN
37	M.R.S.A., Title 38, section 1258

1	The foreclosure of the sewer hen mortgage on real estate for charges against
2	(NAME) to
3	the
4	waived.
5	The form must be dated, signed by the treasurer of the sewer ct and notarized. A copy of
6	the form must be provided to the party named on the mortgage and each record holder of
7	a mortgage on the real estate.
8	Emergency clause. In view of the emergency cited in the preamble, this
9	legislation takes effect when approved.
10	SUMMARY
11	This bill provides sewer districts with the same authority as sanitary districts to place
12	a mortgage lien on real estate served or benefited by the district's sewers for nonpayment
13	of rates. The procedures for foreclosing the lien are the same as for sanitary district liens.
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